(“Official Gazette” of the Brcko District of Bosnia and Herzegovina, No. 10/03)

By virtue of Article 23 of the Statute of the Brcko District of Bosnia and Herzegovina, the Assembly of the Brcko District of Bosnia and Herzegovina, at its 65th session, held on May 28, 2003, adopted the following

LAW ON CRIMINAL PROCEDURE OF THE BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA

PART ONE - GENERAL PROVISIONS

CHAPTER I - BASIC PRINCIPLES

Article 1
Scope and Application of this Law

This Law shall set forth the rules of the criminal procedure that are mandatory for the proceedings of the Basic and Appellate Court of Brcko District of Bosnia and Herzegovina (hereinafter: the Basic and Appellate Court), the Prosecutor’s Office of Brcko District of Bosnia and Herzegovina (hereinafter: the Prosecutor’s Office) and other participants in the criminal proceedings under this Law, when acting in criminal matters.

Article 2
Principle of Legality

(1) The rules set forth in this Law should ensure that no innocent person be convicted and that a perpetrator of an offense be pronounced a criminal sanction subject to conditions stipulated in the Criminal Code of Brcko District of Bosnia and Herzegovina (hereinafter: the Criminal Code) and other laws defining criminal offenses within a lawful deadline.

(2) Freedom and rights of the suspect or accused may be limited only under the conditions set forth in this Law.

(3) A criminal sanction may be pronounced to the perpetrator of a criminal offense by the competent court in the proceedings conducted pursuant to this Law.

Article 3
Presumption of Innocence and *In Dubio Pro Reo*

(1) A person shall be considered innocent of a crime until found guilty by a final judgment.

(2) Doubt as to whether facts exist constituting a criminal offense or upon which the application of certain provisions of criminal legislation is contingent shall be resolved by the Court through a judgment in the manner most favorable for the accused.

Article 4
Ne Bis in Idem

No person shall be re-tried for the criminal offense he had already been tried for and for which a final decision was rendered.

Article 5
Rights of a Person Deprived of Liberty

(1) A person deprived of liberty must be immediately informed, in his native tongue or any other language

that he understands, about the reasons of his apprehension and instructed on the fact that he is not bound to make a statement, on his right to a defense counsel of his own choice as well as on the fact that his family, consular officer of a foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.

(2) A person deprived of liberty shall be appointed a defense counsel at his request if, due to his financial status, he cannot bear the expenses of a defense.

Article 6
Rights of a Suspect or Accused

(1) The suspect must be informed about the offense that he is charged with and grounds for suspicion about him during the first interview.

(2) The suspect or the accused must be given an opportunity to make a statement regarding all the inculpatory facts and evidence as well as to present all exculpatory facts and evidence.

(3) The suspect or the accused shall not be bound to present his defense or to answer any questions.

Article 7
Right to Defense

(1) The suspect or the accused is entitled to act *pro se* or to defend through professional assistance of a defense counsel of his own choice.

(2) If the suspect or the accused does not engage a defense counsel, one shall be appointed to him in the cases stipulated by this Law.

(3) The suspect or the accused must be given sufficient time to prepare his defense.

Article 8
Language and Alphabet

(1) The Bosnian, Croatian and Serbian languages shall be in equal use in criminal proceedings, and Latin and Cyrillic alphabets shall be official.

(2) Criminal proceedings shall be conducted in one of the languages from Paragraph 1 of this Article and one of the alphabets from Paragraph 1 of this Article shall be used.

(3) Parties, witnesses and other participants in the proceedings shall be entitled to use their own language. If a party does not understand one of the official languages of Bosnia and Herzegovina, provisions shall be made for oral interpretation of the testimony of that person and other persons as well as interpretation of identification documents and other written pieces of evidence.

(4) Persons from Paragraph 3 of this Article shall be advised on their rights from Paragraph 3 of this Article prior to the first interview and they may waive these rights if they understand the language in which the proceedings are being conducted. A note shall be made in the record that the participant has been advised so and his response thereto shall also be noted.

(5) A court interpreter shall perform interpretation.

Article 9
Sending and Delivery of Papers

(1) The Court and other bodies participating in the proceedings shall send summons, decisions and other papers in the official languages from Article 8, Paragraph 1 of this Law.

(2) Complaints, appeals, and other writs shall be submitted to the Court and other bodies participating in the

proceedings in the official languages from Article 8, Paragraph 1 of this Law.

(3) The person who is deprived of liberty or is in custody, serving sentence or committed to mandatory psychiatric treatment or to mandatory addiction rehabilitation, shall also be delivered the translation of the papers referred to in Paragraphs 1 and 2 of this Article, in the language used by the person in the proceedings.

Article 10
Legality of Evidence

(1) It shall be forbidden to extort a confession or any other statement from a suspect, an accused or any other participant in the proceedings.

(2) The Court may not base its decision on evidence obtained through violation of human rights and freedoms granted by the Constitution and international treaties or on evidence obtained through violations of this Law.

(3) The Court may not base its decision on evidence derived from the evidence referred to in Paragraph 2 of this Article.

Article 11
Right to Compensation and Rehabilitation

A person who was unjustifiably convicted of a criminal offense or was groundlessly deprived of liberty shall be entitled to rehabilitation, compensation of damage from the budget, as well as to other rights stipulated by law.

Article 12
Instruction on Rights

The suspect or the accused or any other participant in the proceedings, who might, out of ignorance, fail to carry out a certain procedural action or fail to exercise his rights, shall be instructed about their rights under this Law and consequences of failure to take action by the Court, Prosecutor and other bodies participating in the proceedings.

Article 13
Right to Speedy Trial

(1) The suspect or the accused shall be entitled to be brought before the Court in the shortest reasonable period of time and to be tried without delay.

(2) The Court shall also be bound to conduct the proceedings without delay and prevent any abuse of the rights of parties to the proceedings.

(3) The custody must be reduced to the shortest possible time.

Article 14
Equality of Arms and Fair Trial

(1) The Court, the Prosecutor and other bodies participating in the proceedings shall have to examine and establish, with equal attention, inculpatory as well as exculpatory facts related to the suspect or the accused.

(2) Rules stipulated in this Law shall ensure that the suspect or the accused is given a fair trial.

Article 15
Free Evaluation of Evidence

The right of the Court, Prosecutor and other bodies participating in a criminal proceeding to evaluate the existence or non-existence of facts shall not be related to or limited by special formal evidentiary rules.

Article 16
Accusatory Principle and the Burden of Proof

(1) Criminal proceedings may only be initiated and conducted at the request of the Prosecutor.

(2) The Prosecutor shall have a duty to prove the guilt of the accused.

Article 17
Principle of Legality of Prosecution

The Prosecutor shall initiate prosecution if there is evidence that a criminal offense has been committed unless otherwise stipulated by this Law.

Article 18
Consequences of Initiation of a Proceedings

If it is stipulated that initiation of criminal proceedings results in the restriction of certain rights, such consequences shall occur once the indictment is confirmed, unless otherwise specified by this Law. Should the criminal offenses in question be those for which a prison sentence of up to five (5) years or a fine is prescribed as principal punishment, those consequences shall take effect as of the date the conviction is rendered, regardless of whether it has become final or not.

Article 19
Preliminary Issues

(1) If application of criminal code is contingent on a prior ruling on a legal matter to be decided by a competent Court in another proceedings, or by another body, the Court, when trying the criminal case, may rule itself on that matter as well pursuant to provisions on evidentiary procedure in criminal proceedings. The Court's ruling on such a legal matter shall only have an effect in the particular criminal case being decided by the Court.

(2) If the Court had already ruled on such preliminary matter in some other proceedings or if another body had passed the decision, such decision shall not be binding for the Court with respect to the assessment of whether a particular criminal offense was committed.

CHAPTER II

DEFINITION OF TERMS

Article 20
Basic Terms

Unless otherwise provided by this Law, particular terms used for purposes of this Law shall have the following meanings:

a) The term "suspect" refers to a person suspected of an offense based on grounded suspicion that he may have committed a criminal offense;
b) The term "accused" refers to a person against whom one or more counts in an indictment have been confirmed;
c) The term "convicted person" refers to a person pronounced criminally liable for a particular criminal offense in a final judgment;
d) The term "pre-trial judge" refers to a judge who takes actions during the investigation when prescribed by this Law;
e) The term "preliminary hearing judge" refers to a judge who, after the indictment has been raised, acts in the cases prescribed by this Law and has the authority identical to that of the pre-trial judge;

f) The term “parties” refers to the Prosecutor and to the suspect or the accused;
g) The term “authorized official” refers to a person with appropriate authorities within the State Border Service, police authorities of the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District of Bosnia and Herzegovina, judicial police and customs, financial police, tax authorities and military police;
h) The term "injured party" refers to a person whose personal or property right(s) have been jeopardized or violated by a criminal offense;
i) The term “legal persons” refers to persons defined as such in the Criminal Code of the Brcko District of BiH, including: corporations, enterprises, associations, firms and partnerships and other business companies;
j) The term “investigation” refers to all activities undertaken by the Prosecutor or by authorized officials in accordance with this Law, including the collection and preservation of statements and evidence;
k) The term “cross-examination” refers to the questioning of a witness and expert witness by a party, or by his defense counsel, who did not call the witness or the expert witness to testify;
l) The term “direct examination” refers to the examination of a witness and expert witness by the party or the defense counsel who called the witness or expert witness to testify;
m) The term “grounded suspicion” refers to a high degree of suspicion based on collected evidence leading to the conclusion that a criminal offense was committed;
n) The terms "notes" and "documents" refer to letters, words, or numbers, or their equivalent, generated by handwriting, typewriting, printing, photocopying, photographing, magnetic impulse recording, mechanical or electronic recording, or other form of data compilation;
o) The term "photographs" refers to photographs, digital and X-ray films, videotapes, and motion pictures;
p) The term "original" refers to an actual document or recording or a similar counterpart by which the person writing, recording or issuing it achieves the same effect. An "original" of a photograph shall include the negative and any copy therefrom. If the data are stored on a computer or a similar automatic data processing device, any printout or other visible output shall be considered an "original”;
r) The term "duplicate" refers to a copy generated by copying the original or matrix, including enlargements and miniatures, by mechanical or electronic re-recording, chemical reproduction, or by other equivalent techniques that accurately reproduce the original;
s) The term “telecommunication address” refers any telephone number, either landline or cellular, or e-mail or Internet address held or used by a person.

CHAPTER III

LEGAL ASSISTANCE AND OFFICIAL COOPERATION

Article 21
Duty to Extend Legal Assistance and Official Cooperation

(1) The Basic and Appellate Courts shall have a duty to extend legal assistance to the Court of BiH, the courts in the Federation of Bosnia and Herzegovina and the courts in Republika Srpska.

(2) All authorities in the Brcko District of Bosnia and Herzegovina shall have a duty to maintain official cooperation with the courts, the Prosecutor and other bodies participating in criminal proceedings.

Article 22
Rendering of Legal Assistance

(1) The Basic or Appellate Court shall send a request for legal assistance or official action to the competent court or authority.

(2) Legal assistance shall be rendered and official action taken free of charge.

(3) Paragraphs 1 and 2 of this Article shall also be applied to requests sent by the Prosecutor to a prosecutor’s office and other authorities.

CHAPTER IV - JURISDICTION OF THE COURTS

Section 1 - Subject-matter Jurisdiction and Territorial Jurisdiction of the Courts

Article 23
Subject-matter Jurisdiction and Composition of the Courts

(1) The Basic and Appellate Court shall try criminal cases within the scope of their subject-matter jurisdiction as defined by law.

(2) In the first instance, the Basic Court shall pass rulings in the panel of three judges, while an individual judge shall try criminal offenses where a fine or a prison sentence of up to ten years is prescribed as a principal punishment.

(3) The Court President, pre-trial judge, preliminary hearing judge and the presiding judge in the panel shall decide, in a joint session, in the cases defined by this law.

(4) In the second instance, the Appellate Court shall decide on appeals against decisions and judgments of the Basic Court and on extraordinary remedies against final and binding court rulings, in the panel composed of three judges.

(5) A judge who took part in passing the ruling contested by the appeal shall not take part in deciding on extraordinary remedies.

Article 24
Territorial Jurisdiction of the Courts

(1) The Basic and Appellate Court shall have a duty to try all criminal offenses committed or attempted in the territory of the Brcko District of BiH.

(2) All other forms of territorial jurisdiction shall be regulated by agreements with the Entities.

Section 2 - JOINDER AND SEPARATION OF PROCEEDINGS

Article 25
Joinder of Proceedings

(1) The Court shall, as a rule, decide to conduct joint proceedings and render a single judgment if one person was charged with several criminal offenses, or if several persons participated in the commission of one criminal offense.

(2) The Court may decide to conduct joint proceedings and render a single judgment even if several persons have been charged with several criminal offenses, but only if there is a connection between the said offenses.

(3) The Court may decide to conduct joint proceedings and render a single judgment if separate proceedings are conducted against the same person for several criminal offenses or against several persons for the same criminal offense.

(4) The judge or the panel shall decide on the joinder of proceedings by a decision. No appeal shall be allowed against the decision ordering joinder of the proceedings or rejecting the motion for joinder of the proceedings.

Article 26
Separation of Proceedings

(1) Before the main trial is completed, the court may, for important reasons or for reasons of expediency,

decide to separate the proceedings regarding certain criminal offenses or against certain accused persons, and complete them separately.

(2) The judge or the panel shall make the decision on separation of proceedings after having heard the parties and the defense counsel.

(3) No appeal shall be allowed against the decision ordering separation of proceedings or rejecting a motion for separation of proceedings.

Section 3 - TRANSFER OF TERRITORIAL JURISDICTION

Article 27
Transfer of Jurisdiction

(1) If the competent court cannot proceed, *de jure* or *de facto*, or for other relevant reasons, the court designated by law may designate another court in its territory that has subject-matter jurisdiction.

(2) Decision from Paragraph 1 of this Article may be passed at the proposal of authorized judge or panel, or at the proposal of one of the parties, or the defense counsel.

(3) No appeal shall be allowed against this decision.

Article 28
Consequences of Non-Jurisdiction

(1) The Court shall carefully consider its jurisdiction and as soon as it becomes aware that it is not competent, it shall declare its non-jurisdiction and remit the case to the competent court, after the decision has become final. However, it shall have a duty to undertake those procedural actions that should not be delayed.

(2) After an indictment has been confirmed, the court may not declare its territorial non-jurisdiction and the parties may not file a motion contesting territorial jurisdiction.

CHAPTER V-DISQUALIFICATION

Article 29
Grounds for Disqualification

A judge may not carry out his regular duties, if:

a) he/she is damaged by the criminal offense;
b) if the suspect or the accused, his defense counsel, the Prosecutor, the injured party, his legal representative or proxy, is his/her spouse or partner, or relative in direct line of descent in any generation, in lateral line to the fourth generation, or in-law to the second generation,
c) if he/she is a guardian, ward, adoptive parent, adopted child, foster parent or foster child of the suspect or the accused, his defense counsel, the Prosecutor or the injured party,
d) if he/she was involved in the same criminal case as the pre-trial judge or preliminary hearing judge, or if he/she acted as prosecutor, defense counsel, legal representative or proxy of the injured party, or if he/she was heard as a witness or expert witness,
e) if he/she took part in rendering a decision contested by a legal remedy in the relative case,
f) if there are any circumstances that raise reasonable doubt as to his/her impartiality.

Article 30
Disqualification at the Request of the Parties

(1) A party or a defense counsel may request the disqualification of the President and a judge of the Basic and the Appellate Court.

(2) The motion from Paragraph 1 of this Article may be filed before the beginning of the main trial and if the reasons for disqualification from Article 29, Items a. to f. of this Law are found out later, the motion shall be filed as soon as they have been found out.

(3) A party or defense counsel may file the motion for disqualification of the President and a judge of the Appellate Court either in the appeal or in the response to the appeal.

(4) A party or a defense counsel may request disqualification of only a particular judge involved in the case.

(5) In the motion, a party or defense counsel shall set forth the circumstances due to which they believe that the legal grounds exist to justify the disqualification. The reasons stated in the previously refused motion for disqualification may not be stated again in a new motion.

Article 31
Disqualification Procedure

As soon as a judge learns of any of the reasons for his disqualification from Article 29, Items a. through e. of this Law, he shall be bound to stop all activities on the case and inform the President of the Court. If the judge believes that the circumstances from Article 29, Item f. of this Law exist, he shall inform the President of the Court accordingly.

Article 32
Decisions on Motion for Disqualification

(1) The President of the Basic Court shall decide on disqualification of a judge of the Basic Court and the President of the Appellate Court shall decide on disqualification of the President of the Basic Court.

(2) The President of the Appellate Court shall decide on a motion for disqualification of a judge of the Appellate Court, and the Court, in joint session, shall decide on disqualification of the President of the Appellate Court.

(3) Prior to passing a decision on disqualification, a statement by the judge or the President of the Court shall be obtained, and other inquiries shall be made, if necessary.

(4) No appeal shall be allowed against the decision granting or denying the motion for disqualification. However, the decision denying the motion for disqualification may be contested through the appeal against the judgment.

(5) If the motion for disqualification from Article 29, Item f. of this Law was submitted after the beginning of the main trial, or if actions were taken contrary to the provisions of Article 30, Paragraphs 4 and 5 of this Law, the motion shall be denied in whole or in part. No appeal shall be allowed against the decision denying the motion.

Article 33
Validity of Actions Taken after Filing the Motion for Disqualification

When a judge learns that a motion has been filed for his disqualification, he shall immediately cease all activities on the case and may not sign any court decision from Article 163 of this Law (judgment, decision, order). If the disqualification from Article 29, Item f. of this Law is in question, the judge may only take those actions, before the decision on the motion is passed, the delay of which would be harmful.

Article 34
Disqualification of the Prosecutor and Other Participants in the Proceedings

(1) The provisions on disqualification of a judge shall accordingly be applied to the Prosecutor and the persons authorized by law to represent the prosecutor in the proceedings, clerks, court interpreters and experts as well as to expert witnesses, unless otherwise regulated.

(2) The Prosecutor shall decide on the disqualification of persons who are, by law, authorized to represent him in criminal proceedings. The prosecutor's office, in its full composition, shall decide on disqualification of the prosecutor.

(3) The panel, presiding judge or a judge shall decide on the disqualification of clerks, court interpreters, experts and expert witnesses.

(4) When authorized officials take investigative actions pursuant to this Law, the prosecutor shall decide on their disqualification. Should a clerk take part in the actions, an authorized person taking the actions shall decide on the disqualification of the clerk.

CHAPTER VI - PROSECUTOR

Article 35
Rights and Duties

(1) The fundamental right and the fundamental duty of the Prosecutor shall be the detection and prosecution of perpetrators of criminal offenses falling within the jurisdiction of the Court.

(2) The Prosecutor shall have the right and duty to:

a) take necessary steps to discover a criminal offense and conduct investigation immediately after having learned that there is grounded suspicion that it was committed, identify the suspect(s), direct and supervise the investigation, as well as to direct the activities of authorized officials concerning the identification of a suspect, taking statements and collection of evidence;
b) conduct an investigation in accordance with this Law;
c) grant immunity in accordance with law;
d) request information from governmental bodies, companies and physical and legal persons in Bosnia and Herzegovina;
e) issue summons and orders, and propose the issuance of summons and orders as provided under this Law;
f) order an authorized official to execute an order issued by the Court pursuant to this Law;
g) propose the issuance of a criminal warrant pursuant to Article 334 of this Law;
h) indict and defend indictment before the court;
i) file legal remedies;
j) perform other tasks provided by law.

(3) In accordance with Paragraphs 1 and 2 of this Article, all bodies participating in the investigation shall inform the Prosecutor on each undertaken action and act in accordance with each request of the Prosecutor.

Article 36
Initiation of Actions

The prosecutor shall take all actions in the proceedings for which he is authorized by law, either by himself or through persons who are, under the law, bound to act upon his requests in the criminal proceedings.

Article 37
Instruction Giving

In order to exercise his rights and duties, the prosecutor may, in particular cases, which are within the jurisdiction of the court, give necessary instructions to authorized officials.

Article 38
Principle of Mutation

The Prosecutor may abandon the prosecution before the end of the main trial in the proceedings before the Appellate Court, when provided by this Law.

CHAPTER VII - DEFENSE COUNSEL

Article 39
Right to a Defense Counsel

(1) The suspect or the accused shall be entitled to a defense counsel throughout the proceedings.

(2) An attorney may be engaged as a defense counsel subject to the law requirements.

(3) If the suspect or the accused does not hire a defense counsel by himself, a defense counsel may be engaged for him by his legal representative, spouse or partner, relatives in direct line of descent to any generation, adoptive parent, adopted child, siblings or foster parents, unless the suspect or the accused is explicitly against it.

(4) The defense counsel must submit his letter of attorney when taking the first action in the proceedings.

Article 40
Number of Defense Counsels

(1) Several suspects or accused may have one defense counsel unless the defense counsel appointed by the court, in accordance with Articles 45 and 46 of this Law.

(2) The suspect or the accused may have more than one defense counsel, but only one shall have the status of the lead counsel and the suspect or the accused shall decide that. It shall be considered that the defense has been provided when one of the defense counsels is participating in the proceedings.

Article 41
Persons Who May not Act as Defense Counsels

(1) An injured party, spouse or partner of the injured party or of the prosecutor, or their relative in the direct line of descent to any generation, in a lateral line of descent to the fourth generation, or in-laws to the second generation may not act as a defense counsel.

(2) A defense counsel who has been summoned as a witness may not act as a defense counsel in that case.

(3) A person who has acted in the capacity as the judge or the prosecutor may not act as a defense counsel in the same case.

Article 42
Disqualification of a Defense Counsel from the Proceedings

(1) Grounds for disqualification of a defense counsel shall also exist for a defense counsel abusing the contact with the suspect or accused, who is in detention, to the effect that the suspect or accused, would commit a criminal offense, or jeopardize the security of the detention facility.

(2) In the case from Paragraph 1 of this Article, the suspect or the accused shall be requested to engage another defense counsel within a defined deadline.

(3) If the suspect or the accused fails to engage a defense counsel in the cases of mandatory defense, or if the persons from Article 39, Paragraph 3 of this Law fail to do so, the procedure stipulated in Article 45, Paragraph 4 of this Law shall be applied.

(4) In the circumstances from Paragraphs 2 and 3 of this Article, the newly appointed defense counsel shall be given sufficient time to prepare the defense of the suspect or the accused.

(5) In the course of disqualification, the defense counsel may not defend the suspect or the accused in other proceedings. The defense counsel may not defend other suspects or accused in the same, or in separate proceedings.

Article 43
Procedure of Disqualification of a Defense Counsel

(1) The decision on disqualification of a defense counsel shall be issued at a separate hearing attended by the Prosecutor, the suspect or the accused, the defense counsel and a representative of the Bar Association, whose member is the defense counsel.

(2) The disqualification proceedings may be conducted even in the absence of the defense counsel, provided that the defense counsel had been duly summoned and that the summons cautioned the defense counsel that the proceedings would be conducted even in his absence. Records shall be compiled about the hearing.

Article 44
Decision on Disqualification

(1) The pre-trial judge or the preliminary hearing judge shall pass the decision on disqualification from Article 43 of this Law, prior to the commencement of the main trial, and in the main trial, the judge or the panel of judges. In the proceedings conducted before the Appellate Court, the decision on disqualification of the defense counsel shall be passed by the panel of judges.

(2) No appeal shall be allowed against the decision from Paragraph 1 of this Article.

(3) If the defense counsel was disqualified from the proceedings, he may be ordered to bear the costs incurred as a result of discontinuation or delay of the proceedings.

Article 45
Mandatory Defense of a Suspect

(1) If a suspect is mute or deaf or suspected of a criminal offense punishable by long-term imprisonment, he must have a defense counsel at the first hearing.

(2) A suspect or the accused must have a defense counsel immediately after he has been pronounced pre-trial custody, during the pre-trial custody.

(3) After an indictment has been raised for a criminal offense punishable by a prison sentence of ten years or more, the accused must have a defense counsel at the time of the delivery of the indictment.

(4) If the suspect or the accused in the cases of mandatory defense, does not engage a defense counsel, or if the persons from Article 39, Paragraph 3 of this Law fail to engage a defense counsel for him, the pre-trial judge, preliminary hearing judge, the judge, or the presiding judge in the panel shall appoint a defense counsel for the suspect or the accused in the proceedings. In this case, the suspect or the accused shall have the right to a defense counsel until the judgment has become final and, if a long-term imprisonment was pronounced, also in the remedies proceedings.

(5) If the court finds it in the interest of justice, it shall appoint a defense counsel to the suspect or the accused, due to the complexity of the case or mental state of the suspect or the accused.

(6) In the process of appointing a defense counsel, the suspect or the accused, shall be invited to select a defense counsel from a given list by himself. If the suspect or the accused fails to select a defense counsel from the given list, the court shall appoint one.

Article 46
Appointment of a Defense Counsel for Indigent Persons

(1) When the requirements for mandatory defense are not met, and the proceedings are conducted for an offense punishable by a prison sentence, or when it is in the interest of fair trial regardless of the prescribed punishment, a defense counsel from the Agency for Legal Aid or from among private attorneys shall be assigned to the suspect or the accused at his request, if, due to his financial situation,

he is not able to pay the expenses of the defense.

(2) The President of the Basic Court shall define the criteria for assigning a defense counsel.

(3) The motion for assigning a defense counsel from Paragraph 1 of this Article may be filed at any time during the criminal proceedings. The defense counsel shall be assigned by the pre-trial judge, the preliminary hearing judge, the judge or the presiding judge of the panel, after the suspect or the accused was first given the opportunity to select a defense counsel from the presented list.

(4) Should it be subsequently determined that the financial status of the suspect or the accused is not in line with the respective criteria, the court may decide that the costs of the defense should be compensated.

Article 47
The Right of the Defense Counsel to Inspect Files and Documentation

(1) During the investigation, the defense counsel shall have the right to inspect files and obtained items in favor of the suspect. The defense counsel may be denied this right, if the disclosure of these particular files and items would jeopardize the purpose of the investigation.

(2) As an exception from Paragraph 1 of this Article, when the suspect or the accused is in pre-trial custody, the prosecutor shall submit evidence to the pre-trial judge, or to the preliminary hearing judge, for the purpose of informing the defense counsel.

(3) After the indictment is raised, the defense counsel of the suspect or the accused shall have the right to review all files and evidence.

(4) Upon obtaining any new piece of evidence, or any information or fact that may be used as evidence at the trial, the pre-trial judge, preliminary hearing judge, the judge or the panel, or the prosecutor, shall have a duty to submit them for inspection to the defense counsel.

(5) In the cases from Paragraphs 3 and 4 of this Article, the defense counsel may make copies of all files or documents.

Article 48
Communication of the Suspect or the Accused with the Defense Counsel

(1) If the suspect or the accused is in custody, he shall immediately be entitled to communicate with the defense counsel, orally or in writing.

(2) The communication between the suspect or the accused may be observed, but not heard.

Article 49
Dismissal of Appointed Defense Counsel

(1) A suspect or an accused may engage another defense counsel instead of the appointed defense counsel. In this case, the appointed defense counsel shall be dismissed.

(2) A defense counsel may request to be released from the case only as provided by law.

(3) The dismissal of the defense counsel from Paragraphs 1 and 2 of this Article shall be decided during investigation by the preliminary proceeding judge, after raising of the indictment by the preliminary hearing judge, whereas during the main trial by the judge trying the case or the panel. No appeal shall be allowed against this decision.

(4) The preliminary proceeding judge, the preliminary hearing judge, the judge or the panel may, at the request of the suspect or accused or with his consent, dismiss a defense counsel who is not performing his duties properly. Another defense counsel shall be appointed instead of the dismissed defense counsel. The Bar Association to which the dismissed defense counsel belongs shall be informed immediately

about the dismissal of the defense counsel.

Article 50
Actions by Defense Counsel

(1) The defense counsel, in representing a suspect or an accused, must take all necessary steps aimed at establishment of facts and collection of evidence in favor of the suspect or accused, and at protection of his rights.

(2) The rights and duties of the defense counsel shall not cease when his entry of appearance is withdrawn, until the trial judge or the panel releases the defense counsel from his rights and duties.

CHAPTER VIII

ACTIONS AIMED AT OBTAINING EVIDENCE

Section 1 - SEARCH OF DWELLINGS OR OTHER PREMISES AND PERSONS

Article 51
Search of Dwellings, Other Premises and Personal Property

(1) A search of dwellings and other premises of the suspect, accused or other persons, as well as their personal property outside the dwelling may be conducted only when there are sufficient grounds for suspicion that the perpetrator, the accomplice, traces of a criminal offense or objects relevant to the criminal proceedings might be found there.

(2) Search of personal property pursuant to Paragraph 1 of this Article shall include a search of the computer and similar devices for automated data processing connected with it. At the request of the Court, the persons using such devices shall be obligated to allow them access, to hand over diskettes and magnetic tapes or some other forms of saved data, as well as to provide necessary information concerning the use of the devices. A person who refuses to do so, although the reasons from Article 84 of this Law do not exist, may be punished under the provision of Article 65 Paragraph 5 of this Law.

Article 52
Search of Persons

(1) The search of a person shall be permitted if it is likely that the person has committed a criminal offense or that through a search some objects or traces relevant to the criminal proceedings may be found.

(2) A person shall be searched by the person of the same sex.

Article 53
Search Warrant

(1) The Court may issue a search warrant under the conditions provided by this Law.

(2) A search warrant may be issued by the Court at the request of the Prosecutor or at the request of authorized officials who have the approval by the Prosecutor.

Article 54
A Form of the Request for Search Warrant

A request for the issuance of a search warrant may be submitted in writing or orally. If the request is submitted in writing, it must be drafted, signed and certified in the manner defined in Article 55 Paragraph 1 of this Law. The request for the issuance of a search warrant may be submitted in accordance with Article 56 of this Law.

Article 55
Contents of the Request for Search Warrant

(1) The request for search warrant must contain:

a) the name of the Court and the name and title of the applicant;
b) facts indicating the likelihood that the persons, or traces and objects referred to in Article 51 Paragraph 1 of this Law shall be found at the designated or described place, or with a certain person;
c) a request that the Court issue a search warrant in order to find a person or to forfeit an object.

(2) The request may also suggest that:

a) the search warrant be made executable at any time of the day or night, because there is grounded suspicion that the search cannot be executed between the hours of 6:00 A.M. and 9:00 P.M., the property sought might be removed or destroyed if not seized immediately, or the person sought is likely to flee or commit another criminal offense or might endanger the safety of the authorized official or another person, if not seized immediately or between the hours of 9:00 P.M. and 6:00 A.M.;
b) the authorized official execute the warrant without prior presentation of the warrant, when there is grounded suspicion to believe that the property sought might be easily and quickly destroyed if not seized immediately, when the presentation of such a warrant might endanger the safety of the authorized official or another person, or the person sought is likely to commit another criminal offense or might endanger the safety of the authorized official or another person.

Article 56
Oral Request for a Search Warrant

(1) An oral request for a search warrant may be filed when there is a risk of delay. The oral request for a search warrant may be communicated to the pre-trial judge by telephone, radio or other means of electronic communication.

(2) Having been advised that an oral request for a search warrant is made, the pre-trial judge shall record all of the remaining communication. If a voice recording device is used or a stenographic record made, the pre-trial judge must have the record transcribed, certify the accuracy of the transcription and file the original record and transcript with the Court within 24 hours of the issuance of the warrant. If longhand notes are taken, the judge shall sign a copy and file it with the Court within 24 hours of the issuance of the warrant.

Article 57
Issuance of a Search Warrant

(1) If the pre-trial judge determines that the request for a search warrant is justified, he shall grant the request and issue the search warrant.

(2) When the pre-trial judge decides to issue a search warrant based upon an oral request, the applicant shall draft the warrant in accordance with Article 58 of this Law, and shall read it, verbatim, to the preliminary proceeding judge.

Article 58
Contents of a Search Warrant

A search warrant must contain:

a) the name of the issuing Court and, except where the search warrant has been obtained through an oral request, the signature of the pre-trial judge who is issuing the warrant;
b) where the search warrant has been obtained through an oral request, it shall be indicated along with the name of the pre-trial judge issuing the order, and the time and place of the issuance;
c) the name, department or rank of the authorized official to whom it is addressed;
d) purpose of the search;
e) a description of the person being sought or a description of the property that is the subject of the search;

f) a description of the dwellings, premises or person to be searched, indicating the address, ownership, name or any other data essential for identification;
g) a direction that the warrant be executed between 6:00 A.M. and 9:00 P.M., or, where the Court has specifically determined so, an authorization for execution thereof at any time of the day;
h) an authorization, where the Court has specifically determined, for the authorized official to enter the premises to be searched without a prior notice;
i) a direction that the warrant and any property seized pursuant thereto be delivered to the Court without delay;
j) an instruction that the suspect is entitled to notify his defense counsel and that the search may be executed without the presence of the defense counsel if the extraordinary circumstances require so.

Article 59
Time of the Search Warrant Execution

(1) A search warrant must be executed not later than 15 days from the day of its issuance and it must thereafter be returned to the Court without delay.

(2) A search warrant may be executed on any day of the week. It may be executed only between 6:00 A.M. and 9:00 P.M., unless the warrant expressly allows for the execution thereof at any time of the day or night, as provided in Article 55 Paragraph 2 this Law.

