

## **Bosnia and Herzegovina**

### **Draft Criminal Code (2003) (excerpts)**

#### **THE CRIMINAL CODE**

#### **OF BOSNIA AND HERZEGOVINA**

Enacted by decision of the High Representative on 24 January 2003 - will enter into force until such time as the Parliamentary Assembly of Bosnia and Herzegovina adopts this law in due form, without amendments and with no conditions attached.

(excerpts)

(...)

#### **SPECIAL PART**

(...)

#### **XV Chapter Fifteen**

#### **CRIMINAL OFFENCES AGAINST FREEDOM AND RIGHTS OF INDIVIDUALS AND CITIZENS**

(...)

#### **Unlawful Deprivation of Freedom**

#### **Article 147**

An official or responsible person in the institutions of Bosnia and Herzegovina who unlawfully imprisons another person, keeps him imprisoned or otherwise restricts his freedom of movement,

shall be punished by a fine or imprisonment for a term not exceeding three years.

If the unlawful deprivation of freedom lasted for more than thirty days, or if the manner of the execution was cruel, or if such a treatment of the person who was illegally deprived of freedom caused grave impairment of his health, or if some other serious consequences occurred, the perpetrator

shall be punished by imprisonment for a term between two and eight years.

If the person who has been illegally deprived of freedom lost his life as a result of the deprivation, the perpetrator

shall be punished by imprisonment for a term not less than five years.

(...)

## XVII Chapter Seventeen

### CRIMES AGAINST HUMANITY AND VALUES PROTECTED BY INTERNATIONAL LAW

(...)

#### **Establishment of Slavery and Transport of Slaves**

##### **Article 185**

Whoever, in violation of the rules of international law, places another in slavery or in a similar status or keeps him in such a status, buys, sells, hands over to another person or mediates the purchase, sale or handing over of such a person or induces someone else to sell his freedom or the freedom of the person he provides for or takes care of,

shall be punished by imprisonment for a term between one and ten years.

Whoever, in violation of the rules of international law, buys, sells, hands over to another person or mediates in the purchase, sale or handing over a child or a juvenile for the purpose of adoption, transplantation of organs, exploitation by labour or for other illicit purposes,

shall be punished by imprisonment for a term not less than five years.

Whoever, in violation of the rules of international law, transports persons who are in a position of slavery or in similar status,

shall be punished by imprisonment for a term between six months and five years.

#### **Trafficking in Persons**

##### **Article 186**

Whoever takes part in the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to obtain the consent of a person having control over another person, for the purpose of exploitation,

shall be punished by imprisonment for a term between one and ten years.

Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article against a juvenile,

shall be punished by imprisonment for a term not less than five years.

Whoever organizes a group of people with an aim of perpetrating the criminal offence referred to in paragraphs 1 and 2 of this Article,

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

Whoever acting out of negligence facilitates the perpetration of the criminal offence referred to in paragraphs 1 through 3 of this Article,

shall be punished by imprisonment for a term between six months and five years.

"Exploitation" referred to in paragraph 1 of this Article includes, in particular, exploiting other persons by way of prostitution or of other forms of sexual exploitation, forced labour or services, slavery or slavery-like practices, serving under coercion or removal of organs for the purpose of transplantation.

### **International Procuring in Prostitution**

#### **Article 187**

Whoever procures, entices or leads away another person to offer sexual services for profit within a state excluding the one in which such a person has residence or of which he is a citizen,

shall be punished by imprisonment for a term between six months and five years.

Whoever, by force or threat to use force or deceit, coerces or induces another person to go to the state in which he has no residence or of which he is not a citizen, for the purpose of offering sexual services upon payment,

shall be punished by imprisonment for a term between six months and five years.

If the criminal offence referred to in paragraphs 1 and 2 of this Article is perpetrated against a child or a juvenile, the perpetrator

shall be punished by imprisonment for a term between one and ten years.

The fact whether the person procured, enticed, led away, forced or deceived into prostitution has already been engaged in prostitution is of no relevance for the existence of a criminal offence.

### **Unlawful Withholding of Identity Papers**

#### **Article 188**

Whoever unlawfully withholds another person's identification papers or passport,

shall be punished by imprisonment for a term between six months and five years.

### **Smuggling of Persons**

#### **Article 189**

Whoever, for financial or material benefit, engages in illegal transport of other persons across the state border, or whoever enables another person to cross the border illicitly,

shall be punished by imprisonment for a term between six months and five years.

### **Torture and Other Cruel, Inhuman or Degrading Treatment**

#### **Article 190**

An official or another person who, acting upon the instigation or with the explicit or implicit consent of a public official person, inflicts on a person physical or mental pain or severe physical or mental suffering for such purposes as to obtain from him or a third person information or a confession, or to punish him for a criminal offence he or a third person has perpetrated or is suspected of having perpetrated or who intimidates or coerces him for any other reason based on discrimination of any kind,

shall be punished by imprisonment for a term between one and ten years.

(...)

### **Constitution of Bosnia-Herzegovina (1995) (excerpts)**

- Country: Bosnia and Herzegovina
- Document type: Constitution
- Also under this topic:

#### **Constitution of Bosnia and Herzegovina**

(excerpts)

(Emphasis added)

The Constitution of Bosnia and Herzegovina was adopted as Annex 4 of the Dayton Peace Accords, initiated in Dayton (United States of America) on 21 Nov 1995.

Adopted on: 1 Dec 1995

ICL Document Status: 14 Dec 1995

### **Article II Human Rights and Fundamental Freedoms**

#### **Paragraph 1 Human Rights**

Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms. To that end, there shall be a Human Rights Commission for Bosnia and Herzegovina as provided for in Annex 6 to the General Framework Agreement.

## **Paragraph 2 International Standards**

The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law.

## **Paragraph 3 Enumeration of Rights**

All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

- (a) The right to life.
- (b) The right not to be subjected to torture or to inhuman or degrading treatment or punishment.
- (c) The right not to be held in slavery or servitude or to perform forced or compulsory labor.
- (d) The rights to liberty and security of person.
- (e) The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.
- (f) The right to private and family life, home, and correspondence.
- (g) Freedom of thought, conscience, and religion.
- (h) Freedom of expression.
- (i) Freedom of peaceful assembly and freedom of association with others.
- (j) The right to marry and to found a family.
- (k) The right to property.
- (l) The right to education.
- (m) The right to liberty of movement and residence.

## **Paragraph 4 Non-Discrimination**

The enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in [Annex I](#) to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

## **Annex I**

### **Additional Human Rights Agreements to be Applied in Bosnia and Herzegovina**

1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide
2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto
3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto
4. 1957 Convention on the Nationality of Married Women
5. 1961 Convention on the Reduction of Statelessness
6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- 7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto**
- 8. 1966 Covenant on Economic, Social and Cultural Rights**
9. 1979 Convention on the Elimination of All Forms of Discrimination against Women
10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment

11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

**12. 1989 Convention on the Rights of the Child**

**13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

14. 1992 European Charter for Regional or Minority Languages

15. 1994 Framework Convention for the Protection of National Minorities

## **CRIMINAL CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA**

Entry into force on November 20, 1998

(...)

### **SPECIAL PART**

(excerpts)

[Full-text of the Code](#)

(...)

### **Chapter XVI**

#### **CRIMINAL OFFENSES AGAINST HUMANITY AND INTERNATIONAL LAW**

(...)

Establishing Slavery and Transporting Enslaved People

#### **Article 167**

(1) Whoever, in violation of the rules of international law, enslaves another person or puts him/her in similar position, or keeps him/her in such position, buys, sells or hands him/her over to another person, or whoever mediates in the buying, selling or handing over of such a person, or whoever incites another person to sell his/her freedom or freedom of persons he/she supports or takes care of, shall be punished with a sentence of imprisonment for a term between one year and ten years.

(2) Whoever transports persons in slavery or similar relation from one country to another, shall be punished with a sentence of imprisonment for a term between six months and five years.

(3) Whoever commits the act described in paragraphs 1 and 2 of this Article against a juvenile, shall be punished with a sentence of imprisonment for not less than five years.

(...)

## **Chapter XVII**

### **CRIMINAL OFFENSES AGAINST LIFE AND LIMB**

(...)

Grievous Bodily Injury

#### **Article 177**

(1) Whoever inflicts grievous bodily injury upon another person or gravely impairs his/her health, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever commits the act described in paragraph 1. of this Article to his/her spouse, cohabiting partner, or to the parent of his/her child with whom he/she does not cohabit, shall be punished with one to five years in prison.

(3) Whoever inflicts bodily injury upon another person or impairs his/her health so gravely that the life of the injured person is endangered, or if an important part or organ of his/her body was destroyed or permanently weakened to a substantial degree, or if the injured person was made permanently unable to work, or if permanent and grave damage to his/her health or disfigurement took place, shall be punished by imprisonment for a term between one year and ten years

(4) Whoever commits the act from paragraph 1. of this Article out of racial, national or religious reasons, shall be punished with the sentence from paragraph 3. of this Article

(5) Should the injured person die as a result of injuries referred to in paragraphs 1 through 4 of this Article, the perpetrator shall be punished by imprisonment for a term between one year and twelve years.

(6) Whoever negligently commits the acts referred to in paragraphs 1 through 3 of this Article, shall be punished by imprisonment for a term not exceeding three years.

(7) Whoever commits the acts referred to in paragraphs 1 through 4 of this Article while under influence of irresistible impulse caused through no fault of his/her own by an attack or rude insult on the part of the injured person, shall be punished for the acts referred to in paragraphs 1 through 3 by imprisonment for a term between three months and three years, and for the acts referred to in paragraph 4 by imprisonment for a term between six months and five years.

Light Bodily Injury

#### **Article 178**

(1) Whoever inflicts light bodily injury upon another person or impairs his/her health in a minor way, shall be fined or punished by imprisonment for a term not exceeding one year.

(2) Whoever commits the act from paragraph 1. of this Article upon his/her spouse, cohabiting partner, or non-cohabiting parent of his/her child, shall be sentenced to up to one year in prison.

(3) The court may administer a judicial admonition to the perpetrator of an act referred to in paragraph 1 of this Article if the perpetrator has been provoked by rude or indecent behavior of the injured person.

(4) Prosecution for the acts described in paragraph 1. and 2. of this Article shall commence upon personal action.

(...)

Exposure to danger

### **Article 180**

(1) Whoever leaves another person without help in life-threatening conditions or circumstances, which he/she himself has caused, shall be punished by imprisonment for a term not exceeding three years.

(2) If the person exposed to such danger loses his/her life or sustains grievous bodily injury or grave impairment of health, the perpetrator shall be punished by imprisonment for a term between one year and eight years.

Abandonment of a Helpless Person

### **Article 181**

(1) Whoever leaves a helpless person who has been entrusted to him/her or under his/her care without assistance in circumstances dangerous to life or health, shall be punished by imprisonment for a term between three months and three years.

(2) If as a result of this the abandoned helpless person loses his/her life or sustains grievous bodily injury or grave impairment of health, the perpetrator shall be punished by imprisonment for a term between one year and eight years.

Failure to Render Aid

### **Article 182**

Whoever fails to render aid to a person whose life is in imminent danger, although he/she could have done so with no danger to either himself or others, shall be punished by imprisonment for a term not exceeding one year.

## **Chapter XVIII**

### **CRIMINAL OFFENSES AGAINST CIVIL RIGHTS AND LIBERTIES**

(...)

## Abduction

### **Article 184**

(1) Whoever commits abduction of a person in order to force him/her or someone else to do something, not to do something, or to suffer, shall be punished by imprisonment for a term between one year and ten years.

(2) Whoever commits the act referred to in paragraph 1 of this Article against a juvenile, or who threatens to deprive the abducted person of his/her life or to inflict grievous bodily injury upon him/her in order to achieve the goals of the abduction referred to in paragraph 1 of this Article, or in some other particularly serious case, shall be punished by imprisonment for not less than three years.

(3) The sentence defined in paragraph 2. of this Articles shall be pronounced on whoever commits the act defined by paragraph 1. of this Article because of racial, national, or religious reasons;

(4) If the perpetrator of the offense described in paragraph 2. of this Article is a parent of the child whose parental right has been taken away, or the child has been given to care and education to the other parent or a third person, shall be punished with imprisonment between three months, and three years.

(5) The perpetrator of the acts referred to in paragraphs 1 through 3 of this Article who voluntarily releases the abducted person before his/her purpose in committing the abduction has been fulfilled, may be punished less severe or may be released from sentencing.

## Duress

### **Article 185**

Whoever by force or serious threat of force compels another to do something, not to do something, or to suffer shall be punished by a fine or imprisonment for a term not exceeding three year.

(...)

## Unlawful Deprivation of Freedom

### **Article 187**

(1) Whoever unlawfully imprisons another person, keeps him/her imprisoned or otherwise restricts his/her freedom of movement, shall be punished by imprisonment for a term not exceeding one year.

(2) The attempt is punished.

(3) If the unlawful deprivation of freedom lasted for more than thirty days, or if the manner of the execution was cruel, or if such a treatment of the person who was illegally deprived of freedom caused grave impairment of his/her health, or if some

other serious consequences occurred, the perpetrator shall be punished by imprisonment for a term between three months and five years.

(4) If the acts referred to in paragraphs 1 and 3 of this Article have been committed by an officer while on duty, he/she shall be punished for the act referred to in paragraph 1 by imprisonment for a term between three months and five years, and for the act referred to in paragraph 3 by imprisonment for a term between one year and eight years.

(5) If the person who has been illegally deprived of freedom lost his/her life as a result of the deprivation, the perpetrator shall be punished by imprisonment for not less than three years.

(...)

## **Chapter XXI**

### **CRIMINAL OFFENSES AGAINST PERSONAL DIGNITY AND MORALITY**

Forced Sexual Intercourse

#### **Article 222**

Whoever has forced another person into sexual intercourse by use of serious threat to reveal something that would seriously harm that person's honor or reputation or that of a person close to him/her, or by seriously threatening that person with some other harm, shall be punished by imprisonment for a term between six months and five years.

(...)

Sexual Intercourse with a Juvenile

#### **Article 224**

(1) Whoever performs sexual intercourse with a juvenile under the age of 14, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever commits the act referred to in paragraph 1 of this Article against a helpless juvenile under the age 14, or by use of force or threat of immediate attack upon life or body, shall be punished by imprisonment for not less than three years.

(3) If pregnancy of the juvenile female, grievous bodily injury or serious damage to health or the death of the juvenile occurred as a result of the acts referred to in paragraphs 1 and 2 of this Article, or if the act has been committed by two or more persons or in a particularly brutal or degrading way, the perpetrator shall be punished by imprisonment for not less than five years.

Sexual Intercourse by Abuse of Position

### **Article 225**

(1) Whoever induces into sexual intercourse another person who is in a subordinate or dependent position in relation to him/her by abusing that person's position, shall be punished by imprisonment for a term between three months and three years.

(2) A teacher, educator, guardian, adoptive parent, step-father or any other person who by abuse of his/her status has sexual intercourse with a juvenile who is aged 14 or over and who has been entrusted to him/her for the purpose of instructing, educating, custody or care, shall be punished by imprisonment for a term between six months and five years.

(3) If the act referred to in paragraph 2 of this Article has been committed against a juvenile who is under the age of 14, the perpetrator shall be punished by imprisonment for a term between one year and ten years.

(...)

Seduction

### **Article 227**

(1) Whoever by false promises of marriage induces into a sexual intercourse a juvenile who is aged between 14 and 16, shall be punished by imprisonment for a term between three months and three years.

(2) Prosecution shall be instituted upon personal complaint.

Procuring and Pandering

### **Article 228**

(1) Whoever procures a juvenile for debauchery shall be punished by imprisonment for a term between three months and five years.

(2) Whoever procures opportunities for debauchery with a juvenile, shall be punished by imprisonment for a term not exceeding three years.

(3) Whoever for reward procures a female, or whoever for reward procures opportunities for debauchery, shall be punished by imprisonment for a term not exceeding three years and fined.

Promoting Prostitution

### **Article 229**

(1) Whoever recruits, induces, incites or lures females into prostitution, or whoever takes part in any way in turning a female over to another for the exercise of prostitution, shall be punished with a sentence of imprisonment for a term between three months and three years.

(2) If the offense described in paragraph 1 of this Article has been committed against a juvenile female or by force, threat or ruse, the perpetrator shall be punished with a sentence of imprisonment for a term between one year and ten years.

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Source : Office of the High Representative - Legal Department

## CRIMINAL CODE OF THE REPUBLIKA SRPSKA

July 31, 2000

(excerpts - **emphasis added on article 188**)

[Full-text version of the Code](#)

(...)

SPECIAL PART

**Legislationline Comment : of particular relevance is article 188 - Chapter 19.**

(...)

### Chapter Fifteen

CRIMINAL OFFENSES AGAINST LIFE AND LIMB

(...)

Light Bodily Injury

Article 134

(1) Whoever inflicts light bodily injury upon another person or impairs his health in a minor way, shall be fined or punished by imprisonment term not exceeding two years.

(2) The court may administer a judicial admonition to the perpetrator of the offense referred to in paragraph 1 of this article if the perpetrator has been provoked by grave affront or violent behavior of the injured person.

Grievous Bodily Injury

Article 135

(1) Whoever inflicts grievous bodily injury upon another person or gravely impairs his health, shall be punished by imprisonment term ranging between six months and five years.

(2) Whoever inflicts bodily injury upon another person or impairs his health so gravely that the life of the injured person is endangered, or if an important part or organ of his body was destroyed or permanently weakened to a substantial degree, or if the injured person was made permanently unable to work, or if permanent and grave damage to his health or disfigurement took place, shall be punished by imprisonment term ranging between one year and eight years.

(3) Should the injured person die as a result of injuries referred to in paragraphs 1 and 2 of this article, the perpetrator shall be punished by imprisonment term ranging between one year and twelve years.

(4) Whoever negligently commits the acts referred to in paragraphs 1 and 2 of this article, shall be punished by imprisonment term not exceeding three years.

(5) Whoever commits the acts referred to in paragraphs 1, 2, and 3 of this article while under influence of irresistible impulse caused at no fault of his own by a battery or grave affront or grave abuse of the injured person,

shall be punished for the acts referred to in paragraphs 1 and 2 by imprisonment for a term not exceeding three years, and for the acts referred to in paragraph 3 by imprisonment for a term ranging between six months and five years.

(...)

Exposure to Danger

Article 138

(1) Whoever leaves another person without help in life-threatening conditions or circumstances which he himself has caused, shall be punished by imprisonment term not exceeding two years.

(2) Should the person left sustain grievous bodily injury or grave impairment of health in consequence of the deed described under paragraph 1 of this article, the perpetrator shall be punished by imprisonment term ranging between six months and five years.

Should the person left lose his life in consequence of the deed described under paragraph 1 of this article, the perpetrator shall be punished by imprisonment term ranging between one and eight years.

Abandonment of a Helpless Person

Article 139

(1) Whoever leaves a helpless person who has been entrusted to him or under his care without assistance in circumstances dangerous to life or health, shall be punished by imprisonment term not exceeding two years.

(2) If as a result of the deed described under paragraph 1 the abandoned helpless person sustains grievous bodily injury or grave impairment of health, the perpetrator shall be punished by imprisonment term ranging between six months and five years.

(3) If as a result of this the abandoned helpless person die or sustain a grievous bodily injury; the perpetrator shall be punished by imprisonment term ranging between one year and eight years.

Failure to Render Aid

Article 140

(1) Whoever fails to render aid to a person whose life is in imminent life threat, although he could have done so with no danger to either himself or others, shall be fined or punished by imprisonment term not exceeding one year.

(2) Should a grievous bodily injury of the person left in imminent life threat result from the deed described under paragraph 1 of this article, the perpetrator shall be fined or punished by imprisonment not exceeding two years.

(3) Should the person left in imminent life threat die in result of the deed described under paragraph 1 of this article, the perpetrator shall be punished by imprisonment term ranging between three months and three years.

## **Chapter Sixteen**

### CRIMINAL OFFENSES AGAINST CIVIL LIBERTIES AND RIGHTS

(...)

Duress

Article 143

(1) Whoever compels another person by use of force or serious threat of use of force to an action, omission of an action or acquiescence, shall be fined or punished by imprisonment term not exceeding one year.

(2) Whoever commits the offense described under paragraph 1 of this article by threatening to kill or inflict a grievous bodily injury, abduction or in a group or criminal organization shall be punished by imprisonment term not exceeding three years.

Abduction

Article 144

(1) Whoever commits the abduction of a person in order to extort money or other property gain from him or someone else, or force him or someone else to an action, omission of an action or acquiescence, shall be punished by imprisonment term ranging between one and eight years.

(2) Whoever commits the act defined by paragraph 1. of this article against a child or a juvenile, or in a cruel way, or by threatening to kill or inflict grievous bodily injury, or in group or criminal organization, shall be punished by imprisonment term ranging between one and ten years.

(3) The punishment prescribed under paragraph 2 of this article shall also be pronounced if the abducted person had been held for more than fifteen days, or the health of the abducted person has been severely harmed, or other serious consequences have occurred.

(4) Should the abducted person die in consequence of the offenses described under paragraphs 1, 2, and 3 of this article, the perpetrator shall be punished by imprisonment term ranging between two and fifteen years.

(5) The perpetrator of the acts referred to in paragraphs 1 through 3 of this article who voluntarily releases the abducted person before his request for which he had committed the abduction had been fulfilled, may be freed from punishment.

#### Lawless Deprivation of Liberty

##### Article 145

1. Whoever imprisons, keeps imprisoned or otherwise restricts the freedom of movement of another in a lawless way, shall be fined or punished by imprisonment not exceeding one year.

If the offense described under paragraph 1 of this article has been done by an official by abuse of his official position or authority, the perpetrator shall be punished by imprisonment not exceeding three years.

3. If the lawless deprivation of liberty from paragraphs 1 and 2 of this article lasted longer than fifteen days, or has been done in a cruel way, or the person deprived of liberty in a lawless way has suffered serious damage of his health or some other grievous consequences, the perpetrator shall be punished by imprisonment ranging between one and five years.

4. Should a consequence of the offense described under paragraphs 1, 2, and 3 a death of the person lawlessly deprived of liberty occur, the perpetrator shall be punished by imprisonment term ranging between two and twelve years.

5. The attempt to commit the offenses described under paragraphs 1 and 2 of this article is punishable.

#### Abuse

##### Article 147

(1) Whoever by rough behavior maltreat another, or by doing so causes severe physical or mental suffering of another, shall be fined or punished by imprisonment term not exceeding one year.

(2) If the offense described under paragraph 1 of this article had been committed against a child or a juvenile, the perpetrator shall be punished by imprisonment term not exceeding two years.

### Imperiling Security

#### Article 148

(1) Whoever imperils the security of a person by a serious threat to kill, inflict grievous bodily injury, deprive of freedom or abduct him or a person close to him, or inflict harm by arson, explosion or other generally dangerous deed or means, shall be fined or punished by imprisonment term not exceeding one year.

(2) If the offense described under paragraph 1 of this article had been committed against an official in relation to execution of his duty, or against a number of persons, or within a group or criminal organization, the perpetrator shall be punished by imprisonment term not exceeding three years.

**(...)**

## **Chapter Nineteen**

### CRIMINAL OFFENSES AGAINST SEXUAL INTEGRITY

#### Rape

#### Article 183

(1) Whoever by force or threat of immediate attack upon life and limb, or life or limb of a close person, compels another person to sexual intercourse, or some other sexual act shall be punished by imprisonment term ranging between one and ten years.

(2) If the criminal offense described under paragraph 1 of this article has been committed against a juvenile, or in a particularly brutal or degrading way, or the rape was at the same occasion repeated once or several times by one or several individuals, the act has caused grievous bodily injury or a serious disturbance of health or pregnancy of the female victim, the perpetrator shall be punished by imprisonment term ranging between three and fifteen years.

(3) If the act referred to under paragraphs 1 and 2 of this article has caused death of the victim, the perpetrator shall be punished by imprisonment term exceeding five years.

(4) Whoever forces another to sexual intercourse by serious threat that he would disclose something what would harm his or honor and reputation of a person close to

him, or that he would cause some other evil, shall be punished by imprisonment term between six months and five years.

#### Sexual Violence against a Helpless Person

##### Article 184

(1) Whoever performs sexual intercourse or another sexual act with a person taking advantage of his mental disease, mental underdevelopment, other mental disorders, infirmity, or any other state of that person which makes that person incapable of resisting, shall be punished by imprisonment term ranging between six months and five years.

(2) If the criminal offense described under paragraph 1 of this article is committed against a juvenile, or in a particularly brutal or degrading way, or several acts were committed by several persons, or grievous bodily injury, impairment of health, or pregnancy of the helpless female victim were brought about, the perpetrator shall be punished by imprisonment term ranging between three and fifteen years.

(3) If the offences described under paragraphs 1 and 2 of this article have resulted by death of the victim, the perpetrator shall be punished by imprisonment term exceeding five years.

#### Sexual Intercourse with a Child

##### Article 185

(1) Whoever performs sexual intercourse or another sexual act with a child, shall be punished by imprisonment term ranging between one and eight years.

(2) Whoever commits the act of rape or another sexual action with a child (article 183 ) or with a helpless child (article 184), shall be punished by imprisonment term ranging between three and fifteen years.

(3) In case that the offense described under paragraphs 1 and 2 of this article had been committed by a teacher, educator, guardian, step-father, medical doctor or any other person who had abused his position with respect to the child entrusted to him for teaching, educating, guarding or taking care of, the perpetrator shall be punished by imprisonment term ranging between five and fifteen years.

(4) If the criminal offense described under paragraphs 1, 2, and 3 of this article is committed in a particularly brutal or degrading way, or several acts were committed by several persons on the same occasion, or grievous bodily injury, impairment of health, or pregnancy of the female victim were brought about, the perpetrator shall be punished by imprisonment term exceeding five years.

(5) If the offenses described under paragraphs 1, 2, 3, and 4 of this article had caused death of the child, the perpetrator shall be punished by imprisonment term of at least ten years.

#### Sexual Intercourse by Abuse of Position

#### Article 186

(1) Whoever by abuse of position induces another person who is in a subordinate or dependent position in relation to him into sexual intercourse or another sexual act, shall be punished by imprisonment term not exceeding three years.

(2) A teacher, educator, guardian, adoptive parent, step-father or any other person who by the abuse of his status commits sexual intercourse or another sexual act with a juvenile who has been entrusted to him for the purpose of instructing, educating, custody or care, shall be punished by imprisonment term ranging between six months and five years.

(...)

#### **Trade with humans for the purpose of prostitution**

#### **Article 188**

**(1) Whoever for profit, induces, incites or lures other persons into offering sexual services, , or in some other way enables a person\_ s transfer to another for the purpose of offering sexual services, or whoever takes part in any way in organizing or maintaining offering sexual services, shall be punished by imprisonment term ranging between six months and five years.**

**(2) Whoever, with the intention to acquire personal gain, by use of force or serious threat of force or other significant harm, compels or lures another to provide sexual services, shall be punished by imprisonment term ranging between one and five years.**

**(3) Punishment described under paragraphs 2 of this article shall also be imposed on whoever for the purpose of getting profit, in the manner described under previous paragraph, by abusing the difficult situation originating from the person\_ s stay in another country, compels or induces that person to offer sexual services, or hires in a professional way another person to induce the person.**

**(4) If the offense described under paragraphs above has been committed against a person under twenty one years of age, the perpetrator shall be punished by imprisonment term ranging between one and twelve years.**

**(5) For the purposes of this article, it does not matter whether the person forced, induced or procured had already been prostituting before.**

Abusing children and juveniles for pornographic purposes

#### Article 189

(1) Whoever abuses a child or a juvenile for the purpose of making pictures, audio-visual material or other objects of pornographic content, or abuses a child or a juvenile for a pornographic show, shall be punished with imprisonment term ranging between six months and five years.