Article 60
Procedure of the Search Warrant Execution

(1) Prior to the commencement of a search, an authorized official must present his credentials and the purpose of his arrival and show the warrant to the person whose property is to be searched or who himself is to be searched. If the authorized official is not thereafter admitted, he may resort to use of force in accordance with the law.

(2) In executing a search warrant that directs a search of a dwelling or other premises, an authorized official need not give notice to anyone of his authority and purpose, but may promptly enter the dwelling or other premises, if such premises are at the time unoccupied, or reasonably believed by the authorized official to be unoccupied and if the search warrant expressly allows for entry without notice.

(3) The occupant of the dwelling or other premises shall be called to be present at the search, and if he is absent, his representative, or an adult member of the household, or a neighbor shall be called to be present. If the occupant of the dwelling is not present, the search warrant shall be left in the premises subject to search, and the search shall be conducted without the presence of the occupant.

(4) A search of the dwelling or other premises or of the person shall be witnessed by two adult citizens. The search of a person shall be witnessed by the persons of the same gender. Witnesses shall be instructed to pay attention as to how the search is conducted, and that they have the right to make comments before signing the record on the search if they believe that the content of the record is not truthful.

(5) In conducting a search of official premises, the manager or person in charge shall be called in to be present at the search.

(6) If a search is to be conducted in a military facility, a written search warrant shall be delivered to the military authorities that shall assign at least one military person to be present at the search.

Article 61
Duties and Powers of Authorized Officials

In executing a search warrant authorizing the search of a person, an authorized official must give notice of his authority and purpose to the person and deliver the warrant. The authorized official may use force in accordance with the law.

Article 62
Recording the Search

(1) A record shall be made on every search of dwellings or other premises or a person, which shall be signed by the person whose dwellings or other premises are being searched, or who is being searched, and the persons whose presence is mandatory. In executing a search, only those objects and documents shall be seized that relate to the purpose of the search. The record shall include and clearly identify the objects and documents that are the subject of seizure, which shall be indicated in a seizure receipt immediately to be given to the person from whom the objects or documents are seized.

(2) If, during a search of dwellings or other premises or a person, objects are found that are unrelated to the criminal offense for which the search warrant was issued, but indicate another criminal offense, they shall be described in the record and temporarily seized and a receipt on the seizure shall be issued immediately. The Prosecutor shall be notified thereof. Those objects shall be returned immediately if the Prosecutor establishes that there are no grounds for initiating criminal proceedings, and there is no other legal ground for seizing the objects.

(3) The objects used in the search of computers and similar electronic devices for automated data processing shall be returned to their users after the search, unless they are required for the further conduct of the criminal proceedings. Personal data obtained by the search may be used only for the purpose of the criminal proceedings and shall be deleted immediately after the purpose is fulfilled.

Article 63
Seizure of Objects According to Search Warrant

(1) Upon temporary seizure of objects pursuant to a search warrant, an authorized official must draft and sign a receipt indicating the objects seized and the name of the issuing Court.

(2) If an object has been temporarily seized from a person, the receipt referred to in Paragraph 1 of this Article must be given to that person. If an object has been seized from a dwelling or other premises, such a receipt must be given to the owner, tenant or user, as applicable.

(3) Upon seizing objects pursuant to a search warrant, an authorized official must, without delay, return to the Court the warrant and the property, and submit an inventory of the seized objects.

(4) Upon receiving objects seized pursuant to a search warrant, the Court shall either: retain them in custody of the Court pending further disposition; or order that they be held in custody of the applicant for the warrant or of the authorized official who executed it.

Article 64
Search Without a Warrant

(1) An authorized official may enter a dwelling or other premises without a warrant and without a witness, and if necessary conduct a search if the tenant wants so, if someone calls for his help, if this is required to apprehend a suspect of a criminal offense who has been caught in the act, or for the sake of the safety of a person or property, if the person who is to be apprehended by the Court order is in the dwelling or other premises, or if the person is hiding in the dwelling or other premises.

(2) An authorized official may search a person without a search warrant and without witnesses:

a) when executing an apprehension warrant;
b) when arresting a person;
c) when there is suspicion that the person possesses a firearm or side arms;
d) when there is suspicion that he will conceal or destroy articles that are to be taken from him and used as evidence in criminal proceedings.

(3) After an authorized official conducts a search without a search warrant, he must immediately submit a report to the Prosecutor, who shall inform the pre-trial judge on that. The report shall state the reasons

why the search was completed without a warrant.

Section 2 – TEMPORARY SEIZURE OF OBJECTS AND PROPERTY

Article 65
Order for Seizure of Objects

(1) Objects that are to be seized pursuant to the Criminal Code of the Brcko District of BiH or that might be used as evidence in the criminal proceedings shall be seized temporarily and their custody shall be provided for on the grounds of a court decision.

(2) The seizure warrant shall be issued by the Court, upon a motion by the Prosecutor or authorized officials who have been granted the approval by the Prosecutor.

(3) The seizure warrant shall contain the name of the Court, legal grounds for the seizure of objects, indication of the objects that are subject to seizure, the name of persons from whom objects are to be seized, place where the objects are to be seized, a timeframe within which the objects are to be seized, and instruction on legal remedy.

(4) The authorized official shall seize objects on the basis of the issued warrant.

(5) Anyone in possession of such objects must turn them over upon the order of the Court. A person who refuses to hand out articles may be fined 50.000 KM, and may be imprisoned if he persists in his refusal. Imprisonment shall last until the article is handed out or until the end of criminal proceedings, but no longer than 90 days. An official or responsible person in a state body or a legal entity shall be treated in the same manner.

(6) The provisions of Paragraph 5 of this Article shall also apply to the data stored in computers or similar devices for automated data processing. In obtaining such data, special care shall be taken with respect to regulations on confidentiality of certain data.

(7) An appeal against a decision on fine or on imprisonment shall be decided by the panel. An appeal against the decision on imprisonment shall not stay the execution of the decision.

(8) When articles are seized, a note shall be made of the place where they were found, and they shall be described, and if necessary, establishment of their identity shall also be provided for in some other manner. A receipt shall be issued for seized articles.

(9) The measures referred to in Paragraphs 5 and 6 of this article may not be applied to the suspect, or the accused, or to the persons who are exempted from the duty to testify.

Article 66
Temporary Seizure Without a Seizure Warrant

(1) If delay might be risky, items referred to in Paragraph 1 of Article 65 of this Law may temporarily be seized even without the Court order. If the person affected by the search explicitly opposes the seizure of items, the Prosecutor shall, within 72 hours following the completion of the search, put forward to a pre-trial judge a motion for a subsequent approval of the seizure of items.

(2) If the pre-trial judge denies the Prosecutor's motion, the items seized may not be used as evidence in the criminal proceedings. The temporarily seized items shall be immediately returned to the person from whom they have been seized.

Article 67
Temporary Seizure of Mail and Telegrams and other Consignments

(1) The mail, telegrams and other consignments addressed to or sent by the suspect or the accused, which

are found with a company or persons engaged in postal and telecommunication activities, may temporarily be seized.

(2) The consignments from Paragraph 1 of this Article may temporarily be seized if the circumstances clearly indicate that they may serve as evidence in the proceedings.

(3) A seizure warrant for temporary seizure of objects referred to in Paragraph 1 of this Article shall be issued by the Court, upon a motion by the Prosecutor.

(4) A warrant for temporary seizure of objects may also be issued by the Prosecutor, should a delay pose a risk. Such a warrant must, however, be confirmed by the pre-trial judge within 72 hours following the temporary seizure.

(5) If the warrant is not confirmed pursuant to Paragraph 4 of this Article, the seized objects may not be used as evidence in the criminal proceedings.

(6) The measures undertaken as provided under this Article shall not apply to the letters, telegrams and other mail exchanged between the suspect or the accused and his defense counsel.

(7) The seizure warrant referred to in Paragraph 3 of this Article shall include: information on the suspect or the accused subject to the warrant, the manner of execution of the warrant and duration of the measure, and the company that will execute the imposed measure. The measures taken may not last longer than three (3) months, but for an important reason, the pre-trial judge may extend the measures for three (3) additional months. The measures taken shall, however, be terminated as soon as the reasons for taking them cease to exist.

(8) If the proceedings allow for that, the suspect or the accused subject to the measures referred to in Paragraph 1 shall be informed of those measures.

(9) Delivered mail shall be opened by the Prosecutor in the presence of two witnesses. In opening the mail, care shall be taken not to break the seal and the envelope and the address shall be kept. A record shall be made regarding the opening.

(10) The content of the mail or a part thereof, as applicable, shall be communicated to the suspect or the accused or the recipient, and the mail or a part of thereof shall be handed over to that person, unless the Prosecutor, exceptionally, considers the transfer to be detrimental to the success of the criminal proceedings. If the suspect or the accused is absent, his family members shall be notified of the mail delivery. If the suspect or the accused does not request the delivery of the mail thereafter, the mail shall be returned to the sender.

Article 68
An Inventory of Temporarily Seized Objects and Documentation

(1) After a temporary seizure of objects and documentation, an inventory list of the temporarily seized objects and documents shall be made and a receipt concerning the objects and documents seized shall be issued.

(2) If making an inventory list of objects and documentation is impossible, the objects and documentation shall be wrapped and sealed.

(3) Objects seized from a physical person or legal person may not be sold, given as a gift or otherwise disposed of.

Article 69
Right to Appeal

(1) The person from whom objects or documentation are temporarily seized shall have the right to appeal.

(2) The appeal referred to in Paragraph 1 of this Article shall not stay the temporary seizure of objects.

(3) The Prosecutor has a right to appeal the decision of the Court by which the seized objects and documents are to be returned.

Article 70
Safekeeping of Temporarily Seized Objects and Documentation

Temporarily seized objects and documentation shall be deposited with the Court, or the Court shall otherwise provide for their safekeeping.

Article 71
Opening and Inspection of Temporarily Seized Objects and Documents

(1) The opening and inspection of temporarily seized objects or documentation shall be done by the Prosecutor.

(2) The Prosecutor shall notify the person or the enterprise from which the objects were seized, the pre-trial judge and the defense counsel about the opening of temporarily seized objects or documentation.

(3) When opening and inspecting the seized objects and documents, attention shall be paid that no unauthorized person gets to know into their contents.

Article 72
Order Issued to a Bank or Another Legal Person

(1) If there are grounds for suspicion that a person committed a criminal offense related to acquisition of property, the Court may, upon a motion by the Prosecutor, issue an order to a bank or another legal person engaged in financial transactions to deliver the information concerning the bank deposits and other financial or other transactions of that person and the persons reasonably believed to be involved in these financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The pre-trial judge may, upon a motion by the Prosecutor, order that other necessary measures referred to in Article 116 of this Law be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence thereupon.

(3) In case of urgency, any of the measures from Paragraph 1 of this Article may be ordered by the Prosecutor on the basis of an order. The Prosecutor shall keep the obtained information sealed until the issuance of the court order. The Prosecutor shall immediately inform the pre-trial judge about the measures taken, who shall issue a court order within 72 hours. The Prosecutor shall keep the obtained information sealed until the issuance of the court order. In case the pre-trial judge fails to issue the said order, the Prosecutor shall be bound to return such information without accessing it.

(4) The Court may issue a decision ordering a legal or physical person to temporarily suspend a financial transaction that is suspected to be a criminal offense or intended for the commission of the criminal offense, or suspected to serve as a cover for a criminal offense or a cover for a gain obtained by the criminal offense.

(5) The decision referred to in Paragraph 4 of this Article shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts in domestic or foreign currency be temporarily seized pursuant to Article 65 Paragraph 1 of this Law, deposited in a special account and kept until the end of the proceedings, or until the conditions for their return are met.

(6) An appeal may be filed against the decision referred to in Paragraph 4 of this Article by the Prosecutor, the owner of the financial resources or the cash in domestic or foreign currency, the suspect or the accused, and the legal or physical person referred to in Paragraphs 4 and 5 of this Article.

Article 73
Provisional Seizure of Property as a Security Mechanism

(1) At any time during the proceedings, upon the proposal of the Prosecutor, the Court may order a temporary measure for seizing property, which shall be done pursuant to the Criminal Code of the Brcko District of BiH, the measure of confiscation or other requisite temporary measure so as to prevent the use, sale or disposal of such property.

(2) If the delay might be risky, an authorized official may temporarily seize the property referred to in Paragraph 1 of this Article, may forfeit the property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the Prosecutor about the measures taken and these measures must be approved by the pre-trial judge within 72 hours after the measures were taken.

(3) If the pre-trial judge denies the approval, the measures taken shall be terminated and the objects and property seized returned immediately to the person from whom they have been seized.

Article 74
Return of Temporarily Seized Property

Objects that have temporarily been seized during the criminal proceedings shall be returned to the owner or possessor once it becomes evident during the proceedings that their retention runs contrary to Article 65 of this Law and that there are no reasons for their seizure (Article 391).

Section 3 - PROCEDURE OF DEALING WITH SUSPICIOUS OBJECTS

Article 75
Public Notice on Suspicious Objects

(1) If another person's object is found with the suspect or the accused, whose owner is not known, the body conducting the proceedings shall describe the object and post this description on the notice board of the municipality where the suspect or the accused resides and where the criminal offense has been committed. The notice shall invite the owner to contact the body conducting the proceedings within one year from the date of posting the notice; otherwise, the object will be sold. The proceeds from the sale shall be revenue of the budget of the Brcko District of Bosnia and Herzegovina.

(2) If the object is of considerable value, a description may also be published in a daily newspaper.

(3) If the object is perishable or its safekeeping would entail significant costs, the object shall be sold pursuant to the provisions governing the executive procedure and the proceeds shall be delivered for safekeeping to the Court.

(4) The provision of Paragraph 3 of this Article shall also be applied when the object belongs to a runaway or an unknown perpetrator of a criminal offense.

Article 76

Decisions on Suspicious Objects

(1) If, within one year, no one comes forward as the owner of an object or of the proceeds from the sale of the object, a decision shall be issued that the object becomes property of the Brcko District of Bosnia and Herzegovina, or that the proceeds are the revenue of the budget of Brcko District of Bosnia and Herzegovina.

(2) The owner of the object shall be entitled to request in civil proceedings the repossession of the object or the proceeds from the sale of the object. The statute of limitations with respect to this right shall run from the date of posting.

Section 4 - QUESTIONING OF THE SUSPECT

Article 77
Summoning the Suspect

(1) The suspect under investigation shall be questioned by the Prosecutor.

(2) The questioning of the suspect must be done with full respect to the personal integrity of the suspect. During questioning of the suspect it shall be forbidden to use force, threat, deceit, narcotics or other means that may affect the freedom of decision-making and expression of will while giving a statement or confession.

(3) If actions were taken contrary to the provisions of this Article, the decision of the Court may not be based on the statement by the suspect.

Article 78
Instructing the Suspect on His Rights

(1) At the first questioning, the suspect shall be asked the following questions: his name and surname; nickname, if he has one; name and surname of his parents; maiden name of his mother; place of birth; place of residence; date, month and year of birth; nationality and citizenship; identification number of Bosnia and Herzegovina citizen; profession; family situation; if he is literate; completed education; if he served in the army, and if so, when and where, or whether he has a rank of a reserve officer; whether he is entered in the military records, and if yes, with which authority in charge of defense affairs; whether he has received a medal; financial situation; previous convictions and, if any, when and why he was convicted; if convicted, whether he served the sentence and when; if there are ongoing proceedings against him for some other criminal offense, and if he is a minor, who is his legal representative. The suspect shall be instructed to obey summons and to inform the authorized officials immediately about every change of his address or intention to change his residence, and the suspect shall also be instructed about consequences if he does not act accordingly.

(2) At the beginning of the questioning, the suspect shall be informed of the charges against him, the grounds for the charges and he shall be informed of the following rights:

a) the right not to present his defense or answer questions;
b) the right to retain a defense counsel of his choice who may be present at questioning and the right to free defense counsel services in the cases provided by this Law;
c) the right to make a statement about the charges against him, and to present all facts and evidence in his favor;
d) that during the investigation, he is entitled to study files and view the collected items in his favor unless the files and items concerned are such that their disclosure might endanger the aim of investigation;
e) the right to free interpreter's services if the suspect does not speak the language used in questioning.

(3) The suspect may voluntarily waive the rights stated in Paragraph 2 of this Article but his questioning may not commence unless his waiver has been recorded officially and signed by the suspect. Under no circumstances the suspect may waive the right to a defense counsel if his defense is mandatory under this Law.

(4) If the suspect has waived the right to a defense counsel, but later expressed his desire to retain one, the questioning shall immediately be suspended and shall resume when the suspect retains or is assigned a defense counsel, or if the suspect expresses a wish to answer the questions.

(5) If the suspect has voluntarily waived the right not to answer the questions asked, he must be allowed to make a statement on all facts and evidence in his favor.

(6) If any actions have been taken contrary to the provisions of this Article, the Court's decision may not be based on the statement by the suspect.

Article 79
Manner of Questioning the Suspect

(1) A record shall be made on every questioning of the suspect. Important parts of the statements shall be entered in the record word for word. After the record has been completed, it shall be read to the suspect and he shall be given a copy of it.

(2) As a rule, a questioning of the suspect shall be audio or video recorded under the following conditions:

a) the suspect shall be informed, in the language he speaks, that the questioning is being audio or video recorded;
b) if the questioning is adjourned, the reason and time of the adjournment shall be indicated in the record, as well as the time of resuming and completing the hearing;
c) at the end of the questioning, the suspect shall be allowed to explain whatever he has said and add whatever he wants;
d) the tape record thus made shall be transcribed after the completion of the questioning, and a copy of the transcript shall be given to the suspect along with a copy of the tape record, or if a device for making several records simultaneously was used, he shall be given one of the original tapes;
e) once a copy of the original tape has been made for the purpose of making a transcript, the original tape or one of the originals shall be sealed in the presence of the suspect and authenticated by the respective signatures of the authorized official and the suspect.

Article 80
Questioning through an Interpreter

The suspect shall be questioned through an interpreter in the cases referred to in Article 87 of this Law.

Section 5 - EXAMINATION OF WITNESSES

Article 81
Summons to Examine Witnesses

(1) Witnesses shall be heard when it is likely that their statements can provide information concerning the offense, perpetrator and other important circumstances.

(2) The Prosecutor or the Court shall serve the writ of summons. Any summoning of a minor under 16 as a witness shall be done through the parents or legal representative, except for the cases where this is not possible due to a need to act urgently, or other circumstances.

(3) Witnesses who cannot answer the summons because of age, illness or serious physical impairments may be questioned at their residence, hospital or any other place.

(4) The witness shall be notified in the summons of his being summoned as a witness, of where and when to appear upon being summoned, as well as of the consequences of his failure to appear.

(5) Should the witness fail to appear or to justify his absence, the Court may fine him up to 5,000 KM, or may order forcible apprehension of the witness.

(6) The order for apprehending a witness shall be carried out by the Judicial Police. Exceptionally, the order may be given by the Prosecutor if a duly summoned witness fails to appear and does not justify his absence, provided that this order must be confirmed by the pre-trial judge within 24 hours following the issuance of the order.

(7) Should the witness refuse to testify, the Court may, upon the proposal of the Prosecutor, issue a decision imposing on the witness a fine up to 30,000 KM. An appeal against this decision shall be allowed, but shall not stay the execution of the decision.

(8) Appeals against the decision imposing a fine shall be decided by the panel (Article 24, Paragraph 6).

Article 82
Persons That May Not Be Heard As Witnesses

The following persons shall not be heard as witnesses:

a) A person who would, by his statement, violate the duty of keeping state, military or official secrets until the competent body releases him from that duty;
b) A defense counsel of the suspect or the accused with respect to the facts that became known to him in his capacity as a defense counsel;
c) A person who would, by his statement, violate the duty of keeping professional secrets, including religious confessor, journalists for the purpose of protecting the information source, attorneys-at-law, notary, physician, midwife and others, unless he was released from that duty by a special regulation or a statement by the person who benefits from the secret being kept;
d) A minor who is, in view of his age and mental development, unable to comprehend the importance of his privilege not to testify.

Article 83
Persons Allowed to Refuse to Testify

(1) The following persons may refuse to testify:

a) the spouse or the extramarital partner of the suspect or the accused;
b) any person who is a direct blood relative of the suspect or the accused, relatives in the lateral line to and including the third degree, and in-laws up to including the second degree;
c) an adopted child and adoptive parent of the suspect or the accused.

(2) The authority conducting the proceedings must caution the persons referred to in Paragraph 1 of this Article, prior to their hearing or as soon as it learns about their relation to the suspect or the accused, about the right to refuse to testify. The caution and answer must be entered in the record.

(3) A person who has grounds to refuse to testify against one of the suspects or the accused may refuse to testify against other defendants if his testimony, by its nature, cannot be restricted solely to the other suspects or the accused.

(4) If a witness has been heard who was entitled to refuse to testify, or the person heard has not been cautioned of the right not to testify, or the caution has not been entered into records, the Court decision may not be based on such a testimony.

Article 84
Right of the Witness to Refuse to Respond

(1) The witness shall be entitled to refuse to answer questions if a truthful reply would result in prosecution against him.

(2) The witness exercising the right referred to in Paragraph 1 of this Article shall answer the questions provided that immunity is granted to such a witness.

(3) Immunity may be granted by the decision of the Prosecutor.

(4) The witness who has been granted immunity and testified shall not be prosecuted except in the case he gave a false testimony.

(5) A lawyer as the advisor may be assigned by the Court's decision to the witness during the hearing if it is obvious that the witness himself is not able to exercise his rights during the hearing and if his interests cannot be protected in some other manner.

Article 85
Method of Examination, Confrontation and Identification

(1) Witnesses shall be examined individually and in the absence of other witnesses.

(2) At all times during the proceedings, witnesses may be confronted with other witnesses or with the suspect or the accused.

(3) If necessary to ascertain whether the witness knows the person or object, first the witness shall be required to describe him/her/it or to indicate distinctive features, and then a line-up of unknown persons, including the person to be recognized, shall follow, or the object shall be shown to the witness, if possible among objects of the same type.

Article 86
Course of the Examination of a Witness

(1) The witness must answer orally.

(2) Before the examination, the witness shall be called upon to tell the truth and not to withhold anything, and then he shall be cautioned that giving a false testimony is a criminal offense.

(3) Subsequently, the witness shall be asked the following questions: his name and surname his father's or his mother's name, occupation, residence, place and date of birth, and his relation to the suspect, the accused and the injured party. The witness must also be cautioned that it is his duty to inform the Court regarding a change of his address or residence.

(4) When hearing a minor, in particular if the minor was victimized by the criminal offense, the participants in the proceedings shall be obligated to act with circumspection in order not to have an adverse effect on the minor's mental condition. If necessary, the minor shall be heard with assistance of a pedagogue or other professional.

(5) It shall not be allowed to question an injured party about his sexual experience prior to commission of the criminal offense and if such a question has already been posed, the Court decision cannot be based on such a statement.

(6) In view of the age, physical and mental condition, or other justified reasons, the witness may be examined by means of technical devices for transferring image and sound in such a manner as to permit the parties and the defense counsel to ask questions although not in the same room with the witness. A professional may be assigned for the purpose of the examination.

(7) After general questions, the witness shall be invited to present everything that he knows about the case, and then the witness shall be asked questions aimed at checking, supplementing and explaining his statement. When hearing the witness, it shall be prohibited to practice deceit or ask any questions that already contain the desired answer.

(8) The witness shall be asked how does he know the facts he is testifying about.

(9) Witnesses may be confronted if their testimony disagrees with respect to important facts. The confronted witnesses shall be examined individually about each circumstance where their testimonies are in contradiction, and their answers shall be entered into records. Only two witnesses at a time may be confronted.

(10) The injured party being examined as the witness shall be asked if he wanted to pursue his property claim in the course of the criminal proceedings.

Article 87
Examination of a Witness through Interpreter

(1) If a witness is deaf or mute, he shall be examined through an interpreter.

(2) If the witness is deaf the questions shall be asked in writing and if he is mute he shall be asked to answer in writing. If the hearing cannot be conducted in this manner then a person who can communicate with the witness shall be invited to be an interpreter.

(3) If the interpreter has not previously taken an oath, he shall swear that he shall truthfully communicate the questions to the witness as well as his testimony.

Article 88
Oath or Affirmation of a Witness

(1) The Court may request the witness to take an oath or affirmation prior to giving the testimony.

(2) Prior to the main trial, the witness may take the oath or affirmation only if there is a fear that due to illness or other reasons he shall not appear at the main trial. The oath or affirmation shall be taken before the judge or the Presiding judge. The reason for taking the oath or affirmation shall be entered into the records.

(3) The text of the oath or affirmation is as follows: "I swear/ I affirm that I shall speak the truth about everything I am going to be asked before this Court and that I shall not withhold anything known to me."

(4) The oath or affirmation shall be taken orally by reading the text or with a confirmation after the text of the oath or affirmation has been read by the judge or the Presiding judge. Mute witnesses who can read and write shall take the oath or affirmation by signing the text of the oath or affirmation, whereas deaf or mute witnesses who cannot read or write shall take the oath or affirmation through an interpreter.

(5) The refusal and reasons for refusal of the witness to take an oath or affirmation shall be entered into the records.

Article 89
Individuals Who May Not Take the Oath or Affirmation

The individuals who may not take the oath or affirmation are persons who are minors at the time of examination, those for whom it has been proved that there is a grounded suspicion that they have committed or participated in commission of an offense for which they are being examined or those who, due to their mental condition, are unable to comprehend the importance of the oath or affirmation.

Article 90
Audio and Video Recording of the Witness' Examination

The examination of witnesses may be recorded by audio and visual devices at all stages in the proceedings. It must be recorded in the case involving minors under sixteen (16) years of age who were victimized by the offense, and if there are grounds to belive that the witness cannot be examined at the main trial.

Article 91
Protected Witness

With respect to protected witnesses in the proceedings before the Court, the provisions of the special law shall be applied.

Section 6 - CRIME SCENE INVESTIGATION AND RECONSTRUCTION OF EVENTS

Article 92
Conducting a Crime Scene Investigation

A crime scene investigation shall be conducted when a direct observation is needed to establish relevant facts in the proceedings.

Article 93
Reconstruction of Events

(1) In order to verify the evidence presented, or to establish facts that are important to clarify matters, the

body in charge of the proceedings may order a reconstruction of the events. The reconstruction shall reproduce the actions or situations with the conditions under which the event occurred according to the evidence presented. If statements by individual witnesses or the suspects or the accused describing the actions or situations are inconsistent or contradictory, the reconstruction shall, as a rule, reproduce each version of events.

(2) A reconstruction may not be performed in such a manner as to violate public peace and order or morality or endanger human life or health.

(3) Certain evidence may be presented again during the reconstruction, if necessary.

Article 94
Aid of an Expert Witness or a Specialist

(1) A crime scene investigation or reconstruction shall be conducted with the assistance of a specialist in criminalistics or some other discipline who shall assist in finding, protecting and describing traces, take certain measurements or photographs, or make sketches or photo-records or gather other data.

(2) An expert witness may also be invited to the crime scene investigation or reconstruction if his presence would be useful for opinions and findings.

Section 7 - EXPERT EVALUATION

Article 95
Ordering Expert Evaluation

Expert evaluation shall be ordered when the findings and opinion of a person possessing the necessary specialized knowledge are required to establish or evaluate some important facts. If scientific, technical or other specialized knowledge will assist the Court in estimating the evidence or clarifying disputable facts, an expert as a special witness may testify by providing his findings on the facts and opinion that contains the evaluation of the facts.

Article 96
Order for Expert Evaluation

(1) The order for expert evaluation shall be issued in writing by the Prosecutor or the Court. The order shall indicate the facts in regard of which the evaluation is to be conducted.

(2) If there is a specialized institution for performing the particular kind of expert evaluation, or if the expert evaluation could be performed by a state body, such expert evaluation, especially if it is complicated, shall, as a rule, be assigned to that institution or body. The institution or body shall name one or more specialists who will make the expert evaluation.

Article 97
Duties of the Expert Witness Appointed by the Prosecutor or the Court

The expert designated by the Prosecutor or Court must present a report to the Prosecutor or Court that shall contain the evidence examined, the tests performed, the findings and conclusion reached, and any other relevant information the expert considers necessary for a fair and objective analysis. The expert shall provide a detailed explanation of how he came to a particular conclusion.

Article 98
Persons Who Cannot be Engaged as Experts

(1) A person shall not be engaged as an expert who may not testify as a witness (Article 82), or who has been exempted from the duty to testify (Article 83), as well as the injured party. If nevertheless such person is engaged, the Court shall not base its decision on his findings and opinion.

(2) Grounds for disqualification of experts (Article 34) also exist when the expert is employed in the same agency or business enterprise or other private legal entity as the suspect, the accused or injured party, or when the expert is employed by the suspect, the accused or the injured party.

(3) As a rule, a person who has been questioned as a witness shall not be engaged as an expert.

Article 99
Expert Evaluation Procedure

(1) The body ordering expert evaluation shall manage the expert evaluation. Before commencement of the presentation of expert testimony the expert shall be invited to carefully study the subject of his testimony, and shall precisely present everything he knows and finds, and shall be invited to present his opinion without bias and in conformity with the rules of his science and expertise. He shall be specifically warned that presentation of false testimony is a criminal offense.

(2) An expert witness shall rely solely on evidence presented to him by authorized officials, the Prosecutor or the Court in forming his opinions or inferences on the subject being examined. An expert witness may testify only on a matter derived from his own findings, unless the information he is relying on in forming his opinion and inferences, is the type of information reasonably relied on by other experts in the same field.

(3) An expert may be given clarifications, and he may also be allowed to examine the records. An expert may propose that evidence be presented or articles and data be obtained that are of relevance for the presentation of his findings and opinion. If he is present at a crime scene investigation, reconstruction, or other investigative activity, the expert may propose that certain circumstances be clarified or that specific questions be posed to the person questioned.

Article 100
Examination of Items to be Evaluated

(1) The expert shall examine the items at the place where the evidence is stored, unless expert evaluation requires extended tests or if the tests are performed in institutions, or state bodies or if ethical consideration so requires.

(2) If analysis of some substance must be performed for purposes of expert evaluation, only a portion of the substance shall be made available to the expert, if this is possible, while the remainder shall be set aside in the required amount against the possibility of subsequent analysis.

Article 101
Presentation of Opinion and Findings

The expert witness shall present his findings and opinion as well as worksheets, drawings, and notes to his appointing authority.

Article 102
Expert Evaluation in a Specialized Institution or State Body

(1) If a specialized institution or a body is commissioned to make the expert evaluation, the Court or the Prosecutor shall caution the institution or the body conducting the evaluation that persons who provide the findings and opinion may not include a person referred to in Article 98 of this Law or a person for whom there are grounds for disqualification from expert evaluation as provided by this Law, and the Court or the Prosecutor shall warn them of the consequences of giving a false finding or opinion.

(2) The materials necessary for the expert evaluation shall be made available to the specialized institution or state agency; if necessary, the procedure described in the provision of Article 99 of this Law shall be followed.

(3) The specialized institution or state agency shall deliver a written finding and opinion of the persons who

made the expert evaluation.

Article 103
Autopsy and Exhumation

(1) The examination and autopsy of the corpse shall be done in any case of death where there is suspicion that the death was not natural. If the corpse has already been buried, the exhumation of such corpse shall be ordered for the purpose of examination and autopsy.

(2) During the autopsy of a corpse, all necessary measures for identification of a corpse shall be taken and, to that end, the data on external and internal bodily characteristics of the corpse shall specifically be described.

Article 104
Autopsy Outside a Specialized Medical Institution

(1) Examination and autopsy of the body shall be performed by a specialized medical institution.

(2) If an expert evaluation is not made in a specialized medical institution, examination and autopsy of a corpse shall be done by a physician-forensic specialist. The Prosecutor shall direct that expert evaluation and shall record the findings and opinion of the expert.

(3) The physician who normally treated the deceased may not perform the autopsy. However, the physician who treated the deceased may be questioned as a witness in order to provide an explanation on the course and the circumstances of the illness of the deceased.

Article 105
Forensic Report on Examination and Autopsy

(1) A forensic pathologist shall include in his report the cause and estimated time of death.

(2) Should any sort of injury be found on the corpse, it shall be ascertained whether that injury was caused by someone else, and if so, by what means, in which manner, at what interval before death, and whether such injury is the cause of death. If several injuries have been found on the corpse, it shall be ascertained whether all of the injuries were inflicted by the same means and which injury caused death; if there were several fatal injuries, it shall be stated which one(s) were the cause of death.

(3) In cases referred to in Paragraph 2 of this Article, it shall specifically be ascertained whether the death was caused by the type of injury and general nature of the injury or due to personal characteristics, or specific conditions of the body of the deceased, or by coincidence, or circumstances under which the injury was inflicted.

(4) The expert shall pay attention to discovered biological material (blood, saliva, semen, urine, etc.), describe it and preserve it for biological evaluation, if ordered.

Article 106
Examination and Autopsy of a Fetus or Newborn Infant

(1) In the examination and autopsy of a fetus, a specific determination shall be made as to the stage of pregnancy, the fetus' ability to live outside the uterus, and the cause of death.

(2) In an examination and autopsy of the corpse of a newborn infant a specific determination shall be made as to whether the infant was born alive or stillborn, were it capable to live, how long the infant lived, and the time and cause of death.