The objects and means from paragraph 1 shall be forfeited.

#### Producing and Showing Children Pornography

##### Article 190

(1) Whoever offers, distributes, , shows or renders available through a public display or in any other way writings, pictures, audiovisual and other objects containing children pornography or whoever for that purpose produces, acquires or keeps such materials, or whoever shows a children pornographic show shall be fined or punished by imprisonment not exceeding one year.

(2) If a juvenile under 16 years of age has been involved in committing the offense described under paragraph 1 of this article, the perpetrator shall be punished by imprisonment term not exceeding three years.

(3) If the offenses described under paragraphs above have been committed through the means of public information or through internet, the perpetrator shall be punished with imprisonment term ranging between six months and five years.

(4) For the purposes of this provision, children pornography denominates all pornographic material visually showing: (a) a child or a juvenile engaged in apparently sexual behavior, and (b) realistic pictures presenting a child or a juvenile engaged in apparently sexual behavior.

(5) The objects used in committing the offense from paragraphs 1 and 2 of this article shall be confiscated.

(...)

##### Article 444

This Code enters in to the force on 1.October, 2000.

### **CRIMINAL CODE OF THE BRCKO DISTRICT OF BOSNIA AND HERZEGOVINA**

"Official Gazette" of the Brcko District of Bosnia and Herzegovina, 6/00

(excerpts)

[Full-text version of the Code](#)

NOTE: Changes and Amendments of the Law on Criminal Code of the Brcko District, published in the Official Gazette of the Brcko District of Bosnia and Herzegovina 1/01, are not included in this translation.

(...)

## **CHAPTER XVI**

### **CRIMINAL OFFENSES AGAINST HUMANITY AND INTERNATIONAL LAW**

(...)

#### Establishing Slavery and Transporting Enslaved People

##### Article 161

A person, who in violation of the Rules of International law, enslaves another person or puts him in similar position, or keeps him in such position, buys, sells or hands him over to another person, or mediates in buying, selling or handling over of such a person, or incites another person to sell his freedom or freedom of persons he supports or takes care of, shall be sentenced to prison from one to ten years.

A person who transports enslaved persons or persons in similar positions from one country to another shall be sentenced to prison from six months to five years.

A person who commits the act described in Paragraphs 1 and 2 of this Article against a juvenile shall be sentenced to prison from five to fifteen years.

(...)

## **CHAPTER XVIII**

### **CRIMINAL OFFENSES AGAINST LIBERTY AND RIGHTS OF CITIZENS**

#### Abduction

##### Article 179

A person who commits abduction of a person in order to make him or someone else do or not do something, or suffer, shall be sentenced to prison from one to ten years.

A person who commits the act referred to in Paragraph 1 of this Article against a juvenile or who threatens to deprive the abducted person of life or to inflict a grievous bodily injury upon him in order to achieve goals of the abduction referred to in Paragraph 1 of this Article, or in some other particularly serious way, shall be sentenced to prison from three to fifteen years.

The sentence defined in Paragraph 2 of this Article shall be pronounced against a person who commits the act defined by Paragraph 1 of this Article because of racial, national or religious reasons.

If the perpetrator of the act referred to in Paragraph 1 of this Article is a parent of the child who has been deprived from parental right, or the child has been given to

care and education to the other parent or another person, he shall be sentenced to prison from three months to three years.

The perpetrator of the acts referred to in Paragraphs 1 to 3 of this Article, who voluntarily releases the abducted person before fulfillment of the purpose of committing the abduction, may be punished less severe or may be released from punishment.

Duress

Article 180

A person who uses force or serious threat of force to compel another to do something, not to do something, or to suffer, shall be sentenced to prison up to three years.

(...)

Unlawful Deprivation of Liberty

Article 182

A person who unlawfully imprisons another person, keeps him imprisoned or otherwise restricts his freedom of movement, shall be fined or sentenced to prison up to one year.

The attempt of the offense from Paragraph 1 of this Article shall be punished.

If the unlawful deprivation of freedom lasted for more than fifteen days or if the manner of execution was cruel, or if such treatment of the person who was illegally deprived of freedom caused grave impairment of his health or if some other serious consequences occurred, the perpetrator shall be sentenced to prison from three months up to five years.

If an official person commits the act referred to in Paragraphs 1 and 3 of this Article while on duty, he shall be sentenced for the act referred to in Paragraph 1 of this Article to prison from three months to five years, and for the act referred to in Paragraph 3 of this Article he shall be sentenced to prison from one to eight years.

If a person unlawfully deprived of freedom loses his life as a result of a committed act, the perpetrator shall be sentenced to prison from three to fifteen years.

(...)

Abuse while Performing Duties

Article 184

An official person who, while performing his duties, abuses another person, inflicts grave physical or mental anguish, frightens or insults that person, shall be sentenced to prison from three months to five years.

#### Endangering Safety

#### Article 185

A person who endangers safety of another by serious threat that he will deprive him or a closely related person of life, inflict a serious bodily injury, deprive him of liberty or kidnap him, do harm by setting fire, explosion or by some other action or means generally known as dangerous, shall be fined or sentenced to prison up to six months.

If the offense under Paragraph 1 of this Article was committed against an official in connection with performing of his official duties, or against several persons, or this offense has caused serious disturbance of citizens, or was committed by a group or a criminal organization, the perpetrator shall be sentenced to prison from three months up to five years.

A person who by sneaking, frequent following, or by disturbing, or in other way endangers safety of the spouse, cohabiting partner, or parent of his child, or any other person with whom he has or in the past had a close relationship shall be fined or sentenced to prison up to one year.

(...)

#### CHAPTER XX

#### CRIMINAL OFFENSES AGAINST SEXUAL INTEGRITY

#### Rape

#### Article 206

A person who compels another person to sexual intercourse by use of force or by threat of direct attack on life and body of that person, or life and body of somebody close to that person, shall be sentenced to prison from one to ten years.

If the offense referred to in Paragraph 1 of this Article resulted in pregnancy of the female, grievous bodily injury, serious impairment of health or death of the injured party, or if the offense was committed by several persons, or in an extremely brutal or humiliating way, the perpetrator shall be sentenced to prison from three to fifteen years.

A person who commits the criminal offense referred to in Paragraph 1 of this Article because of differences in ethnic or national origin, race, religion or language, shall be sentenced in accordance with Paragraph 2 of this Article.

## Forced Sexual Intercourse

### Article 207

A person who forces another person to sexual intercourse by use of serious threat of revealing something which would harm the honour or reputation of that person or somebody close to that person, or by use of threat of doing some other serious harm, shall be sentenced to prison from six months to five years.

## Sexual Intercourse with a Helpless Person

### Article 208

Whoever performs a sexual intercourse on another person by taking the advantage of the person's mental illness, mental retardation, mental disorder, helplessness or some other state of that person which makes him incapable to oppose, shall be sentenced to prison from one to eight years.

If the offense referred to in Paragraph 1 of this Article resulted in grievous bodily injury, serious impairment of health or death of the injured party, or if the offense has been committed by several persons, or in an extremely brutal or humiliating way, the perpetrator shall be sentenced to prison from three to fifteen years.

## Sexual Abuse of a Juvenile

### Article 209

A person who performs a sexual intercourse on a juvenile under fourteen, shall be sentenced to prison from six months to five years.

A person who commits the offense referred to in Paragraph 1 of this Article to a helpless juvenile under fourteen, or by use of force or by threat of direct attack on life and body, shall be sentenced to prison from three to fifteen years.

If the offense referred to in Paragraphs 1 and 2 of this Article resulted in the pregnancy of a juvenile female person, griveous bodily injury, severe impairment of health, or if the offense was committed by several persons or in a particularly brutal or humiliating way, the perpetrator shall be sentenced to prison from five to fifteen years.

If the criminal offense referred to in Paragraphs 1 and 2 of this Article resulted in the death of a juvenile, the perpetrator shall be sentenced to prison for at least ten years or long-term imprisonment.

## Sexual Intercourse through Abuse of Official Position

### Article 210

A person who abuses the position to compel to sexual intercourse another person who is in a dependent or subordinate position, shall be sentenced to prison from three months to three years.

A teacher, tutor, guardian, adoptive parent, stepfather or other person who abuses his position and performs a sexual intercourse on a juvenile over the age of fourteen entrusted to him for the purpose of teaching, education, guarding or care, shall be sentenced to prison from six months to five years.

If the offense referred to in Paragraph 2 of this Article has been committed to the juvenile under fourteen, the perpetrator shall be sentenced to prison from one to ten years.

#### Pandering

##### Article 211

A person who panders a juvenile, shall be sentenced to prison from three months up to three years.

A person who enables a sexual abuse of a juvenile, shall be sentenced to prison up to three years.

A person who panders another person for a reward, or a person who enables a sexual abuse for a reward, shall be sentenced to prison up to three years and fined.

#### Intermediation in Performing Prostitution

##### Article 212

A person who recruits, induces, encourages or lures female persons to prostitution, or whoever in any sense participates in handing a female person over to another for the purpose of prostitution, shall be sentenced to prison from three months to three years.

If the offense referred to in Paragraph 1 of this Article was committed against a juvenile person, or by use of force, threat or deception, the perpetrator shall be sentenced to prison from one to ten years.

If the offense referred to in Paragraphs 1 and 2 of this Article was committed against a child, the perpetrator shall be sentenced to prison from two to twelve years.

### CHAPTER XXI

#### CRIMINAL OFFENSES AGAINST MARRIAGE AND FAMILY

##### Abduction of a Juvenile

##### Article 217

A person who unlawfully keeps the juvenile or abducts him from parents, adoptive parent or guardian, or from the institution or persons to whom the juvenile is entrusted, who keeps the juvenile away or prevents the juvenile from being with the person who has the right to him, or hinders the execution of the decision entrusting the juvenile to a certain person, shall be fined or sentenced up to one year of prison.

If the motive for committing the offense referred to in Paragraph 1 of this Article was to achieve an improper benefit, or some other base motive, or if health, upbringing, or education of the juvenile was consequently severely endangered, the perpetrator shall be sentenced to prison from three months to five years.

The perpetrator of the offense referred to in Paragraphs 1 and 2 of this Article who voluntarily hands over the juvenile to a person, or to an institution to whom the juvenile is entrusted, or enables the execution of the decision on entrusting the juvenile, may be released from punishment by the court.

In pronouncing the suspended sentence for the offenses referred to in Paragraphs 1 and 2 of this Article, the court may impose the obligation and specify the deadline to the perpetrator to hand over the juvenile to the person or institution to which the juvenile is entrusted or to enable the execution of the decision by which the juvenile is entrusted to a certain person or institution.

(...)

## **LAW ON SPECIAL WITNESS IDENTITY PROTECTION IN CRIMINAL PROCEEDINGS IN THE FEDERATION OF BOSNIA AND HERZEGOVINA**

**As amended on 2 March 2001**

### **Article 1**

This Law sets the rules for a witness hearing under special conditions, aiming for complete protection of life, body, and freedom of a person and his/her close family in criminal processes in which a sentence of a long-term prison can be issued, or in any other criminal acts for which a council of judges of the Supreme Court of the Federation of Bosnia and Herzegovina (thereof Federation Supreme Court) as per the Article 2, paragraph 1 of this Law, deems appropriate.

### **Article 2**

(1) When requested by the court in charge of the case, or an authorised prosecutor, or an accused and his/her defense lawyer, a witness can be heard by a Federation Supreme Court Council of Judges, comprised of three Supreme Court judges.

(2) The request to hear a witness as outlined in the previous paragraph, is to be submitted to the President of the Supreme Court. The request shall contain data on a person's identity who is to be heard as a witness; a criminal case to which the witness-hearing is to serve; facts clearly indicating danger to life, body or freedom of the person and his/her close relatives in a case of testifying that calls for a necessary application of witness protection envisioned by this Law; and circumstances about which the witness is to be examined.

(3) The office which submits the request as per Paragraph 1 of this Article, shall submit it in a closed envelope, clearly indicating that the envelope contains a request to hear a witness as defined by this Law, and forward it to the President of the court in charge of the criminal case, or that should be in charge of the criminal case once it starts. The President of this court shall then without delay, and without getting familiar with what is in the envelope, forward this envelope to the President of the Federation Supreme Court.

(4) The organs of internal affairs can inform a prosecutor, who has jurisdiction, about the need for the special identity protection of a person who is to be heard as a witness, and the need for protection as stipulated by this Law.

### **Article 3**

1. Upon receiving the request to hear a witness, the President of the Federation Supreme Court shall forward the case to a council of three judges, who will then act on the request.
2. The chairman of the council shall schedule a council session to be held within the following 15 days.

(3) When requested by the chairman of the council, the council shall receive documentation of the criminal case related to the witness hearing request.

### **Article 4**

(1) Based on the facts outlined in the request for witness-hearing and the assessment of the criminal case documents in which the witness-hearing is requested, the Council shall first decide whether there are circumstances justifying a witness-hearing as specified in this Law.

(2) If the Council deems the circumstances as unjustified, it shall inform the requester about the decision through the President of the Court, as per Article 2, Paragraph 4 of this Law.

(3) If the Council decides that the circumstances justify the hearing of a witness in accordance with this Law, it shall schedule the date, time and place of the hearing.

(4) In case the members of the Council disagree about the circumstances justifying the hearing of the witness as per this Law, the members of the Council shall vote on this, and the majority vote shall be implemented.

(5) With the approval of the Supreme Court President, a witness can be heard outside of the Supreme Court building.

### **Article 5**

(1) Before the hearing, a witness shall be informed about a warning from Section 6, Chapter XVIII of the Criminal Code Procedure (Official Gazette F BiH, No: 43/98, dated 20.11. 1998), and shall be informed that he/she shall be heard as a specially protected witness; that his/her identity shall not be revealed to individuals other than the President of the Federation Supreme Court, the members of the Council and

a secretary; and that he/she shall not appear in person before the court in charge of the criminal case.