Article 107
Toxicological Tests

(1) If there is suspicion that a poisoning occurred, the suspicious substances found in the corpse or in another place shall be sent for expert evaluation to the institution or state body performing toxicological tests.

(2) When examining suspicious substances, the expert shall specifically ascertain the type, amount and effects of the discovered toxic substances and, if the substances taken from the body are being tested, if possible, the amount of that toxic substance.

Article 108
Expert Evaluation of Physical Injuries

(1) Expert evaluation of physical injuries shall be done as a rule by examining the injured party. If it is not possible to examine the injured party or it is not necessary, an expert evaluation shall be based on medical records or other available information.

(2) After providing a precise description of the injuries, the expert shall give his opinion, especially concerning the type and severity of each injury and their total effect in view of their nature or the specific circumstances of the case, the type of effect such injuries usually cause, the type of effect they have caused in this specific case, the means by which the injuries were inflicted and the manner of their infliction.

Article 109
Physical and Other Examinations

(1) A physical examination of a suspect or the accused shall be performed, even without his consent, if necessary to determine the facts important for criminal proceedings. A physical examination of other persons may be performed without their consent only when it has to be established that a specific trace or other consequence of a criminal offense may be found on their body.

(2) Blood taking and other medical procedures, taken in medical science for analysis and determination of other facts important to criminal proceedings, may be taken even without the consent of the person being examined, if it would not do any harm to the health of person examined.

(3) A physical examination of the suspect or the accused, as well as other related procedures, shall be ordered by the Court, and if the delay poses a risk then it shall be ordered by the Prosecutor.

(4) It shall be forbidden to perform a medical intervention on the suspect, accused or witness or to administer to them agents that would affect their will in giving testimony.

(5) If actions are taken contrary to the provisions of this Article, the decision of the Court may not be based on the evidence obtained in this manner.

Article 110
Psychiatric Expert Evaluation

(1) If there is a suspicion that the suspect or the accused acted in the state of mental incapacity or diminished mental capacity, or that the suspect or the accused has committed a criminal offense due to the drug or alcohol addiction, or that he is not capable to participate in the proceedings due to the mental disturbance, psychiatrist expert evaluation shall be ordered.

(2) If during the investigation the suspect refuses to voluntarily undergo the psychiatric examination for the purpose of an expert witness evaluation or if according to the opinion of the expert witness an extended observation is required, the suspect shall be committed to the appropriate medical institution for the purpose of psychiatric examination. A decision to that effect shall be rendered by the pre-trial judge upon a motion of the Prosecutor. The observation may not exceed two (2) months.

(3) Should experts establish that the mental condition of the suspect or accused is disturbed, they shall define the nature, type, degree and duration of the disorder and shall give their opinion concerning the

type of influence this mental state has had and still has on the comprehension and actions of the suspect or the accused, as well as concerning whether and in what degree the disturbance of his mental state existed at the time when the criminal offense was committed.

(4) If a suspect or accused who is in pretrial custody is sent to a medical institution, the judge shall inform that institution of the reasons why pretrial custody was ordered so that the necessary measures can be taken to achieve the purposes of custody.

(5) The time, which a suspect or an accused spent in a medical institution, shall be included in the time of custody or credited against his sentence, should a sentence be pronounced.

Article 111
Court Audit of Business Books

(1) If an audit of business books is required, the body before which the proceedings are conducted shall indicate to the court auditors the line of inquiry and the scope of the audit and other facts and circumstances that are to be determined.

(2) If the books of a business enterprise, other legal entity or an individual entrepreneur first need to be put in order before being audited, the costs of putting books in order shall be charged to their account.

(3) The decision to put books in order shall be made by the authority conducting the proceedings on the basis of a written documented report of the experts ordered to audit the business books. The decision shall also indicate the amount that the legal entity or the individual entrepreneur must deposit with that authority as an advance against the cost of putting its books in order.

(4) The costs, if their amount has not been advanced, shall be collected and paid to the authority that has already paid the costs and compensated the expert auditors.

Article 112
DNA Analysis

DNA analysis may be made exclusively by an institution specialized in this type of expert evaluation.

Article 113
When to Make a DNA analysis

A DNA analysis may be performed if it is required to establish identity or facts, or whether the discovered traces originate from the suspect, the accused or the injured party.

Article 114
Use of DNA Analysis Results in Other Criminal Proceedings

For the purpose of establishing the identity of the suspect or the accused, cells may be taken from his body in order to perform a DNA analysis. All data obtained thereby may be used in other criminal proceedings against the same person.

Article 115
Registry of DNA Analyses and Data Protection

(1) All DNA analyses shall be kept in a special registry within the Department of Health, Public Safety and Community Services of the Brcko District of Bosnia and Herzegovina.

(2) Protection of the data obtained from the analyses referred to in Paragraph 1 of this Article shall be regulated under a separate law.

CHAPTER IX

SPECIAL INVESTIGATIVE ACTIONS

Article 116
Types of Special Investigative Actions and Conditions for Their Taking

(1) If evidence cannot be obtained in another way or its obtaining would be accompanied by disproportionate difficulties, special investigative actions may be ordered against a person against whom there are grounds for suspicion that he has committed, along with other persons, taken part in committing or participated in the commission of an offense referred to in Article 117 of this Law.

(2) The investigative actions referred to in Paragraph 1 of this Article are as follows:

a) surveillance and technical recording of telecommunications;
b) access to the computer systems and computerized data processing;
c) surveillance and technical recording of premises;
d) undercover surveillance and technical recording of individuals and objects;
e) use of undercover investigators and informants;
f) simulated purchase of certain objects and simulated bribery;
g) supervised transport and delivery of objects of a criminal offense.

(3) The investigative actions referred to in Item a) of Paragraph 2 of this Article may also be ordered against persons against whom there are grounds for suspicion that they will deliver to the perpetrator, or will receive from the perpetrator of the offenses referred to in Article 117 of this Law, information in relation to the offenses, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to those persons.

(4) Provisions regarding the communication between the suspect and his defense counsel shall apply accordingly to the communication between the person referred to in Paragraph 1 of this Article and his defense counsel.

(5) In executing the investigative actions referred to in Items e) and f) of Paragraph 2 of this Article, police authorities or other persons shall not undertake activities that incite a criminal offense. If such activities are undertaken, this shall be an instance precluding the criminal prosecution against the incited person for a criminal offense committed in relation to these activities.

Article 117
Criminal Offenses Where Special Investigative Actions May Be Ordered

The investigative actions from Article 116, Paragraph 2 of this Law may be ordered for criminal offenses for which a prison sentence of at least three years, or a more severe punishment, may be pronounced pursuant to the Law.

Article 118
Competence to Order the Investigative Actions and Their Duration

(1) The investigative actions referred to in Article 116 Paragraph 2 of this Law shall be ordered by the pre-trial judge, upon a reasonable motion by the Prosecutor containing: the data on the person against which the action is to be taken, the grounds for suspicion referred to in Paragraphs 1 or 3 of Article 116 of this Law, the reasons for taking the action and other important circumstances necessitating its taking, the type of the required action, the method of its implementation, and the extent and duration of the action. The order shall contain the data contained in the Prosecutor's motion, as well as ascertainment of the duration of the ordered action.

(2) Exceptionally, if a written order cannot be received in due time, and if delay poses a risk, the execution of the actions referred to in Article 116 of this Law may commence on the basis of a verbal order pronounced by the pre-trial judge. The written order of the Court must be obtained within 24 hours following the issue of the verbal order.

(3) The investigative actions referred to in Items a) through d) and g) of Paragraph 2 of Article 116 of this Law may last up to one (1) month, while on account of particularly important reasons the duration of such actions may, upon the reasonable motion by the Prosecutor, be prolonged for a term of another month, provided that the actions referred to in Items a), b) and c) may last up to six (6) months in total, while the actions referred to in Items d) and g) may last up to three (3) months in total. The motion for the actions referred to in Item f) of Paragraph 2 of Article 116 may refer only to a single act, whereas the motion for each subsequent action against the same person must contain reasons justifying its application.

(4) The order of the pre-trial judge and the motion by the Prosecutor referred to in Paragraph 1 of this Article shall be kept in a separate envelope. By compiling or transcribing the records without making references to the personal data therein about the undercover investigator and informant, or in another appropriate way, the Prosecutor and the pre-trial judge shall prevent unauthorized officials as well as the suspect and his defense counsel from establishing the identity of the undercover investigator and informant.

(5) By way of a written order the pre-trial judge must immediately suspend the execution of the actions taken if the reasons for previously ordering the actions have ceased to exist.

(6) The order referred to in Paragraph 1 of this Article shall be executed by the police authorities. The companies engaged in transmission of information shall be bound to enable the Prosecutor and police authorities to take the actions referred to in Item a) of Paragraph 2 of Article 116 of this Law.

Article 119
Material Obtained through the Actions and Notification About the Taken Actions

(1) Following the completion of the actions referred to in Article 116 of this Law, all information, data and objects obtained through the actions taken, as well as a report thereof must be submitted by police authorities to the Prosecutor. The Prosecutor shall be bound to provide the pre-trial judge with a written report on the taken actions. On the basis of the submitted report, the pre-trial judge shall evaluate the compliance with his order.

(2) Should the Prosecutor refrain from prosecution, or should the data and information obtained through the ordered actions not be needed for the criminal proceedings, they shall be destroyed under the supervision of the pre-trial judge, of which event he shall make a separate record. The person against whom any of the actions referred to in Article 116 Paragraph 2 of this Law were taken, shall be notified of the actions taken, the reasons for their taking, information stating that the obtained material did not constitute sufficient grounds for criminal prosecution and was thereafter destroyed.

(3) Following the taking of the actions referred to in Article 116 of this Law, the pre-trial judge shall forthwith inform the person against whom the actions were taken. That person may request that the Court review legality of the order and the manner in which the actions were taken.

(4) Data and information obtained through the actions referred to in Paragraph 2 of Article 116 of this Law shall be stored and kept as long as the court file is being kept.

Article 120
“Incidental Findings”

No data or information obtained through the actions referred to in Article 116 of this Law shall be used as evidence if they are not related to the criminal offense referred to in Article 117 of this Law.

Article 121
Acting Without a Court Order or Beyond Its Extent

If the actions referred to in Article 116 of this Law were taken without the order issued by the pre-trial judge or contrary to that order, the Court cannot base its decision on the data or evidence thereby obtained.

Article 122
Admissibility of Evidence Obtained through Special Actions

Technical recordings, documents and objects obtained under the conditions and in the manner prescribed by this Law may be used as evidence in the criminal proceedings. The undercover investigator and informant referred to in Article 116 Paragraph 2 Item e) of this Law, and the persons who have taken the actions referred to in Article 116 Paragraph 2 Item f) of this Law may be questioned as witnesses on the course of taking the actions.

CHAPTER X

MEASURES TO GUARANTEE THE PRESENCE OF THE SUSPECT OR THE ACCUSED AND SUCCESSFUL CONDUCT OF CRIMINAL PROCEEDINGS

Section 1 - GENERAL PROVISIONS

Article 123
Types of Measures

(1) Measures that may be taken against the accused in order to ensure his presence and successful conduct of the criminal proceedings shall be: summons, apprehension, house arrest, bail and custody.

(2) When deciding which of the above-mentioned measures is to be applied, the competent body shall meet certain requirements for application of the measures, attempting not to apply more severe measure if the same effect may be achieved by application of a less severe measure.

(3) These measures shall also be cancelled *ex officio* as soon as the reasons for their application cease to exist, or they shall be replaced with a less severe measure when the conditions for it are created.

(4) The provision of this Chapter shall accordingly be applied to the suspect.

Section 2 - SUMMONS

Article 124
Service and Contents of Summons

(1) The presence of the suspect in carrying out actions in the criminal proceedings shall be ensured through the summons.

(2) A summons shall be served by delivering a sealed written summons containing the following: the name of the body issuing the summons, the first and last name of the accused, the criminal offense with which he is charged, the place where the accused is to appear, the date and hour when he is to appear, an indication that he is being summoned as accused, and a warning that he will be apprehended should he fail to appear, that he must immediately inform the Prosecutor or the Court of the change of his address and of the intention to change the residence, the official stamp, and the signature of the Prosecutor or the judge issuing the summons.

(3) The first time an accused is summoned, he shall be instructed of his right to engage a defense counsel who may be present at his questioning.

(4) The first time a suspect is summoned, in the summons he shall be informed about his rights as specified in Article 78 of this Law. Before raising the indictment, the suspect shall be summoned by the Prosecutor.

(5) If the accused is unable to answer the summons because of illness or other impediment that cannot be removed, he shall be examined where he is or shall be provided transportation to the courthouse or any other place where the proceeding is to be conducted.

Section 3 - APPREHENSION

Article 125
Order for Apprehension

(1) The Court may order the accused to be apprehended if a detention warrant has been issued or if the accused duly summoned has failed to appear without justification, or if the summons could not have been duly serviced and the circumstances obviously indicate that the accused is evading service of summons.

(2) Exceptionally, in emergency cases, the order referred to in Paragraph 1 of this Article may be issued by the Prosecutor if the duly summoned suspect has without justification failed to appear, provided that this order must be confirmed by the pre-trial judge within 24 hours after issuance of the order.

(3) The order for apprehension shall be executed by the judicial police.

(4) The order shall be given in writing. The order shall contain: the name and last name of the accused who is to be apprehended, the criminal offense with which he is charged, the specific citation of the relevant criminal provisions, the grounds for ordering the person be apprehended, the official stamp and the signature of the judge ordering the apprehension.

(5) The person authorized to execute the order shall deliver the order to the accused and instruct the accused to follow him. If the accused refuses, he shall be apprehended by force.

Section 4 – PROHIBITION TO LEAVE TEMPORARY PLACE OF RESIDENCE

Article 126
Measures of Prohibition

(1) In a reasoned decision, the Court may place the accused under house arrest if there are circumstances indicating that the accused might flee or go to an unknown place or abroad.

(2) In addition to the measure referred to in Paragraph 1 of this Article, the accused may be prohibited from visiting certain places or from meeting certain persons or be ordered to report occasionally to a specified authority or his travel document or driver's license may be temporarily seized. The accused may also be prohibited from performing certain business activities.

(3) The measures referred to in Paragraphs 1 and 2 of this Article may not restrict the right of the accused to communicate with his defense counsel.

(4) The accused shall be warned in the decision imposing the measures referred to in Paragraphs 1 and 2 of this Article that he may be placed into custody if he violates the prohibitions imposed.

(5) In the course of an investigation, the measures referred to in Paragraphs 1 and 2 of this Article shall be ordered and revoked by the pre-trial judge; after the issuance of an indictment – by a preliminary hearing judge, and after the case has been referred to the judge or the panel for the purpose of scheduling of the main trial – by that judge or the presiding judge.

(6) The measures referred to in Paragraphs 1 and 2 of this Article may last as long as they are needed, but no later than the date on which the judgment becomes legally binding. The pre-trial judge, preliminary hearing judge, the judge, or the presiding judge must review every two (2) months whether the application of the measures is still needed.

(7) Against the decision ordering, extending or revoking measures from Paragraphs 1 and 2 of this Article, the parties and the defense counsel may file an appeal, and the Prosecutor also against the decision rejecting his motion for taking the measure. The Appellate Court shall decide on the appeal within three days from the date of receipt of the appeal. The appeal shall not stay the execution of the decision.

Section 5 - BAIL

Article 127
Conditions for Bail

A suspect or the accused for whom custody is to be ordered or for whom custody has already been ordered due to the fear of his flight, may be allowed to remain at liberty, or may be released, if he personally or another person on his behalf presents guarantees that he will not flee until the end of the criminal proceedings and if the accused himself pledges that he will hide and will not leave his temporary residence without permission.

Article 128
Contents of Bail

(1) Bail shall always be expressed in an amount of money that is set on the basis of the seriousness of the criminal offense, the personal and family circumstances of the accused, and the property situation of the person paying the bail.

(2) Bail shall be depositing of money, securities, valuables or other personal property of a large value that is easily marketable and easily maintained, or of placing a mortgage for the amount of bail on real estate of the person posting bail, or of a personal pledge of one or more individuals that they will pay the amount of bail that has been set should the accused flee.

(3) A person paying the bail shall submit evidence on his financial standing, origin of the property and ownership of the property or possession of the property posted as bail.

(4) If the accused flees, a decision shall be issued ordering that the amount posted as bail shall be paid to the budget of the Brcko District of Bosnia and Herzegovina.

Article 129
Cancellation of Bail

(1) Notwithstanding the bail posted, the accused shall be placed in custody if he fails to appear when duly summoned without justification, if he is preparing to flee, or if there are other legal grounds for ordering his custody while he is at large.

(2) In the case referred to in Paragraph 1 of this Article, the bail shall be cancelled. The money, valuables, securities or other personal property deposited shall be returned, and the mortgage shall be removed. The same procedure shall be applied when the criminal proceedings terminate with a legally binding decision to dismiss proceedings or with a judgment.

(3) If a prison sentence is imposed by the judgment, the bail shall be cancelled only when the convicted person begins to serve the sentence.

Article 130
Decision on Bail

In the course of an investigation, a decision on bail and the cancellation of the bail shall be issued by the pre-trial judge; after the indictment has been raised – by a preliminary hearing judge; and after the case has been submitted to the judge or the panel for the purpose of scheduling the main trial – by that judge or the presiding judge. A decision setting the bail and a decision canceling the bail shall be made following the hearing of the Prosecutor.

Section 6 - PRE-TRIAL CUSTODY

Article 131
Ordering Pre-trial Custody

(1) Custody may be ordered only under the conditions prescribed by this Law and only if the same purpose cannot be achieved by another measure.

(2) The duration of custody must be reduced to the shortest necessary time. If the accused is in custody, all bodies participating in criminal proceedings and agencies extending legal aid shall expediently take all actions.

(3) Custody shall be terminated at any time during the proceedings when the grounds for it cease to exist, and the person in custody shall immediately be released.

Article 132
Grounds for Pre-trial Custody

(1) If there is a grounded suspicion that a person has committed a criminal offense, custody may be ordered against him:

a) if he hides, or if other circumstances suggest the possibility of flight;
b) if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings, or if particular circumstances indicate that he will hinder the criminal proceedings by influencing witnesses, accessories or accomplices;
c) if particular circumstances justify the fear that he will repeat the criminal offense, or complete the criminal offense, or commit a threatened criminal offense, and for such criminal offenses a prison sentence of five (5) years or longer may be imposed;
d) if the criminal offense is punishable by a prison sentence of ten years or more, and the manner of commission or the consequence of the criminal offense necessitates that custody be ordered for reason of safety of citizens or property. If the criminal offense concerned is terrorism, it shall be presumed (which may be challenged) that there is a threat against the safety of the public or property.

(2) In the case of Item b), Paragraph 1 of this Article, custody shall be cancelled once the evidence for which the custody was ordered has been secured.

Article 133
General Right to Detain

Any person may detain the person caught in act. The detained person must immediately be turned over to the Court, Prosecutor or to the nearest police authority, and if this cannot be done, one of the above mentioned bodies must be notified immediately.

Article 134
Competence for Ordering Custody

(1) Custody shall be ordered by a decision of the Court and upon the motion by the Prosecutor.

(2) A decision on custody shall contain: the first and last name of the person being taken into custody, the criminal offense with which he is charged, the legal basis for custody, explanation, instruction as to the right of appeal, the official seal and the signature of the judge ordering custody.

(3) A decision on custody shall be delivered to the pertinent person at the moment of deprivation of liberty. The files must indicate the hour of the deprivation of liberty and the hour of the delivery of the decision.

(4) The person taken into custody may appeal the decision on custody before the Appellate Court within 24 hours of the receipt of the decision. If the person taken into custody is questioned for the first time after this period has expired, he may file an appeal in the course of the questioning. The appeal with a copy of the record on questioning, if the person in custody had been questioned, and the decision on custody, shall be immediately submitted to the panel. The appeal shall not stay the enforcement of the decision.

(5) If the pre-trial judge or the pre-trial judge, does not accept the Prosecutor’s motion for ordering custody,

he shall request that the Appellate Court decide the issue. The person taken into custody may file an appeal against the decision ordering custody, which shall not stay the enforcement of the decision. With respect to the delivery of the decision and filing of an appeal, provisions of Paragraphs 3 and 4 of this Article shall apply.

(6) In cases from Paragraphs 4 and 5 of this Article, the Appellate Court shall pass a decision within 48 hours.

Article 135
Duration of Custody in the Course of Investigation

(1) Before passing a decision on ordering custody, the pre-trial proceedings judge shall review whether the motion for ordering custody is grounded. Following the decision of the pre-trial proceeding judge, custody may last one month following the date of apprehension. After that period, the suspect may be kept in custody only on the basis of a decision extending the custody.

(2) Custody may be extended for no longer than two months by a decision of the pre-trial proceedings judge, following a substantiated motion of the Prosecutor. An appeal shall be allowed against this decision with the Appellate Court. An appeal shall not stay the enforcement of the decision.

(3) If the proceeding is conducted for a criminal offense punishable by a prison sentence of ten years or more, and if there are reasons of special importance, custody may be extended following a substantiated motion by the Prosecutor, for another three months at most. An appeal against this decision shall be allowed and it shall be filed with the Appellate Court. The appeal shall not stay the enforcement of the decision.

(4) Should the indictment not be confirmed before the expiration of the timelines from Paragraphs 1 through 3 of this Article, the suspect shall be released.

Article 136
Termination of Custody

(1) In the course of an investigation and before the custody has expired, the pre-trial proceedings judge may terminate custody by a decision, upon hearing the Prosecutor. The Prosecutor may file an appeal against this decision with the Appellate Court, which shall reach a decision within 48 hours.

(2) An appeal shall not be allowed against the decision rejecting the motion for termination of custody.

Article 137
Custody after the Indictment Confirmation

(1) Custody may be ordered, extended or terminated even after indictment has been confirmed. The justification of custody shall be reviewed every two (2) months following the date of issuance of the latest decision on custody. The appeal against this decision shall not stay its execution.

(2) After the indictment has been confirmed, custody may not exceed one (1) year. If, during that period, no first instance judgment is pronounced, the custody shall be terminated and the accused released.

(3) After pronouncing the first instance judgment, the custody may not last for no longer than another six (6) months. If, during that time, no second instance judgment is pronounced reversing or confirming the first instance judgment, custody shall be terminated and the accused released. If, within six (6) months, a second instance judgment is pronounced revoking the first instance judgment, the custody may last for no longer than another year after pronouncement of the second instance judgment.

(4) Custody shall be terminated upon the expiration of the pronounced judgment.

Article 138
Ordering Custody after the Verdict is pronounced

(1) When the Court pronounces a prison sentence against an accused, it shall order custody against the accused or the custody shall be extended if there are grounds referred to in Article 132, Paragraph 1, Items a), c) and d) of this Law. The custody shall be terminated if the grounds for which the custody was pronounced do not exist any more. In this case, a special decision shall be issued, and appeal against such decision shall not stay its execution.

(2) Custody shall be terminated and release of the accused ordered if he has been acquitted, or if the charges against him have been rejected, or he has been found guilty but released from penalty, or he has only been fined or conditionally sentenced or, after crediting the custody time, he has already served the sentence.

(3) Custody ordered or extended pursuant to provisions of Paragraph 1 of this Article may last until a judgment becomes legally binding but no longer than the sentence pronounced in the first instance.

(4) At the request of the accused, who is in custody after a prison sentence has been pronounced against him, a judge or the presiding judge may commit the accused by a decision to an institution for serving the sentence even before the judgment becomes legally binding.

Article 139
Deprivation of Liberty and Detention

(1) Police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offense and if there are any of the reasons referred to in Article 132 of this Law, but they must immediately, but no later than 24 hours, bring that person before the Prosecutor. In apprehending the person concerned, the police authority shall notify the Prosecutor of the reasons for and time of the deprivation of liberty. Use of force in accordance with law is allowed when apprehending the person.

(2) A person deprived of liberty must be instructed in accordance with Article 5 of this Law.

(3) If a person deprived of liberty is not brought before the Prosecutor within the period specified in Paragraph 1 of this Article, he shall be released.

(4) The Prosecutor is obligated to question the apprehended person without delay, and no later than 24 hours. The Prosecutor shall decide within that time whether he will release the apprehended person or request the preliminary proceeding judge to order the custody. The preliminary proceeding judge shall immediately, and no later than 24 hours, issue a decision on custody or on releasing of the apprehended person.

(5) If the preliminary proceeding judge rejects the proposal for the custody, he shall act in accordance with Paragraph 5 of Article 134 of this Law.

Section 7 - EXECUTION OF CUSTODY AND PROCEDURE WITH PERSONS TAKEN INTO CUSTODY

Article 140
General Provisions

Custody shall be executed in the institutions designated for that purpose by the Judicial Commission of Brcko District of Bosnia and Herzegovina in concert with competent Entities' bodies. Custody enforcement activities may only be performed by employees with the required knowledge, skills and professional qualifications as stipulated by legislation.

Article 141
Rights and Freedoms of Persons Taken into Custody and the Respective Data

(1) Custody must be executed in a manner not offending integrity and dignity of the person taken into custody. In executing custody, authorized judicial police officers and guards in the institution may use

means of force only in cases prescribed by law.

(2) The rights and freedoms of the person taken into custody may be restricted only insofar as it is necessary to achieve the purpose for which custody has been ordered and to prevent the flight of the person taken into custody, commission of a criminal offense or endangerment to the life and health of people.

(3) The administration of the institution shall collect, process and store data on the person taken into custody, including identification data of the person in custody and his psycho-physical condition, the duration, extension and cancellation of his custody, the work performed by the person in custody, his behavior, pronounced disciplinary measures and the like.

(4) The custody records shall be kept by the Judicial Commission of Brcko District of BiH.

Article 142
Accommodation of Persons in Custody

Persons in custody shall be accommodated in rooms of appropriate size that meet health care requirements. Individuals of different sex may not be accommodated in the same room. As a rule, persons in custody shall not be put in the same room with persons serving a prison sentence. A person taken into custody shall not be accommodated together with persons who might have an adverse influence on him or with persons whose company might have adverse influence on the conduct of the proceedings.

Article 143
Special Rights of Persons Taken into Custody

(1) Persons in custody have the right to eight (8) hours of uninterrupted rest within each 24-hour period. In addition, they shall be guaranteed at least two (2) hour walk in the open air on a daily basis.

(2) A person in custody shall be allowed to have personal belongings and hygienic items with him, and shall also be allowed to procure at his own expense books, newspapers and other printed media. A person in custody shall also be allowed to keep other objects in such the quantity and size not disturbing the living environment in the room and violating the internal regulations of the custody. When being placed to custody, the person shall be searched and the objects related to the criminal offense shall be seized from him, whereas any other object, that the person in custody is not allowed to possess, shall be put aside and stored according to his instruction or delivered to a person designated by him.

Article 144
The Right to Communication of the Person in Custody with the Outside World and his Defense Counsel

(1) Upon the approval of the pre-trial judge or the preliminary hearing judge and under his supervision or the supervision of a person designated by him, the person in custody may be visited by his spouse or extramarital partner or relatives, and at his request, by a physician and other persons, subject to internal regulations of the custody. Some visits may be prohibited if they could be detrimental to the conduct of the proceedings.

(2) The pre-trial judge or the preliminary hearing judge shall allow a consular official of a foreign country to visit the person in custody who is a citizen of that country, subject to the internal regulations of the custody.

(3) A person in custody may correspond with persons outside the custody with the knowledge and under supervision of the pre-trial judge or the preliminary hearing judge, and the judge or the presiding judge. A person in custody may be forbidden to send and receive letters and other mail, but may not be forbidden to send motions, complaints or appeals.

(4) A person in custody shall be forbidden to use cellular phone but shall have the right, subject to internal regulations of the custody and under supervisions of the detention administration, to make telephone

calls at his own expense. To that end, the detention administration shall provide the persons in custody with a sufficient number of public telephone connections. The pre-trial judge, the preliminary hearing judge, the individual judge or the presiding judge may, for security reasons or due to the existence of any of the reasons referred to in Article 132 Paragraph 1 Item a) through c), of this Law restrict or prohibit, by a decision, the use of telephone by a detainee.

(5) A detainee shall be entitled to free and unrestrained communications with his defense counsel.

Article 145
Disciplinary Violations of a Detainee

(1) In case of a disciplinary violation by a detainee, the pre-trial judge, the preliminary hearing judge, the individual judge or the presiding judge may impose, at the proposal of the manager of the institution, a disciplinary penalty of restriction of visits and correspondence. This restriction shall not apply to the communications of the detainee with the defense counsel or contacts with the consular official.

(2) A disciplinary violation includes any serious violation pertaining to:

a) physical attack on other detainees, employees or authorized officials, or insult of these persons;
b) making, receiving, importing or smuggling objects for attack or escape;
c) bringing into the institution or preparation in the institution of a narcotic substance or alcohol;
d) breach of rules on safety at work, fire protection and prevention of consequences of natural disasters;
e) intentional causing of large material damage;
f) indecent behavior in front of other detainees or authorized officials.

(3) An appeal to the Appellate Court shall be allowed against the decision on the disciplinary sanction within 24 hours. The appeal shall not stay the execution of the decision.

(4) The administration of the institution shall immediately notify the Court of the application of disciplinary measures to the detainee.

Article 146
Supervision of the Execution of the Custody

(1) The President of the Court shall supervise the enforcement of custody.

(2) The President of the Court or a judge designated by him shall be obligated to visit detainees at least once in 15 days and if he considers it necessary, shall inquire, without the presence of the Judicial police, about the detainees' diet, how they satisfy other needs and how they are treated. The President of the Court or a judge designated by him shall be obligated to take necessary measures to remedy irregularities noticed during the visit to the institution. The President of the Court may not delegate supervision over the execution of custody to pre-trial judge.

(3) Notwithstanding the supervision referred to in Paragraph 2 of this Article, the President of the Court, the pre-trial judge, an individual judge or the presiding judge may visit the detainees at all times, may talk to them and hear their complaints.

Article 147
House Rules in Custody Institutions

The Judicial Commission of Brcko District of Bosnia and Herzegovina shall draft house rules for pre-trial custody institutions regulating the enforcement of custody in more details, in accordance with the provisions of this Law.

CHAPTER XI

SUBMISSIONS AND RECORDS

Article 148

Manner of Filing of Submissions

(1) Bills of indictment, motions, legal remedies and other statements and communications shall be submitted in writing or given orally for entry into the records.

(2) Submissions referred to in Paragraph 1 of this Article must be comprehensible and must contain all required information in order to be acted upon.

(3) Unless otherwise stipulated by this Law, the person filing a submission that is incomprehensible or does not contain all information required for action upon the submission, shall be summoned by the Court to correct or supplement the submission; should he not do so within a specified period, the Court shall reject the submission.

(4) In the summon to correct or supplement the submission, the Court shall warn the person who filed the submission of the consequences of his failure to correct or supplement it.

Article 149
Delivery of the Submission to the Opposing Party

(1) Submissions that under this Law must be delivered to the opposing party in the proceedings shall be delivered to the Court in a sufficient number of copies for the Court and the other party.

(2) If such submissions have not been filed with the Court in a sufficient number of copies, the Court shall summon the submitting party to file a sufficient number of copies within a specified period of time. If the submitting party fails to act as ordered by the Court, the Court shall make the necessary number of copies at the expense of the submitting party.

Article 150
Sanctioning of Persons in Contempt of the Court

The Court shall impose a fine in the amount up to 5.000 KM on a Prosecutor, defense counsel, proxy, legal representative or injured party who expresses contempt of court in a submission or verbal statement. An appeal shall be allowed against the decision on sanctioning. The Judicial Commission of Brcko District of BiH (High Judicial and Prosecutorial Council of Bosnia and Herzegovina) shall be informed of the sanction pronounced against a prosecutor, while the relevant Bar Association shall be informed of the penalty pronounced against a defense counsel.

Article 151
Obligation to Take Minutes

(1) The minutes shall be taken for each step in the course of criminal proceedings at the same time when such a step is being taken; if this is not possible, then this shall be done immediately thereafter.

(2) The minutes shall be kept by the minutes taker. Only when a search is made of a dwelling or person or when an action is taken off the official premises of the relevant body or agency, and the minutes taker is not available, may the record be drawn up by the person undertaking the action.

(3) When the record is made by the minutes taker, the minutes taker shall make the record in such a manner that the person taking the action shall inform the minutes taker aloud what shall be entered in the record.

(4) A person being questioned shall be allowed to state his answers for the record in his own words. This right may be denied if it is abused.

Article 152
Contents of the Minutes

(1) The entry in the minutes shall include: the name of the body before which the action is being taken, the venue where the action is being taken, the date and the hour when the action began and ended, the first

and last names of the persons present and the capacity in which they are present, and an identification of the criminal case in which the action is being taken.

(2) The minutes should contain the essential information about the course and content of the action taken. The questions and responses shall be entered in the minutes verbatim. If physical objects or papers are forfeited in the course of the action, this shall be indicated in the minutes, the articles taken shall be attached to the minutes, or the place where they are being kept shall be indicated.

(3) In the conduct of proceedings such as an inquest at the crime scene, search of a dwelling or person, or the identification of persons or objects, information that is important in view of the significance of that action or for establishing the identity of certain articles, including description, dimensions and size of an article or traces and labeling articles, shall also be entered in the minutes; if sketches, drawings, layouts, photographs, films, and the like are made, this shall be entered in the minutes, and they shall be attached to the minutes.

Article 153
Keeping Minutes

(1) The minutes must be kept in a correct way; nothing in the minutes may be deleted, added or amended. Places that are crossed out must be left legible.

(2) All changes, corrections, and additions shall be noted at the end of the minutes and must be certified by the persons signing the minutes.

Article 154
Reading and Signing of the Minutes

(1) The suspect or accused or other person being questioned, the defense counsel and the injured party shall be entitled to read the minutes or to demand that they be read to him. The person conducting the proceedings must make the said individuals aware of this right, and it shall be noted in the minutes whether they have been so informed and whether the minutes have been read. The minutes shall always be read if the minutes taker was not present, and that shall be indicated in the minutes.

(2) The minutes shall be signed by the person being questioned. If the minutes consist of more than one folded sheet, the person being questioned shall sign each folded sheet.

(3) The minutes shall be signed at the end by the interpreter, if any, by witnesses whose presence was compulsory during the conduct of investigative actions, and, during a search, by the person searched or the person whose dwelling was searched. If the minutes are not kept by the minutes taker, the minutes shall be signed by persons present on the occasion of the action. If there are no such persons, or if persons present are unable to understand the contents of the minutes, the minutes shall be signed by two witnesses, except in cases where it is not possible to ensure their presence.

(4) An illiterate person shall place the print of the index finger of his right hand in place of a signature, and the minutes taker shall enter the person’s first and last name underneath the fingerprint. If the print is of some other finger or a print of a finger of the left hand is made because it is not possible to make a fingerprint of the right index finger, the minutes shall indicate the finger and hand from which the print was taken.

(5) If the person being questioned refuses to sign the minutes or to place his fingerprint, this shall be noted in the minutes along with the reason for the refusal.

(6) If the person being questioned has neither hand, he shall read the minutes, and if he is illiterate the minutes shall be read to him, and this shall be noted in the minutes.

(7) If the action could not be conducted without an interruption, the minutes shall indicate the day and hour when the interruption occurred and the day and hour when the action was resumed.

(8) If there are objections pertaining to the contents of the minutes, those objections shall also be indicated in the minutes.

(9) The minutes shall be signed at the end by the person who conducted the action and by the minutes taker.

Article 155
Audio and Video Recording

(1) As a rule, all actions taken during the criminal procedure shall be tape recorded. The Prosecutor or authorized official shall inform the person being interrogated or questioned that the questioning shall be recorded, and inform him that he has a right to ask for a playback of the tape recording in order to verify his statement.

(2) The tape recording must contain the information referred to in Article 152 Paragraph 1 of this Law, information necessary to identify the individual whose statement is being tape recorded, and information as to the capacity in which that person is making the statement. When the statements of several persons are tape recorded, it must be made sure that a listener can clearly recognize from the recording who has made the statement.

(3) The tape recording shall be immediately played back at the request of the person questioned, and the corrections or clarifications of that person shall be tape recorded.

(4) The record of investigative proceeding shall state that a tape recording was made, indicate who made the tape recording, state that the person being questioned was informed in advance that the proceeding was being tape recorded and that the tape record was played back, and it shall also indicate where the magnetic tape is kept if it is not attached to the official papers of the case.

(5) The Prosecutor may order that a magnetic tape be entirely or partially transcribed. The Prosecutor shall examine and certify the transcript and attach it to the record of the investigative proceeding.

(6) The magnetic tape shall be kept as long as the criminal file is kept.

(7) The Prosecutor may allow persons with a legitimate interest to tape record investigative proceedings.

(8) The provisions of Paragraphs 1 through 7 of this Article shall also be applied accordingly when an investigative proceeding is filmed or recorded in some other manner.

(9) The recordings referred to in Paragraph 1 through 8 of this Article may not be publicly played without written approval of the parties and other participants in the recorded action.

Article 156
Appropriate Application of the Provisions of This Law

The provisions of Articles 253 and 254 of this Law shall also apply to the minutes of the main trial.

Article 157
Minutes on Deliberations and Voting

(1) Separate minutes shall be kept in the course of deliberations and voting process.

(2) The minutes on deliberations and voting of the panel shall contain a description of the course of the voting and the judgment rendered.

(3) The minutes on deliberations and voting shall be signed by all members of the panel and the minutes taker. The opinions that were singled out shall be appended to the minutes of the deliberations and voting unless they have been entered in the minutes.

(4) The minutes on deliberations and voting shall be enclosed in a separate envelope. The minutes may be

reviewed exclusively by the panel of the Appellate Division when deciding on legal remedies and, in this case, it shall re-enclose the minutes in a separate envelope and indicate on the envelope that it has reviewed the minutes.

CHAPTER XII

DEADLINES

Article 158
Deadlines for Filing of Submissions

(1) The deadlines set forth in this Law may not be extended unless explicitly allowed by this Law. If a deadline specified by this Law to protect the right to defense and other procedural rights of the suspect or the accused, that deadline may be shortened at the request of the suspect or the accused, in writing, or verbally before a minutes taker who shall make a record.

(2) When a statement must be made within a specified period of time, it shall be assumed that it has been made within the specified period of time if it has been given to the person authorized to receive it before the expiration of that period.

(3) When a statement has been sent by registered mail or telegraph or other means of communication, the date of mailing or sending shall be taken as the date of delivery to the person to whom it has been sent.

(4) The suspect or the accused who is in pretrial custody may also make a time-limited statement for the record of the Court or deliver it to the administration of the prison, and a person who is serving a prison sentence or who is an inmate in some other institution because of a security measure or correctional measure may deliver such a statement to the administration of the institution in which he is an inmate. The day when the record was made or when the statement was delivered to the administration of the institution shall be taken as the date of delivery to the body competent to receive it.

(5) If a submission subject to a deadline has been delivered or sent as a result of ignorance or an obvious mistake of the sender to a Court that is not competent, and if it has reached the Court after the expiration of deadline, it shall be considered that it was timely submitted.

Article 159
Calculation of Deadlines

(1) Deadlines shall be computed in hours, days, months and years.

(2) The hour or day when a delivery or communication was made or when an event occurred, which serves as the point of commencement of a deadline, shall not be included in the deadline, but the first subsequent hour or day, as applicable, shall be taken as the point of commencement of the period of time. Twenty-four (24) hours shall be taken as a day, and a month shall be computed on the basis of the calendar.

(3) Deadlines stated in months or years shall expire in the last month or year at the end of the same day of the month or the year on which the period began, as applicable. If there is no such day in the last month, the period shall expire on the last day of that month.

(4) If the last day of the deadline falls on a state holiday or a Saturday or Sunday, or on any other day when the governmental body in question does not work, the deadline shall expire at the end of the next working day.

Article 160
Conditions for Allowing Return to *Status Quo Ante*

(1) If the accused shows good reasons for failing to meet the deadline for filing an appeal against a judgment or a decision pronouncing a security measure or correctional measure or a decision to forfeiture property

gain, the Court shall allow return to the *status quo ante* for purposes of submitting the appeal if, within eight (8) days following termination of the reasons for failing to meet the deadline, the accused submits a request for return to the *status quo ante* and files his appeal simultaneously with the request.

(2) Return to the *status quo ante* may not be requested if three (3) months have passed from the date of failure to meet the deadline.

Article 161
Decision on Return to *Status Quo Ante*

(1) The decision on the return to the *status quo ante* shall be made by the judge or the presiding judge on the panel that rendered the judgment or the decision being contested by the appeal.

(2) No appeal shall be permitted against a decision allowing return to the *status quo ante*.

Article 162
Consequences of Filing a Request for Return to *Status Quo Ante*

As a rule, a request for return to the *status quo ante* shall not stay execution of a judgment or execution of a decision instituting a security measure or correctional measure or a decision to forfeit property gain, but the Court may decide to halt the execution until a decision is made on the request.

CHAPTER XIII

RENDERING AND COMMUNICATION OF DECISIONS

Article 163
Types of Decisions

(1) Decisions shall be rendered in criminal proceedings in the form of a judgment, procedural decision or order.

(2) A judgment shall be rendered only by a Court, while procedural decisions and orders shall also be issued by other bodies participating in criminal proceedings.

Article 164
Decision-making During Deliberation and Voting Sessions

(1) Decisions of a panel of judges shall be rendered after deliberations and voting. A decision has been adopted when a majority of members of the panel have voted in favor of it.

(2) The President of the panel shall direct both the deliberation and voting and shall cast the final vote. He shall be responsible for ensuring that all issues are examined in a full and comprehensive manner.

(3) If votes on certain issues have been divided among several different opinions, and if none of them receives a majority, the issues shall be separated and the voting shall be repeated until a majority is reached. If no majority has been reached in this manner, the decision shall be adopted by adding those votes that are most unfavorable for the accused to the votes that are less unfavorable until the required majority is reached.

(4) Members of the panel cannot refuse to vote on questions put by the Presiding judge of the panel, but a member of the panel who has voted to acquit the accused or to revoke the judgment and who has remained in the minority shall not be required to vote on the penalty. If he does not vote, it shall be taken that he consented to the vote that was most favorable for the accused.

Article 165
Manner of Voting

(1) During decision-making, a vote shall first be taken on whether the Court is competent, whether it is necessary to supplement the proceedings, and on other preliminary issues. When a decision has been taken on preliminary issues, the panel shall begin to consider the main issue.

(2) In the course of deciding on the main issue a vote shall first be taken on whether the accused committed the criminal offense and whether he is criminally responsible, and thereafter a vote shall be taken on the sentence, other criminal sanctions, costs of criminal proceedings, claims under property law and other issues to be decided.

(3) If an individual has been charged with several criminal offenses, a vote shall be taken on criminal responsibility and sentences for each criminal offense, and thereafter a vote shall be taken on a single sentence for all criminal offenses.

Article 166
Closed Session

(1) Deliberations and voting shall be done in a closed session.

(2) Only members of the panel and a record keeper may be present in the room where the Court conducts its deliberations and voting.

Article 167
Communication of Decisions

(1) Unless otherwise determined by this Law, decisions shall be communicated to parties by way of oral announcement if they are present or a certified copy shall be delivered to them if they are absent.

(2) If a decision has been orally communicated, this shall be indicated in the relevant record and case file, and the person who has acknowledged the communication shall confirm this by his signature. If the concerned person declares that he will not appeal, no certified copy of the orally communicated decision shall be delivered to him unless otherwise determined by this Law.

(3) Copies of decisions against which an appeal is permitted shall be delivered, along with the instruction as to the right to appeal.

CHAPTER XIV

DELIVERY OF CASE RELATED DOCUMENTS

Article 168
Manner of Delivery

(1) Case related documents shall as a rule be delivered by mail. Delivery may also be made through an official of the authority that rendered the decision or directly with that authority.

(2) The Court may also communicate a summons to a main trial or other summons orally to a person who is before the Court; such communication shall include an instruction as to the consequences of a failure to appear. Orally communicated summons shall be noted in the record, which the person summoned shall sign, unless such summons has been recorded in the main trial record. It shall be considered that a valid delivery has thereby been made.

Article 169
Personal Delivery

A writ that under this Law must be personally served shall be delivered directly to the person to whom it is addressed. If a person to whom a writ or notice must be personally delivered has not been found where the delivery was to take place, the writ server shall make inquiries as to when and where that person may be found and shall leave with one of the persons under Article 170 of this Law a written notice that he should be

in his dwelling or at his workplace at a particular day and hour in order to receive the writ. If even after this the writ server does not find the person to whom the writ is to be delivered, he shall use the procedure under the provision of Article 170, Paragraph 1 of this Law, and it shall be assumed that the writ has been served.

Article 170
Indirect Delivery

(1) Writs for which this Law does not specify personal delivery shall also be delivered in person; but if the recipient is not found at home or at work, such documents may be given to any of adult members of his household, who must accept the document. Should any of the household members not be found at home, the document shall be left with a neighbor, if he consents to accept it. If a writ is delivered to a person at his workplace, and the person concerned has not been found there, the document may be delivered to a person authorized to receive mail, who must accept the document, or to a person employed at the same workplace, if he consents to accept it.

(2) Should it be established that the person to whom a writ or notice is to be delivered is absent and that persons under Paragraph 1 of this Article are therefore not in the position to present the document to him in a timely manner, the writ shall be returned with an indication as to whereabouts of the absent person.

Article 171
Contents of Personally Served Documents

(1) The summons to the first examination in the investigation, the summons to the main trial, and the summons to the sentencing hearing shall be personally served on the suspect or the accused.

(2) The indictment, judgment and other decisions for which the period of time for appeal commences on the date of their service, including the appeal by the opposing party submitted for an answer, shall be personally served on an accused who does not have a defense counsel. At the request of the accused, the judgment and other decisions shall be served on a person designated by him.

(3) If an accused who does not have a defense counsel is to be delivered a judgment by which a sentence of imprisonment has been pronounced against him, and the judgment cannot be delivered at his previous address, the Court shall *ex officio* appoint an attorney for defense of the accused, who shall perform that duty until the new address of the accused is learned. The appointed defense counsel shall be given the necessary period of time to acquaint himself with the case file, whereupon the judgment shall be served on the appointed defense counsel and proceedings shall resume. If it concerns another decision whose date of delivery becomes the date of commencement of the period of time for an appeal or if it concerns an appeal of the opposing party that is being submitted for an answer, the decision or appeal shall be posted on the bulletin board of the Court, and after eight (8) days from the date of posting it shall be assumed that valid delivery has been made.

(4) If the accused has a defense counsel, the indictment and all decisions for which the period of time for filing an appeal commences on the date of delivery, and also the appeal of the opposing party submitted for an answer, shall be served on the defense counsel and the accused in accordance with the provisions of Article 170 of this Law. In such a case, the period for pursuing a legal remedy or answering the appeal shall commence on the date when the writ is delivered to the accused or defense counsel. If the decision or appeal cannot be served on the accused because the accused has failed to report a change of address, the decision or appeal shall be posted on the bulletin board of the Court and after eight (8) days from the date of posting it shall be assumed that valid delivery has been made.

(5) If a writ is to be delivered to the defense counsel of the accused, and he has more than one defense counsel, it shall be sufficient to make delivery to one of them.

Article 172
Receipt Confirming Delivery

(1) The recipient and the person making the delivery shall sign the receipt confirming that delivery has been

made. The recipient shall himself indicate the date of service on the receipt.

(2) If the recipient is illiterate or unable to sign his name, the person making the delivery shall sign on his behalf, shall indicate the date of service, and shall make a note as to why he signed for the recipient.

(3) Should the recipient refuse to sign the receipt, the person making the delivery shall make a note to that effect on the receipt and shall indicate the date of delivery, whereby service is completed.

Article 173
Refusal to Receive a Writ

If the recipient or an adult member of his family refuses to accept the writ, the person making the delivery shall note on the receipt the date, hour and reason for refusal, and shall leave the writ in the dwelling of the recipient or in his workplace, whereby service is completed.

Article 174
Special Cases of Delivery

(1) A summons shall be served on a person deprived of liberty through the Court or through the administration of the institution where he is an inmate.

(2) Persons who enjoy the right of immunity in Bosnia and Herzegovina, unless otherwise specified under international treaties, shall be served summons through the competent ministry of Bosnia and Herzegovina.

(3) If the procedure set forth in Articles 408 and 409 of this Law does not apply, Bosnia and Herzegovina nationals abroad shall be served summonses through diplomatic or consular missions of Bosnia and Herzegovina in a foreign country, provided that the foreign state does not oppose this manner of service and that the person being served the summons voluntarily consents to receive the summons. An authorized official of the diplomatic or consular mission shall sign the receipt as the person making the delivery if the summons is served within the mission office itself, and if the summons is sent by mail, he shall so indicate on the receipt.

Article 175
Delivery to the Prosecutor

(1) Decisions and other writs or notices shall be delivered to the Prosecutor through the filing office of the Prosecutor's Office.

(2) In the case of delivery of decisions for which a period of time commences on the date of delivery, the date of presentation of the document to the filing office of the Prosecutor's Office shall be taken as the date of delivery.

Article 176
Applicability of Corresponding Provisions of Other Laws

In cases that have not been specifically covered by this Law, the delivery shall be made according to the provisions that apply to a civil action before the Court.

Article 177
Informing by Way of Telegram or Telephone

(1) The persons other than the accused who are participants in the proceedings, may be informed of a summons to a main trial or other summons and of a decision postponing a main trial or other scheduled actions, by way of telegram or telephone if one can assume from the circumstances that the notice given in that manner will be received by the person to whom it is addressed.

(2) An official note shall be made in the record that a summons or decision notice has been delivered in the

manner provided by Paragraph 1 of this Article.

(3) Harmful consequences prescribed for failure to take action may ensue for a person who has been informed or to whom a decision was sent according to Paragraph 1 of this Article only if it is ascertained that he timely received the summons or decision and was made aware of the consequences of a failure to act.

CHAPTER XV

EXECUTION OF DECISIONS

Article 178
Finality of Decisions

(1) A judgment shall become final when it may no longer be contested by an appeal or when no appeal is admissible.

(2) A judgment that becomes final shall be executed if its delivery has been carried out and if there are no legal obstacles to its execution. If an appeal has not been filed, or if the parties have waived or abandoned on the appeal filed, the judgment shall be considered executable by the expiration of the time period set forth for appeal, or as of the day of the waiving or abandonment of the appeal filed.

(3) The Court shall be competent for the execution of final judgments.

(4) If a military officer has been convicted, the Court shall deliver a certified copy of the final judgment to the body in charge of defense where the convicted person is registered.

Article 179
Failure to Collect Fines

If a fine prescribed by this Law cannot be collected, the Court shall proceed in the manner stipulated by the Criminal Code of Brcko District of BiH.

Article 180
Execution of Decision on Costs of Proceedings and Forfeiture of Items

(1) With respect to the costs of criminal proceedings, forfeiture of property gain and claims under property law, the judgment shall be executed by the Court under the provisions that apply to judicial enforcement procedure and that apply on the territory where the decision is to be implemented.

(2) Coercive collection of the costs of criminal proceedings credited to the budget of Brcko District of Bosnia and Herzegovina shall be done automatically. The costs of coercive collection shall be paid in advance from the Court funds.

(3) If the judgment pronounces the security measure of forfeiture of items, the Court shall decide whether to sell these items in accordance with the provisions applicable to judicial enforcement procedure, or turn them over to the criminology museum or some other institution, or destroy. The proceeds collected from the sale of such articles shall be credited to the budget of Bosnia and Herzegovina.

(4) The provision of Paragraph 3 of this Article shall also be applied accordingly when a decision is made to forfeit property on the basis of Article 391 of this Law.

(5) Aside from the case of reopening of the criminal proceedings, a final order to forfeit items may be amended in a civil action if a dispute concerning the ownership of the forfeited items arises.

Article 181
Enforceability of Decisions

(1) Unless this Law states otherwise, decisions shall be executed when they become final. Orders shall be executed immediately unless the issuing body orders otherwise.

(2) A decision becomes final when it may no longer be contested by an appeal or when no appeal is admissible.

(3) Unless otherwise specified, decisions and orders shall be declared by the bodies that rendered those decisions. If the Court has pronounced a decision on the costs of criminal proceedings, those costs will be collected according to the provisions of Article 180, Paragraphs 1 and 2 of this Law.

Article 182
Doubts as to Whether the Execution is Permissible

(1) If doubts arise as to whether execution of a Court decision is permissible or as to the computation of a sentence, or if a final judgment fails to make a decision to credit pretrial custody or a previously served sentence, or the computing has not been done correctly, a separate decision shall be made on these issues by the judge or by the presiding judge of the panel which tried the case in the first instance. An appeal shall not stay execution of the decision unless the Court specifies otherwise.

(2) If doubt arises as to the interpretation of the Court decision, the ruling shall be made by the judge or by the panel of judges that rendered the final decision.

Article 183
Validity of a Verdict on a Claim under Property Law

When a decision on a claim under property law becomes legally binding, at the request of the injured party, a certified transcript of the decision shall be issued to him, with a note that the judgment is executable.

Article 184
Regulations on Criminal Records

Regulations on criminal records shall be passed by the Judicial Commission of Brcko District of Bosnia and Herzegovina.

CHAPTER XVI

COSTS OF CRIMINAL PROCEEDINGS

Article 185
Types of Costs

(1) The costs of criminal proceedings are the expenses incurred in connection with criminal proceedings from the time they are instituted until they are completed.

(2) The costs of criminal proceedings include the following:

a) costs for witnesses, expert witnesses, interpreters and specialists and the cost of a crime scene investigation;
b) the cost of transporting the accused or the suspect;
c) the expenses of requiring the suspect or the accused or person in custody to appear;
d) the transportation and traveling expenses of officials;
e) expenses of medical treatment of the suspect or the accused while in pretrial custody, including the expenses of childbirth, except for the expenses covered from the health insurance fund;
f) costs of routine maintenance check, blood sample analysis and transportation of corpse to the place of autopsy;
g) a scheduled amount;
h) remuneration and necessary expenses of defense counsel;
i) necessary expenses of the injured party and his legal representative.

(3) The scheduled amount shall be fixed within the limits of amounts specified by the appropriate regulation considering the duration and complexity of the proceedings and the financial standing of the person required to pay the amount.

(4) The expenses enumerated under Items a) through f) of Paragraph 2 of this Article and the necessary expenses of an appointed defense counsel shall be paid in advance from the funds of the Prosecutor's Office or the Court, and they shall be collected later from the individuals who are required to make compensation under the provisions of this Law. The body conducting the criminal proceedings must make a list all expenses that have been paid in advance, which shall be appended to the record.

(5) Costs of interpretation into the languages of the parties, witnesses and other participants in the criminal proceedings that are incurred in enforcing the provisions of this Law shall not be collected from individuals who, under the provisions of this Law, are required to compensate the costs of criminal proceedings.

Article 186
Decision on the Costs

(1) In every judgment or decision halting criminal proceedings a decision shall be made as to who will bear the costs of the proceedings and as to the amount of these costs.

(2) If data on the amount of costs are lacking, a special decision on the amount of costs shall be made by the Court when such data have been obtained. The request with the data on the amount of costs may be submitted not later than six (6) months after the day of the delivery of a legally binding judgment or decision halting criminal proceedings to the person who is entitled to make such a request.

(3) When the decision on costs of criminal proceedings is contained in a separate decision, an appeal against that decision shall be ruled on by a panel of judges of the Appellate Division.

Article 187
Other Costs

(1) The suspect or the accused, defense counsel, legal representative, witness, expert witness, interpreter and specialist, regardless of the results of the criminal proceedings, shall pay the costs of appearance or postponement of the investigative proceeding or main trial and other costs of proceedings incurred through their own fault and the corresponding share of the scheduled amount.

(2) A separate decision shall be rendered concerning the costs referred to in Paragraph 1 of this Article, unless the matter of costs to be paid by the accused is settled in the decision on the main issue.

Article 188
Costs of Proceedings when the Accused is Found Guilty

(1) When the Court finds the accused guilty, it shall declare in its judgment that the accused must reimburse the costs of criminal proceedings.

(2) A person who has been charged with several criminal offenses shall not be ordered to reimburse costs related to criminal offenses of which he has been acquitted if those costs can be determined separately from the total costs.

(3) In a judgment finding several defendants guilty, the Court shall specify what portion of the costs shall be paid by each of them; but if this is not possible, it shall order that all defendants be jointly and severally liable for the costs. Payment of the scheduled amount shall be specified for each accused separately.

(4) In the decision which settles the issue of costs the Court may relieve the accused of the duty to reimburse all or part of the costs of criminal proceedings as referred to in Article 185, Paragraph 2, Items a) through h), of this Law if their payment would jeopardize the support of the accused or of persons whom the accused is required to support economically. If these circumstances are ascertained after the decision on

costs has been rendered, the judge may issue a separate decision relieving the accused of the duty to reimburse the costs of criminal proceedings.

Article 189
Costs of Proceedings in Case the Proceedings are Discontinued or a Verdict is Rendered Acquitting the Accused or Rejecting the Charges

(1) When criminal proceedings are dismissed or when a judgment is rendered that acquits the accused or rejects the charge, the decision or judgment shall pronounce that the costs of criminal proceedings referred to in Article 185, Paragraph 2, Items a) through f) of this Law and the necessary expenditures of the accused and the necessary expenditures and remuneration of defense counsel shall be paid from budget, except in the cases specified in Paragraph 2 of this Article.

(2) A person who deliberately files a false charge shall pay the costs of criminal proceedings.

(3) When the Court rejects the charge because it is not competent, the decision on costs shall be made by the competent Court.

(4) If the request for compensation of necessary costs and remuneration from Paragraph 1 of this Article is not approved or the Court fails to decide the request within three months following the date of filing of the request, the accused and defense counsel shall be entitled to settle their claims against Brcko District of Bosnia and Herzegovina through civil proceedings.

Article 190
Remuneration and Necessary Expenses of the Defense counsel

The remuneration and necessary expenses of the defense counsel must be paid by the person represented regardless of who is ordered to pay the costs of criminal proceedings in the decision of the Court, unless under the provisions of this Law the remuneration and necessary expenses of the defense counsel are to be paid from the Court budget appropriations. If an attorney was appointed to defend the suspect or the accused, and payment of remuneration and necessary expenses would jeopardize the support of the accused or the persons whom the accused is required to support, the remuneration and necessary expenses of defense counsel shall be paid from the Court budget appropriations.

Article 191
Costs of the Proceedings by Legal Remedies

It shall be decided in accordance with the provisions of Articles 185 through 190 of this Law on the obligation to pay the costs in the proceedings by legal remedies.

Article 192
Separate Regulations Concerning Compensation of Costs

More detailed regulations on reimbursement of costs of criminal proceeding and the scheduled amount shall be issued by the Judicial Commission of Brcko District of Bosnia and Herzegovina.

CHAPTER XVII

CLAIMS UNDER PROPERTY LAW

Article 193
Subject of the Claim under Property Law

(1) A claim under property law that has arisen because of the commission of a criminal offense shall be deliberated on the motion of authorized officials in criminal proceedings if this would not considerably prolong such proceedings.

(2) A claim under property law may pertain to reimbursement of damage, recovery of items, or annulment of

a particular legal transaction.

Article 194
Petition to Satisfy a Claim under Property Law

(1) The petition to satisfy a claim under property law in criminal proceedings may be filed by the person authorized to pursue that claim in a civil action.

(2) If a criminal offense has caused damage to the property of Brcko District of Bosnia and Herzegovina, the body empowered by law to protect such property may participate in criminal proceedings in accordance with its powers under that law.

Article 195
Procedure for Satisfaction of a Claim under Property Law

(1) A petition to pursue a claim under property law in criminal proceedings shall be filed with the Court.

(2) The petition may be submitted not later than the end of the main trial or sentencing hearing before the Court.

(3) The person authorized to submit the petition must state his claim specifically and must submit the evidence.

(4) If an authorized person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment had been confirmed, he shall be informed that he may file that petition by the end of the main trial, or of the sentencing hearing. If a criminal offense caused damage to the property of Brcko District of Bosnia and Herzegovina, and no petition has been filed, the Court shall so inform the body from Article 194, Paragraph 2 of this Law.

(5) If an authorized person does not file the claim under property law until the end of the main trial or if he requests a transfer to civil action, and the data concerning the criminal proceedings provide a reliable grounds for a complete or partial resolution of the claim under property law, the Court shall decide in the convicting judgment to pronounce on the accused the measure of forfeiture of property gain.

Article 196
Petition Withdrawal

(1) Authorized officials may withdraw a petition to satisfy a claim under property law in criminal proceedings up to the end of the main trial or sentencing hearing and pursue it in a civil action. In the event that a petition has been withdrawn, the same plea may not be filed again unless otherwise provided under this Law.

(2) If after the petition was filed and before the end of the sentencing hearing the claim under property law has been transferred under the rules of property law to another person, that person shall be summoned to declare whether or not he stands by his petition. If he does not appear when duly summoned, he shall be considered to have abandoned the petition.

Article 197
Obligations of the Prosecutor and the Court in Relation to the Establishment of Facts

(1) The Prosecutor shall gather evidence and take investigative actions required for making a decision on the claim under property law which is related to the criminal offense.

(2) The Court shall question the accused in relation to the facts of concern in the petition of the authorized official.

Article 198
Ruling on the Claims under Property Law

(1) The Court shall decide on claims under property law.

(2) The Court may propose to the injured party and the accused, or the defense counsel, that a mediation procedure be conducted through a mediator pursuant to the law if it estimates that the claim under property law is such that it is advisable to send it to mediation. The motion for mediation may be filed by both the injured party and the accused, or the defense counsel before the end of the main trial.

(3) In the judgment finding the accused guilty, the Court may award the injured party the entire claim under property law, or may award him part thereof and refer him to a civil action for the remainder. If the data on the criminal proceeding do not provide a reliable basis for either a complete or partial award of the claim, the Court shall instruct the injured party to initiate a civil action to pursue his entire claim under property law.

(4) When the Court passes a judgment acquitting the accused or rejecting the charges or when it terminates the criminal proceeding by a decision, it shall instruct the injured party to pursue his claim under property law in a civil proceeding.

Article 199
Decisions to Turn Over the Articles to the Injured Party

If a claim under property law pertains to recovery of articles, and the Court finds that the article does belong to the injured party and is in the possession of the accused or one of the participants in the main trial or in the possession of a person to whom those persons gave it for safekeeping, it shall order in the judgment that the article be turned over to the injured party.

Article 200
Decisions to Annul Certain Legal Transactions

If a claim under property law pertains to annulment of a specific legal transaction, and the Court finds that the claim is grounded, it shall declare in its judgment complete or partial annulment of that legal transaction with the consequences deriving therefrom, without affecting the rights of third parties.

Article 201
Amending the Decision on a Claim under Property Law

(1) A Court may amend a final judgment that contains a decision on a claim under property law only in the case of the reopening of the criminal proceeding.

(2) Notwithstanding cases referred to in Paragraph 1 of this Article, the convicted person or his heirs may seek to amend a criminal Court's final judgment containing a decision on a claim under property law only in a civil action, as long as the grounds exist for retrial under the provisions that apply to civil proceedings.

Article 202
Temporary Security Measures

(1) Temporary measures to secure a claim under property law that has accrued because of the commission of a criminal offense may be ordered in criminal proceedings according to the provisions that apply to judicial enforcement procedure.

(2) The decision from Paragraph 1 of this Article shall be passed by the Court. An appeal against this decision shall be allowed and it shall be decided by the Appellate Court. The appeal shall not stay the enforcement of the decision.

Article 203
Return of Articles in the Course of the Proceedings

(1) If a claim pertains to articles that unquestionably belong to the injured party, and they do not constitute

evidence in criminal proceedings, those articles shall be given to the injured party even before the proceedings are completed.

(2) If the ownership of articles is disputed by several injured parties, they shall be referred to a civil action, and the Court in criminal proceedings shall order only the safekeeping of the items as a temporary security measure.

(3) Items that serve as evidence shall be temporarily seized and at the end of the proceedings they shall be returned to the owner. If such an item is urgently needed by the owner, it may be returned to him even before the end of the proceedings, provided he brings them when requested.

Article 204
Security Measures Against Third Parties

(1) If an injured party has a claim against a third party because he possesses some items obtained through a criminal offense or because he gained property as a result of a criminal offense, the Court in criminal proceedings, upon the petition of authorized officials (Article 194) and according to the provisions that apply to judicial enforcement procedure, may order temporary security measures even toward that third party. The provisions of Article 202, Paragraph 2 of this Law shall apply in this case as well.

(2) In a judgment pronouncing the accused guilty the Court shall either revoke the measures referred to in Paragraph 1 of this Article, if they have not already been revoked, or shall refer the injured party to a civil action, in which case those measures shall be revoked unless the civil action is instituted within the period of time fixed by the Court.

CHAPTER XVIII

MISCELLANEOUS PROVISIONS

Article 205
Discontinuance of the Proceedings if the Suspect or Accused Dies

When it is established in the course of the criminal proceedings that the suspect or accused has died, the proceedings shall be discontinued.

Article 206
Procedure in Case of Mental Incapacity of the Suspect or the Accused

If in the course of the proceedings it is established that the suspect or the accused was mentally incapacitated at the time of committing the criminal offense, the Court shall render an appropriate decision in accordance with Article 389 of this Law. If the suspect or the accused is in custody or in a psychiatric institution he shall not be released but instead the Court shall issue a decision on temporary detention of the suspect or the accused up to 30 days following the day of issuance.

Article 207
Mental Disorder Suffered by the Suspect or the Accused in the Course of the Proceedings

If in the course of criminal proceedings it is ascertained that after the criminal offense was committed the suspect or the accused has become mentally ill, a decision adjourning criminal proceedings shall be issued. (Article 388)

Article 208
Application of the Rules of International Law

(1) The rules of international law shall apply with respect to exemption from criminal prosecution of aliens who enjoy the right of immunity in Bosnia and Herzegovina.

(2) Should there be any doubt as to the identity of persons referred to in Paragraph 1 of this Article, the

Court shall seek clarification from the competent Ministry of Bosnia and Herzegovina.

Article 209
Approval to Prosecute

When the law states that prior approval of the competent governmental body is required for prosecution of certain persons, the Prosecutor may not conduct an investigation nor may he bring charges without submitting evidence that the approval has been granted.