(2) The witness is not obliged to answer questions which would indicate his/her identity, or the identities of his/her close relatives.

(3) The Council shall hear a witness in details on the circumstances suggested by the requester, as well as on all other circumstances which members of the Council deem necessary.

#### **Article 6**

(1) The record of the hearing will not contain data on the witness's identity, but will contain a pseudonym determined by the Chairman of the council, which shall be used during the trial and in the decisions of the court.

(2) The chairman, the council members, and a secretary shall sign the record of the hearing.

(3) The record of the hearing shall be promptly forwarded to the President of the court in charge of the criminal case, and the investigative judge or the chairman of the council of judges in charge of the criminal case shall inform all parties in the case that a hearing of a protected witness has taken place.

(4) In the main hearing or a hearing before the second instance court, the court shall read the witness testimony without the prior agreement of the parties in the case and a defense lawyer, and cannot call the witness for a direct hearing.

#### **Article 7**

(1) After becoming familiar with a witness's testimony, the court can, either pursuing an official duty or following the authorized prosecutor's suggestion, or the suggestion of the defense and the accused, propose to the Federation Supreme Court to hear a witness on additional questions or to clarify previously given testimony. In this case, the case documents shall be given back to the Supreme Court Council, which will hear the witness within 15 days from the date when the request for an additional hearing was received, after which the case documents and hearing record will be promptly forwarded back to the court in charge of the case.

#### **Article 8**

When the witness is heard as prescribed by this Law, the verdict cannot be exclusively based on the witness testimony only.

#### **Article 9**

(1) All persons who are present during the witness hearing, or participating in organization of the witness hearing, or persons who obtain information on the witness identity, are obliged to keep confidential the identity of the witness, place, and time of the hearing, and at any moment be aware of the need to provide full security to the witness.

(2) The Judicial Police Unit of the Federation Supreme Court shall conduct technical tasks in the witness protection.

(3) The President of the Federation supreme Court shall pass a special bill on filing witness-hearing records in court registries and keeping witness-hearing cases in Supreme Court archives.

#### **Article 10**

The Criminal Procedure Code is applicable to all other situations that are not envisioned by this Law.

Office of the High Representative

## **LAW ON PROTECTION OF WITNESSES UNDER THREAT AND VULNERABLE WITNESSES**

### **CHAPTER I**

#### **GENERAL PROVISIONS**

##### **Article 1**

###### **Purpose**

This Law regulates the measures to provide for the protection of witnesses under threat and vulnerable witnesses in criminal proceedings conducted by the Court of Bosnia and Herzegovina (hereinafter: the Court) or the Chief Prosecutor of Bosnia and Herzegovina (hereinafter: the Prosecutor) in criminal offences over which the Court has jurisdiction.

##### **Article 2**

###### **Definitions**

Terms used in this Law shall have the meaning that follows from the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: CPC BiH), the Criminal Code of Bosnia and Herzegovina and the Law on the Court of Bosnia and Herzegovina, unless otherwise stipulated by this Law.

##### **Article 3**

###### **Witnesses under threat and vulnerable witnesses**

1. A witness under threat is a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony.

2. Family in paragraph 1 of this Article means persons allowed to refuse to testify under the CPC BiH.
3. A vulnerable witness is a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive, and a child and a juvenile.
4. A protected witness is a witness heard according to the provisions of Articles 14 through 23 of this Law.

#### **Article 4**

##### **Application of witness protection measures**

The Court may order such witness protection measures provided for by this Law as it considers necessary, including the application of more than one measure at the same time. When deciding which of the witness protection measures is to be applied the Court shall not order the application of a more severe measure if the same effect can be achieved by application of a less severe measure.

#### **Article 5**

##### **Informing witnesses**

1. The Court, the Prosecutor and other bodies participating in the proceedings shall, ex officio, advise a witness who may be under threat or a vulnerable witness of the witness protection measures available under this Law.
2. A witness under threat and a vulnerable witness shall be entitled to legal aid in accordance with the law.

### **CHAPTER II**

#### **WITNESS PROTECTION MEASURES**

##### **Article 6**

###### **Access to psychological and social assistance and professional help**

During the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall ensure that the body responsible for issues of social care is aware of the involvement of the vulnerable witness in the proceedings and shall enable the assistance of this body as well as psychological support to the witness, including the presence of appropriate professionals at examination or hearings.

##### **Article 7**

###### **Order of presentation of evidence at the main trial**

In the course of the main trial, the Court may hear witnesses under threat and vulnerable witnesses at the earliest possible time and shall have the possibility of hearing those witnesses at the main trial in a different order from the one stipulated by the CPC BiH.

## **Article 8**

### **Examination**

1. The judge or the presiding judge shall exercise an appropriate control over the manner of the examination of witnesses when a vulnerable witness is examined, particularly to protect the witness from harassment and confusion.
2. In exceptional circumstances, the Court may, with the consent of the parties and the defense attorney, hear a vulnerable witness by posing questions directly to the witness on behalf of the parties and the defense attorney.

## **Article 9**

### **Testimony by using technical means for transferring image and sound**

When determining whether there are justified reasons for examining a witness using technical means for transferring image and sound in such manner as to permit the parties and the defense attorney to ask questions although not in the same room as the witness, the need to provide for the protection of witnesses under threat and vulnerable witnesses shall also be taken into account.

## **Article 10**

### **Removal of the accused**

1. Where there is a justified fear that the presence of the accused will affect the ability of the witness to testify fully and correctly, the Court may, either ex officio or upon the motion of the parties or the defense attorney, and after hearing the other party and the defense attorney, order that the accused be removed from the courtroom.
2. The accused shall be enabled to follow the testimony through technical means for transferring image and sound, or the testimony shall be recorded and presented to the accused.
3. The defense attorney shall be present at the hearing. After the testimony has been presented to the accused but before the witness is released, the defense attorney and the accused shall have the opportunity to consult.
4. A decision pursuant to paragraph 1 of this Article is subject to appeal by the parties and the defense attorney. The Panel of the Appellate Division shall consider the appeal within 72 hours following the day the appeal is received.

## **Article 11**

### **Exception from the imminent presentation of evidence**

When determining whether the records on testimony given during the investigative phase may be read or used as evidence at the main trial, the Court shall also take into account the need to provide for the protection of a witness under threat who would expose himself or his family to great personal danger and the protection of a vulnerable witness who would expose himself to significant emotional distress by appearing at the main trial.

## **Article 12**

### **Limitation of the right of an accused and his defense attorney to inspect files and documentation**

1. In exceptional circumstances, if revealing some or all of the personal details of a witness or other details would contribute to identifying a witness, and would seriously endanger the witness under threat, the preliminary proceedings judge may, upon the motion of the Prosecutor, decide that some or all of the personal details of a witness, may continue to be kept confidential after the indictment is issued.
2. The prosecutor shall immediately notify the accused and his defense attorney of the submission of the motion referred to in paragraph 1 of this Article.
3. If possible, the preliminary proceedings judge shall hear the accused and his defense attorney prior to taking the decision referred to in paragraph 1 of this Article. The decision of the preliminary proceedings judge must be taken within 72 hours following the day the motion is received.
4. No appeal shall be permissible against the decision referred to in paragraph 1 of this Article.
5. If the preliminary proceedings judge was unable to hear the accused and his defense attorney prior to the decision referred to in paragraph 1 of this Article, the Court shall hear them immediately upon receiving the indictment.
6. The Court may revoke the decision referred to in paragraph 1 of this Article, either ex officio or upon the motion of the accused or his defense attorney.
7. Upon the motion of the Prosecutor, the Court shall revoke the decision referred to in paragraph 1 of this Article.
8. The Court shall always bear in mind the need to release, as soon as possible, the information to which the decision referred to in paragraph 1 of this Article pertains. Sufficient details shall be released for the defense to prepare for examination of a witness. The information must be released at the latest when the witness testifies at the main trial.

## **Article 13**

### **Additional measures to provide for the anonymity of a witness**

1. In exceptional circumstances, where there is a justified fear that if some or all of the personal details of the witness are released it would seriously endanger the personal security of a witness or his family, and the danger would persist after the testimony is given, the Court may, either ex officio or upon the motion of the parties or the defense attorney, decide that the personal details of the witness shall remain confidential for such period as may be determined to be necessary, but in any event not exceeding thirty years, following upon the day the decision became final.
2. The Court may, after hearing the parties and the defense attorney, decide that the anonymity of the witness be preserved by allowing the witness to testify behind a screen or utilizing electronic distortion of the voice of the witness or the image of the witness, or both the image and the voice, by using technical means for transferring image and sound.

3. The Court may, at any time, revoke the decision from paragraph 1 of this Article, either ex officio or upon the motion of the parties or the defense attorney.

#### **Article 14**

##### **Witness protection hearing**

In exceptional circumstances, where there is a manifest risk to the personal security of a witness or the family of the witness, and the risk is so severe that there are justified reasons to believe that the risk is unlikely to be mitigated after the testimony is given, or is likely to be aggravated by the testimony, the Court may conduct a witness protection hearing in accordance with Articles 15 through 23 of this Law.

#### **Article 15**

##### **Motion for a witness protection hearing**

1. A motion for a witness protection hearing may be made by:

- a. a judge, the Presiding Judge or the judge of the Panel;
- b. the Prosecutor; or
- c. the suspect or the accused or his defense attorney.

1. The motion must comprise:

- a. information establishing the identity of the witness and the proceedings in which the witness is to testify;
- b. facts indicating that the personal security of the witness or the family of the witness is at risk through his participation in the proceedings; and
- c. circumstances about which the witness is to be examined.

1. If the motion is made by the Prosecutor or the suspect or the accused or his defense attorney, the motion must be submitted to the Court in a sealed envelope clearly indicating on its outside that it is a motion for witness protection hearing under Articles 14 through 23 of this Law.

#### **Article 16**

##### **Determination of the need for hearing**

1. On receipt of the motion for a witness protection hearing, the Panel of three judges shall, without delay and not later than within 15 days following the day the motion is received, determine whether such a hearing is justified.

2. The Court shall base its determination on:

- a. the facts in the motion for hearing of a protected witness; and
- b. the documentation before it of the criminal case.

#### **Article 17**

### **Appeal against the decision of the Panel**

(1) An appeal against a decision pursuant to Article 16 of this Law shall be allowed.

(2) The Panel of the Appellate Division shall consider the appeal referred to in paragraph 1 of this Article without delay and shall deliver its decision no more than 15 days from the day the appeal is received.

### **Article 18**

#### **Scheduling of the Hearing**

After the decision to hold a witness protection hearing becomes final, the presiding judge of the Panel shall schedule the date, time, and place of the hearing.

### **Article 19**

#### **Hearing**

1. A witness protection hearing is conducted by the Panel referred to in paragraph 1 of Article 16 of this Law in accordance with the provisions of the Criminal Procedure Code of Bosnia and Herzegovina on the hearing of witnesses, unless otherwise stipulated by this Law.
2. The witness shall be informed that
  - a. he will be heard as a protected witness;
  - b. his identity shall not be revealed to any person other than the members of the Panel and the minute taker of the Panel;
  - c. he shall not appear in person before the Panel at any hearing other than the witness protection hearing; and
  - d. he is not obliged to answer questions that would indicate his identity or the identity of the members of his family.

(3) The Panel shall hear a witness in detail on the circumstances suggested by the party making the motion and on all other circumstances the Panel considers necessary.

### **Article 20**

#### **Record**

1. The record of the witness protection hearing shall not contain information relating to the identity of the protected witness.
2. The record shall employ a pseudonym for the witness, as determined by the Panel, which shall be used during the criminal proceedings and in the decisions of the Court.
3. The members of the Panel and the minute taker of the Panel shall sign the record of the witness protection hearing.
4. The Court shall take measures to ensure the confidentiality of the record by:

- a. keeping the record separate from all other documentation of the criminal case in a secure place;
- b. returning the record to the secure place after its use at the appropriate hearing in the criminal procedure and when the decision has become final; and
- c. providing for long-term archiving of the record in a manner that limits access to the document only to the President of the Criminal Division for such period as may be determined to be necessary, but in any event not exceeding thirty years, following upon the day the decision became final.

## **Article 21**

### **Use of a recorded testimony**

1. At the main trial of the criminal case, the Court shall have the testimony of the protected witness read out loud from the record of the witness protection hearing.
2. The judge or the Panel shall not need the agreement of the parties in the case to have the testimony read out loud.
3. With the consent of the Prosecutor and the accused and his defense attorney, the judge or the Panel may waive the reading of the testimony out loud.
4. The witness may not be called to give testimony other than the testimony at the witness protection hearing.

## **Article 22**

### **Additional Questions**

1. The Court may, either ex officio or upon the motion of the Prosecutor or of the accused or his defense attorney, decide that the protected witness be heard on additional questions:
  - a. to clarify previously given testimony; or
  - b. relating to information that was not covered by the previously given testimony and are material to the case.
1. The Panel shall conduct an additional witness protection hearing at which the witness is asked the additional questions and the answers are recorded and read out loud in the manner provided for in Article 21 of this Law.

## **Article 23**

### **Verdict Requires Other Evidence**

The Court shall not base a conviction solely on evidence provided according to Articles 11 or 14 through 22 of this Law.

**CHAPTER III**  
**OTHER PROVISIONS**

**Article 24**  
**Confidentiality**

1. Information that a person who performs official duties in connection with witness protection measures acquires in the course of those duties relating to witness protection measures, constitutes an official secret.
2. The Court or the Prosecutor shall warn persons who are present at hearings, or who are otherwise given possession of such secret information in the exercise of their official or professional duties, that the unauthorised disclosure of such information is a criminal offence.
3. A person who performs official duties in connection with witness protection measures and who acquires information referred to in paragraph 1 of this Article cannot be required in any proceeding in any court, tribunal, or commission of inquiry, however described, to produce any document or divulge or communicate any matter relating to that information.