Article 210
Special Cases of Prosecution

(1) In the event that a criminal offense was committed outside the territory of Bosnia and Herzegovina, the Prosecutor may initiate the prosecution provided that the criminal offense was sanctioned by the law of Brcko District of Bosnia and Herzegovina.

(2) In the event referred to in Paragraph 1 of this Article the Prosecutor shall undertake the criminal prosecution only if the offense committed is prescribed as the criminal offense under the laws of the country in whose territory the criminal offense was committed. Neither in that case shall the prosecution be undertaken, if under the laws of that country the prosecution is to be undertaken only upon the request of the injured party, whereas no such request has been filed by the injured party.

(3) Notwithstanding the laws of the country where the criminal offense was committed, the Prosecutor may undertake the prosecution if such an act is a criminal offense against the integrity of Bosnia and Herzegovina or if that act constitutes a criminal offense under the rules of international law.

Article 211
Fines in Case of Prolonging Proceedings

(1) In the course of proceedings, the Court may impose a fine in an amount of up to 5.000 KM upon the Prosecutor, defense counsel, power of attorney or legal representative and an injured party if actions of the Prosecutor, defense counsel, or power of attorney or legal representative or the injured party are obviously aimed at prolonging the criminal proceedings.

(2) The Judicial Commission of Brcko District of Bosnia and Herzegovina (High Judicial and Prosecutorial Council of Bosnia and Herzegovina) shall be informed of the fining of the Prosecutor, and the relevant Bar Association shall be informed of the fining of the defense counsel.

Article 212
Providing Information from Criminal Records

(1) Information from the criminal record related to the criminal proceedings conducted against a person that had previously been convicted may be revealed to the Court, the Prosecutors' Offices and bodies of internal affairs, as well as to bodies competent for execution of criminal sanctions and competent bodies participating in the procedure of granting amnesty, pardon or deletion of sentence.

(2) Upon the presentation of a justifiable request, information from the criminal record may also be revealed to governmental bodies if certain legal consequences incident to conviction or security measures are still in force.

(3) At their request, citizens may be given information on their being convicted or not being convicted if the information is necessary for exercising their rights.

(4) No one has the right to demand that citizens present evidence on their being convicted or not being convicted.

PART TWO - COURSE OF THE PROCEEDINGS

CHAPTER XIX

INVESTIGATION

Article 213
Obligation to Report Criminal Offense

(1) Official and responsible persons in all the bodies of authority in the Brcko District of Bosnia and Herzegovina, public companies and institutions shall report criminal offenses of which they have been informed or which they have learned of in some other manner. Under such circumstances, official and responsible persons shall take steps to preserve traces of a criminal offense, objects upon which or with which the criminal offense was committed and other evidence on them, and shall notify an authorized official or the Prosecutor's Office without delay.

(2) Medical workers, teachers, pedagogues, parents, foster parents, adoptive parents and other persons authorized or obligated to provide protection and assistance to minors, to supervise, educate and raise minors, are obligated to immediately inform the authorized official or the Prosecutor about their suspicion that the minor is the victim of sexual, physical or any other form of abuse.

Article 214
Citizens Reporting a Criminal Offense

(1) Citizens shall be entitled to report a criminal offense.

(2) All persons must report commission of a criminal offense in those instances where failure to report such a criminal offense constitutes a criminal offense itself.

Article 215
Filing a Report

(1) The report shall be filed with the Police or the Prosecutor, in writing or orally.

(2) If a person files an oral report concerning a criminal offense, such person shall be warned of the consequences of providing a false report. The minutes shall be made concerning the oral report and if the report is communicated by telephone, an official note shall be made.

(3) If the report has been filed with the Court or with an authorized official, they shall accept the report and immediately submit it to the Prosecutor.

Article 216
Order on Conducting an Investigation

(1) The Prosecutor shall order conducting of an investigation if grounds for suspicion that a criminal offense has been committed exist.

(2) The order on conducting the investigation shall contain the following: data on perpetrator, if known, description of the act pointing to the legal elements which make it a criminal offense, legal name of the criminal offense, circumstances that confirm the grounds for suspicion for conducting an investigation and existing evidence. The Prosecutor shall list in the order which circumstances need to be investigated and which investigative measures need to be taken.

(3) The Prosecutor shall not order the investigation if it is evident from the report and supporting documents that a reported act is not a criminal offense, if there are no grounds to suspect that the reported person committed a criminal offense, if the statute of limitation is applicable or if the criminal offense is subject to amnesty or pardon or if there exist other circumstances that preclude criminal prosecution.

(4) The Prosecutor shall, within three (3) days, inform the injured party and the person who reported the offense of non-conducting the investigation, as well as of the reasons for not doing so. The injured party and the person who reported the offense shall be entitled to file a complaint with the Prosecutor's Office within eight (8) days.

Article 217
Conducting an Investigation

(1) In the course of conducting the investigation, the Prosecutor may undertake all investigative actions, including the questioning of the suspect and hearing of the injured party and witnesses, crime scene investigation and reconstruction of events, undertaking special measures to ensure safety of witnesses and information and to order necessary expert evaluation.

(2) The record on the undertaken investigative actions shall be made in accordance with this Law.

Article 218
Prosecutor Supervising the Work of Authorized Officials

(1) If there are grounds for suspicion that a criminal offense has been committed that carries a prison sentence of more than five (5) years, an authorized official shall immediately inform the Prosecutor and shall under the Prosecutor's supervision take necessary measures to identify the perpetrator, to prevent the suspect or accomplice from hiding or fleeing, to detect and secure the clues to the criminal offense and objects which might serve as evidence, and to gather all information that might be of use for the criminal proceedings.

(2) If there are grounds for suspicion that a criminal offense referred to in Paragraph 1 of this Article has been committed, and if the delay would pose a risk, an authorized official is obligated to take necessary actions in order to fulfill the tasks referred to in Paragraph 1 of this Article. When taking these actions, the authorized official is obligated to act in accordance with this Law. The authorized official shall be bound to immediately inform the Prosecutor on all actions taken and deliver the collected items that may serve as evidence.

(3) If there are grounds for suspicion that a criminal offense has been committed that carries a prison sentence of up to five (5) years, an authorized official shall inform the Prosecutor of all available information, actions and measures performed no later than seven (7) days after forming the grounds for suspicion that a criminal offense has been committed.

(4) In cases referred to in Paragraphs 1 through 3 of this Article, the Prosecutor shall issue an order on conducting the investigation if he considers it necessary.

Article 219
Taking Statements and Gathering Other Evidence

(1) In order to perform the tasks referred to in Article 218 of this Law, authorized official may do the following: take necessary statements from persons; conduct necessary examination of means of transport, passengers and luggage; restrict movement in a specified area during the time required to complete a certain action; take necessary measures to establish identity of persons and objects; organize search to locate an individual or items being sought; in the presence of a responsible individual search the specified structures and premises of state authorities, public enterprises and institutions, examine specified documents belonging to state authorities, public enterprises or institutions, and take other necessary steps and actions. A record or official notes concerning the facts and circumstances ascertained in taking of certain actions and also concerning items which have been found or forfeited shall be kept.

(2) In taking statements from an individual, an authorized official may issue a written summons to a person to appear at the police station, provided that the summons designates the reasons for requesting the person's appearance. A person is not obligated to give a statement or respond to any question posed by the authorized official, other than to give his own identity data. The authorized official shall inform the

person about this right.

(3) In taking statements from persons, the authorized official shall act in accordance with Article 78 of this Law or in accordance with Article 86 of this Law. In that case, the records on taken statements may be used as evidence in the criminal proceedings.

(4) A person against whom any of the actions or measures referred to in this Article have been taken shall be entitled to file a complaint with the Prosecutor's Office within period of three (3) days. The Prosecutor shall examine the grounds of the complaint and if it is determined that the taken actions or measures contain the features of a criminal offense or a violation of duty, the complaint shall be processed in accordance with the law.

(5) The authorized official shall complete a report based on the taken statements and gathered evidence. The report shall be submitted along with physical articles, sketches, photographs, obtained reports, records of the actions and measures taken, official notes, statements taken and other materials, which could contribute to the effective conduct of proceedings, including all facts or evidence in favor of the suspect. If the authorized official learns of new facts, evidence or clues to the criminal offense after submitting the report, he/she shall have a continuing duty to gather the necessary information and shall immediately submit a supplemental report to the Prosecutor.

(6) The Prosecutor may also take statements from persons in custody if this is necessary to detect other criminal offenses committed by the same person or his/her accomplices, or criminal offenses of other perpetrators.

Article 220
Restriction of Movement at the Crime Scene

(1) An authorized official shall be entitled to restrict the movement of persons found at the crime scene in order to take their statements, if such persons could provide information relevant for the criminal proceedings. The authorized official shall be bound to inform the Prosecutor about the restriction of movement and taking statements. Restriction of movement of such persons at the crime scene may not last more than six (6) hours.

(2) An authorized official may photograph a person and take his/her fingerprints if there are grounds for suspicion that he/she has committed a criminal offense. When it will contribute to the effective conduct of proceedings, an authorized official may release the photograph of that person for general publication, but only with the approval of the Prosecutor.

(3) If necessary to establish whose fingerprints are found on certain objects, the authorized official may take fingerprints from persons who have possibly touched those objects.

(4) A person against whom any of the actions or measures referred to in this Article have been taken shall be entitled to file a complaint with the Prosecutor.

Article 221
Crime Scene Investigation and Expert Evaluation

An authorized official, upon notifying the Prosecutor, shall proceed with the investigation of the crime scene and order the necessary expert evaluations, with the exception of an autopsy and the exhumation of a corpse. If the Prosecutor is present at the crime scene while it is being investigated by authorized officials, he/she may request authorized officials to perform certain actions that the Prosecutor considers necessary. All actions undertaken at the crime scene must be documented in detail by way of both a record and a separate official report.

Article 222
Autopsy and Exhumation

If there is a suspicion or if it is evident that a death was caused by criminal offense or that it is related to the commission of a criminal offense the Prosecutor shall order the performance of an autopsy. If the corpse has already been buried, an exhumation of the corpse shall be ordered for the purpose of an examination and autopsy through a warrant that the Prosecutor shall request from the Court.

Article 223
Preservation of Evidence by the Court

(1) Whenever it is in the interest of justice that the witness's testimony be taken in order to use it at the main trial because the witness may be unavailable to the Court during the trial, the pre-trial judge may, upon the request of the parties or the defense counsel, order that the testimony of the witness in question be taken at a special hearing. The special hearing shall be conducted in accordance with Article 262 of this Law.

(2) Prior to use of the witness's statement referred to in Paragraph 1 of this Article, the party or the defense counsel requesting for the statement to be considered as evidence at the main trial, must prove that despite all efforts to secure the witness's presence at the main trial, the witness remained unavailable. The statement in question may not be used if the witness is present at the main trial.

(3) If the parties or the defense counsel are of the opinion that certain evidence may disappear or that the presentation of such evidence at the main trial may not be possible, the parties or the defense counsel shall propose to the pre-trial judge to take necessary actions aimed at the preservation of evidence. If the pre-trial judge accepts the proposal on taking actions of presentation of evidence, he shall inform the parties and defense counsel accordingly.

(4) If the pre-trial judge rejects the proposal from Paragraphs 1 and 3 of this Article, he shall issue a decision that can be appealed before the Appellate Court.

Article 224
Cessation of Investigation

(1) The Prosecutor shall order cessation of investigation if the following is established:

a) that the act committed by the suspect is not a criminal offense;
b) that there are insufficient evidence that the suspect committed a criminal offense;
c) that the act is covered by amnesty, pardon or statute of limitations or if there are some other obstacles that preclude prosecution.

(2) The Prosecutor shall inform the injured party, who enjoys the rights prescribed by the Article 216, Paragraph 4 of this Law, that the investigation has ceased.

(3) The Prosecutor may, in cases stated under Paragraph 1, Item b) of this Article, reopen the investigation, if additional information are obtained confirming grounded suspicion that the suspect committed the criminal offense.

Article 225
Completion of Investigation

(1) The Prosecutor shall order a completion of investigation after he concludes that the status is sufficiently clarified to allow the raising of indictment. Completion of the investigation shall be noted in the file.

(2) Prior to the completion of the investigation, the Prosecutor shall question the suspect if this has not been done previously.

(3) If the investigation is not completed within six months after the order to conduct investigation had been issued, the Prosecutor shall undertake necessary measures to complete the investigation.

CHAPTER XX

INDICTMENT PROCEDURE

Article 226
Raising Indictment

(1) If during the course of an investigation, the Prosecutor finds that there is enough evidence for grounded suspicion that the suspect has committed a criminal offense, the Prosecutor shall prepare and refer the indictment to the preliminary hearing judge.

(2) After the indictment is raised, the suspect, that is, the accused and the defense counsel have a right to examine all the files and evidence.

(3) After the indictment is raised, the parties or the defense counsel may propose to the preliminary hearing judge to take actions in accordance with Article 223 of this Law.

Article 227
Contents of the Indictment

(1) The indictment shall contain the following:

a) the name of the Court;
b) the first and the last name of the suspect and his/her personal data;
c) a description of the act pointing to the legal elements which make it a criminal offense, the time and place of committing the criminal offense, the object on which and the means with which the criminal offense was committed, as well as other circumstances necessary for the criminal offense to be defined as precisely as possible;
d) the legal name of the criminal offense accompanied by the relevant provisions of the Criminal Code;
e) proposal of evidence to be presented, including the list of the names of witnesses and experts, documents to be read and objects serving as evidence;
f) the results of the investigation;
g) material supporting the charges in the indictment.

(2) An indictment may cover several criminal offenses or several suspects.

(3) If the suspect is not detained, it may be proposed in the indictment that he be detained, and if the suspect is already detained, it may be proposed to extend the detention or that he be released.

Article 228
Decision on Indictment

(1) The preliminary hearing judge may confirm or discharge all or some of the counts in the indictment within 8 days from the day of receiving the indictment. If the preliminary hearing judge discharges all or some counts of the indictment, s/he shall issue a decision that is submitted to the Prosecutor. This decision shall not be subject to an appeal.

(2) During the confirmation of the indictment, the preliminary hearing judge shall examine each count in the indictment and materials submitted by the Prosecutor in order to establish grounded suspicion.

(3) Upon confirmation of some or all counts in the indictment, the suspect shall have the status of the accused. The preliminary hearing judge shall present the indictment to the accused and his defense counsel.

(4) The preliminary hearing judge shall, without delay, present the indictment to the accused who is not detained, and if the accused is already detained, the preliminary hearing judge shall present him the indictment within 24 hours after the confirmation of the indictment. The preliminary hearing judge shall inform the accused that he shall be requested to enter the plea of guilty or not guilty on each count of the indictment within 15 days after the delivery of the indictment, and shall inquire the accused if he/she

tends to submit the preliminary motions and shall request the accused to list the proposed evidence that need to be presented at the main trial.

(5) Upon discharge of all or some counts in the indictment, the Prosecutor may bring a new or an amended indictment that may be based on new evidence. The new or amended indictment shall be submitted for confirmation.

Article 229
Guilty or Not Guilty Plea

(1) A plea of guilty or not guilty shall be entered before the preliminary hearing judge in the presence of the Prosecutor and the defense counsel. Plea shall be entered in the record. If the accused fails to enter a plea, the preliminary hearing judge shall, *ex officio*, record that the accused enters a plea of not guilty.

(2) If the accused enters a plea of guilty, the preliminary hearing judge shall refer the case to the judge or to the panel for scheduling the hearing at which it shall be determined whether the conditions referred to in Article 23 of this Law exist.

(3) A plea of not guilty shall never be held against the accused in fashioning a sentence if the accused is found guilty at the trial or subsequently changes his plea from not guilty to guilty.

(4) After entering a plea of not guilty into the record, the preliminary hearing judge shall refer the case to the judge or the panel that has been assigned to try the case so that they can schedule the main trial not later than 60 days from the day when the accused entered the plea of guilty. In exceptional cases, this deadline may be extended for 30 days.

Article 230
Deliberation on the Plea of Guilty

(1) In the course of deliberation of the statement on the plea of guilty from the accused, the Court must ensure the following:

a) that the plea of guilty was entered voluntarily, consciously and with understanding, and that the accused was informed of the possible consequences, including the satisfaction of the claims under property law and reimbursement of the expenses of the criminal proceedings;
b) that there is enough evidence proving the guilt of the accused.

(2) If the Court accepts the statement on the plea of guilty, the statement of the accused shall be entered in the record. In that case, the Court shall set the date for the trial for pronouncement of the sentence within three (3) days at the latest.

(3) If the Court rejects the statement on plea of guilty, the Court shall inform the parties and the defense counsel to the proceeding about the rejection and say so in the record. Statement on the admission of guilt is inadmissible as evidence in the criminal proceedings.

Article 231
Plea Bargaining

(1) The suspect, i.e. the accused and the defense counsel, may negotiate with the Prosecutor on the conditions of admitting the guilt for the criminal offense with which the accused is charged.

(2) In plea bargaining with the suspect, i.e. the accused and his defense counsel on the admission of guilt pursuant to Paragraph 1 of this Article, the Prosecutor may propose an agreed prison sentence of less than the minimum prescribed by the Law for the criminal offense(s) or a lesser penalty against the suspect or the accused.

(3) An agreement on the admission of guilt shall be made in writing. The preliminary proceeding judge, preliminary hearing judge, judge or the panel may sustain or reject the agreement in question.

(4) In the course of deliberation of the agreement on the admission of guilt, the Court must ensure the following:

a) that the agreement on admission of guilt was entered voluntarily, consciously and with understanding, and that the accused is informed of the possible consequences, including the satisfaction of the claims under property law and reimbursement of the expenses of the criminal proceedings;
b) that there is enough evidence proving the guilt of the suspect or the accused;
c) that the suspect , i.e. the accused understands that by agreement on the admission of guilt he waives his right to trial and that he may not file an appeal against the pronounced criminal sanction.

(5) If the Court accepts the agreement on the admission of guilt, the statement of the suspect, i.e. the accused shall be entered in the record. In that case, the Court shall set the date of the trial for the pronouncement of the sentence envisaged in the agreement referred to in Paragraph 3 of this Article within three (3) days at the latest.

(6) If the Court rejects the agreement on the admission of guilt, the Court shall inform the parties to the proceedings and the defense counsel about the rejection and say so in the record. Admission of guilt given before the preliminary proceeding judge, preliminary hearing judge, the judge or the panel is inadmissible as evidence in the criminal proceedings.

(7) The Court shall inform the injured party about the results of the negotiation on guilt.

Article 232
Withdrawing the Indictment

(1) The Prosecutor may withdraw the indictment without prior approval before its confirmation, and after the confirmation and before the commencement of the main trial, only with the approval of the preliminary hearing judge who confirmed the indictment.

(2) In the case referred to in Paragraph 1 of this Article, the proceeding shall be ceased by the decision, and the suspect, i.e. the accused and the defense counsel as well as the injured party shall be promptly notified of such decision.

Article 233
Reasons for Motion and the Decision on Motion

(1) Preliminary motions, are motions that:

a) challenge jurisdiction;
b) allege formal defects in the indictment;
c) challenge the lawfulness of evidence obtained or of the confession;
d) seek joint or separate proceedings;
e) challenge the refusal of a request for assignment of the defense counsel pursuant to Article 46, Paragraph 1 of this Law.

(2) Preliminary motions shall be lodged in writing with the Court not later than 15 days after the delivery of the indictment, and they shall be decided upon prior to referring the case to the judge, i.e. the panel for the purpose of scheduling the main trial.

(3) The preliminary hearing judge shall decide on preliminary motions. An appeal shall not be allowed against the decisions on preliminary motions, except in the case from Paragraph 1, Item c) of this Article.

CHAPTER XXI

MAIN TRIAL

Section 1 – PUBLIC NATURE OF THE MAIN TRIAL

Article 234
General Public

(1) The main trial is public.

(2) Only adults may attend the main trial.

(3) Persons attending the main trial must not carry arms or dangerous weapons, except for the guards of the accused and persons who are permitted to do so by the judge or the presiding judge.

Article 235
Exclusion of the Public

From the opening to the end of the main trial, the judge, i.e. the panel of judges may at any time, *ex officio* or on motion of the parties and the defense counsel, but always after hearing the parties and the defense counsel, exclude the public for the entire main trial or a part of it if that is in the interest of the national security, or if it is necessary to preserve a national, military, official or important business secret, if it is to protect the public peace and order, to preserve morality in the democratic society, to protect personal and intimate life of the accused or the injured or to protect the interest of a minor or a witness.

Article 236
Persons to Whom Exclusion of the Public Is Not Applicable

(1) Exclusion of the public shall not include parties, the defense counsel, the injured party, the legal representatives and the proxy.

(2) The judge, i.e. the panel of judges may allow certain officials, scientists and public officials to be present at the main trial from which the public is excluded, and the judge, i.e. the panel of judges, at the request of the accused, may also allow the presence to the accused's spouse, or his extramarital partner and his close relatives.

(3) The judge or the panel of judges shall warn persons attending the main trial closed to the public that they must keep in secret everything they learn at the main trial and shall warn them that it is a criminal offense to disclose such information.

Article 237
Decision on Exclusion of the Public

(1) The judge or the panel of judges shall issue a decision on exclusion of the public. The decision in question must be explained and publicly announced.

(2) The decision on exclusion of the public may be contested only in the appeal against the judgment.

Section 2 – DIRECTION OF THE MAIN TRIAL

Article 238
Mandatory Presence at the Main Trial

(1) The judge, i.e. the judges in the panel and the minutes taker must be continuously present during the main trail.

(2) If it seems likely that the main trial will continue for a lengthy period of time, the presiding judge may request from the President of the Court to appoint one (1) or two (2) judges to be present at the main trial so that they can replace members of the panel in case of their absence.

Article 239
Obligations of the Judge, i.e. the Presiding Judge

(1) The judge, i.e. the presiding judge shall direct the main trial.

(2) It is the duty of the judge, i.e. the presiding judge to ensure that the subject matter of the case is fully examined, that the truth is found and that everything that prolongs the proceedings but does not serve to clarify the matter is eliminated.

(3) If not prescribed otherwise by this Law, the judge, i.e. the presiding judge shall rule on motions of the parties and the defense counsel.

(4) The decisions of the judge, i.e. the presiding judge shall always be announced and entered in the main trial record with a brief summary of the facts considered.

Article 240
Order of the Main Trial

The main trial shall proceed in the order set forth in this Law, but the judge, i.e. the presiding judge may order a departure from the regular order of proceedings due to special circumstances, and especially if it concerns the number of accused, the number of criminal offenses and the amount of evidence. The reasons why the main trial is not conducted in the order prescribed by the law shall be entered in the main trial record.

Article 241
Duties of the Judge, i.e. the Presiding Judge

(1) It is the duty of the judge, i.e. the presiding judge to ensure the maintenance of order in the courtroom and the dignity of the Court. The judge, i.e. the presiding judge may immediately upon opening the session warn persons present at the main trial to behave courteously and not to disrupt the work of the Court. The judge, i.e. the presiding judge may order that persons present at the main trial be searched.

(2) The judge, i.e. the presiding judge may order that all persons present at the main trial as observers be removed from the session if the measures for maintaining order stipulated by this Law have been ineffective in ensuring that the main trial is not disrupted.

(3) Filming shall be banned in the courtroom. As an exception, the President of the Court may allow such filming at the main trial. If the filming is approved, the judge, i.e. the presiding judge may, for justified reasons, at the main trial, order that certain parts of the main trial not be filmed.

Article 242
Penalties for Disruption of Order and Discipline in the Proceedings

(1) The judge, i.e. the presiding judge may exclude a person from the courtroom in order to protect the right of the accused to a fair and public trial, i.e. to maintain the dignity of trial and disturbance-free proceedings.

(2) The judge, i.e. the presiding judge may order that the accused be removed from the courtroom for a certain period of time if the accused persists in disruptive conduct after being warned that such conduct may result in his justified removal from the courtroom. The judge, i.e. the presiding judge may continue the proceedings during this period if the accused is represented by the defense counsel.

(3) Should the Prosecutor, defense counsel, injured party, legal representative, proxy of the injured party, witness, expert, interpreter or another person attending the main trial disrupt the order or disobey the orders of the judge or the presiding judge on the panel to maintain the order, the judge or the president on the panel shall give the person a warning. Should the warning be ineffective, the judge or the presiding judge on the panel may order that the person be removed from the courtroom and fined with up to 10.000 KM. Should the Prosecutor or defense counsel be removed from the courtroom, the judge or the presiding judge on the panel shall inform the Judicial Commission of Brcko District of BiH (High Judicial and Prosecutorial Council of Bosnia and Herzegovina) or the Bar Association of which the

defense counsel is a member, for further action.

(4) Should a defense counsel or a power of attorney of the injured continue to disrupt the order even after being fined, the judge or the presiding judge on the panel may deprive him of further representation at the main trial and fine him in the amount of up to 30.000 KM. The decision on this issue with explanation shall be entered in the main trial record. An interlocutory appeal is allowed against this decision. The main trial shall be recessed or postponed to allow the accused to engage another defense counsel and prepare a defense.

Article 243

False Testimony Given by Witness or Expert

If there is grounded suspicion that a witness or an expert has given false testimony in the main trial, the judge or the presiding judge on the panel may order that a separate transcript be made of the witness's or the expert's testimony that shall be delivered to the Prosecutor.

Section 3 – PREREQUISITES FOR HOLDING THE MAIN TRIAL

Article 244
Opening of the Session

The judge or the presiding judge on the panel shall open the session and announce the subject matter of the main trial. The judge or the presiding judge shall then determine whether all summoned persons have appeared, and if not, the judge or the presiding judge shall inspect whether the summons were served on them and whether they have justified their absence.

Article 245
Failure of the Prosecutor or His Substitute to Appear at the Main Trial

(1) If the Prosecutor or his substitute was duly summoned but fails to appear in the main trial, the main trial shall be postponed. The judge or the presiding judge on the panel shall request the Prosecutor or his substitute to explain his reasons for failing to appear. The judge shall decide, based on the Prosecutor's explanation, whether the Prosecutor should be sanctioned as referred to in Paragraph 2 of this Article. If the Prosecutor or his substitute is sanctioned, the High Judicial and Prosecutorial Council of Bosnia and Herzegovina must be informed about the sanction.

(2) The judge or the presiding judge on the panel may fine the Prosecutor or his substitute up to 5.000 KM if the Prosecutor or his substitute had been duly summoned to the main trial by the Court but failed to appear and did not justify his absence.

Article 246
Failure of the Accused to Appear at the Main Trial

(1) If the accused was duly summoned but fails to appear and does not justify his absence, the judge or the presiding judge on the panel shall postpone the main trial and order that the accused be forcefully brought in at the next session. If the accused justifies his absence before being forcefully brought in, the judge or the presiding judge on the panel shall revoke the order on forceful bringing in.

(2) If the accused was duly summoned but obviously avoids appearing at the main trial, and if forceful bringing in was not successful, the judge or the presiding judge on the panel may order that the accused be placed in custody.

(3) The appeal is allowed against the decision on placing in custody but such appeal shall not stay the execution of the Court decision on placing in custody.

(4) If the order regarding placing in custody is not overruled, it shall last until the pronouncement of the judgment, and not longer than 30 days.

Article 247
Ban of Trial in Case of Absentia

An accused may never be tried *in absentia*.

Article 248
Failure of the Defense Counsel to Appear at the Main Trial

(1) If the defense counsel was duly summoned but fails to appear in the main trial, the main trial shall be postponed. The judge or the presiding judge on the panel shall request that the defense counsel explains his reasons for failing to appear. The judge or the presiding judge on the panel shall decide, based on defense counsel's explanation, whether the defense counsel should be sanctioned. The Bar Association with which the defense counsel is affiliated shall be informed whenever the defense counsel is sanctioned under these circumstances.

(2) The judge or the presiding judge on the panel may fine the defense counsel up to 5.000 KM if the defense counsel failed to appear at the main trial despite being duly summoned by the Court and failed to justify his absence.

(3) If a new defense counsel is appointed for the accused, the main trail shall be postponed. The judge or the presiding judge on the panel shall grant an adequate time period to a new defense counsel for the preparation of the defense of the accused, and that time period shall not be less than 15 days for criminal offenses for which a sentence of ten (10) years of imprisonment or more is prescribed, unless the accused waives this right and the judge or the presiding judge on the panel is assured that a shorter time period for the preparation of the defense shall not interfere with the right of the accused to a fair trial.

Article 249
Failure of the Witness or the Expert to Appear at the Main Trial

(1) If a witness or an expert was duly summoned but fails to appear and does not justify his absence, the judge or the presiding judge on the panel may order that the witness or the expert to be forcefully brought in.

(2) The judge or the presiding judge on the panel may fine the witness or the expert, who was duly summoned but failed to justify his absence, up to 5.000 KM.

(3) In the case referred to in Paragraph 1 of this Article, the judge or the presiding judge on the panel shall decide whether the main trial should be postponed.

Section 4 – ADJOURNMENT AND RECESS OF THE MAIN TRIAL

Article 250
Reasons for Adjournment of the Main Trial

(1) On the motion of the parties or the defense counsel, the main trial may be adjourned by the decision of the judge or the presiding judge on the panel if new evidence need to be obtained or if the accused became incapable of attending the main trial after commission of the criminal offense or if there are other impediments that prevent the main trial from successful conduct.

(2) The decision to adjourn the main trial shall be entered in the record and, when convenient, the day and hour of the resumption of the main trial shall be designated. The judge or the presiding judge on the panel shall also order the securing of evidence that could be lost or destroyed as a result of the adjournment of the main trial.

(3) An appeal is not allowed against the decision referred to in Paragraph 2 of this Article.

Article 251
Resumption of the Adjourned Main Trial

(1) If the main trial resumes after it has been adjourned before the same judge or the panel, the judge or the presiding judge on the panel shall summarize the course of the previous main trial. The judge or the presiding judge on the panel may order that the main trial recommences from the beginning.

(2) The main trial that has been adjourned must recommence from the beginning if the composition of the panel has changed, but upon the hearing of the parties and the defense counsel, the panel may decide that in such case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted but that the only minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be read.

(3) If the adjournment lasted longer than 30 days or if the main trial is being held before another judge or presiding judge on the panel, the main trial must commence from the beginning and all evidence must be presented again.

Article 252
Recess of the Main Trial

(1) Aside from the cases stipulated in this Law, the judge or the presiding judge on the panel may declare a recess of the main trial due to leave or due to the fact that the workday has ended or he may declare the recess in order to obtain certain evidence within a short period of time or for the purpose of preparing the prosecution or defense.

(2) A recessed main trial shall always resume before the same judge or the same panel of judges.

(3) If the main trial may not be resumed before the same judge or the same panel of judges or if the recess of the main trial lasted longer than eight (8) days, the procedure called for in the provisions of Article 251 of this Law shall be followed.

Section 5 – MAIN TRIAL RECORD

Article 253
Manner of Keeping the Record

(1) A verbatim record of the entire course of the main trial must be kept.

(2) The judge or the presiding judge may order that a certain part of the record be read or copied, and it shall be always read or copied at the request of the parties, of the defense counsel or of a person whose statement was entered in the record.

Article 254
Entering the Pronouncement of the Verdict in the Record

(1) A complete pronouncement of the judgment must be entered in the record, indicating whether the judgment was announced publicly. The pronouncement of the judgment entered in the record of the main trial represents an original document.

(2) If the decision on placing in custody has been rendered, it must also be entered in the record of the main trial.

Article 255
Preservation of Physical Evidence

(1) Physical evidence gathered during criminal proceedings shall be stored and preserved in the Court's special room. The judge or the presiding judge on the panel may, at any time, issue an order concerning the control and disposition of the physical evidence.

(2) Judicial Commission of Brcko District of Bosnia and Herzegovina shall enact regulations prescribing the manner and conditions for preserving physical evidence referred to in Paragraph 1 of this Article.

Section 6 – COMMENCEMENT OF THE MAIN TRIAL

Article 256
Entrance of the Judge or the Panel of Judges into the Courtroom

(1) When the judge or the panel of judges enters or exits the courtroom, all present shall stand up upon the call of the authorized person.

(2) Parties and other participants of the proceedings are obligated to stand up when addressing the Court unless there are justified reasons for not doing so.

Article 257
Presumptions for Holding the Main Trial

When the judge or the presiding judge on the panel ascertains that all persons summoned have appeared at the main trial, or when the judge or the presiding judge on the panel decides that the main trial shall be held in the absence of certain persons summoned, or when a decision on these matters has been postponed, the judge or the presiding judge on the panel shall call the accused and obtain personal data from him in order to verify his identity.

Article 258
Verifying the Identity of the Accused and Giving Directions

(1) The judge or the presiding judge on the panel shall obtain personal data from the accused (Article 78) in order to verify his identity.

(2) After verification of the identity of the accused, the judge or the presiding judge on the panel shall ask the parties and defense counsel whether they have any motions regarding the composition of the panel and jurisdiction of the Court.

(3) Once the identity of the accused had been verified, the judge or the presiding judge on the panel shall direct the witnesses and experts to the space assigned to them outside the courtroom where they shall wait until called to testify. The judge or the presiding judge on the panel shall warn the witnesses not to discuss their testimony with each other while waiting. Upon motion of the Prosecutor, the accused or the defense counsel, the judge or the presiding judge on the panel shall allow requested experts to attend the main trial.

(4) If the injured party is present, but still has not filed the claim under property law, the judge or the presiding judge on the panel shall inform the person in question that such a claim may be filed by the closing of the main trial.

(5) The judge or the presiding judge on the panel may undertake necessary measures to prevent witnesses, experts and parties from communicating with each other.

Article 259
Instructions to the Accused

The judge or the presiding judge on the panel shall warn the accused of the need to carefully follow the course of the main trial and shall instruct him that he may present facts and propose evidence in his favor, question co-accused, witnesses and experts and offer explanations regarding their testimonies.

Article 260
Reading of the Indictment and Opening Statement

(1) The main trial shall commence by reading of the indictment. The indictment shall be read by the Prosecutor.

(2) The Prosecutor shall then briefly state the evidence by which the Prosecutor expects to sustain the case of prosecution. After the indictment had been read, the judge or the presiding judge on the panel shall ask the accused whether he understood the charges. If the judge or the presiding judge on the panel finds that the accused has not understood the charges, the judge or the presiding judge on the panel shall summarize the content of the indictment in a manner understandable to the accused.

(3) The accused or his defense counsel may then state the defense and briefly state the evidence that shall be presented in the defense.

Section 7 – EVIDENTIARY PROCEDURE

Article 261
Presentation of Evidence

(1) Parties and the defense counsel are entitled to call witnesses and to present evidence.

(2) Unless the judge, or the panel, in the interest of justice, decide otherwise, the evidence at the main trial shall be presented in the following order:

a) evidence of the prosecution;
b) evidence of the defense;
c) rebutting evidence of the prosecution;
d) evidence in rejoinder to the Prosecutor's rebutting evidence;
e) evidence whose presentation was ordered by the judge or the panel;
f) all relevant information that may help the judge or the panel in fashioning the appropriate criminal sanction, if the accused is found guilty on one or more counts in the indictment.

(3) During the presentation of evidence, direct examination, cross-examination and redirect examination shall be allowed. The party who called a witness shall directly examine the witness in question, but the judge or the panel may at any stage of the examination ask the witness appropriate questions.

Article 262
Direct Examination, Cross-examination and Additional Examination of Witnesses

(1) It is allowed for the party, or the defense counsel who called a witness to examine the witness (direct examination), for the adverse party, or its defense counsel to examine the witness (cross-examination) and it is allowed that the party, or the defense counsel who called a witness to repeat the examination of the witness. The party who called a witness shall examine the witness, but the judge, or the presiding judge and members of the panel may at any stage of the examination ask the witness appropriate questions. Questions posed to the witness by the adverse party shall be limited and related to the questions asked earlier in the examination of the witness by the party who called him. Questions on repeated examination of a witness by the party who called him shall be limited and shall relate to questions asked during examination of the witness by the adverse party and to questions in support of own allegations. After the examination of the witness, the judge or the presiding judge and members of the panel may question the witness.

(2) Leading questions shall not be used during direct examination except if there is a need to clarify the witness's testimony. As a rule, leading questions shall be allowed only during cross-examination. When a party calls the witnesses of the adverse party or when a witness is hostile or uncooperative, the judge or the presiding judge on the panel may at his own discretion allow the use of leading questions.

(3) The judge or the presiding judge on the panel shall exercise an appropriate control over the manner and order of the examination of witnesses and the presentation of evidence so that the examination of and presentation of evidence is effective to ascertain the truth, to avoid loss of time and to protect the witnesses from harassment and confusion.

(4) During the presentation of evidence referred to in Item e. Paragraph 2 of Article 261 of this Law, the Court shall question the witness and then allow the parties and the defense counsel to pose questions to the witness.

Article 263
Discretion of the Court to Forbid a Question or Evidence

(1) The judge or the presiding judge on the panel shall forbid the question and answer to the question that had already been posed – if, in his opinion, the question is inadmissible or irrelevant to the case.

(2) If the judge or the presiding judge on the panel finds that the circumstances that a party is trying to prove are irrelevant to the case or that the presented evidence is unnecessary, the judge or the presiding judge on the panel shall reject the presentation of such evidence.

Article 264
Special Evidentiary Rules When Dealing With Cases of Sexual Misconduct

(1) The facts related to earlier sexual conduct of the injured party and his/her sexual orientation shall not be admissible as evidence in the proceedings.

(2) Notwithstanding Paragraph 1 of this Article, evidence offered to prove that semen, medical documents on injuries or any other physical evidence may stem from a person other than the accused, is admissible.

(3) In the case of commission of criminal offense against humanity and values protected by international law, the consent of the victim may not be used in a favor of the defense.

(4) Before admitting evidence pursuant to this Article, an appropriate *in camera* hearing will be held.

(5) The motion, supporting documents and the record of the hearing must be sealed in a separate envelope, unless the Court orders otherwise.

Article 265
The Consequences of Accused's Confession

If a confession of the accused during the main trail is complete and in accordance with previously presented evidence, only evidence related to the decision on criminal sanction shall be presented in the evidentiary proceeding.

Article 266
Taking an Oath or Giving of Affidavit

(1) All witnesses shall take an oath or sign an affidavit replacing an oath before testifying.

(2) The text of the oath or the affidavit is as follows: "I swear or affirm on my honor and conscience that I shall speak the whole truth on everything the Court asks me and shall not conceal, add or alter anything known to me on this subject."

(3) Mute witnesses who are able to read and write shall take an oath by signing the text of the oath or affidavit, and deaf witnesses shall read the text of the oath or affidavit. If mute or deaf witnesses are not able to read or write, the oath or affirmation shall be given through an interpreter.

Article 267
Protection of Witnesses from Insults, Threats and Assault

(1) The judge or the presiding judge on the panel is obligated to protect the witness from insults, threats and assault.

(2) The judge or the presiding judge on the panel shall warn or fine a participant in the proceedings or any

other person who insults, threatens or jeopardizes the safety of the witness before the Court. In case of a fine, provisions of Article 242, Paragraph 1 of this Law shall be apply.

(3) In case of a serious threat to a witness, the judge or the presiding judge on the panel shall inform the Prosecutor for the purpose of undertaking criminal prosecution.

(4) At the petition of the parties or the defense counsel, the judge or the presiding judge on the panel shall order the police to undertake measures necessary to protect the witness.

Article 268
Sanctions for Refusal to Testify

(1) If a witness refuses to testify without providing a justified reason and after having been cautioned of the consequences, the witness may be fined with an amount of up to 30.000 KM.

(2) An appeal is allowed against the decision referred to in Paragraph 1 of this Article but it shall not stay the execution of the decision.

Article 269
Engagement of the Expert

(1) The parties, the defense counsel and the Court may hire an expert.

(2) Expenses of the expert referred to in Paragraph 1 of this Article shall be paid by the one who engaged the expert.

Article 270
Examination of Experts

(1) Before an examination of an expert, the judge or the presiding judge on the panel shall remind the expert of his duty to present his findings and opinion to the best of his knowledge and in accordance with the skills and ethics of his profession and shall warn him that the presentation of false findings and false opinions constitutes a criminal offense.

(2) Prior to testimony, an expert shall take an oath or sign an affidavit.

(3) The oath or affidavit shall be taken orally.

(4) The text of the oath or affidavit shall be as follows: " I swear/affirm on my honor that I shall speak the truth and shall present my findings and opinion accurately and completely."

(5) The expert shall present his findings and opinion orally in the main trial. In that case, the expert shall be subjected to direct and cross-examination, i.e. additional examination by the parties and the defense counsel, i.e. the Court.

(6) The written findings and opinion of the expert shall only be admitted as evidence if the expert in question testified at the main trial and was subject to cross-examination.

Article 271
Discharging Witnesses and Experts

(1) Witnesses and experts who have been examined shall remain outside of the courtroom unless the judge or presiding judge of the panel discharges them after examination of the parties and the defense counsel.

(2) The judge or the presiding judge on the panel may order *ex officio* or on the motion of the parties or the defense counsel that examined witnesses and experts leave the courtroom and be subsequently recalled and reexamined in the presence or absence of other witnesses and experts.

Article 272
Examination out of the courtroom

(1) If it is learned during the proceedings that a witness or expert is not able to appear before the Court or that his appearance would be related to great difficulty, the judge or the presiding judge on the panel, if he deems the testimony of witness and expert important, may order that the witness, i.e. the expert be examined out of the courtroom. The judge or the presiding judge on the panel, the parties and the defense counsel shall be present at the examination, and the examination shall be conducted in accordance with Article 262 of this Law.

(2) If the judge or the presiding judge on the panel finds it necessary, the examination of the witness may be carried out during a reenactment of the criminal offense out of the Court. The judge or the presiding judge on the panel, the parties and the defense counsel shall be present at the reenactment, and the examination shall be carried out in accordance with Article 262 of this Law.

(3) The parties, defense counsel and injured party shall always be notified about the time and place of the examination of witnesses or the reenactment, with an instruction that the parties, defense counsel and witnesses must attend these proceedings. Examination shall be carried out as it is at the main trial in accordance with Article 262 of this Law.

(4) If the judge or the presiding judge on the panel finds it necessary, the examination of minors as witnesses shall be carried out in accordance with Article 86, Paragraph 6, and Article 90 of this Law.

Article 273
Exceptions from the Direct Presentation of Evidence

(1) Prior statements given during the investigative phase are admissible as evidence in the main trial and may be used in direct and cross-examination or in rebuttal or in rejoinder or for additional examination. In this case, the person must be given an opportunity to explain or deny a prior statement.

(2) Notwithstanding Paragraph 1 of this Article, records on testimony given during the investigative phase, and if the judge or the panel of judges so decides, may be read and used as evidence at the main trial only if the persons who gave the statements are dead, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons.

Article 274
Records on Evidence

(1) Records concerning the crime scene investigation, the search of dwellings and persons, the forfeiture of things, books, records and other evidence, shall be introduced at the main trial in order to establish their content, and at the discretion of the judge or presiding judge on the panel, their content may be entered in the record in a summarized version.

(2) To prove the authenticity of a writ, recording or photograph, the original writ, recording or photograph shall be required, unless otherwise stipulated by this Law.

(3) Notwithstanding Paragraph 2 of this Article, a certified copy of the original may be used as evidence as well as the copy verified as unchanged with respect to the original.

(4) Evidence referred to in Paragraph 1 of this Article shall be read unless the parties and the defense counsel agree otherwise.

Article 275
Amendment of the Indictment

If the Prosecutor evaluates that the presented evidence indicates a change in the facts presented in the indictment, the Prosecutor may amend the indictment at the main trial. The main trial may be postponed in order to give adequate time for preparation of the defense. In this case, the indictment shall not be confirmed.

Article 276
Supplement to the Evidentiary Proceedings

(1) After the presentation of evidence, the judge or the presiding judge on the panel shall ask the parties and defense counsel if they have additional evidentiary motions.

(2) If the parties or the defense counsel has no evidentiary motions, the judge or the presiding judge on the panel shall declare the evidentiary proceedings completed.

Article 277
Closing Arguments

(1) Upon the completion of the evidentiary proceedings, the judge or the presiding judge on the panel shall call for the Prosecutor, injured party, defense counsel and the accused to present their closing arguments. The last words shall be always given to the accused.

(2) If the prosecution is represented by more than one Prosecutor or if the accused is represented by more than one defense counsel, all Prosecutors and defense counsels may give their closing arguments, but their closings may not be repetitive and they may be time limited.

Article 278
Closing the Main Trial

Once all closing arguments are heard, the judge or the presiding judge on the panel shall declare the main trial closed and the Court shall retire for deliberation and voting for the purpose of reaching a judgment.

CHAPTER XXII

THE JUDGEMENT

Section 1 – PRONOUNCEMENT OF THE JUDGEMENT

Article 279
Pronouncement and Announcement of the Judgment

The judgment shall be pronounced and announced in the name of Brcko District of Bosnia and Herzegovina.

Article 280
Correspondence between the Judgment and Indictment

(1) The judgment shall refer only to the accused person and only to the criminal offense specified in the indictment that has been confirmed, or amended at the main trial or supplemented.

(2) The Court is not bound to accept the proposals regarding the legal evaluation of the act.

Article 281
Evidence on Which the Judgment is Grounded

(1) The Court shall reach a judgment solely based on the facts and evidence presented at the main trial.

(2) The Court is obligated to conscientiously evaluate each item of evidence individually and as it relates to other evidence and, based on such evaluation, to conclude whether a fact has been proved.

Section 2 – TYPES OF JUDGMENTS

Article 282
Procedural Judgments and Judgments on Merits

(1) A judgment shall dismiss the indictment, or acquit the accused or declare him guilty.

(2) If the indictment includes several criminal offenses, the judgment shall declare whether and for which offense a charge is dismissed, or the accused is acquitted of the charge or is declared guilty.

Article 283
Judgment Dismissing the Charges

The Court shall pronounce the judgment dismissing the charges in the following cases:

a) if the Court is not competent to pass the judgment;
b) if the proceedings were conducted without the Prosecutor requesting so;
c) if the Prosecutor dropped the charges between the beginning and the end of the main trial;
d) if there was no necessary approval or if the competent state body revoked the approval;
e) if the accused has already been convicted by a legally binding decision for the same criminal offense, has been acquitted of the charges or if proceedings against him have been dismissed by a legally binding decision, provided that the decision in question is not the decision on dismissing the procedure referred to in Article 326 of this Law;
f) if by an act of amnesty or pardon, the accused has been exempted from criminal prosecution or if criminal prosecution may not be undertaken due to the statute of limitation or if there are other circumstances which permanently preclude criminal prosecution.

Article 284
Judgment of Acquittal

The Court shall pronounce the judgment acquitting the accused of the charges in the following cases:

a) if the offense with which the accused is charged by law does not constitute a criminal offense under the law;
b) if there are circumstances which exclude criminal liability of the accused;
c) if it has not been proved that the accused committed the criminal offense with which he is charged.

Article 285
Judgment of Guilty

(1) In a judgment of guilty, the Court shall pronounce the following:
   a) the criminal offense for which the accused is found guilty along with a citation of the facts and circumstances that constitute the elements of the criminal offense and those on which the application of a particular provision of the Criminal Code depends;
   b) the legal name of the criminal offense and the provisions of the Criminal Code that were applied;
   c) the punishment pronounced to the accused or releasing from punishment under the provisions of the Criminal Code;
   d) a decision on suspended sentence;
   e) a decision on security measures, on forfeiture of property gain and a decision on return of objects (Article 74) if such objects have not been returned to their owner or the possessor;
   f) a decision crediting pretrial custody or time served;
   g) a decision on costs of criminal proceedings, on a claim under property law, and the decision that the legally binding judgment shall be announced in the media;

(2) If the accused has been pronounced a fine, the judgment shall indicate the deadline for payment of the fine and the manner of substituting the fine in case that the accused is not able to pay.

Section 3 – ANNOUNCEMENT OF THE JUDGMENT

Article 286
Time and Location of the Announcement of the Judgment

(1) After the pronouncement of the judgment, the Court shall announce the judgment immediately. If the Court is unable to pronounce the judgment the same day the main trial was completed, the judge shall postpone the announcement of the judgment for a maximum of three days and shall set the time and

location of announcing the judgment.

(2) The Court shall read the pronouncement of the judgment in the presence of the parties and the defense counsel, their legal representatives and their proxies and briefly explain the grounds of the judgment.

(3) The judgment shall be announced even if the parties, the defense counsel, legal representative or proxy are not present. The Court may decide that the judge or the presiding judge on the panel shall orally announce the judgment to the accused absent during the announcement or that the judgment only be served on the accused.

(4) If the public has been excluded from the main trial, the pronouncement of the judgment must always be read in a public session. The panel of judges shall decide whether and to what extent the public shall be excluded when announcing the reasons for the judgment.

(5) All persons present shall rise to hear the reading of the judgment.

Article 287
Custody After Pronouncement of the Judgment

Provisions of Article 138 of this Law shall apply when ordering, extending or terminating custody after the announcement of the judgment and until the judgment becomes legally binding.

Article 288
Instructions on the Right to Appeal and Other Instructions

(1) Upon the announcement of the judgment, the judge or the presiding judge on the panel shall instruct the accused and the injured party on their right to appeal, and on the right to answer the appeal.

(2) If the accused has been given a suspended sentence, the judge or presiding judge on the panel shall caution him as to the significance of a suspended sentence and conditions to which he must adhere.

(3) The judge or the presiding judge on the panel shall caution the accused that he must notify the Court regarding every change of the address until the legally binding completion of the proceeding.

Section 4 – WRITING AND DELIVERY OF THE JUDGMENT

Article 289
Writing of the Judgment

(1) An announced judgment must be prepared in writing within 15 days from its announcement, and in complicated matters and as an exception, within 30 days. If the judgment has not been prepared by these deadlines, the judge or the presiding judge on the panel is obligated to inform the President of the Court as to why this has not been done. The President of the Court shall, if necessary, undertake the necessary measures to have the judgment written as soon as possible.

(2) The judge or the presiding judge on the panel and the minutes-taker shall sign the judgment.

(3) A certified copy of the judgment shall be delivered to the prosecutor and to the injured party, and it shall be delivered to the accused and the defense counsel pursuant to Article 171 of this Law. If the accused is in custody, certified copies of the judgment must be sent within the time periods stipulated in Paragraph 1 of this Article.

(4) The instruction on right to appeal shall be also delivered to the accused and the injured party.

(5) The Court shall deliver a certified copy of the judgment, with instructions as to the right to appeal, to a person who owns an article confiscated under the pertinent judgment and to a legal person against whom confiscation of property gain was pronounced. The legally binding judgment shall be delivered to the

injured party.

Article 290
The Contents of the Judgment

(1) A written judgment must fully correspond to the announced judgment. The judgment must have an introductory part, the pronouncement and the opinion.

(2) Introductory part of the judgment shall contain the following: a statement that the judgment is pronounced in the name of Brcko District of Bosnia and Herzegovina, the name of the Court, first and last name of the presiding judge on the panel and judges on the panel and the minutes-taker, first and last name of the accused, the criminal offense with which the accused is charged and whether the accused attended the main trial, the date of the main trial and whether the main trial was public, first and last name of the prosecutor, defense counsel, legal representative and proxy who were present at the main trial and the date when the pronounced judgment was announced.

(3) The pronouncement of the judgment shall contain personal data of the accused and the decision declaring the accused guilty of the criminal offense with which he is charged or the decision acquitting him of the charge of the criminal offense in question or the decision rejecting the charge.

(4) If the accused is found guilty, the pronouncement of the judgment must include the necessary data referred to in Article 285 of this Law, and if the accused is acquitted of the charge or the charge is rejected, the pronouncement of the judgment must include a description of the criminal offense with which the accused is charged and a decision on the costs of the criminal proceedings and claim under property law, if such was made.

(5) In the case of joinder of criminal offenses, the Court shall incorporate in the pronouncement of the judgment the penalties stipulated for each individual criminal offense and then a unified sentence pronounced for all the criminal offenses in the joinder.

(6) In the opinion of the judgment, the Court shall present the reasons for each paragraph of the judgment.

(7) The Court shall specifically and completely state which facts and on what grounds the Court finds to be proven or unproven, furnishing specifically an assessment of the credibility of contradictory evidence, the reasons why the Court did not sustain the various motions of the parties, the reasons why the Court decided not to directly examine the witness or expert whose testimony was read, and the reasons guiding the Court in ruling on legal matters and especially in ascertaining whether the criminal offense was committed and whether the accused was criminally liable and in applying specific provisions of the Criminal Code to the accused and to his act.

(8) If the accused has been sentenced to punishment, the opinion shall state the circumstances the Court considered in fashioning the punishment. The Court shall especially present the reasons which guided the Court when it decided to mitigate the punishment or to release the accused from the punishment or to pronounce a suspended sentence or to pronounce a security measures or confiscation of property gain.

(9) If the accused is acquitted of the charges, the opinion shall specifically state on what grounds referred to in Article 284 of this Law the acquittal is based.

(10) In the opinion of a judgment rejecting the charges, the Court shall not assess the merits, but shall restrict itself solely to the grounds for rejecting the charge.

Article 291
Corrections in the Judgment

(1) Errors in names and numbers and other obvious errors in writing and arithmetic, formal defects and discrepancies between the written copy of the judgment and the original judgment shall be corrected, through a separate decision, by the judge or the presiding judge on the panel, on the motion of the parties

and defense counsel or *ex officio*.

(2) If there is a discrepancy between the written copy of the judgment and the original of the judgment with respect to data from Article 285, Paragraph 1, Items a) through e) and Item g) of this Law, the decision on the correction shall be delivered to the persons referred to in Article 289 of this Law. In that case, the period allowed for appeal shall commence on the date of delivery of the decision against which no interlocutory appeal is allowed.

CHAPTER XXIII

REGULAR LEGAL REMEDIES

Section 1 – APPEAL AGAINST THE FIRST INSTANCE JUDGMENT

Article 292
Right to Appeal and Deadline for Appeal

(1) An appeal may be filed against the judgment rendered in the first instance within 15 days from the date when the copy of the judgment was delivered.

(2) In complex matters, the Court may, on the motion of the parties and the defense counsel, extend the deadline for filing an appeal for a maximum of 15 days.

(3) Until the Court renders a decision on the motion referred to in Paragraph 2 of this Article, the deadline for filing an appeal shall not run.

(4) A timely filed appeal shall stay the execution of the judgment.

Article 293
Subjects of the Appeal

(1) The parties, the defense counsel and the injured party may file an appeal.

(2) An appeal on behalf of the accused may be filed by his legal representative, spouse or extramarital partner of the accused, direct blood relative, adoptive parent, adopted child, sibling and foster parent. In this case as well, the period allowed for the appeal shall run from the date when the accused or his defense counsel was delivered a copy of the judgment.

(3) The Prosecutor may file an appeal to the detriment or to the benefit of the accused.

(4) The injured party may contest the judgment only with respect to the decision of the Court on costs of the criminal proceedings and with respect to the decision on the claim under property law.

(5) An appeal may also be filed by a person whose item was confiscated or from whom the property gain obtained by a criminal offense was forfeited.

(6) The defense counsel and persons referred to in Paragraph 2 of this Article may file an appeal even without the separate authorization of the accused, but not against the accused's will, unless a sentence of long-term imprisonment was pronounced against the accused.

Article 294
Waiver and Withdrawal of Appeal

(1) The accused may waive the right to appeal only after the judgment had been served on him. The accused may waive the right to appeal even before that, if the Prosecutor had waived the right to appeal, except if the accused must serve a prison sentence pursuant to the judgment. The accused may withdraw the appeal that had already been filed, before the panel of the Appellate Court had reached its decision.

(2) The Prosecutor may waive the right to appeal from the moment of announcing the judgment to the end of the period allowed for filing appeals and may withdraw the already filed appeal, before the panel of the Appellate Court had reached its decisions.

(3) The waiver and withdrawal of an appeal may not be revoked.

Article 295
Contents of Appeal and Removal of Shortcomings of Appeal

(1) An appeal should include:

a) an indication of the judgment being appealed (the name of the Court, the number and the date of the judgment),
b) the grounds for contesting the judgment,
c) the reasoning behind the appeal,
d) a proposal for the contested judgment to be fully or partially reversed, or revised,
e) the signature of the appellant.

(2) If an appeal was filed by the accused or another person from Article 293, Paragraph 2 of this Law, and the accused does not have a defense counsel, or if the appeal was filed by an injured party who has no proxy and the appeal has not been drawn up in conformity with the provisions of Paragraph 1 of this Article, the Court shall invite the appellant to supplement the appeal by a certain date, in writing, or orally, on the Court record. If the appellant fails to respond to the invitation, the Court shall reject the appeal if it does not contain the data from Paragraph 1, Items b), c), and e) of this Article; if the appeal does not contain the information from Paragraph 1, Item a) of this Article, it shall be rejected if it cannot be ascertained to what judgment it pertains. If the appeal was filed in favor of the accused, it shall be delivered to the panel of the Appellate Court, if it can be established to what judgment it does pertain. Otherwise, the appeal shall be rejected.

(3) If an appeal was filed by the injured party who is represented by a proxy or if an appeal was filed by the Prosecutor, and the appeal does not contain the data from Paragraph 1, Items b), c), and e) of this Article, or the information from Paragraph 1, Item a) of this Article, and it cannot be ascertained to what judgment the appeal pertains, the appeal shall be rejected. An appeal having the aforesaid deficiencies, filed in the favor of the accused who is represented by a defense counsel, shall be delivered to the panel of the Appellate Court, if it can be ascertained to what judgment the appeal pertains. If this cannot be ascertained, the appeal shall be rejected.

(4) New facts and new evidence, which despite due attention and cautiousness were not presented at the main trial, may be presented in the appeal. The appellant must cite the reasons why he did not present them previously. In referring to new facts, the appellant must cite the evidence that would allegedly prove these facts; in referring to new evidence, he must cite the facts that he wants to prove with that evidence.

Article 296
Grounds for Appeal

A judgment may be contested on the grounds of:

a) an essential violation of the provisions of criminal procedure,
b) a violation of the Criminal Code,
c) erroneously or incompletely established state of the facts,
d) the decision as to the sanctions under criminal law, the confiscation of property gain, costs of criminal proceedings, claim under property law and of the decision to announce the judgment through the media.

Article 297
Essential Violations of Criminal Procedure Provisions

(1) The following constitute an essential violation of the provisions of criminal procedure:

a) if the Court was improperly composed in its membership or if a judge participating in pronouncing

the judgment did not participate in the main trial or who was disqualified from trying the case by a final decision,

b) if a judge who should have been disqualified participated in the main trial,
c) if the main trial was held in the absence of a person whose presence at the main trial was required by law, or if in the main trial the accused, defense counsel or the injured party, in spite of his petition, was denied the use of his own language at the main trial and the opportunity to follow the course of the main trial in his language;
d) if the right to defense was violated;
e) if the public was unlawfully excluded from the main trial;
f) if the Court violated the rules of criminal procedure on the question of whether there existed an approval of the competent authority;
g) if the Court reached a judgment and was not competent as to subject matter, or if the Court rejected the charges improperly due to a lack of jurisdiction as to subject matter;
h) if, in its judgment, the Court did not entirely resolve the contents of the charge;
i) if the judgment is based on evidence that may not be used as grounds for judgment under the provisions of this Law;
j) if the charge has been exceeded;
k) if the pronouncement of the judgment was incomprehensible, internally contradictory or contradictory to the grounds of the judgment or if the judgment did not present reasons at all or if it did not cite reasons concerning the decisive facts.

(2) There is also a substantial violation of the principles of criminal procedure if the Court has not applied or has improperly applied some provisions of this Law to the preparation of the main trial or during the main trial or in rendering the judgment, and this affected or could have affected the rendering of a lawful and proper judgment.

Article 298
Violations of the Criminal Code

The Criminal Code shall be considered violated in the following issues:

a) if the offense for which the accused is being prosecuted does not constitute a criminal offense;
b) if the circumstances exist that preclude criminal liability;
c) if circumstances exist that preclude criminal prosecution, and especially if the statute of limitation on criminal prosecution applies, or if prosecution is precluded because of amnesty or pardon, or if the matter has already been decided by a legally binding judgment;
d) if a law that could not be applied has been applied to the criminal offense that is the subject matter of the charge;
e) if the decision pronouncing the sentence or suspended sentence or decision pronouncing a security measure or confiscation of property gain has exceeded the authority that the Court has under the law;
f) if provisions concerning the crediting of pretrial custody and time served have been properly applied.

Article 299
Erroneously or Incompletely Established State of Facts

(1) A judgment may be contested because of erroneously or incompletely established state of the facts when the Court had erroneously established a decisive fact or failed to establish it.

(2) It shall be taken that the state of facts has been incompletely established also when new facts or new evidence so demonstrate.

Article 300
Decision on the Criminal Sanction, Costs of the Proceedings, Claim under Property Law and Announcement of the Judgment

(1) A judgment may be contested because of the decision on the sentence and suspended sentence when the sentence did not exceed legal authority, but the Court failed to correctly fashion the punishment in view of the circumstances that affect the sentence to be stricter or milder and because the Court either applied or failed to apply provisions on mitigation of punishment, release from punishment or suspension of

sentence despite existence of the legal prerequisites to that effect.

(2) A decision invoking a security measure or confiscation of property gain may be contested if there is no violation of the law under Article 298, Item e) of this Law, but the Court incorrectly rendered that decision or did not pronounce a security measure or confiscation of property gain despite the existence of legal prerequisites. The same reasons may constitute grounds for contesting a decision on the costs of the criminal proceedings.

(3) A decision on the claim under property law and a decision on announcing the judgment through the media may be contested when the Court has rendered the decision on these matters contrary to the provisions of law.

Article 301
Filing an Appeal

(1) An appeal shall be filed in a sufficient number of copies for the Court, for the adverse party and defense counsel to prepare a response.

(2) The judge or the presiding judge on the panel shall issue a decision rejecting an appeal that is late (Article 311) or inadmissible (Article 312).

Article 302
Response to Appeals

A copy of the appeal shall be submitted to the adverse party and to the defense counsel (Article 171) who may file their response to the appeal with the Court within eight days from the date of the receipt of the appeal. The appeal and the response to the appeal shall be submitted to the Appellate Court along with the entire case file.

Article 303
Reporting Judge

(1) When the appellate brief arrives in the Appeal Court, the President of the Court shall refer the brief to the presiding judge on the panel, who shall appoint the reporting judge.

(2) The reporting judge may, if necessary, obtain the report on violations of the provisions of criminal procedure from the judge or the presiding judge on the panel that rendered a contested judgment, and the reporting judge may also inspect the allegations in the appeal with respect to new evidence and new facts or obtain necessary reports or documents.

(3) Once the reporting judge has prepared the documents, the presiding judge on the panel shall schedule a session of the panel.

Article 304
Session of the Panel

(1) The Prosecutor, the accused and his defense counsel shall be informed about the session of the panel.

(2) If the accused is in custody or serving the sentence, his presence shall be ensured.

(3) The session of the panel shall open with the presentation of the appellant, and then the other party shall present the answer to the appeal. The panel may request for any necessary explanation regarding the appeal and the answer to appeal from the parties and the defense counsel present at the session. The parties and the defense counsel may propose that certain documents be read and may, upon the permission from the presiding judge on the panel, present any necessary explanation for their points in the appeal, or from the answer to the appeal without being repetitive.

(4) Failure of the parties and the defense counsel to appear at the session despite being duly summoned shall

not preclude the session from being held.

(5) The public may be excluded from the session of the panel attended by the parties and the defense counsel only under the conditions stipulated in this Law (Article 235 through Article 237).

(6) The record of the panel session shall be included in the case file.

(7) The decisions referred to in Article 311 and Article 312 of this Law may be rendered even without notification to the parties and defense counsel about the session of the panel.

Article 305
Ruling in Panel Sessions or on Hearings

The Appellate Court shall rule in a panel session or after a hearing had been held.

Article 306
Limits of Judgment Review

The Appellate Court shall review a judgment in the part contested by the appeal.

Article 307
Ban *Reformatio in Peius*

If an appeal has been filed only in favor of the accused, the judgment shall not be modified to the detriment of the accused.

Article 308
Extended Effect of the Appeal

An appeal against erroneously or incompletely established facts or against the violation of the Criminal Code filed in favor of the accused shall also contain an appeal of the decision concerning the criminal sanction and confiscation of property gain (Article 300).

Article 309
Beneficium cohaesionis

If, in ruling on an appeal, an Appellate Court panel establishes, irrespective of who the appellant is, that grounds on which the decision was rendered in favor of the accused is also of benefit to any of the co-accused who has not filed an appeal, or has not filed an appeal in that particular respect, it shall proceed *ex officio* as though such an appeal had been filed.

Article 310
Decisions on the Appeal

(1) The Appellate Court may, in panel session, reject an appeal as untimely or inadmissible or reject the appeal as unfounded and confirm or modify the first instance judgment, or revoke the judgment and hold the main trial.

(2) The Appellate Court shall decide on all appeals against the same judgment by a single decision.

Article 311
Rejecting an Appeal on Grounds of Untimeliness

An appeal shall be rejected as untimely by way of a decision, if it is found that it was filed after the lawful date for its filing.

Article 312
Rejection of an Appeal on Grounds of Inadmissibility

An appeal shall be rejected as inadmissible by way of a decision if it is found that the appeal was filed by a person unauthorized to file an appeal or a person who waived the right to appeal, or if it is found that the appeal was withdrawn, or if the appeal was repeated after it had been withdrawn, or if an appeal is not allowed under the law.

Article 313
Rejection of an Appeal

The Appellate Court shall reject an appeal as unfounded through a judgment and confirm the first instance judgment when it had found that the grounds for contesting the judgment by the appeal are non-existent.

Article 314
Alteration of the First Instance Judgment

(1) In honoring an appeal, the Appellate Court shall render a judgment altering the first instance judgment if it deems that crucial facts were correctly established in the first instance judgment and that, in view of the established finding of facts, a different judgment must be rendered when the law is properly applied, according to the state of facts and in the case of violation from Article 297, Paragraph 1, Items f) and j) of this Law.

(2) If requirements have been met due to the alteration of the first instance judgment to order, or terminate custody pursuant to Article 138, Paragraphs 1 and 2 of this Law, the Appellate Court shall issue a separate decision on this against which an appeal shall not be allowed.

Article 315
Revocation of a First Instance Judgment

(1) In honoring the appeal, the Appellate Court shall revoke the first instance judgment and order a trial, if it finds that:
   a) there is a major violation of the provisions of the criminal procedure, excluding the cases from Article 314, Paragraph 1 of this Law;
   b) it is necessary to present new evidence or repeat the evidence presented in the first instance proceeding that led to an erroneous or incomplete finding of facts.