**Article 25**  
**Rules of Procedure**

The Court shall adopt rules of procedure ensuring the appropriate use of the means to protect witnesses stipulated in this Law, and guaranteeing that witnesses are afforded other appropriate protection or care as provided for by the laws of Bosnia and Herzegovina as appropriate.

**CHAPTER IV**  
**TRANSITIONAL AND FINAL PROVISIONS**

**Article 26**  
**Applicability to ongoing criminal proceedings**

This Law applies as appropriate also in criminal proceedings that are ongoing at the time this Law comes into force.

**Article 27**  
**Entry into force of the Law**

This Law shall enter into force on March 1, 2003.

### **Law on Public Order and Peace**

Official Gazette of the RS No. 10/98, 31 March 1998

(excerpts)

(...)

#### **Article 2**

The public order and peace is violated if:

[...]

15. A person prostitutes herself or leases the premises or makes premises available to somebody for the purpose of carrying out the prostitution;

16. A person induces somebody to prostitute or mediates in carrying out of prostitution.

(...)

#### **Law on Movement or Stay of Aliens and Asylum (2002)**

- Posted: 07 May 2003
- Country: Bosnia and Herzegovina
- Document type: Primary legislation

- Also under this topic:

Law on Movement or Stay of Aliens and Asylum (2002)

#### **LAW ON MOVEMENT OF STAY OF ALIENS AND ASYLUM**

Based on Article IV. 4. a) of the Constitution of Bosnia and Herzegovina, the Parliamentary Assembly of Bosnia and Herzegovina, at the session of the House of Representatives held on \_\_\_\_\_2002 and at the session of the House of Peoples held on \_\_\_\_\_2002, adopted the

## **CHAPTER I GENERAL PROVISIONS**

### **Article 1**

(Subject-matter of the Law)

1. This Law shall regulate conditions and procedure for entry and stay of aliens in Bosnia and Herzegovina (hereinafter referred to as: BiH), reasons for refusal of entry and stay, reasons for cancellation of stay and expulsion of aliens from the territory of BiH, procedure for submission of requests for asylum, approval of asylum and cessation of asylum in BiH, competency of authorities relevant for implementation of this Law, as well as other issues related to asylum, stay and movement of aliens in BiH.

### **Article 2**

(Bodies responsible for implementation of the Law)

1. In accordance with this Law and by-laws passed on the basis of this Law, the procedure shall be carried out and relevant decisions taken by the:

- a) Council of Ministers of BiH,
- b) Ministry for Human Rights and Refugees of BiH (hereinafter referred to as: the Ministry),
- c) Ministry for Foreign Affairs of BiH (hereinafter referred to as: MFA) and diplomatic and consular representations abroad (hereinafter referred to as: DCR),
- d) State Border Service (hereinafter referred to as: SBS),
- e) Entity Ministries of Internal Affairs, notably: cantonal ministries of internal affairs of BiH Federation, public security stations of the Ministry of Internal Affairs of the Republika Srpska and the Police of Brcko District (hereinafter referred to as: OIA)

### **Article 3**

(Office for aliens and asylum)

1. The Office for Aliens and Asylum shall be established within the Ministry for Human Rights and Refugees, with its departments for aliens and asylum (hereinafter referred to as: the Department) as structural units detached from the seat of the Ministry, for the purpose of applying provisions of this Law.

2. The Office for Aliens and Asylum shall be administered by the director appointed by the Council of Ministers at the proposal of the ministers of the Ministry.

3. The Ministry shall by way of a by-law specify the number of these departments, their territorial jurisdiction and structure of postings, as well as other issues relevant for their operation.

#### **Article 4**

(Definitions)

1. For the purpose of this Law, the term:

an alien refers to any person who is not a citizen of BiH or is stateless,

a stateless person refers to any person who is neither a citizen of BiH, nor a citizen of any other state pursuant to legislation of that state,

a place of habitual residence of an alien refers to his/her country of origin or the country of his/her permanent residence,

a valid travel document refers to a passport issued by the competent foreign authority recognised in BiH and valid through and space, as well as an ID Card or another document with a photograph authorising its bearer to travel abroad, which has been recognised by an international treaty to which BiH is a Contracting Party or by the decision of the Council of Ministers of BiH, as well as a travel document issued to an alien in accordance with the present Law,

an asylum applicant refers to any alien seeking asylum regardless of whether the alien has sought asylum at a border crossing or after having entered the territory of BiH. This category includes persons who have expressed fear of torture, inhuman or degrading treatment, or of any other threat to their life or freedom in the country where they are coming from.

#### **Article 5**

(Freedom of movement of aliens)

1. Entry, stay and exit of aliens may be restricted under the terms stipulated by this Law.

Under the conditions specified by this Law, aliens staying in BiH shall enjoy the right to freedom of movement within the country and freedom of choosing the place of their residence, unless regulated otherwise in this or other special laws.

#### **Article 6**

(Prohibition of discrimination)

1. There must be no discrimination expressed towards aliens on any grounds whatsoever, including sex, race, colour of skin, language, religion, political and other views, national and social origin, status of a national minority, property status, age, psychological or physical disability, status attained by birth or some other status.

#### **Article 7**

(Obligation of compliance with regulations)

1. Aliens in BiH must respect the constitutional order of BiH and comply with regulations and decisions of the authorities of the State, Entity and Brcko District of BiH.

### **Article 8**

(Rights during the proceedings before the State bodies)

Aliens must, within a prescribed deadline, present to competent authorities relevant documents, information and attestations required for conducting the procedure related to residence permits, as defined by the present Law.

At all stages of the procedure aliens shall be informed of the rights and obligations that ensue from the present Law, of the right to appeal, of potential claims for damages as well as of all formalities necessary to have their rights recognised.

If an alien does not know the language used during the procedure, the body that conducts the procedure is obligated to give the alien an opportunity to follow the course of the proceedings through an interpreter.

### **Article 9**

(Proof of identity)

1. During their stay in the territory of BiH, aliens must possess documents for the purpose of verifying their identity and their right to enter and stay in BiH, and present them to the competent authority at their request.

## **CHAPTER II ENTRY AND STAY**

### **Part A. General entry conditions**

#### **Article 10**

(Crossing the border)

Aliens may cross the BiH border only at the border posts open to international traffic or at those meant for circulation between two States, unless agreements between BiH and neighbouring States provide otherwise.

An alien wishing to enter or leave BiH shall be subject to control by an officer authorised to control the crossing of the state border, and is obliged to subject both his/her luggage and his/her vehicle to that control.

At the request of the officer referred to in paragraph 2 of this Article, an alien wishing to enter or leave BiH shall be obligated to honestly and fully answer all questions and hand over all documentation, as well as to fill out additional questionnaires, if so requested by the officer.

#### **Article 11**

(General entry conditions)

1. An alien may be granted entry to BiH provided that he/she has fulfilled the following requirements:

- a) that he/she is in possession of a valid passport or a travel permit,
- b) that he/she is in possession of a valid visa for entry and stay or for transit through the territory of BiH, or a residence permit as stipulated in this Law,
- c) that he/she has the means to support himself/herself during his/her entry, stay and exit from the country, including health care means, as stipulated in Article 14 of this Law,
- d) that he/she is in possession of an entry visa, if so required, of a neighbouring country of his/her destination, or the country the territory of which he/she is transiting through,
- e) that no expulsion measure from the territory of BiH has been imposed against him/her, as long as the imposed measure is in force,
- f) that his/her presence in the territory of BiH does not constitute a threat to national security, rule of law and public order of BiH.

The Council of Ministers of BiH may prescribe special conditions for entry of aliens, when so being required by reasons of national security and rule of law or by other reasons stemming from international obligations and relations.

## **Article 12**

(Entry under special conditions)

An entry may be allowed to an alien even if he/she does not fulfil the conditions referred to in Article 11 items a) and b) of this Law, if so being stipulated by an international treaty to which BiH is a Contracting Party or by a special regulation of the Council of Ministers of BiH.

## **Article 13**

(Exemption from visa requirement)

1. At the proposal of MFA, the Council of Ministers of BiH shall specify the countries the citizens of which shall not be required to have a visa for entering BiH (hereinafter referred to as: non-visa countries), as well as the countries the citizens of which may enter BiH with a travel document other than a passport. The Council of Ministers of BiH shall also be responsible to exempt persons whose refugee status has been recognised by other countries from visa requirement.

2. Aliens who are according to this Law exempt from visa requirement to enter the territory of BiH shall be entitled to stay in the country (hereinafter referred to as: non-visa residence) for a period of not longer than three months, unless a shorter period has been designated by an international treaty to which BiH is a Contracting Party or by a special regulation of the Council of Ministers of BiH, passed in accordance with Article 12 of this Law.

3. Aliens are exempt from visa requirement to enter BiH if their permanent or temporary residence permit sticker has been affixed in their passport, for as long as that residence permit is valid.

## **Part B. Means of subsistence.**

### **Article 14**

(Means of subsistence)

Evidence of the existence of means of subsistence needed to support an alien referred to in Article 11 paragraph 1 item c) shall be brought through either:

possession of cash, in the local or foreign convertible currency,

possession of forms of non-cash payment accepted by the banking system of BiH,

a letter of guarantee or a letter of invitation,

presentation of evidence of board and lodgings paid for through travel agencies, or possession of other reliable means.

### **Article 15**

(Letter of guarantee)

A letter of guarantee needed for an alien to enter BiH may be issued by a citizen of BiH or by an alien who has been granted permanent residence in BiH. A letter of guarantee may be accepted as verification of possession of means of subsistence, provided that it contains the statement that the guarantor undertakes to provide lodging, costs of medical treatment and to ensure support and other expenses related to stay of that alien in BiH, as well as costs of his/her departure from BiH.

A statement referred to in previous paragraph must be certified by the competent administrative body in the place of residence of the guarantor.

### **Article 16**

(Letter of invitation)

An invitation is a form of a letter of guarantee whereby a domestic or foreign legal entity registered in BiH is inviting a foreign partner to a business visit within a designated period of time.

The invitation shall include the statement on covering the costs referred to in Article 15 of this Law.

The invitation must be certified by the Chamber of Commerce of BiH and by the competent administrative authority in the place where the guarantor is seated.

### **Article 17**

(Work permit)

When an alien wishes to enter BiH for the purpose of work or other taxable activity returning profits, entry may only take place when he/she has a work permit or its equivalent, in accordance with special regulations regulating the field of employment.

An alien who possesses a work permit shall be deemed to fulfil the requirements relating to the possession of means of subsistence.

### **Article 18**

(Departure guarantee)

Evidence of the existence of a repatriation guarantee can be brought through a title of transport valid for return or continuation of the journey as well as through the legal possession of an appropriate means of transport by the concerned alien.

Whenever necessary, the possession of various visas authorising the alien to continue his/her trip onto the territory of another State may be required.

### **Article 19**

(Evidence of the existence of means of subsistence).59

Aliens who are under this Law exempt from visa requirement to enter the territory of BiH, must possess documents and confirmations referred to in Article 14 of this Law and present them when entering BiH to a person authorised to control the crossing of the State border at his/her request.

The application for issuance of a visa must be submitted by aliens who are required to have a visa, a letter of confirmation and documentation referred to in Article 14 of the Law.

Aliens whose BiH temporary or permanent residence permit has been entered in their valid travel document are not obliged to possess letters of confirmation and documentation referred to in Article 14 of the Law when entering BiH, for as long as their residence permit is valid.

## **Part C. Refusal of entry and competencies**

### **Article 20**

(Refusal of entry)

1. An alien may be refused entry in BiH even if he/she fulfils entering requirements prescribed in Article 11 of this Law, if:

- a) while entering the country he/she fails to present requested information to the authority authorised to control the State
- b) border crossing or fails to complete certain queries or deliberately provides false information about his/her right to enter BiH or deliberately avoids such situations, or
- c) there are reasonable grounds to believe that he/she will be performing activities for which a work permit is required, without possessing such a permit, particularly with regard to an alien who has already been refused entry in BiH for the above mentioned reasons.

### **Article 21**

(Competency and appeal)

Decisions on refusal of entry are taken by the SBS at the border:

An appeal against the decision on refusal of entry may be lodged with the Ministry within 15 days from the notification of the decision.

An appeal does not stay the execution of the decision.

## **CHAPTER III ENTRY AND RESIDENCE PERMITS AND TRAVEL DOCUMENTS**

Article 22

(Entry permits)

Except in case referred to in Article 12 of this Law, permits authorising an alien to enter and stay in BiH are as follows:

- a) visa,
- b) temporary residence permit,
- c) permanent residence permit.

### **Article 23**

(Visas)

A visa is a permit authorising entry to and stay on the territory of BiH, as well as transit through the territory of BiH, for a limited period of time.

An alien shall be issued a visa if he/she fulfils requirements referred to in Article 11, items a), c), d), e) and f) of this Law and if he/she has not been registered as an international offender in the records of the competent authorities.

The visa shall authorise stay for the period defined therein, but for not more than 90 days. Visas for single or double entry shall be valid for not more than 90 days.

Visas permitting multiple entries shall be valid for not more than one year, but each period of stay on the territory of BiH shall not be longer than 90 days.

Within the period of validity of the visa, the period of stay defined in a single entry visa may be extended for justified reasons.

The visa shall be extended by issuing a new visa in accordance with the rules relevant for issuance of the visa, for no more than 90 days following the date of entry.

#### **Article 24**

(Visa issuance)

Visas shall be applied for in advance.

Visas shall be issued by BiH DCRs.

An application for visa may be, for exceptional, justified reasons of humanitarian nature, made before entry at the border. Such an application shall be decided upon by SBS.

A decision on visa extension in the sense of Article 23 paragraphs 5 and 6 shall be made by SBS, at the proposition of MFA.

No appeal shall be allowed against the decision on issuance or extension of the visa.

#### **Article 25**

(By-law)

The Ministry shall by way of a by-law further specify requirements for entry of aliens in BiH, issuance and extension of visas, types of visas, form and content of visa stickers, as well as other issues relevant for entry of aliens in BiH.

#### **Article 26**

(Visa cancellation)

1. A visa shall be cancelled if it has been subsequently established that it was issued in contravention to requirements provided for by this Law.