(2) The Appellate Court may also revoke parts of the first instance judgment if certain parts of the judgment can be separated without detriment to a rightful judgment, and hold a trial concerning that part.

(3) If an accused is in custody, the Appellate Court shall review whether there are still grounds for custody and shall issue the decision to extend or terminate custody. An appeal against this decision shall not be allowed.

(4) If an accused is in custody, the Appellate Court shall have a duty to pass the decision no later than three months from the date of receiving the case file.

Article 316
Opinion in the Decision on Revoking a First Instance Judgment

In the opinion of the judgment, in the part by which the first instance judgment is revoked or in the decision on revoking the first instance judgment, only brief reasons for revoking the judgment shall be cited.

Article 317
Procedure before the Appellate Court and Appeals to Second Instance Decisions

(1) Provisions that apply to the main trial in first instance proceedings shall accordingly apply to hearings before the Appellate Court.

(2) If the Appellate Court finds that it is necessary to repeat the evidence already presented in the first instance proceeding, testimonies of examined witnesses and experts and written findings and opinion

shall be admitted into evidence, if the adverse party or the defense counsel cross-examined those witnesses and experts or they were not cross-examined by the adverse party or the defense counsel although it was possible, or if the evidence are those referred to in Article 261, Paragraph 2, Item e) of this Law. In that case, their statements may be read at trial.

(3) The provisions of Paragraph 2 of this Article shall not apply to privileged witnesses from Article 83 of this Law.

(4) Appeal against a second instance judgment shall be allowed before a court of third instance in those cases when the second instance court altered the judgment of the first instance court acquitting the accused and pronouncing a judgment of guilty.

(5) An appeal against the second-instance judgment shall be decided by the Appellate Court in general session, pursuant to provisions applicable to second instance court proceedings.

Section 2 – AN APPEAL AGAINST THE DECISION

Article 318
Appeals Permitted against the Decision

(1) The parties, the defense counsel and persons whose rights have been violated may always file an appeal against the decision of the Court rendered in the first instance unless when it is explicitly prohibited to file an appeal under this Law.

(2) A decision rendered in order to prepare the main trial and the judgment may be contested only in an appeal against the judgment.

Article 319
General Deadline for Filing the Appeal

(1) An appeal shall be filed with the Court.

(2) Unless this Law stipulates otherwise, an appeal against the decision shall be filed within three (3) days from the day the decision was delivered.

Article 320
Execution Suspended by an Appeal

Unless otherwise stipulated in this Law, filing an appeal against the decision shall stay the execution of the decision in question.

Article 321
Deciding on Appeals against the Decision

(1) Unless otherwise stipulated in this Law, the panel of the appellate division shall decide on appeals against the first instance decision.

(2) Unless otherwise stipulated in this Law, the Appellate Court shall decide an appeal against the decision rendered by the pre-trial proceedings judge, i.e. of the preliminary hearing judge.

(3) In deciding on appeals, in its decision the Court may reject the appeal as late or inadmissible, may refuse the appeal as unfounded or may grant the appeal and revise or revoke the decision and, if necessary, refer the case for retrial.

Article 322
Appropriate Application of Provisions on Appeal against First Instance Judgment

Provisions of Article 293, 295 and Paragraph 2 of Article 301, Paragraph 1 of Article 303, Article 307 and Article 309 of this Law shall be appropriately applied when deciding an appeal against the decision.

Article 323
Appropriate Application of Provisions of this Law on Other Decisions

Unless otherwise stipulated under this Law, provisions of the Article 318 and Article 322 of this Law shall be appropriately applied to all other decisions rendered in accordance with this Law.

CHAPTER XXIV

EXTRAORDINARY LEGAL REMEDY

REOPENING OF CRIMINAL PROCEEDINGS

Article 324
General Provision

A criminal proceeding that was terminated by a legally binding decision or judgment may be reopened upon the petition of an authorized person only in cases and under the conditions provided by this Law.

Article 325
Resumption of the Criminal Proceeding

If a criminal proceeding was dismissed by a legally binding decision or if the charges were rejected by a legally binding judgment due to a lack of required permission, the proceeding shall resume at the petition of the Prosecutor upon termination of the reasons for rendering the aforesaid decision.

Article 326
Reopening a Proceeding Completed by a Legally Binding Decision

(1) If a criminal proceeding was dismissed by a legally binding decision prior to the main trial, except for the cases referred to in Article 325, the reopening of the criminal proceeding may be allowed upon a petition of the Prosecutor if new evidence is introduced enabling the Court to ascertain that the conditions to reopen the criminal proceeding have been fulfilled.

(2) A criminal proceeding that was dismissed by a legally binding decision prior to the commencement of the main trial may be reopened if the Prosecutor dropped the charges and it is proven that the Prosecutor dropped the charges in connection with abuse of his official post of Prosecutor. The provision of Article 327, Paragraph 2 of this Law shall be applied when proving the criminal offense committed by the Prosecutor.

Article 327
Reopening the Proceedings for the Benefit of the Accused

(1) A criminal proceeding completed by a legally binding judgment may be reopened in favor of the accused:

a) if it is proven that the judgment was based on a false document or on a false testimony of a witness, expert or interpreter;
b) if it is proven that the judgment ensued from a criminal offense committed by the judge or person who performed the investigation;
c) if new facts are presented or new evidence is submitted, which, despite due attention and caution, could not have been presented at the main trial, and which *per se* or in relation to the previous evidence would tend to bring about the acquittal of the person who has been convicted or his conviction under a less severe criminal law;
d) if an individual has been multiply convicted for the same criminal offense or if more than one person has been convicted of a criminal offense which could have been committed by only one person or by

some of them;

e) if, in case of a conviction for a combined criminal offense or for another criminal offense that, as defined by law, includes several identical actions or several various actions, new facts are presented or new evidence is submitted demonstrating that the accused did not commit an action included in the criminal offense covered by the conviction, and the existence of those facts would have essentially affected the fashioning of punishment;

f) if the Constitutional Court of Bosnia and Herzegovina, the Human Rights Chamber or the European Court for Human Rights establish that human rights and basic freedoms were violated during the proceeding and that the judgment was based on these violations;

(2) In the cases referred to in Items a) and b) of Paragraph 1 of this Article, it must be proven by a legally binding judgment that the abovementioned persons were found guilty of the criminal offenses. If the proceeding against these persons could not be conducted because they have passed away or because circumstances exist which preclude criminal prosecution, the facts referred to in Items a) and b) of Paragraph 1 of this Article may be established with other evidence as well.

Article 328
Reopening the Proceeding to the Detriment of the Accused

(1) A criminal proceeding may be reopened to the detriment of the accused if the judgment refusing the indictment was rendered due to the withdrawal of the Prosecutor from the indictment, and it is proven that this withdrawal was brought about by the criminal offense of corruption or criminal offense of abuse of the official post or other responsible duty by the Prosecutor.

(2) In the case referred to in Paragraph 1 of this Article, the provision of Article 327, Paragraph 2 of this Law shall be applied.

Article 329
Persons Authorized to File a Petition

(1) A petition to reopen a criminal proceeding may be filed by the parties and the defense counsel, and following the death of the convicted person, the petition may be filed in his favor by the Prosecutor and by the persons from Article 293, Paragraph 2, of this Law.

(2) A petition to reopen a criminal proceeding in favor of a convicted person may be filed even after the convicted person has served his sentence and regardless of the statute of limitations, amnesty or pardon.

(3) If the Court learns that a reason exists for reopening a criminal proceeding, the Court shall so inform the convicted person or the person authorized to file the petition on his behalf.

Article 330
Processing of Petitions

(1) The panel of the Basic Court shall decide on a petition to reopen a criminal proceeding (Article 23, Paragraph 2).

(2) The petition must cite the legal basis on which reopening of the proceedings is sought and the evidence to support the facts on which the petition is based. If the petition does not contain such data, the Court shall call upon the petitioner to supplement the petition by a certain date.

(3) When deciding on a petition, a judge who participated in rendering the judgment in the previous proceeding shall be excluded from the panel.

Article 331
Deciding of the Petition

(1) The Court shall reject the petition in a decision if, on the basis of the petition itself and the record of the prior proceeding, it finds that the petition was filed by an unauthorized person or that there are no legal

conditions for reopening the proceeding, or because the facts and evidence on which the petition is based have already been presented in a previous petition for reopening the proceedings that were refused by a valid decision of the Court, or if the facts and evidence obviously are not adequate to provide a basis for reopening the proceeding, or if the petitioner did not conform with Article 330, Paragraph 2 of this Law.

(2) Should the Court not reject the petition, it shall serve a copy of the petition on the adverse party who has the right to answer the petition within eight (8) days. When the Court receives an answer or when the deadline for giving the answer is overdue, the presiding judge of the panel shall order a review of the facts and collection of the evidence called for in the petition and in the answer to the petition.

(3) After the review has been conducted, the Court shall issue a decision in which it rules on the petition for reopening the proceeding.

Article 332
Permission to Reopen the Proceeding

(1) After the Prosecutor had returned the documents, the Court shall admit the petition and allow the reopening of the criminal proceeding based on the results of the review, if it does not order review to be extended, or reject the petition if it finds that the new evidence is insufficient to reopen the criminal proceeding.

(2) If the Court finds that grounds based on which it had allowed the proceeding to be reopened on behalf of one accused also exist on behalf of a co-accused who did not file a petition to reopen the proceeding, the Court shall *ex officio* proceed as though such petition had been filed for the co-accused.

(3) In the decision allowing the reopening of the criminal proceeding, the Court shall order that a new main trial be scheduled immediately or that the criminal matter be returned to the investigative phase.

(4) If the petition to reopen a criminal proceeding has been filed on behalf of a convicted person, and the Court deems, in view of the evidence submitted, that in the reopened proceeding the convicted person may receive such a punishment that would call for his release once time already served had been credited, or that he might be acquitted of the charge, or that the charge might be rejected, it shall order that execution of the judgment be postponed or terminated.

(5) When a decision allowing the reopening of a criminal proceeding becomes legally binding, execution of the penalty shall be stayed, but on the recommendation of the Prosecutor, the Court shall order custody if the conditions exist as referred to in Article 132 of this Law.

Article 333
Rules of Reopened Proceeding

(1) The provision applicable to the preliminary proceedings shall also apply to a reopened criminal proceeding that is being carried out on the basis of the decision to reopen the criminal proceeding. During the new proceeding, the Court shall not be bound by the decisions rendered in the preliminary proceeding.

(2) Should the reopened proceeding be dismissed before the main trial commences, the Court shall revoke the prior judgment by the decision on dismissal of the proceeding.

(3) When the Court renders a judgment in the reopened proceeding, the Court shall pronounce that the prior judgment is being partially or fully placed out of force, or shall pronounce that the prior judgment remains valid. The Court credit time served by the accused into the sentence ordered in the new judgment, and if the reopening was ordered only for some of the criminal offenses for which the accused has been convicted, the Court shall pronounce a single new sentence.

(4) In the new proceeding, the Court shall be bound by the prohibition set forth in Article 307 of this Law.

PART THREE-SPECIAL PROCEDURES

CHAPTER XXV

PROCEDURE FOR ISSUING THE WARRANT FOR PRONOUNCEMENT OF SENTENCE

Article 334
General Provision

(1) For a criminal offense punishable with a prison sentence up to five (5) years or a fine as the main sentence, for which the Prosecutor has gathered enough evidence to provide grounds for the Prosecutor's allegation that the suspect committed the criminal offense, the Prosecutor may request the Court, in the indictment, to issue a warrant for pronouncement of the sentence in which a certain sentence or measure shall be pronounced to the accused without holding the main hearing.

(2) The Prosecutor may request one or more of the following criminal sanctions or measures to be pronounced: fine, suspended sentence, confiscation of material gain acquired by the criminal offense or confiscation of the item.

(3) A fine may be requested in an amount that shall not exceed 50.000 KM.

Article 335
Rejection of the Request to Issue a Sentencing Warrant

(1) A judge shall reject the request for issuing of a sentencing warrant, if he determines that grounds exist for joinder of proceedings from Article 25 of this Law, if the criminal offense in question is such that this request may not be filed, or if the Prosecutor requested a pronouncement of sentence or measure that is not allowed according to the law.

(2) The Appellate Court shall decide on the Prosecutor's appeal against the decision on rejection, within 48 hours.

(3) If the judge considers that the information in the indictment do not provide sufficient grounds for issuing a sentencing warrant, or that according to this information another sanction or measure may be expected other than the one requested by the Prosecutor, the judge shall treat the indictment as if it has been submitted for confirmation and forward it for further procedure in accordance with this Law.

Article 336
Granting the Request to Issue the Sentencing Warrant

(1) If a judge agrees with the request to issue the sentencing warrant, the judge shall confirm the indictment and schedule a hearing of the accused.

(2) At the hearing the judge shall:

a) ensure whether the right of the accused to be represented by the defense counsel is honored;
b) ensure whether the accused understands the indictment and the Prosecutor's request for a certain sentence or certain measures to be pronounced;
c) present the accused with the evidence gathered by the Prosecutor, and call upon the accused to make a statement regarding the evidence presented;
d) call upon the accused upon to enter a plea of guilty or not guilty;
e) call upon the accused to make a statement upon the requested sanction or measures.

Article 337
Issuance of the Sentencing Warrant

(1) If the accused pleads not guilty or raises any objection against the indictment, the judge shall schedule the main trial within 30 days, and forward the indictment for further procedure in accordance with this Law.

(2) If the accused pleads guilty, and accepts the sentence or measure proposed in the indictment, the judge shall first establish the guilt of the accused and then shall issue a sentencing warrant in accordance with the indictment.

Article 338
Contents of the Judgment Issuing Sentencing Warrant and Right to Appeal

(1) The judgment pronouncing the sentencing warrant shall contain the data referred to in Article 285 of this Law.

(2) The opinion of the judgment from Paragraph 1 of this Article shall briefly state the reasons justifying the pronouncement of the judgment pronouncing the sentencing warrant.

(3) An appeal shall be allowed against the judgment from Paragraph 1 of this Article within eight (8) days from the date of the delivery of the judgment.

Article 339
Delivery of the Judgment Issuing a Sentencing Warrant

(1) The judgment by which the sentencing warrant is issued shall be delivered to the accused, his defense counsel and to the Prosecutor.

(2) Payment of the fine before the expiration of the deadline for appeal is not considered to be a waiver of the right to appeal.

CHAPTER XXVI

JUVENILE PROCEDURE

Section 1 – GENERAL PROVISIONS

Article 340
Application of Other Provisions of This Law to Juvenile Procedure

(1) The provisions of this Chapter shall apply in proceedings conducted against persons who were minors at the time when they committed a criminal offense and who had not reached the age of twenty-one (21) at the time proceedings were instituted or when those persons were tried. The other provisions of this Code shall apply to the extent that they do not conflict with the provisions of this Chapter.

(2) Provisions of Articles 342 through 344, Articles 347 through 350, Article 355, Article 357, Article 359 and Article 366 of this Law shall apply in proceedings conducted against a young adult if it is found, before the commencement of the main trial, that the option of pronouncing a measure to this person, in terms of provisions of the Criminal Code of Brcko District of Bosnia and Herzegovina, is possible, and the person has not yet reached the age of twenty-one by that time.

Article 341
Application of the Provisions to Children

When it is established in the course of the proceeding that at the time when the minor committed the criminal offense he had not reached the age of fourteen (14), the criminal proceeding shall be dismissed, and the juvenile authorities shall be so informed.

Article 342
Circumspect Treatment

(1) A minor may not be tried *in absentia*.

(2) When procedural actions are undertaken with the minor present, and especially when he is examined, the bodies participating in the proceeding must be circumspect, mindful of the mental development, sensitivity and personal characteristics of the minor, so that the conduct of the criminal proceeding will not have an adverse effect on the minor's development.

(3) The bodies who participate in the proceeding shall take appropriate measures to prevent any undisciplined behavior of the minor.

Article 343
Mandatory Defense

(1) A minor must have defense counsel from the outset of the preliminary proceeding.

(2) If the minor does not understand the language in which the criminal proceeding is being conducted, the Court shall appoint an interpreter for him.

(3) If in the cases from Paragraph 1 of this Article the minor himself, his legal representative or relatives do not retain a defense counsel, the juvenile judge shall appoint him *ex officio*.

Article 344
Exemption from the Duty to Testify

Only parents of a minor, his foster parents, adoptive parents, social worker, religious official and defense counsel shall be relieved of the duty to testify concerning the circumstances necessary for evaluation of the mental development of the minor and for gaining familiarity with his personality and the conditions in which he lived (Article 355).

Article 345
Joining and Separation of Proceedings

(1) When a minor participated in commission of a criminal offense with an adult, a separate proceeding shall be conducted against him, pursuant to the provisions of this Chapter.

(2) A proceeding against a minor may be joined with the proceeding against an adult and conducted under the general provisions of this Law only if the joined proceeding is necessary for full clarification of the case. The decision on this matter shall be made by the juvenile judge upon a reasoned motion of the Prosecutor. An appeal shall not be allowed against this decision.

(3) When a joint proceeding is conducted against a minor and adult perpetrators, the provisions of Article 342 through 344, Article 347 through 350, Articles 355, Article 357, Article 359 and Article 365 of this Law shall always be applied to the minor when matters pertaining to the minor are being clarified in the main trial, and Articles 366 and 372 of this Law, while the remaining provisions of this Chapter shall be applied to the extent that it does not conflict the conduct of a joint proceeding.

Article 346
Joint Proceeding

When a person committed a criminal offense as a minor and another criminal offense as an adult, a joint proceeding shall be conducted pursuant to Article 25 of this Law before the panel that tries adults.

Article 347
The Role of the Youth Authority

(1) In a proceeding against a minor, beside the authority explicitly provided by the provisions of this Chapter, the youth authority shall have the right to be kept informed with the course of the proceeding, to make recommendations in the course of the proceeding and to point out the facts and evidence relevant to rendering of a correct decision.

(2) The Prosecutor shall notify the competent youth authority of each proceeding instituted against a minor.

Article 348
Summoning and Delivery of Process

(1) A minor shall be summoned through his parents or legal representatives.

(2) Decisions and other processes shall be served on a minor in accordance with the provisions of Article 171 of this Law, provided that processes shall be not served on the minor through posting on the Court bulletin board, and the provision of Article 167, Paragraph 2 of this Law shall not be applied.

Article 349
Announcement of the Course of the Criminal Proceeding

(1) Neither the course of a criminal proceeding against a minor, nor the decision rendered in that proceeding may be made public, nor may the course of the proceeding be visually or audio recorded.

(2) A legally binding decision of the Court may be published, but without stating the personal data of the minor that might serve to establish the identity of the minor.

Article 350
Duty of Urgent Action

Authorities participating in the proceeding against a minor and other agencies and institutions from whom information, reports or opinions are sought must proceed with the greatest urgency so that the proceeding is completed as soon as possible.

Article 351
Composition of the Court

(1) A juvenile judge of the Basic Court shall conduct the first instance proceedings, who shall also conduct pre-trial proceedings and perform other actions in proceedings against juveniles, in accordance with this Law.

(2) The juvenile panel for of the Appellate Court, composed of three judges, shall rule on appeals against the decision of the juvenile judge in cases defined by this Law.

Section 2 – INSTITUTING THE PROCEEDING

Article 352
Application of the Principle of Opportunity

(1) For criminal offenses carrying sentence of imprisonment of up to three (3) years or a fine, the Prosecutor may decide not to request the institution of a criminal proceeding even though there is evidence that the minor committed the criminal offense if the Prosecutor feels that it would not be purposeful to conduct a criminal proceeding against the minor in view of the nature of the criminal offense and the circumstances under which it was committed, the minor's previous life and his personal characteristics. In order to determine these circumstances, the Prosecutor may seek information from parents or guardians of the minor and from other persons and institutions and when necessary, he may summon those persons and the minor to obtain information in person. The Prosecutor may seek the opinion of the youth authority on the purposefulness of conduct a criminal proceedings against the minor.

(2) If there is a need to examine the personal characteristics of the minor in order to make the decision from Paragraph 1 of this Article, the Prosecutor may in agreement with the youth authority send the minor to a juvenile home or institution for examination or educational institution, but not for more than 30 days.

(3) When a sentence or correctional measure is underway, the Prosecutor may decide not to request a

criminal proceeding for the second criminal offense committed by the minor, if, in view of the severity of that criminal offense and the punishment or developmental measure being executed, conducting a criminal proceeding and pronouncing a sentence for that criminal offense would be futile.

(4) If in the cases referred to in Paragraphs 1 and 3 of this Article the Prosecutor finds that it is not purposeful to institute a criminal proceeding against a minor, he shall so inform the youth authority and the injured party, stating the grounds of this decision.

Article 353
Educational Recommendation

Prior to taking a decision on whether to file a request for instituting of a criminal proceeding against a minor for the criminal offense from Article 352, Paragraph 1 of this Law, the Prosecutor shall be obligated to consider whether it is possible and justified to pronounce an educational recommendation, in terms of provisions of the Criminal Code of Brcko District of Bosnia and Herzegovina.

Section 3 – PRELIMINARY PROCEEDINGS

Article 354
Educational Recommendations and Petitions for Instituting of the Proceedings

(1) The Prosecutor shall file the request for instituting the preliminary proceeding with the juvenile judge. Prior to taking the decision on whether to grant the request related to the criminal offenses from Article 353 of this Law, the juvenile judge shall be obligated to consider whether it is possible and justifiable to pronounce an educational recommendation, in accordance with the provisions of the Criminal Code of Brcko District of Bosnia and Herzegovina. If the juvenile judge decides to pronounce an educational recommendation, he/she shall decide not to institute the proceeding against the juvenile. An appeal shall not be allowed against the decision of the juvenile judge.

(2) Except in the cases from Paragraph 1 of this Article, if the juvenile judge does not agree with the request to institute the preliminary proceeding, he/she shall request the juvenile panel of the Appellate Court to decide the matter.

(3) The juvenile judge may order the police to enforce a search warrant on a dwelling or on temporary seizure of an object, as stipulated in this Law.

Article 355
Obtaining Data on Personality of a Minor

(1) In the preliminary proceeding against a minor, along with the facts pertaining to the criminal offense, a specific determination shall be made of the minor's age and of the circumstances necessary to evaluate his mental development, and a study shall be made of the environment in which the minor has lived, under which conditions and other circumstances that have a bearing on his personality.

(2) In order to determine the circumstances from Paragraph 1 of this Article, the juvenile judge shall obtain reports and hear the persons who can provide the necessary information, except the persons from Article 344 of this Law.

(3) The juvenile judge shall obtain information on the minor's personality. The juvenile judge may request that this information be gathered by a professional, including social worker, defectologist, psychologist, but he/she may also entrust the youth authority with obtaining of such information.

(4) When it is necessary for the minor to be examined by experts in order to establish his state of health, mental development, mental characteristic or predisposition, physicians, psychologists or pedagogues shall be tasked for that examination. These examinations of the minor may be done in a medical or other institution.

Article 356
Persons Present at Actions in the Preliminary Proceeding

(1) The juvenile judge shall decide alone on the manner of conducting of certain actions in accordance with the provisions of this Law to a degree that ensures the right of the minor to defense, the right of the injured party and collection of evidence necessary for the decision.

(2) The Prosecutor and the defense counsel may be present during the actions in the preliminary proceeding. When necessary, the examination of the minor shall be carried out with assistance of a pedagogue or another professional. The juvenile judge may approve the presence of a representative of the youth authority and a parent, or guardian, of the minor in actions in the preliminary proceeding. If the aforesaid persons are present in the course of these actions, they may give suggestions and ask the person being examined questions.

Article 357
Accommodation of the Minor

(1) The juvenile judge may order that the minor during the preliminary proceeding be placed in a juvenile home, educational or similar institution, be placed under the custody of a youth authority or placed under the care of another family if this is necessary to separate the minor from the environment in which he has been living or to provide the minor with aid, protection or a place to live.

(2) The cost of the accommodations of the minor shall be paid in advance from the budget and shall be included in the costs of the criminal proceedings.

Article 358
Ordering Custody

(1) Exceptionally, the juvenile judge may order custody for a juvenile when there are grounds for it from Article 132, Paragraph 2, Items a) through c) of this Law.

(2) Based on the decision ordering custody issued by the juvenile judge, the custody may not exceed thirty days, but he/she shall be under a duty to review the necessity of custody each ten days.

(3) Should there be lawful reasons to do so, the juvenile judge may extend the custody for another two months.

(4) An appeal against the decision from Paragraphs 2 and 3 of this Article shall be allowed to the juvenile panel of the Appellate Court, which shall have a duty to rule on it within 24 hours.

(5) After the preliminary proceeding had been completed, the custody may last another six months at longest.

Article 359
Treatment of the Minor when in Custody

(1) Minors shall be separated from adults in custody.

(2) The judge for juveniles has the same authority regarding minors in custody as the judge for the preliminary proceeding or the preliminary hearing judge, pursuant to this Law, has regarding adults in custody.

Article 360
Reasoned Proposal

(1) After examining all circumstances related to the commission of the criminal offense and the minor's personality, the juvenile judge shall refer the brief to the Prosecutor, who shall have a duty to request that the preliminary proceeding be supplemented, within eight days, or file a reasoned proposal with the

judge for juveniles for the pronouncement of a correctional measure or punishment.

(2) It shall be considered that the Prosecutor dismissed criminal prosecution, if the Prosecutor fails to request that the preliminary proceeding be supplemented or to file a reasoned proposal with the judge for juveniles for correctional measures or punishment of juvenile imprisonment within two (2) months from the date on which the juvenile judge referred the brief to the Prosecutor.

(3) The Prosecutor's proposal shall contain the following: first and last name of the minor, the age of the minor, a description of the criminal offense, the evidence indicating that the minor committed the criminal offense, an argument that must contain an assessment of the mental development of the minor and the recommendation that the minor be punished, or that a correctional measure be pronounced against him.

Article 361
Dismissal of the Procedure

(1) If, during the preliminary proceeding, the Prosecutor finds that there are no grounds to conduct a proceeding against a minor, or that the reasons from Article 352, Paragraph 3 of this Law exist, the Prosecutor shall file a motion with the juvenile judge to dismiss the proceeding. The Prosecutor shall inform the youth authority about the motion for dismissal of the proceeding.

(2) If the juvenile judge fails to agree with the motion of the Prosecutor, the judge shall request the juvenile panel of the Appellate Court to decide the matter.

Article 362
Control of the Proceeding

The juvenile judge shall inform the President of the Court each 15 days about the juvenile cases that have not been closed and shall inform him about the reasons as to why certain cases are still pending. The President of the Court shall, if necessary, undertake measures to expedite the proceeding.

Section 4 – FIRST INSTANCE PROCEEDING

Article 363
Scheduling a Hearing or Main Trial

(1) Upon receiving the motion from the Prosecutor, the juvenile judge shall schedule a hearing or the main trial.

(2) The punishment of the juvenile imprisonment and institutional measures shall be pronounced only upon the completion of the main trial.

(3) The juvenile judge shall inform the minor about a correctional measure pronounced against him.

Article 364
Decision Making at the Main Trial

(1) When rendering a decision based on the main trial, the provisions of this Law shall be appropriately applied dealing with preparations for the main trial, the conducting of the main trial, adjournment and recess of the main trial, the record and course of the main trial, but the juvenile judge may depart from these rules should he/she consider their application would not be purposeful in the specific case.

(2) The parents or guardian of the minor and the youth authority shall be summoned for the main trial beside the persons whose presence is mandatory. Failure of the parents, guardian or representative of the youth authority to appear at the main trial shall not preclude the Court from holding the main trial.

(3) Apart from the minor, the Prosecutor, when he had filed a motion referred to in Article 360 of this Law

and the defense counsel must be present at the main trial.

(4) The provisions of this Law concerning amendment and supplement of the indictment shall also apply in a proceeding against a minor, but the juvenile judge shall also be authorized to render a decision based on the state of facts altered in the main trial, without a recommendation of the Prosecutor.

Article 365
Exclusion of the Public

(1) The public shall always be excluded from juvenile trial processes.

(2) The juvenile judge may allow the main trial to be attended by persons professionally concerned with the welfare and development of minors or with combating juvenile delinquency, as well as scientists.

(3) During the main trial, the juvenile judge may order that all or certain persons be removed from the session except the Prosecutor, defense counsel and the representative of the youth authority.

(4) The juvenile judge may order that the minor be removed from the session during the presentation of certain evidence or the oral presentation of the parties.

Article 366
Temporary Accommodation of the Minor

During the proceeding, the juvenile judge may render a decision concerning temporary accommodation of a minor in an institution (Article 357), and may also revoke a previous decision on that matter.

Article 367
Scheduling of the Main Trial and Rendering of the Decision

(1) The juvenile judge shall set the main trial or hold a hearing for the pronouncement of a correctional measure within eight days from the date of receipt of the Prosecutor's proposal or from the date when the decision was made to hold the main trial, at a hearing. For any extension of the deadline, the juvenile judge must have the approval of the President of the Court.

(2) The main trial shall be adjourned or recessed only in exceptional cases. The juvenile judge shall notify the President of the Court of every adjournment or recess of the main trial and shall present the reasons for the adjournment or recess.

(3) The juvenile judge must prepare the judgment or decision in writing within eight days, and in exceptionally complex matters, within 15 days from the announcement of the judgment, or decision.

Article 368
Decisions of a Juvenile Judge

(1) The juvenile judge shall not be bound by the recommendation of the Prosecutor in rendering its decision as to whether he/she shall pronounce a punishment or a correctional measure against a minor, but if the Prosecutor withdrew his recommendation, the judge for juveniles cannot pronounce the punishment against the minor, but only a correctional measure.

(2) The juvenile judge shall issue a decision dismissing a proceedings in cases when, on the basis of Article 283, Item d) through f) of this Law, the Court issues a judgment refusing the charges or acquitting the accused of the charge (Article 284) and when the juvenile judge finds that it is not purposeful to pronounce either a punishment or a correctional measure against the minor.

(3) The juvenile judge shall also issue a decision to pronounce a correctional measure to the minor. The pronouncement of that decision shall state only which measure is being pronounced, but the minor shall not be declared guilty of the criminal offense he had been charged with. The opinion of the decision shall contain a description of the criminal offense and the circumstances that justify the pronouncement of the

correctional measure.

(4) A judgment pronouncing punishment of juvenile imprisonment against the minor shall be rendered in the form defined in Article 285 of this Law.

Article 369
Costs of the Proceeding and Claim under Property Law

(1) The juvenile judge may impose a duty to pay the costs of criminal proceedings and to restitution of claims under property laws on a minor only if he/she has pronounced a sentence of juvenile imprisonment to the minor.

(2) If a correctional measure has been pronounced against the minor, the costs of proceedings shall be paid from the budget, and the injured party shall be referred to seek redress for his claim under property law in a civil proceeding.

Section 5 – LEGAL REMEDIES

Article 370
Appeals against Judgments and Decisions

(1) All persons entitled to appeal judgments (Article 293) may file an appeal against a judgment pronouncing a sentence of juvenile imprisonment to a minor, against a decision pronouncing a correctional measure on a minor, and against a decision on termination of the proceedings (Article 368, Paragraph 2). This appeal may be filed within eight days as of the date of receipt of the judgment, i.e. the decision.

(2) The defense counsel, the Prosecutor, spouse or partner, blood relative in direct line, adoptive parent, guardian, sibling and foster parent may file an appeal on a minor's behalf even without the minor’s consent.

(3) An appeal against the decision pronouncing a correctional measure to be served in an institution shall stay the enforcement of the decision unless the juvenile judge decides otherwise, in agreement with the parents of the minor and upon hearing the minor.

(4) A minor and his defense counsel shall always be summoned to attend the session of the juvenile panel of the Appellate Court (Article 304). Failure of the minor and his defense counsel who were duly summoned to appear at the session shall not preclude the second instance court from holding its session.

Article 371
Decisions of the Juvenile Panel and Ban of *Reformatio in Peius*

(1) The juvenile panel of the Appellate Court may alter the first instance decision and pronounce a more severe measure to a minor - only if this was proposed in the Prosecutor’s appeal.

(2) If a punishment of juvenile imprisonment or an institutional measure were not pronounced by the first instance decision, the juvenile panel may pronounce that punishment, i.e. measure only if it holds a hearing. Long-term juvenile imprisonment or a stricter institutional measure than the one pronounced in the first instance decision may also be pronounced at the session of the second instance panel.

Article 372
Reopening the Criminal Proceeding

The provisions concerning reopening of a criminal proceeding that is ended with a legally binding judgment shall be appropriately applied to the reopening of a proceeding that ended with a legally binding decision on the application of a developmental measure or dismissing proceedings against a minor.

Section 6 – SUPERVISION OF THE COURT OVER THE EXECUTION OF THE MEASURES

Article 373
A Report on Minor's Behavior

(1) The administration of an institution in which a developmental measure is executed against a minor must deliver to the Court that pronounced the correctional measure a report on the minor's behavior every two months. The juvenile judge may himself visit the minors who have been placed in that institution.

(2) The juvenile judge may obtain information through the youth authority concerning the enforcement of other developmental measures, and may order a particular professional, including social worker, defectologist, etc., to do so.

Section 7 – SUSPENSION OF EXECUTION AND AMENDMENT OF THE DECISION ON DEVELOPMENTAL MEASURES

Article 374
Amending the Decision and Suspending the Execution

(1) When the conditions provided by the law have been met for amendment of a decision on the pronounced correctional measure, the decision on amendment shall be rendered by the juvenile judge who rendered the decision on the correctional measure if he finds that there is a need, or on the recommendation of the Prosecutor, the warden of the institution or youth authority under whose custody the minor has been placed.

(2) Before rendering the decision, the juvenile judge shall hear the Prosecutor, the minor, the parents or guardian of the minor, or any other persons, and he/she shall also obtain the necessary reports from the institution in which the minor has been serving an institutional measure and from youth authorities or other agencies and institutions, as appropriate.

(3) A decision to suspend the execution of a correctional measure shall be rendered in accordance with the provisions of Paragraphs 1 and 2 of this Article.

(4) A decision to alter the correctional measure or suspend the execution thereof shall be rendered by a juvenile judge.

CHAPTER XXVII

PROCEEDING AGAINST LEGAL PERSONS

Article 375
Joint Proceeding

(1) As a rule, a joint proceeding shall be instituted and conducted against a legal person and the perpetrator for the same criminal offense.

(2) Proceeding only against a legal person may be instituted or conducted when it is not possible to institute or conduct the proceeding against the perpetrator because of the reasons stipulated by the law or when the proceeding against the perpetrator has already been conducted.

(3) In the joint proceeding against the indicted legal person and the indictee, one indictment shall be raised and one judgment shall be pronounced.

Article 376
Purposefulness of Instituting the Proceeding

The Prosecutor may decide not to request institution of a criminal proceeding against a legal person when the

circumstances indicate that it would not be purposeful, considering the contribution of the legal person to the commission of the criminal offense was insignificant or the legal person has no property or its property is so small that it would be insufficient to cover the costs of the proceeding, or if a bankruptcy proceeding has been instituted against the legal person, or if the perpetrator is the sole owner of the legal person against whom the proceeding could be instituted.

Article 377
Representative of the Legal Person in the Criminal Proceeding

(1) Any legal person must have a representative in the criminal proceeding, authorized to undertake all actions for which, under this Law, the suspect or the accused and the convicted person are also authorized.

(2) A legal person may have only one representative in the criminal proceeding.

(3) The Court shall each time verify the identity of the representative of a legal person and his authority to represent the legal person.

Article 378
Appointing the Representative

(1) A representative of a legal person in the criminal proceeding is the person authorized to represent the legal person under the law, under an official act of the state body, under the statute, articles of incorporation, or another act of the legal person.

(2) A representative may authorize someone else to represent the legal person. Authorization shall be given both in writing and orally on the court record.

(3) If the legal person ceased to exist before the final and binding completion of the criminal proceeding, the Court shall appoint a representative for the legal person.

Article 379
Disqualification of the Representative

(1) A person called to testify may not be a representative of the legal person in a criminal proceeding.

(2) A person against whom the proceeding is ongoing for the same criminal offense may not be a representative of the legal person in the criminal proceeding unless that person is the only member of the legal person.

(3) In cases referred to in Paragraphs 1 and 2 of this Article, the Court shall call on the legal person for its competent body to appoint another representative within a certain period and to notify the Court of the appointment in writing. Otherwise, the Court shall appoint the representative.

Article 380
Delivery of a Process

Process addressed to a legal person shall be delivered both to the legal person and to its representative.

Article 381
Costs of the Representative

The costs of the representative of the legal person in the criminal proceedings constitute the costs of the criminal proceeding. The costs of the representative appointed in accordance with Article 378 and Article 379 of this Law shall be paid in advance from the funds of the body conducting a criminal proceeding only when the legal person has no assets.

Article 382
Defense Counsel of the Legal Person in the Criminal Proceeding

(1) A legal person may have a defense counsel in addition to a representative.

(2) A legal person and a natural person, as well as a suspect or an accused may not have the same defense counsel.

Article 383
Contents of an Indictment

Besides the contents stipulated by this Law, an indictment against a legal person in a criminal proceeding, shall also include the name under which the legal person acts in legal transactions pursuant to the regulations, the head office of the legal person, a description of the criminal offense and the basis of the liability of that legal person.

Article 384
Trial and the Closing Argument

(1) At the main trial, the accused shall be heard first and then the representative of the legal person.

(2) Upon the completion of the evidentiary proceeding and the closing argument of the Prosecutor and the injured party, the judge, or the presiding judge on the panel, shall give the floor to the defense counsel, then to the representative of the legal person, then to the defense counsel of the accused and finally to the accused.

Article 385
Judgment against a Legal Person

Beside the contents stipulated in the Article 285 of this Law, a written judgment shall contain the following:

a) In the introductory part of the judgment, there shall be a name under which the legal person acts in legal transactions pursuant to regulations and its head office, as well as the first and the last name of its representative who was present at the main trial.
b) In the pronouncement of the judgment, there shall be a name under which the legal person acts in legal transactions pursuant to the regulations and its head office, as well as the provisions of the law under which the legal person was indicted, released from charges or the provisions under which the charges have been dismissed.

Article 386
Security Measure

(1) At the proposal of the Prosecutor, the Court may order temporary security against a legal person in order to ensure enforcement of a punishment, confiscation of property or confiscation of property gain. In this case, the provisions of Article 202 of this Law shall apply accordingly.

(2) If there is a legitimate fear that an offense will be repeated within an indicted legal person and that the legal person will be responsible, or if there is a threat that an offense will be committed, in the same procedure the Court may, except for the measures from Paragraph 1 of this Article, impose a time restriction on the legal person for carrying out one or more activities.

(3) When a criminal proceeding was instituted against a legal person, the Court may, at the proposal of the Prosecutor or *ex officio*, forbid status-related changes of the legal person that would result in the deletion of the legal person from the court registry. The decision on this ban is registered in the court registry.

Article 387
Application of Other Provisions of this Law

Unless otherwise stipulated, the appropriate provisions of this Law shall be accordingly applied against a legal person even if the proceeding is conducted solely against the legal person.

CHAPTER XXVIII

PROCEDURE FOR APPLICATION OF SECURITY MEASURES, FORFEITURE OF PROPERTY GAIN OBTAINED THROUGH A CRIMINAL OFFENSE AND REVOCATION OF SUSPENDED SENTENCE

Article 388
Adjournment of the Procedure in Case of Mental Illness

(1) If the accused becomes affected by such a mental illness after the commission of a criminal offense that he/she is unable to take part in the proceeding, the Court shall, upon psychiatric evaluation, issue a decision to adjourn the proceeding and send the accused to the body responsible for issues of social welfare.

(2) After the accused's health had improved to the extent making the accused able to take part in the proceeding, the criminal proceeding shall be resumed.

(3) If criminal prosecution falls under the statute of limitations during the adjournment, the Court shall proceed in accordance with Article 283, Item f) of this Law.

Article 389
Procedure in Case of Mental Incompetence

(1) If the suspect committed a criminal offense in the state of mental incompetence, the Prosecutor shall propose in the indictment for the Court to establish whether the accused committed a criminal offense in a state of mental incompetence and that the case be referred to the body responsible for social welfare issues, for the purpose of initiation of appropriate procedure.

(2) If the evidence presented during the main trial indicates that the accused committed a criminal offense in a state of mental incompetence or reduced mental competence, the Prosecutor shall abandon the proposal he had filed. In case of reduced mental competence, the Prosecutor shall propose a security measure of mandatory psychiatric treatment, to be pronounced along with another criminal sanction.

(3) In the case referred to in Paragraph 1 of this Article, the suspect, or the accused in detention or in a psychiatric institution, shall not be released. Instead, the Court shall, at the proposal of the Prosecutor, issue a decision on detention of up to 30 days from the date of the issuance of the ruling. An appeal shall not be allowed against this decision.

(4) After the proposal referred to in Paragraph 1 of this Article had been filed, the suspect or accused must have a defense counsel.

Article 390
Procedure in Case of Mandatory Medical Treatment of Addiction

(1) The Court shall decide on the application of a security measure of mandatory treatment of addiction after it had obtained findings and opinion of an expert. The expert also must give an opinion on the possibilities for treatment of the accused in his findings and opinion.

(2) If in pronouncing a suspended sentence, the perpetrator is ordered to receive treatment at liberty and he fails to undertake treatment or abandons it voluntarily, the Court may, *ex officio*, or at the proposal of the institution in which the perpetrator was treated or should have been treated, after the hearing of the Prosecutor and the perpetrator, revoke a suspended sentence or forceful enforcement of the security measure of mandatory treatment of addiction. Before it issues a decision, the Court shall, if necessary, also obtain a medical opinion.

Article 391
Confiscation of Items

(1) Items that must be confiscated under the Criminal Code of Brcko District of BiH shall be confiscated even when a criminal proceeding is not completed by a convicting judgment, if this is required by interest of public safety, on which a separate decision shall be issued.

(2) The decision from Paragraph 1 of this Article shall be issued by the Court at the moment of completing i.e. of dismissing the proceeding.

(3) The decision on confiscation of items from Paragraph 1 of this Article shall be issued by the Court also when the judgment declaring the accused guilty failed to pass such a decision.

(4) A certified copy of the decision on confiscation of items shall be delivered to the owner of the items if the owner is known.

(5) The owner of the item shall be entitled to appeal the decision from Paragraphs 1 through 3 of this Article, based on the lack of a legal grounds for confiscation of items.

Article 392
Forfeiture of Property Gain Obtained by Commission of Criminal Offense

(1) The property gain obtained by commission of a criminal offense shall be established in a criminal procedure *ex officio*.

(2) The Prosecutor shall be obligated to collect evidence during the procedure and examine the circumstances that are important for the establishment of the property gain obtained by commission of a criminal offense.

(3) If the injured party submitted a claim under property law for repossession of items obtained through a criminal offense, or the amount equivalent to the value of such items, the property gain shall be established only in the part that is not included in the claim under property law.

Article 393
Procedure for Forfeiture of Property Gain Obtained by Commission of Criminal Offense

(1) When the forfeiture of property gain obtained through a criminal offense is an option, the person to whom the property gain was transferred and the representative of the legal person shall be summoned to the main trail for hearing. They shall be warned in the summons that the procedure shall be conducted in their absence.

(2) A representative of the legal person shall be heard at the main trial after the accused. The same procedure shall apply to the person to whom the property gain was transferred if that person was not summoned as a witness.

(3) The person to whom the property gain was transferred as well as the representative of the legal person shall be authorized to propose evidence in relation to the establishment of property gain and to question the accused, witnesses and expert witnesses upon approval by the judge or the presiding judge.

(4) The exclusion of the public at the main trial shall not refer to the person to whom the property gain was transferred and the representative of the legal person.

(5) If during the main trial the Court establishes that the forfeiture of property gain is an option, the Court shall adjourn the main trial and shall summon the person to whom the property gain was transferred, and a representative of the legal person.

Article 394
Establishment of Property Gain Obtained by Commission of Criminal Offense

The Court shall establish the value of property gain obtained by commission of a criminal offense through free assessment, if to establish it otherwise would be linked to disproportional difficulties or a significant delay in the procedure.

Article 395
Temporary Security Measures

When the forfeiture of property gain obtained by commission of criminal offense is an option, the Court shall *ex officio* and under the provisions applicable to the enforcement procedure define temporary security measures. In that case, the provisions of Article 202 of this Law shall apply accordingly.

Article 396
The Contents of the Decision Pronouncing the Measure of Forfeiture of Property Gain

(1) The forfeiture of property gain obtained by commission of a criminal offense may be pronounced by Court in a judgment by which the accused is declared guilty and in the decision on application of correctional measure, as well as in a proceeding from Article 389 of this Law.

(2) In the pronouncement of the judgment or decision, the Court shall indicate what item or amount of money shall be forfeited.

(3) A certified copy of the judgment or the decision shall also be delivered to the person to whom the property gain was transferred and to the representative of the legal person, if the Court pronounced the forfeiture of property gain from that person.

Article 397
Request for a Renewed Procedure on the Measure of Forfeiture of Property Gain

The person from Article 393 of this Law may file a request for reopening of the criminal proceeding with respect to the decision on forfeiture of property gain obtained by commission of criminal offense.

Article 398
The Appropriate Application of the Provisions of this Law Regarding an Appeal

The provisions of Articles 294, Paragraphs 2 and 3 and Articles 302 and 317 of this Law shall be applied appropriately on the appeal against the decision on forfeiture of property gain.

Article 399
Appropriate Application of Other Provisions of this Law

If the provisions of this Chapter do not stipulate otherwise, other relevant provisions of this Law shall be applied appropriately on the procedure for application of security measures or forfeiture of property gain obtained by commission of criminal offense.

Article 400
Procedure to Revoke Suspended Sentence

(1) When a suspended sentence provides that a sentence will be executed if a convicted persons fails to return property gain obtained by commission of criminal offense, fails to compensate damage or fails to meet other obligations, and the convicted person has failed to fulfill these obligations within specified deadlines, the Court shall conduct proceedings to revoke the suspended sentence at the proposal of the Prosecutor or *ex officio*.

(2) The Court shall be obligated to schedule a hearing in order to establish facts, to which it shall summon the Prosecutor, convicted person and injured party.

(3) If the Court establishes that the convicted person failed to meet obligations defined in the judgment, it shall issue a judgment revoking the suspended sentence and order execution of the sentence, or set a new

deadline for compliance with the obligations or exclude this requirement. If the Court finds that there are no grounds to take any of said decisions, it shall issue a procedural decision revoking the suspended sentence.

CHAPTER XXIX

PROCEDURE FOR RENDERING DECISION TO DELETE A CONVICTION OR TERMINATE SECURITY MEASURES AND LEGAL CONSEQUENCES OF A CONVICTION

Article 401
Decision on Deletion of a Conviction

(1) When the law provides that convictions shall be deleted after a specific period of time and under the condition that the convicted person does not commit another criminal offense during that period, the authority in charge of keeping criminal records shall issue *ex officio* a decision to delete the conviction.

(2) It shall be necessary to conduct certain inquiries before the issuance of the decision to delete the conviction, in particular, information shall be gathered as to whether there is a pending criminal proceedings against the convicted person for a new criminal offense committed prior to the expiry of the deadline stipulated for deleting the conviction.

Article 402
Motion of the Convicted Person to Delete a Conviction

(1) If the competent authority fails to issue a decision to delete a conviction, the convicted person may request that it be established whether the deletion of the conviction occurred in accordance with the law.

(2) If the competent authority fails to meet the request of the convicted person within 30 days of the date of its receipt, the convicted person may request the Court to issue a procedural decision deleting the conviction.

Article 403
Deletion of Suspended Sentence by the Court

If a suspended sentence is not revoked even after one year has expired from the end date of the inquiry deadline, the Court shall issue a decision ordering deletion of the suspended sentence. Such decision shall be delivered to the convicted person, Prosecutor and authority in charge of keeping criminal records.

Article 404
Procedure to Delete a Conviction on the Basis of a Court Decision

(1) Procedure to delete a conviction in accordance with the provisions of the Criminal Code of Brcko District of BiH shall be initiated upon the petition of the convicted person.

(2) Such petition shall be filed with the Court.

(3) A judge assigned with it shall schedule and conduct a hearing of the Prosecutor and convicted person.

(4) The judge may request the police authorities to provide him with a report on the conduct of the convicted person, and can also request such report from the management of the institution where the convicted person has been serving the sentence.

(5) The petitioner and the Prosecutor may file an appeal against the Court decision on the petition to delete the conviction.

(6) If the Court rejects the petition on the grounds that the conduct of the convicted person has not deserved the deletion of the conviction, the convicted person may resubmit his petition upon the expiry of one year of the date when the decision rejecting the motion became final.

Article 405
Certificate on Criminal Records

A certificate issued to citizens on the basis of the data from criminal records must not refer to a conviction that was deleted or legal consequences that were deleted.

Article 406
Petition and Procedure to Terminate a Security Measure

(1) A petition to terminate the security measures prescribed by the Criminal Code of Brcko District of BiH and other measures prescribed by law shall be submitted to the Court.

(2) A judge assigned with it shall conduct a preliminary inquiry as to whether the required period of time provided for by the law has expired, and shall then schedule and conduct hearings to establish facts to which the petitioner referred. The judge shall summon the Prosecutor and the petitioner.

(3) The judge from Paragraph 2 of this Article may request from the police authority, or institution where the convicted person served his sentence, a report as to the conduct of the convicted person.

(4) If the motion is rejected, a new petition may not be submitted before the expiry of one year of the date when the decision rejecting the previous petition became final.

CHAPTER XXX

PROCEDURE TO RENDER INTERNATIONAL LEGAL ASSISTANCE AND TO ENFORCE INTERNATIONAL AGREEMENTS IN CRIMINAL MATTERS

Article 407
General Provisions

International assistance in criminal matters shall be rendered pursuant to the provisions of this Law unless otherwise prescribed by the legislation of Bosnia and Herzegovina or an international agreement.

Article 408
Sending of a Request for Legal Assistance

Requests for legal assistance in criminal matters by the courts of Brcko District of BiH, i.e. of the Prosecutor shall be delivered to foreign authorities through diplomatic channels in such a way that the Court, i.e. the Prosecutor, shall deliver the requests to the Judicial Commission of Brcko District of BiH, which will forward them to the competent ministry of Bosnia and Herzegovina.

Article 409
Actions Following Requests of Foreign Authorities

(1) When the Judicial Commission of Brcko District of BiH receives a request for legal assistance from a foreign authority, via the competent ministry of Bosnia and Herzegovina, it shall be obligated to forward such request to the Court, i.e. the Prosecutor.

(2) The Court, i.e. the Prosecutor shall decide whether an action requested by a foreign authority is permitted and the manner of its implementation, in accordance with their competencies and laws of Bosnia and Herzegovina.

Article 410
Execution of Judgments Rendered by Foreign Courts

(1) The Court shall not act on the motion of a foreign body requesting execution of a criminal judgment rendered by a foreign court.

(2) As an exception to Paragraph 1 of this Article, the Court shall execute a final and binding judgment of a foreign authority regarding a sanction pronounced by a foreign court, if it has been provided for in an international treaty, and if the sanction is also pronounced by the Court in accordance with the criminal legislation of Brcko District of Bosnia and Herzegovina.

(3) The Basic Court shall pass the judgment in the panel of three judges. The Prosecutor, the convicted person and the defense counsel shall be informed of the panel session.

(4) In the pronouncement of the judgment from Paragraph 3 of this Article, the Court shall incorporate the complete pronouncement and the name of the court referred to in the foreign judgment and shall pronounce the sanction. In the explanation of the judgment, the Court shall present its reasons when pronouncing the sanction.

(5) The Prosecutor and convicted person or his defense counsel may file an appeal in accordance with this Law against the judgment from Paragraph 4 of this Article.

(6) If an alien, convicted by the domestic court, or a person authorized by an agreement files a motion with the Court that the convicted person be allowed to serve a sentence in his home country, the Court shall act in accordance with the international agreement.

Article 411
Centralization of Data

The Court shall be obligated to deliver, without delay, via the Judicial Commission of Brcko District of BiH, to the competent ministry of Bosnia and Herzegovina information on the criminal offense and perpetrator, as well as the final judgment concerning criminal offenses of production and trafficking of counterfeit money, unauthorized production, processing and trafficking of drugs and poisons, human trafficking, production and dissemination of pornographic materials, as well as concerning other criminal offenses for which international agreements stipulate centralization of data. In case of the criminal offenses of money laundering or offenses related to money laundering, information must also be delivered without delay, via the Judicial Commission of Brcko District of BiH, to the Bosnia and Herzegovina authority responsible for prevention of money laundering.

Article 412
Transferring of Criminal Prosecution to a Foreign State

(1) If a criminal offense was committed in the territory of Bosnia and Herzegovina by an alien whose permanent place of residence is in a foreign country, it is possible to cede all criminal files for the purpose of criminal prosecution and trial to such country except the conditions for extradition of the suspects, i.e. the accused stipulated in the Law on Criminal Procedure, if such state is not opposed thereto.

(2) Transfer of criminal prosecution and trial shall not be allowed if in that case the alien may be subjected to an unfair proceeding, inhuman and humiliating treatment or punishment.

(3) The Prosecutor shall take a decision on relinquishment before the indictment has been raised. After the raising of the indictment and until the case is referred to a judge or to the panel for the purpose of scheduling the main trial, such decision shall be taken by the preliminary hearing judge at the proposal of the Prosecutor.

(4) Transfer may be carried out for the criminal offenses falling under the jurisdiction of the Court, carrying the sentence of imprisonment of up to ten years.

(5) If the injured party is a citizen of Bosnia and Herzegovina such relinquishment shall not be allowed if said citizen is opposed thereto, unless insurances were given as to realization of the injured party' claim under property law.

Article 413
Takeover of Criminal Prosecution from a Foreign State

(1) The Judicial Commission of Brcko District of BiH shall forward to the Prosecutor a request and files from a foreign state to institute criminal prosecution of a citizen of Bosnia and Herzegovina, or of a person with permanent place of residence in Bosnia ad Herzegovina for a criminal offense falling under the jurisdiction of the Court, committed abroad.

(2) If a claim under property law has been submitted to the competent authority of a foreign state, the procedure shall apply as if the claim had been submitted to the Court.

(3) The foreign state that submitted the request shall be informed of any decision rejecting the launching of criminal prosecution as well as of any final and binding decision rendered in a criminal proceeding.

CHAPTER XXXI

PROCEDURE FOR COMPENSATION OF DAMAGES, REHABILITATION AND OTHER RIGHTS OF PERSONS SUBJECT TO UNJUST CONVICTION AND GROUNDLESS APPREHENSION

Article 414
Compensation of Damages Caused by Unjust Conviction

(1) A person against whom a final and binding criminal sanction was pronounced or who was found guilty and freed from sanction, and subsequently, the proceedings reopened on extraordinary legal remedy was validly suspended or final and binding judgment was pronounced acquitting the person of charges, or the charges were rejected, shall be entitled to compensation of damages on grounds of unjust conviction, except in the following cases:

a) if the suspension of proceedings or the judgment rejecting the charges resulted from the Prosecutor dismissing the prosecution in the reopened proceedings, and the dismissal took place based on an agreement with the suspect or the accused;
b) if in the reopened proceedings a judgment was pronounced rejecting the charges due to Court incompetence, and the authorized Prosecutor instituted prosecution before a competent Court.

(2) A convicted person shall not be entitled to compensation of damages if he intentionally brought about his conviction by false admission or in another way, unless he was forced to do so.

(3) In case of conviction for joinder of offenses, the right to compensation of damages may also refer to individual criminal offenses in whose respect the conditions for recognition of damages were met.

Article 415
Statute of Limitation of Claims for Compensation of Damages

(1) The right to compensation of damages shall fall under the statute of limitations after the expiry of three years from the date on which the judgment acquitting the accused or dismissing the charges became final, or on which the decision of the Prosecutor or the Court dismissing the proceeding became final, if an appeal was filed with the Appellate Court based on the request for extraordinary remedy, from the date of the receipt of the panel's decision.

(2) Before submitting a claim for compensation of damages to the Court, the injured party shall be obliged to file his claim with the Judicial Commission of Brcko District of Bosnia and Herzegovina, so as to achieve agreement on whether the damage occurred and what is the kind and amount of compensation.

(3) In the case from Article 416, Paragraph 1 of this Law, the claim may be decided upon only if the authorized Prosecutor did not institute prosecution before the competent Court within three months from the date of the receipt of the final judgment.

Article 416
Filing Claims for Compensation of Damages to the Competent Court

(1) If the claim for compensation of damages is not granted or the Judicial Commission of Brcko District of Bosnia and Herzegovina fails to make its decision within three months from the date of filing the claim, the injured party may file the claim for compensation of damages with the competent Court.

(2) If an agreement was reached only in part of the compensation claim, the injured party may file a petition with respect to the remaining part of the claim.

(3) Claims for compensation of damages shall be filed against Brcko District of Bosnia and Herzegovina.

Article 417
Right of Heirs to Compensation of Damages

(1) The heirs of the injured party shall inherit only the right of the damaged person to compensation of damages to property. If a claim has already been filed by the injured party, the heirs may continue the proceedings only within the limits of the already filed claim for compensation of damages to property.

(2) The heirs of the injured party, after his demise, may continue compensation proceedings, or initiate such proceedings in case the injured party passed away before the statute of limitation ran out and did not renounce the compensation claim.

Article 418
Other Persons Entitled to Compensation of Damages

(1) The following persons shall be entitled to compensation of damages:
   a) a person who was in detention, but criminal proceedings were not initiated or proceedings were suspended or an effective judgment was pronounced acquitting the person of charges or charges were rejected;
   b) a person who served a sentence of imprisonment, and was pronounced a shorter imprisonment sentence in reopened criminal proceedings than the sentence he had served, or was pronounced a criminal sanction other than imprisonment, or was pronounced guilty and freed from sanction;
   c) a person who was apprehended without grounds or retained in detention, a penitentiary or correctional institution longer than necessary, due to a mistake or unlawful activity of an authority;
   d) a person who remained in detention for a period exceeding the sentence to which he was convicted.

(2) A person who was deprived of liberty without legal grounds shall be entitled to compensation of damages if no pre-trial detention was ordered against him or the time for which he was imprisoned was not included in the sentence pronounced for a criminal offense or misdemeanor.

(3) A person who caused imprisonment by his own unlawful acts shall not be entitled to compensation of damages. In cases from Item a) of Paragraph 1 of this Article, the right to compensation of damages shall not apply also if circumstances from Article 414, Paragraph 1 existed, or if proceedings was suspended pursuant to Article 205 of this Law.

(4) In proceedings for compensation of damages, in cases from Paragraphs 1 and 2 of this Article, the provisions of this Chapter shall apply accordingly.

Article 419
Compensation of Damages Inflicted by Media

If a case involving unjust conviction or groundless deprivation of liberty of a person was broadcast by media, thereby damaging the reputation of that person, the Court shall, at the person's request, publish in newspapers or other media a statement on its decision confirming that the previous conviction was unjust or that the deprivation of liberty was groundless. If the case was not broadcast by media, such a statement shall, at the request of that person, be provided to the authority, or legal person employing the person, and to a

political party or civil association, if that is required for the person's rehabilitation.

Article 420
Persons Entitled to Filing Damage Claims

(1) After the demise of a convicted person, its spouse or common-law partner, children, parents, siblings shall be entitled to file such a claim.

(2) The claim from Paragraph 1 of this Article may be filed even if no claim for compensation of damages has been filed.

(3) Notwithstanding the requirements from Article 414 of this Law, the claim from Paragraph 1 of this Article may also be filed in case the legal qualification of the offense was changed through extraordinary remedy, in case the reputation of the convicted person was more severely damaged by the legal qualification in the earlier judgment.

(4) The claim from Paragraphs 1 to 3 of this Article shall be filed with the Court within six months. The panel of the Basic Court (Article 23 Paragraph 2) shall decide the claim. In deciding on the claim, provisions of Article 414, Paragraphs 2 and 3, and Article 418, Paragraph 3 of this Law shall apply accordingly.

Article 421
Rehabilitation

The Court shall *ex officio* issue a decision annulling the recording of an unjust conviction in the criminal records. The decision shall be submitted to an authority competent for keeping criminal records. Data of annulled records must not be given to any person.

Article 422
Ban on Use of Data

A person who gained access in any way to data pertaining to unjust conviction or groundless deprivation of liberty shall not use such data in a manner that would be detrimental to the rehabilitation of a person against whom criminal proceedings were conducted.

Article 423
Right to Compensation of Damages With Respect to Employment

(1) Years of service or years of insurance coverage of a person whose employment was terminated or who lost the status of social insurance holder due to unjust conviction or groundless deprivation of liberty shall be recognized for the period of time in which the years of service or years of insurance coverage were not recognized due to unjust conviction or groundless deprivation of liberty. The period of time of unemployment effected by unjust conviction or groundless deprivation of liberty, which was not the fault of the person in question, shall also be counted as years of service or years of insurance coverage.

(2) When deciding on each case pertaining to the right that is affected by years of service or years of insurance coverage, the responsible body or another legal person shall also take into account the years of service or years of insurance coverage recognized in the provisions of Paragraph 1 of this Article.

(3) If the responsible body or legal person referred to in Paragraph 2 of this Article fails to take into account the years of service or years of insurance coverage recognized in the provision of Paragraph 1 of this Article, the injured party may request that the Court determine whether the recognition of this period of time was effected in accordance with the law. A complaint shall be filed against the body or legal person disputing the recognized years of service or insurance coverage and against Brcko District of Bosnia and Herzegovina.

(4) At the request of the body or legal person with which the right under Paragraph 2 of this Article is exercised, a prescribed amount for the years of service recognized under the provision of Paragraph 1 of

this Article shall be paid from the budget of Brcko District of Bosnia and Herzegovina.

(5) The years of insurance coverage recognized by the provision of Paragraph 1 of this Article shall be calculated in full to the years of retirement.

CHAPTER XXXII

PROCEDURE FOR ISSUANCE OF WARRANTS AND NOTIFICATIONS

Article 424
Search for Addresses

If the permanent or temporary residence of the suspect or the accused is not known, the Prosecutor or the Court shall, if necessary under the provisions of this Law, request that the police authorities search for the suspect or the accused and inform the Prosecutor or the Court of his address.

Article 425
Requirements for Issuance of Warrants

(1) Issuance of a warrant may be ordered if the suspect or the accused against whom criminal proceedings have been instigated due to a criminal offense punishable by law with a prison sentence of three (3) years or more is on the run, and an order for his apprehension or a decision specifying his detention has been issued.

(2) Issuance of a warrant shall be ordered by the Court.

(3) Issuance of a warrant shall also be ordered in case a convicted person escapes from the institution in which he is serving a sentence regardless of the length of the sentence, or in case of his escape from an institution where he is serving an institutional measure related to deprivation of liberty. In such a case, the warden of the institution shall issue the order.

(4) Order of the Court or warden for issuance of a warrant shall be submitted to police authorities for execution.

Article 426
Issuance of Notification

(1) If data are necessary on case files related to criminal offenses, or if these case files need to be identified, particularly if this is necessary for the purpose of verification of identity of an unidentified dead body, issuance of notification requesting that data or information be submitted to the body conducting the proceedings shall be ordered.

(2) Police authorities may also publish photographs of dead bodies and missing persons if there are grounds to suspect that the deaths or disappearance of these persons resulted from a criminal offense.

Article 427
Withdrawal of Warrant or Notification

The body that ordered the issuance of a warrant or notification is obliged to immediately withdraw it if the wanted person or item is found or if the statute of limitation for criminal prosecution or for serving the sentence applies, or for other reasons that make the warrant or notification unnecessary.

Article 428
Authority to Issue a Warrant or Notification

(1) Warrants and notifications shall be issued by the competent police authority designated by the Court in each individual case, or the institution from which the person fled from serving a sentence or institutional measure.

(2) If it is likely that the person after whom the warrant was issued is abroad, the competent Ministry of Bosnia and Herzegovina may issue an international warrant.

CHAPTER XXXIII

TRANSITIONAL AND FINAL PROVISIONS

Article 429

Judicial Police

If judicial police do not commence their operation before this Law enters into force, the authorities of the judicial police stipulated in this Law shall be carried out by the Police of Brcko District of Bosnia and Herzegovina.

Article 430
Transfer of Cases from the Competence of the Court of BiH

(1) Cases falling under the competence of the Court of BiH that had been pending before courts of Brcko District of BiH before this Law entered into force shall be finalized by these courts if the indictments in these cases have been confirmed.

(2) Cases falling under the competence of the Court of BiH that are pending before the courts of Brcko District of BiH or the Prosecutor's Office of Brcko District of BiH, in which the indictments have not taken effect, shall be finalized by these courts, unless the Court of BiH decides to take over such a case *ex officio* or upon a substantiated proposal by the parties or defense counsel.

(3) If the Court of Bosnia and Herzegovina transferred a proceeding from its jurisdiction to be conducted by the court within whose territorial jurisdiction the criminal offense had been committed or attempted, the latter Court shall admit evidence that were lawfully collected in the course of investigation and court insurance.

Article 431
Deciding on Petitions for Protection of Legality

In proceedings in which a petition for protection of legality had been filed before this Law took effect, or the period provided for filing the petition for protection of legality was ongoing and the petition for protection of legality was filed within that period, the procedure shall continue and shall be completed in accordance with the earlier applicable regulations.

Article 432
Passing of By-Laws

The Judicial Commission of Brcko District shall pass the by-laws stipulated by this Law no later than 90 days as of the date of entering of this Law into force**.**

Article 433
Cessation of Application of the Law

The Law on Criminal Procedure of Brcko District of Bosnia and Herzegovina ("Official gazette of Brcko District of BiH", Vol. 7/00, from 30 November 2000) shall cease to apply as of the date of this Law entering into force, unless otherwise stipulated by provisions of this Law.

Article 434
Entry of this Law into Force

This Law shall enter into force on July 1, 2003, and shall be published in the "Official gazette of Brcko District of Bosnia and Herzegovina".

Bosnia and Herzegovina
BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA
THE ASSEMBLY OF BRCKO DISTRICT

No. 0-02-022-154/03
Brcko, 28 May 2003

P R E S I D E N T O F
THE ASSEMBLY OF BRCKO DISTRICT
Mirsad Djapo, grad.lawyer