2. The visa shall be cancelled based on the final and binding court decision or on the decision on visa cancellation taken by MFA.

3. The visa shall be cancelled by the competent Department by affixing in the travel document of an alien a stamp reading "cancelled" across the visa sticker.

4. If, during the control of entry of an alien at the border, SBS determines that his/her visa has been forged, they are obligated to cancel the visa immediately.

5. No appeal is allowed against the decision on visa cancellation.

## **Article 27**

(Visa revocation)

1. A visa shall be revoked under the conditions as follows:

a) where an alien does not comply with the constitutional order and regulations of BiH, its Entities and Brcko District of BiH, or has taken activities in breach of the constitutional system or security of BiH, or where an alien is a member of an organisation that has taken such activities,

b) where an alien has jeopardised BiH national interests by his/her actions in a way that he/she has been engaged in smuggling of fire arms, explosives, radioactive materials or narcotics or has been engaged in unauthorised transport and trade of materials and equipment for production of arms or other weapons of mass destruction or has produced or possessed narcotics or psychotic substances intended for sale, or has been a member of an organisation included in the stated activities,

c) where an alien has organised illegal entry to, stay on or exit from BiH of individuals or groups or has organised or participated in trafficking of human beings,

d) where an alien has breached or has attempted to breach regulations concerning the crossing of the state border of BiH, regardless of whether the breach has occurred at entry to or exit from Bosnia and Herzegovina,

e) where circumstances on the basis of which the visa was issued have changed to such an extent that they would presently exclude any possibility to issue the visa,

f) where an alien has intentionally provided incorrect data or intentionally disguised circumstances of relevance for visa issuance,

g) where an alien has performed activities for which a work permit is required, without possessing such a permit,

h) where the presence of an alien constitutes threat to public order and national security of BiH.

2. The existence of an international warrant of arrest and/or of a final and binding court decision shall be taken as the basis for establishment of the reasons for visa revocation under items a), b), c) and d) of previous paragraph.

## **Article 28**

(Competency and appeal)

1. The decision on visa revocation shall be issued by the Department, at the request of the court, OIA or SBS.
2. An appeal against the decision referred to in paragraph 1 of this Article may be lodged with the Ministry within 15 days as of the date of notification of the decision.
3. A visa holder cannot be expelled or forcibly removed from the territory of BiH pending the expiration of the deadline provided for appeal and/or pending the procedural decision upon the appeal.

## **Article 29**

(Travel permit)

1. A travel permit for aliens is a travel document valid for one single trip abroad and shall be issued to an alien:

a) whose valid travel document has got lost or destroyed and cannot be replaced, while the country of his/her citizenship neither has their DCR in BiH, nor their interests have been represented by another state, in order to give that alien an opportunity to return to the country of his/her habitual place of residence,

b) who has been granted asylum or a residence permit on humanitarian grounds or who has enjoyed protection based on Article 84 of this Law in order to give him/her an opportunity to return to his/her native country or the country of his/her habitual residence or into the third country which has admitted that person,

c) who has been released from BiH citizenship for the purpose of going abroad.

2. A travel permit for aliens may also be issued in other cases if there exist justified reasons for such an action.

A travel permit for aliens shall be issued by the Department to which the loss or destruction of the travel document has been reported or by the Department on the territory of which the alien has registered his/her temporary or permanent residence.

## **CHAPTER IV - RESIDENCE PERMITS**

### **Article 30**

(Types of residence permits)

1. In the sense of the present Law, residence of aliens shall refer to non-visa residence, temporary residence and permanent residence.

a) non-visa residence is the right of stay for aliens arriving from non-visa countries, pursuant to the provision of Article 13 of this Law,

b) temporary residence is residence on the territory of BiH for the period of one year, unless specified otherwise in the residence permit,

c) permanent residence is residence on the territory of BiH for an indefinite period of time.

## **Part A. Temporary residence**

### **Article 31**

(Application for a residence permit)

1. If an alien wishes to stay in BiH after the period specified in his/her visa, and/or after the period determined for his/her non-visa residence, he/she must submit the application for a temporary residence permit.

2. The application for a temporary residence permit, in the sense of paragraph 1 of this Article shall be submitted not later than 15 days before the expiry of validity of the visa, and/or non-visa residence.

### **Article 32**

(Conditions for granting temporary residence)

1. A temporary residence permit may be issued for justified reasons such as: marriage with a citizen of BiH, reunification of families, education, scientific/research and artistic work, employment as specified in the work permit granted, for business purposes, medical treatment, tourism or for humanitarian reasons.

2. A temporary residence permit may be issued for the time of up to one year or for the time of validity of the alien's passport, if that passport is valid for less than one year.

3. Temporary residence reasoned on humanitarian grounds in cases as prescribed in Article 34 paragraph 1 item a) of this Law shall be granted for the time of up to 3 months.

4. An alien who has entered BiH as a tourist, cannot be granted temporary residence on employment grounds. A temporary residence permit may be extended at the request of an alien and under the conditions prescribed for issuing the requested residence permit.

### **Article 33**

(General conditions for granting residence permits)

1. Temporary residence shall be granted to an alien on the condition that:

- a) he/she has evidence justifying the existence of the ground required for granting temporary residence as prescribed in Article 32 of the Law,
- b) he/she has funds to support himself/herself, including the funds for his/her health care,
- c) he/she has a medical certificate issued not more than 3 months following the date of submitting the application, showing that he/she does not have a disease with a high risk factor for the community.

2. Evidence referred to in item a) of paragraph 1 of this Article shall refer to:

- a) marriage certificate or other relevant evidence of marriage concluded,
- b) work permit issued by the competent employment agency,
- c) decision on registration of the legal entity into the court registry, accompanied with the evidence on their solvency,
- d) attestation of enrolment into an educational institution for the current year,
- e) medical findings, accompanied with the recommendation of a health institution confirming the necessity of a long-term medical treatment in BiH,
- f) documents on completed education and qualifications acquired,
- g) other evidence appropriate to support the stay of the alien in the country.

#### **Article 34**

(Temporary residence on humanitarian grounds)

1. Temporary residence on humanitarian grounds shall be exceptionally granted to an alien who does not fulfil the requirements for granting temporary residence prescribed in this Law, as follows:

- a) to an alien who has been a victim of an organised crime and/or trafficking of human beings, for the purpose of providing protection and assistance for his/her rehabilitation and repatriation into the country of his/her habitual residence,
- b) to a minor child of aliens if he/she has been abandoned or has been a victim of an organised crime or has remained without parental protection for any other reason whatsoever,
- c) to a stateless person,
- d) to an alien with respect to whom the requirements referred to in Article 59 of the present Law have been met and to whom asylum has not been granted pursuant to this Law,

e) for other justified humanitarian reasons.

2. Temporary residence shall be exceptionally granted to an alien who does not fulfil the requirements needed for issuance of a temporary residence permit prescribed by this Law, if so being in the function of enabling the administration of the court proceedings, and/or in cases where the alien co-operates with authorities in revealing crimes and their offenders, or if he/she has been a victim of an organised crime and his/her presence in BiH is indispensable for conducting the court proceedings where he/she shall appear as a plaintiff, an injured party or a witness.

### **Article 35**

(Recommendation of a competent body)

1. The assessment of the authority before which the administrative or court proceedings have been conducted in the sense of Article 34 of this Law, or recommendation of another competent authority, or findings of a health specialist from the appropriate health institution showing the necessity for his/her treatment and rehabilitation shall be required for granting temporary residence on humanitarian grounds, in addition to other evidence relevant for assessing the rationale of the application.

### **Article 36**

(Protection of victims of trafficking)

1. The Ministry has been responsible for providing special protection and assistance to victims of trafficking of human beings for the purpose of their rehabilitation and repatriation into the country of their habitual residence.

2. The Ministry shall by way of a by-law specify rules and standards concerning the actions, admission and other issues related to admission of victims of trafficking of human beings, their rehabilitation and repatriation.

### **Article 37**

(Temporary residence reasoned on reunification of a family)

1. Close family members of a BiH citizen with permanent residence in BiH, or of an alien holding a temporary or permanent residence permit, may be granted temporary residence for the purpose of family reunification on the conditions as follows:

a) where a BiH citizen and/or a person holding a residence permit in BiH has a permanent source of income, or where he/she has means of subsistence to support the respective applicant in BiH,

b) where there are no reasons which exclude issuance of residence permits as set out by this Law.

2. In the sense of this Law, close family members shall refer to:

a) spouse,

b) children under 18 years of age or children supported in the joint household,

c) parents supported in the joint household.

3. Temporary residence reasoned on this ground shall be extended on the same conditions as required for issuance of the residence permit.

### **Article 38**

(Residence with respect to divorce of marriage)

1. Where a marriage has been divorced during the time of the validity of a temporary residence permit issued for the purpose of family reunification, a former spouse who has been granted temporary residence as a close family member, pursuant to provision of Article 37 of the Law, shall not acquire the right to extension of his/her temporary residence, unless:

a) he/she has a custody of a child who has the citizenship of BiH and who has been born in the marriage with a BiH citizen, or

b) he/she has been continually residing in BiH for three years on the basis of temporary residence granted for the purpose of family reunification and meets special requirements set out in this Law for granting temporary residence on other grounds, or

c) he/she has expressed reasons relevant for granting temporary residence on humanitarian grounds in the sense of Article 34 of this Law.

2. Provision of paragraph 1 of this Article shall also apply if cessation of the marriage has been provoked with death of the spouse who is a BiH citizen or a foreigner holding a temporary or permanent residence permit in BiH.

### **Part B. Permanent residence**

#### **Article 39**

(Conditions for granting permanent residence)

1. A permanent residence permit shall be issued to an alien on the following conditions:

a) that he/she has resided on the territory of Bosnia and Herzegovina, on the basis of a temporary residence permit, for at least five years uninterruptedly before submitting the request for issuance of a permanent residence permit,

b) that he/she has funds to support himself/herself, including the funds for his/her health care,

c) that he/she has a medical certificate issued over the period of last three months before the application was submitted, showing that he/she does not suffer from a disease with a high risk factor for the community.

2. Any stay outside BiH for the time of up to ninety days during the same year shall not be considered as an interruption of residence, in the sense of this Article.

### **Part C. Procedure and documents**

#### **Article 40**

(Refusal of the application for a residence permit)

1. An application for temporary or permanent residence shall be refused even if the alien meets conditions required for granting temporary or permanent residence, in the following cases:

a) if the alien has entered the territory of BiH while not respecting the entry requirements set out in this Law, unless there exist reasons for issuance of a residence permit on humanitarian grounds in the sense of Article 34 of this Law, or

b) if the alien has intentionally provided incorrect information or intentionally disguised circumstances of relevance for issuance of the permit, or

c) if expulsion measure from BiH has been imposed against the alien, for as long as the measure is in force, or

d) if the alien has been registered as an international offender, or

e) if there are other compelling reasons arising from international treaties to which BiH is a Contracting Party, or

f) if his/her presence constitutes a threat to public order and national security of BiH.

#### **Article 41**

(Application for a residence permit)

1. An application for a residence permit shall be submitted to the competent Department.

2. The application for a residence permit may also be submitted from abroad, through BiH DCRs.

3. The application must be submitted at least fifteen days before the expiry of a valid period of residence, and/or where applicable, before entry and shall include documents substantiating such a request.

4. The body referred to in paragraph 1 of this Article shall take the decision on the application for a residence permit without unnecessary delay and at the latest within 30 days from the date of notification of the application.

5. When an alien, in his/her application, expresses reasons which are in connection with Article 59 of this Law, the decision on validation of his/her request and on granting temporary residence on humanitarian grounds in the sense of Article 34 item d) of the Law shall be taken by the Ministry.

6. The applicant shall be issued an attestation of the submitted application, which shall serve in lieu of a residence permit, pending the final decision, except in the case referred to in paragraph 2 of this Article.

#### **Article 42**

(Appeal against the decision of the Department)

1. An appeal against the decision taken by the Department upon the request for a residence permit may be filed with the Ministry within 15 days from the date of notification of the decision.

2. The applicant for a residence permit cannot be expelled or forcibly removed from the territory of BiH pending the expiry of the deadline provided for appeal and/or pending the procedural decision upon the appeal.

#### **Article 43**

(Appeal against the decision of the Ministry)

1. No appeal is allowed against the decision of the Ministry on granting temporary residence on humanitarian grounds in the sense of Article 34 paragraph 1 item d) of this Law.

2. An alien cannot be expelled or forcibly removed from the territory of BiH until the decision taken in the sense of Article 34 paragraph 1 item d) of this Law becomes final and binding.

#### **Article 44**

(Residence permit sticker)

1. A residence permit sticker shall be affixed in the valid travel document of an alien.

2. An alien is obligated to have and at the request of an official person to present his/her valid travel document showing that he/she has been granted residence on the territory of BiH.

#### **Article 45**

(ID Card for aliens)

Every alien who has been granted permanent residence shall be issued an ID card for aliens by the competent administrative body of the place of his/her permanent residence.

The alien is obligated to submit the application for ID Card for aliens referred to in paragraph 1 of this Article to the competent body within 8 days from the date of notification of the decision granting him/her permanent residence in BiH.

ID cards for aliens shall be valid for 5 years, unless otherwise stipulated by a special regulation.

The alien is obliged to have and at the request of an official person to show his/her ID Card for aliens.

#### **Part D. Revocation of residence**

##### **Article 46**

(Reasons for revocation of residence)

1. Right to residence and residence permits shall be revoked on the following conditions:

- a) where an alien does not comply with the constitutional order and regulations of BiH, its Entities and Brcko District of BiH, or has taken activities in breach of the constitutional system or security of BiH, or where an alien is a member of an organisation that has taken such activities,
- b) where an alien has jeopardised BiH national interests by his/her actions in a way that he/she has been engaged in smuggling of fire arms, explosives, radioactive materials or narcotics or has been engaged in unauthorised transport and trade of materials and equipment for production of arms or other weapons of mass (translator's note: part of the sentence probably missing) or has been a member of an organisation included in the stated activities,
- c) where an alien has organised or participated in organisation or assisted illegal entry to, stay on or exit from BiH of individuals or groups or has organised or participated in trafficking of human beings,
- d) where an alien has breached or has attempted to breach regulations concerning the crossing of the state border of BiH, regardless of whether the breach has occurred at entry to or exit from BiH,
- e) where circumstances on the basis of which the residence permit was issued have changed to such an extent that they would presently exclude any possibility to issue the permit,
- f) where an alien has intentionally provided incorrect data or intentionally disguised circumstances of relevance for issuance of a residence permit,

g) where an alien has performed the activities for which a work permit is required, without possessing such a permit,

h) where the presence of an alien constitutes threat to public order and national security of BiH.

2. The existence of an international warrant of arrest and/or of a final and binding court decision shall be taken as the basis for establishment of the reasons for revocation of residence prescribed in items a), b), c) and d) of previous paragraph.

3. Provisions of items e) and g) shall not be applied if an alien holding a permanent residence permit in BiH is able to show evidence of the existence of exceptional reasons justifying this exemption.

#### **Article 47**

(Special reason for revocation of permanent residence)

1. The Decision on granting permanent residence shall be revoked where it has been established that the alien has not been residing in BiH for more than a year and has not informed OIA and the Department on the territory of his/her permanent residence about the reasons of his/her absence, or for less than a year if there exist circumstances on the basis of which it can be explicitly established that the alien has no intention to return and take permanent residence in BiH.

#### **Article 48**

(Competency and appeal)

1. The decision on residence revocation shall be issued by the Department ex officio or at the request of the court, OIA or SBS.

The applicant is obligated to submit all information and documentation relevant for passing the decision along with his/her application.

An appeal may be filed against the decision referred to in paragraph 1 of this Article.

The appeal shall be lodged with the Ministry within 15 days from the date of notification of the decision.

#### **Article 49**

(Execution of the decision on residence revocation)

1. A residence permit sticker shall be cancelled by the competent Department in the travel document of the alien or in another identification document recognised in BiH, by imprinting the stamp reading "cancelled" across the sticker, after the decision on revocation of a residence permit becomes final and binding.

2. The decision on revocation of residence shall be executed by the Department in co-operation with OIAs, pursuant to this Law.

## **Part E. Residence registration of aliens**

### **Article 50**

(Obligation to register temporary/permanent residence)

1. An alien is obligated to register his/her temporary residence and any change of his/her home address, as well as to register and/or de-register his/her permanent residence.

2. Registrations and de-registrations referred to in previous paragraph shall be submitted to OIA in the place of the alien's temporary or permanent residence.

### **Article 51**

(Temporary and permanent residence)

In the sense of this Law, temporary residence refers to the place where an alien resides temporarily. In the sense of this Law, permanent residence refers to the place where an alien who has been granted permanent residence in the territory of BiH, has taken up residence with intention to live there permanently.

### **Article 52**

(Deadlines)

1. An alien who has been granted permanent residence is obligated to register his/her permanent residence and any change of his/her home address in the place of permanent residence not later than 8 days from the date of notification of the decision on granting permanent residence, and/or from the date of arriving to the place of permanent residence, and/or from the date of changing his/her home address.

2. An alien referred to in paragraph 1 of this Article as well as an alien who has been granted temporary residence is obligated to register his/her temporary residence and any change of his/her home address not later than 48 hours from the date of notification of the decision on granting temporary residence, and/or from the date of arriving to the place of temporary residence, and/or from the date of changing his/her home address.

### **Article 53**

(Natural and artificial persons obligated to register their temporary residence)

Natural and artificial persons that provide accommodation services to aliens are obliged to report any stay of an alien to the competent OIA, within 24 hours after providing accommodation, and/or after the moment the alien has arrived.

Natural and artificial persons that provide accommodation services are obliged to keep records on aliens (hereinafter: the registry book of aliens) to whom they have rendered accommodation services.

They are obliged to keep the registry books of aliens for at least three years after closing them. The registry books of aliens shall be verified by the OIA in the place of permanent residence of the provider of accommodation services to aliens.

An alien who does not use accommodation services of natural and artificial persons referred to in paragraph 1 of this Article is obliged to register his/her residence with the competent OIA within 48 hours as of the moment of crossing the state border.

OIA is obligated to communicate all information relating to registration or de-registration of permanent or temporary residence of an alien, and/or relating to any change of his/her home address, to the competent Department within 24 hours from the moment of registration.

#### **Article 54**

(By-law)

The Ministry shall by way of by-laws further regulate requirements and rules relating to residence of aliens in BiH.

### **CHAPTER V - REMOVAL OF AN ALIEN FROM THE COUNTRY**

#### **Part A. Expulsion**

#### **Article 55**

(Expulsion measure)

Expulsion is a measure instructing an alien to leave BiH and disallowing him/her to enter and stay in BiH for a certain period of time, which cannot be longer than ten years.

The decision on expulsion of aliens from the territory of BiH shall be issued by the Department ex officio, at the request of the court, OIA or SBS.

The period of expulsion shall commence on the day of issuing a final decision. The time spent in prison shall not be counted towards the term of this measure.

The decision on expulsion shall specify the deadline for voluntary enforcement of the decision, which cannot be longer than 15 days.

#### **Article 56**

(Reasons for imposing expulsion measure)

An alien may be expelled from BiH for one of the following reasons:

- a) if he/she has remained in BiH after the expiration of his/her visa or residence permit or after the expiration of the period of his/her entitlement to non-visa residence,
- b) if he/she has remained in BiH after the cessation of his/her asylum status or after a final and binding decision on refusal of his/her application for asylum has been taken, while he/she has neither acquired the right of residence in accordance with this Law nor has acquired the citizenship of BiH,
- c) if he/she has remained in BiH after withdrawal or release from BiH citizenship, while he/she has not realised the right of residence in accordance with this Law,
- d) if he/she has violated or attempted to violate regulations on crossing the state border of BiH, regardless of whether the violation has occurred while entering or exiting BiH,
- e) if the right of residence of the alien or a residence permit has been revoked by a final and binding decision in accordance with this Law,
- f) if he/she has been convicted by a final and binding court decision for a crime which can be qualified as dealing of narcotics, selling of weaponry, trafficking of human beings, smuggling of people, terrorism, laundering of money or as any other type of organised crime, while the court has simultaneously not imposed the security measure of his/her expulsion from the territory of BiH,
- g) if he/she has been convicted by a court in BiH of another crime and sentenced to more than four years of imprisonment, while the court has not simultaneously imposed the security measure of his/her expulsion from the territory of BiH,
- h) if presence of the alien constitutes threat to national security and public order of BiH.

2. While assessing whether the expulsion measure from BiH territory shall be imposed against an alien and/or while taking the decision on duration of that measure, the Department is obligated to carefully review all the reasons relevant for issuing the decision, both detrimental and beneficial ones.

### **Article 57**

(Execution of the decision on expulsion)

An appeal against the decision on expulsion may be filed with the Ministry within 15 days from the date of notification of the decision.

A final decision on expulsion shall be executed by the Department, in co-operation with the competent OIA and SBS, by undertaking measures for forcible removal of the alien from BiH, in accordance with this Law.

### **Article 58**

(Special cases of expulsion)

1. Exceptionally, at the reasoned proposal of the state ministry or the competent Entity OIA, the Council of Ministers of BiH may, while resolving individual cases, take the decision on expulsion of the alien from BiH if they have assessed that his/her expulsion is necessary and that it is in the interest of public order or national security, in the sense of provision of Article 1 paragraph 2 of Protocol 7 to the European Convention on Protection of Human Rights and Fundamental Freedoms.
2. The decision referred to in paragraph 1 of this Article cannot be executed contrary to the requirements referred to in Article 59 of this Law.

### **Part C. Provisions of protection**

#### **Article 59**

(Refoulement)

1. Aliens shall not be returned or expelled in any manner whatsoever to the frontier of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion, regardless of whether or not they have formally been granted asylum. The prohibition of return or expulsion shall also apply to persons in respect of whom there is reasonable suspicion for believing that they would be in danger of being subjected to torture or other inhuman or degrading treatment or punishment.

Aliens may not be sent to a country where they are not protected from being sent to such a territory either.

#### **Article 60**

(Special procedure)

1. When the alien has expressed reasons referred to in Article 59 of this Law, the procedural authority shall refer the case to the Ministry for the purpose of initiating the procedure for verifying the validity of his/her statement and determining the existence of conditions required for granting temporary residence on humanitarian grounds in the sense of Article 34 paragraph 1 item d) or granting asylum in the sense of Article 75 of this Law.

2. The decision on expulsion may be executed only after the decision issued in the sense of paragraph 1 of this Article becomes final and binding.

### **Part C. Forcible removal of an alien from the country**

#### **Article 61**

(Conclusion on authorisation of enforcement)

An alien may be forcibly removed from BiH.

Forcible removal of an alien from BiH shall be carried out ex officio by the Department which has made the decision on expulsion of the alien or by the

Department on the territory of which the alien who illegally resides there has been found and arrested, by taking the conclusion on authorisation of the enforcement.

The conclusion on authorisation of the enforcement shall be taken without any delay and at the latest within 7 days from the date the decision has become enforceable and shall be immediately communicated to the alien.

The conclusion shall specify the manner and the time for enforcement of the decision.

An appeal against the conclusion may be filed with the Ministry within 8 (eight) days from the date of notification.

The appeal does not stay the execution of the conclusion.

## **Article 62**

(Restriction clauses)

1. Where the court proceedings have been instigated against the alien, a decision on expulsion cannot be enforced earlier than the case is resolved with a final and binding decision.

2. The decision on expulsion cannot be enforced earlier than the prison sentence imposed against the alien is fully served, except in probation cases.

3. If there exist reasons for forcible removal of the alien prescribed in this Law, the alien shall not be forcibly removed if so being in the interest of conducting the court proceedings where the alien shall appear as a plaintiff, an injured party or a witness, being a victim of trafficking of human beings or any other form of an organised crime or where the alien shall co-operate with authorities in revealing crimes and their offenders. The alien shall be granted residence prescribed in Article 34 paragraph 2 of the present Law for as long as these circumstances are present.

4. Forcible removal of an alien from the country shall not be commenced if the alien has decided to leave the territory of BiH by himself/herself or with the assistance of international governmental or non-governmental organisations and has provided an adequate guarantee for such a decision (title of transport, attestation of governmental or non-governmental organisation, etc.).

## **Article 63**

(Repatriation country)

If enforcement of the decision is not subject to restrictions referred to in Article 59 of this Law, an alien who has been expelled shall be sent to his/her country of origin or the country from which he/she came to BiH.

The alien shall be communicated to which country he/she will be sent.

## **Article 64**

(Repatriation costs)

The alien is obligated to pay the costs of his/her trip to the place where he/she is being sent.

If it is established that the alien does not have funds necessary to pay the costs of his/her trip to the sending place, the costs of his/her trip shall be born by:

person who has issued a letter of guarantee or invitation for the purpose of entry of the alien,

natural or artificial person, association or organisation that has employed the alien, although he/she did not have a work permit,

BiH.

### **Article 65**

(By-law)

The Ministry shall by way of a by-law further regulate the manner and procedure for forcible removal of aliens from BiH.

## **CHAPTER VI - RECEPTION OF ALIENS AND SUPERVISION**

### **Part A. Specialised institutions for reception of aliens**

#### **Article 66**

(Structure of institutions)

Immigration centres, asylum centres, centres for accommodation of victims of trafficking of human beings and other institutions specialised for reception of aliens may be established for the purpose of implementing the present Law.

The Council of Ministers of BiH shall by way of by-laws determine the title and the type of a specialised institution for reception of aliens, method of their administration, financing conditions, functioning standards, the method for ensuring special conditions for beneficiaries of a special institution, providing supervision of aliens against whom a measure of supervision has been imposed, as well as other issues relevant for operation of a certain type of a specialised institution.

The prescribed special conditions in specialised institutions for reception of aliens shall comply with the requirements ensuing from the Constitution and international standards relating to the treatment of beneficiaries of specialised institutions.

Supervision of the operation of the institution specialised for reception of aliens shall be conducted by the Ministry.

### **Part B. Placing an alien under supervision**

## **Article 67**

(Imposing supervision)

Supervision may be imposed against an alien for the purpose of ensuring the enforcement of the decision on expulsion or the decision on refusal of entry.

Supervision shall be imposed against an alien if there are reasonable grounds to believe that:

the alien shall escape or otherwise prevent the execution of decisions referred to in paragraph 1 of this Article,

free and unrestricted movement of the alien might jeopardise national security and public order of BiH.

For the same reasons, supervision may also be imposed against the alien admitted under international agreement on co-operation in delivering and admitting aliens whose stay is illegal.

## **Article 68**

(Decision on placing an alien under supervision)

The decision on placing an alien under supervision shall be taken by the Department and/or SBS and shall be communicated to the alien without any delay, simultaneously with executing the decision. The decision referred to in paragraph 1 of this Article shall incorporate the ruling on placement of the alien under supervision, the ruling on accommodation of the alien in a specialised institution, date and time of accommodation and intended period of accommodation, date and time of intended forcible removal of the alien from the country, travelling method, as well as the ruling on the amount and the party obliged to bear the costs of forcible removal. Each ruling contained in the disposition of the decision must be separately and fully explained and must contain all the reasons relevant for taking the decision.

## **Article 69**

(Appeal)

An appeal against the decision on placing an alien under supervision may be lodged with the Ministry within 3 days from the date of notification of the decision.

The appeal does not stay the execution of the decision.

The Ministry is obligated to take the decision upon the appeal within 7 days from the date of notification of the appeal.

## **Article 70**

(Execution of the decision)

The measure of placing an alien under supervision shall be carried out by accommodating the alien in an institution specialised for reception of aliens.

The alien shall remain under supervision until the moment of his/her forcible removal from the country or until the reasons that have constituted grounds for his/her placement under supervision are considerably changed.

## **CHAPTER VII – ASYLUM**

### **Part A. Conditions for granting asylum**

#### **Article 71**

(Definition of the term "Refugee")

Under this Law, asylum shall be granted to:

an alien who according to the definition stated in Article 1 A (2) of 1951 Convention Relating to the Status of Refugees and Article 1 of 1967 Protocol, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself to the protection of that country; or

to an alien who, not having a nationality and being outside the country of his/her former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

#### **Article 72**

(Exemptions)

1. Provisions of Article 71 of this Law shall not apply to an alien with respect to whom there are serious reasons for believing that:

he/she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes,

he/she committed a serious non-political crime outside the country of refuge before his/her entry to that country has been approved,

he/she has been guilty of acts contrary to the purposes and principles of the United Nations.

Asylum may be denied to an alien who has been recognised as a refugee by another country or who has found effective protection in another country and would be able to return to that country and re-avail himself/herself of such protection.

### **Part B. Procedure and competent bodies**

### **Article 73**

(Request for asylum)

An alien may lodge the request for asylum with the Department, SBS and OIA.

The request for asylum, accompanied with all the supported documentation, must be forwarded to the Ministry without any delay.

The Ministry shall issue an attestation of the request to the asylum applicant, which shall be considered as a residence permit pending a final and binding decision upon his/her request.

### **Article 74**

(Provision of protection)

No penalty shall be imposed to an asylum applicant coming directly from a territory where his/her life or freedom was threatened on account of his/her illegal entry or presence in the country, at the condition to immediately register himself/herself with the bodies referred to in Article 73 paragraph 1 of this Law and express justified reasons for his/her illegal entry or presence.

### **Article 75**

(Procedure and competency for issuing the decision)

The requests for asylum shall be considered and decisions taken and issued by the Ministry.

The decision shall be taken after finalisation of a complete interview procedure where all facts relevant for taking the decision shall be established. An applicant must be given the opportunity to present all the circumstances known to him/her, to have access to all available evidence, as well as to suggest presentation of particular evidence.

An alien shall be given an opportunity to follow the course of the procedure through an interpreter if he/she does not know the language used during the procedure, as well as to use the services of a legal or another counsellor. The obligation of the conductor of the procedure is to inform the applicant about all the rights and obligations stemming from the Law.

Recognition of the refugee status is not dependent on the production of any particular formal evidence.

Any decision taken upon validity of the request for asylum must be fully reasoned and shall be communicated to the applicant in person.

The decision must clearly demonstrate the right to complaint and the deadlines.

**Article 76**

(Protection of data)

Asylum procedures shall be closed for public and all information in connection with this procedure shall be considered as confidential.

**Article 77**

(Complaint)

No appeal is allowed against the decision referred to in Article 75 of this Law.

The complaint shall stay the execution of the decision.

**Article 78**

(Provisions on protection)

The asylum applicant who has exhausted all available legal remedies and whose asylum request has been rejected with a final and binding decision, but with respect to whom it has been determined in the course of the procedure that he/she nevertheless cannot be removed from the territory of BiH for the reasons prescribed in the provision of Article 59 of the Law, shall be issued a temporary residence permit reasoned on humanitarian grounds in the sense of Article 34 paragraph 1 item d) of the Law.

**Article 79**

(Reception of asylum applicants)

The Ministry shall make provision for adequate conditions of reception of asylum applicants, notably in the area of accommodation, food, access to health care and education.

**Part C. Rights and obligations of a refugee****Article 80**

(Rights of a refugee)

An alien to whom asylum has been granted shall acquire the refugee status and shall be entitled to rights defined in Articles 3 to 34 of the 1951 Convention Relating to the Status of Refugees.

Provisions of 1951 Convention Relating to the Status of Refugees shall not prejudice the provisions of this and other special domestic laws or provisions of other international instruments which are already in force and to which BiH is a Contracting Party, in case that they accord a more favourable treatment to aliens with the recognised refugee status.

The alien holding a refugee status shall be entitled to reside on the territory of BiH as long as his/her asylum is legitimate and shall be issued to that end a residence permit for refugees. The refugee status shall in principle be extended to the spouse and minor children as well as other close family members if they are living in the same household, on the territory of BiH. Entry visas shall be provided to close family members of an alien to whom asylum has been granted. An alien to whom asylum has been granted shall be authorised to work and shall have access to education, medical care and social welfare on the same conditions as citizens of BiH.

### **Article 81**

(Documents for refugees)

Identity papers shall be issued to an alien holding a refugee status and staying in the territory of BiH. The alien holding a refugee status, who does not have a valid travel document or is unable to obtain a travel document from the country of his/her habitual residence may be issued a travel document for refugees for the purpose of travelling abroad and returning to the territory of BiH, unless there exist compelling reasons of national security and public order.

The travel document for an alien shall be issued for the period of validity of not less than two years and shall be extendable.

### **Part D. Cessation of asylum**

#### **Article 82**

(Reasons for cessation of asylum)

Asylum granted in BiH shall cease for an alien:

who has voluntarily re-availed himself/herself of the protection of the State of his/her citizenship, or

who, having lost the citizenship of another country has voluntarily re-acquired it, or

who has acquired a new citizenship and enjoys the protection of the country of this new citizenship, or

who has voluntarily re-established himself/herself in the State which he/she left or outside which he/she remained owing to fear of persecution, or

who can no longer, because the circumstances in connection with which he/she has been recognised as a refugee have ceased to exist, continue to refuse to avail himself/herself of the protection of the State of his/her citizenship, or

who being stateless can no longer, because the circumstances in connection with which he/she has been recognised as a refugee have ceased to exist, refuse to avail himself/herself of the protection of the State of former habitual residence, or

who has obtained the citizenship of BiH.

If an alien is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself/herself of the protection of the country of his/her citizenship as referred to in item e) of paragraph 1 and/or the country of his former habitual residence as referred to in item f) of paragraph 1, the stated items shall not be applied.

### **Article 83**

(Competency and complaint)

The decision on cessation of asylum shall be taken by the Ministry ex officio or at the request of MFA, OIA, SBS or the Department.

No appeal is allowed against the decision referred to in Paragraph 1 of this Article.

The complaint filed with the competent court by the alien shall stay the execution of the decision.

The alien may neither be expelled nor forcibly removed from the territory of BiH before the decision referred to in paragraph 1 of this Article becomes final and binding.

### **Article 84**

(Mass influx of aliens)

In cases of mass influx, or imminent mass influx, of aliens in need of international protection, the Council of Ministers of BiH may, in consultation with UNHCR, issue special regulations for their protection.

The Council of Ministers of BiH shall, in consultation with UNHCR, cancel regulations referred to in paragraph 1 of this Article, after cessation of the reasons justifying their existence, which shall be without prejudice to the rights of aliens who by way of these regulations have been granted protection, to seek asylum.

### **Article 85**

(Co-operation with UNHCR)

Asylum applicants shall be given the opportunity, at all stages of the procedure, to communicate with UNHCR or with other refugee organisations that may be working on behalf of UNHCR, and vice versa.

The representative of UNHCR shall be informed of the course of the procedure, of the decisions of the competent authorities and shall be given opportunity to submit his/her observations.

### **Article 86**

(By-law)

The Ministry shall by way of a by-law further regulate issues regulated in Chapter VII of this Law.

The method and procedure for registration of refugees, as well as principles of data protection relating to refugees shall be established in the act referred to in paragraph 1 of this Article.

## **CHAPTER VIII – SPECIAL PROVISIONS**

### **Article 87**

(Protection of rights)

No provision of this Law shall preclude any person covered by this Law from exercising and protecting his/her rights before any responsible authority in accordance with the Constitution and legislation of BiH, Entities and Brcko District of BiH.

### **Article 88**

(Privileges and immunities)

Provisions of this Law, with the exception of the Chapter relating to asylum, shall not be applicable to diplomatic and consular agents or other persons covered by specific agreements on privileges and immunities to which BiH is a Contracting Party.

### **Article 89**

(Application of provisions)

Chapters II, III, IV and IX, except for Articles 21, 50, 52, 84 and Article 94 of this Law, shall not apply to asylum applicants as well as to persons who have been granted asylum.

### **Article 90**

(Official records)

In accordance with this Law, official records shall be kept on:

- a) aliens with permanent or temporary residence,
- b) travel documents for aliens issued in accordance with this Law,
- c) aliens who have been refused entry or who have been expelled,
- d) executed measures with regard to aliens,
- e) reported missing travel documents of aliens,

f) issued personal documents,

g) residence registration, residence de-registration and change of address,

h) aliens who have been granted asylum or aliens who have submitted the application seeking asylum,

i) aliens who have been forcibly removed from the territory of BiH.

Official records shall be kept by the authority which is under this Law competent for acting upon certain matters, and which shall forward any information obtained from the records to the Ministry.

### **Article 91**

(Central database)

Central database of aliens shall be established within the Ministry for the purpose of recording and monitoring the movement of aliens and the status of asylum.

The authorities of OIA and SBS shall have access to these records and data, if so necessary for executing their duties stipulated by this Law.

Processing of all data referred to in this Law shall be subject to principles of data protection valid in BiH.

SBS shall keep special records where data relating to the identity, purpose of entry, stay and exit of the alien from BiH shall be copied from a valid travel document of the alien and from his/her supporting travel documentation.

### **Article 92**

(By-law)

The Ministry shall by way of by-laws further regulate rules and regulations on keeping records, using and accessing central database of aliens.

## **CHAPTER IX - PENALTY PROVISIONS**

### **Article 93**

A natural person who has rendered accommodation services to an alien shall be fined with 200.00 KM - 1,000.00 KM for the offence if:

he/she has failed to report, within a prescribed deadline, stay of the alien to whom accommodation services have been rendered (Article 53),

he/she has failed to keep records of aliens to whom accommodation services have been rendered or if

he/she has kept these records improperly (Article 53).

An artificial person who has rendered accommodation services to an alien shall be fined with 500.00 KM - 2,000.00 KM for the offence referred to in paragraph 1 of this Article.

#### **Article 94**

An alien shall be fined with 100.00 KM to 500.00 KM for the offence if:

he/she has refused to show the document verifying his/her identity or his/her right to enter and stay to the authorised official or if he/she does not have the document to verify his/her identity (Article 9),

he/she has not registered his/her permanent or temporary residence, change of his/her home address in the place of permanent residence within a prescribed deadline or if he/she has failed to de-register his/her permanent residence before his/her departure from the place of permanent residence (Article 52).

#### **Article 95**

1. An alien shall be fined with 100.00 KM to 1,500.00 KM or sentenced to imprisonment of 30 days for the offence if:

a) he/she has entered BiH contrary to the requirements prescribed in provisions of Articles 10 and 11 of the present Law,

b) if he/she has stayed in BiH longer than specified in his/her visa, stay permit or residence permit,

c) if he/she has failed to leave the territory of BiH within the deadline determined in this Law.

2. An authorised official responsible to control crossings of the state border may at the border crossing collect the fine in the amount of 100.00 KM for each day of delay for the offence referred to in item 4 paragraph 1 of this Article, unless the alien has not exceeded his/her stay for more than five (5) days and is able to justify the reasons for this delay.

#### **Article 96**

(Competency)

The offence courts established by Entity regulations and/or by regulations of Brcko District of BiH shall be competent for conducting the offence proceedings in accordance with provisions of this Law, for as long as a special law provides otherwise.

### **CHAPTER X - TRANSITIONAL AND FINAL PROVISIONS**

### **Article 97**

(Acquired rights)

All persons who have already acquired a refugee status or who have been granted temporary admission within the territory of BiH before the entry into force of this Law shall have that status recognised in the sense of this Law.

The Ministry may, with the consent of the Council of Ministers of BiH, by way of by-laws regulate conditions for further enjoyment of that status.

### **Article 98**

(Pending cases)

All cases upon which a final and binding decision has not been taken before entering into force of this Law shall be finalised in accordance with provisions of regulations that were in force at the time of initiating the proceedings.

### **Article 99**

(Competency of structural units of OIAs)

Pending the commencement of the operation of the Office for Immigration and Asylum of the Ministry for Human Rights and Refugees, all administrative matters which are under this Law in the competency of the Department for Immigration and Asylum shall be performed by adequate structural units within the Public Security Centres of the Ministry of Internal Affairs of the Republika Srpska, cantonal Ministries of Internal Affairs in BiH Federation and the Police of Brcko District of BiH.

### **Article 100**

(Establishment of the Office)

The Ministry is obligated to establish the Office for Immigration and Asylum within a year from the date of entering into force of the present Law.

The Ministry shall take over resources, equipment and files from the respective structural units of OIAs, which pursuant to Article 99 of this Law have performed activities from the competency of the Ministry.

The employees of OIAs who have performed activities from the competency of the Ministry shall be transferred into the Departments if they fulfil special requirements prescribed in the by-law referred to in Article 3 of the present Law, while other employees shall be deployed by OIAs in accordance with their acts on internal organisation and systematisation of posts.

### **Article 101**

(Cessation of validity of regulations)

The Law on Immigration and Asylum of BiH (Official Gazette of BiH, number 23/99), the Book of Rules on Conditions and Procedures for Entry of Aliens, Issuance of Visas and Other Travel Documents and Issuance of Attestations for the Stay of Aliens in BiH (Official Gazette of BiH, number 29/01), the Decision on Establishment and Composition of the Appeal Panel (Official Gazette of BiH, number 12/01) and the Decision on Conditions for Announcing an Alien as Undesirable Person in Bosnia and Herzegovina (Official Gazette of BiH, number 6/02) shall cease to be applied from the date of entering into force of this Law.

The bodies specified in this Law are obligated to pass the by-laws within one year from the day of entering into force of this Law.

Entities and Brcko District of BiH are obligated to harmonise their legislation with this Law within six months from the day of entering into force of this Law.

## **Article 102**

(Entry into force)

This Law shall enter into force on the eighth day after its publication in the Official Gazette of BiH and shall be published in Official Gazettes of the Entities and Brcko District of BiH.