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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**Working Group of the Venice Commission
and the Directorate General of Legal Affairs
on the establishment of the State Court
of Bosnia and Herzegovina**

**DRAFT LAW ON THE STATE COURT
OF BOSNIA AND HERZEGOVINA**

PREAMBLE

Having regard to

The Constitution of Bosnia and Herzegovina, the democratic principles thereby instituted and in particular to the establishment of a democratic State governed by the Rule of Law and ensuring the highest standards of international human rights;

Pursuant to article II of the Constitution referring to the rights and freedoms set out in the European Convention on Human Rights and recalling the European Convention on Human Rights itself, in particular , in particular Articles 3, 5, 6, 7 and 13 of the European Convention on Human Rights, Protocol No 6 to the European Convention on Human Rights and Articles 2, 3 and 4 of Protocol No. 7 to the European Convention on Human Rights;

A State Court of Bosnia and Herzegovina shall be created.

GENERAL PART

Article G1 Establishment

1. In order to ensure the effective exercise of the competencies of the State of Bosnia and Herzegovina and the respect of human rights and the rule of law in the territory of this State, a Court of Bosnia and Herzegovina is established.

The State Court shall have jurisdiction, in the circumstances and form laid down by this law.

2. The State Court may issue any orders necessary and proper in the exercise of its jurisdiction.

3. The seat of the State Court shall be at Sarajevo.

Article G2 Composition

The Court of Bosnia and Herzegovina shall be composed of 15 judges, or such greater number as may be prescribed by law, a State Prosecutor General and two Deputy Prosecutors.

Article G3 Requisites of eligibility

The judges of the Court are independent judges of high moral character, impartiality and integrity, possessing the qualifications required for the appointment to high professional judicial offices.

Article G4 Nominations of Judges

The Parliamentary Assembly of Bosnia and Herzegovina shall elect the judges of the State Court of Bosnia and Herzegovina upon proposal by the Council of Ministers.

Article G5

Period of office

Judges thus appointed shall perform their duties until the age of 70 years except as provided in Article G6.

Article G6

Term of office

The term of office of a judge can be terminated:

1. on the expiration of the term of office;
2. upon voluntary resignation;
3. upon permanent inability to perform the duties of a judge due to his/her illness, disability, or weakness certified by a medical board;
4. upon being removed from office by the Parliament upon proposal by the Plenum of the Court itself.

Article G7

Incompatibilities and immunities

1. The office of judge is incompatible with a public or private office. Judges of the State Court may not hold any duties in party organs, political associations or foundations connected to them, nor be involved in any political or party activities of a public nature. Teaching duties or scientific research of a juridical nature are exceptions to this rule.
2. All judges of the State Court, the Prosecutor General and the Deputy Prosecutors shall not be prosecuted, subjected to investigation, arrested detained or tried for the opinions expressed or for the decision taken in the exercise of powers associated with their duties.

Article G8

The Prosecutors

1. The State Prosecutor General and the Deputy Prosecutors are entrusted with the task of prosecuting criminal perpetrators. They are appointed by the Council of Ministers of the State of Bosnia and Herzegovina, and must be of high moral character, impartiality and integrity, possessing the qualifications required for the appointment to high professional judicial offices.
2. Articles G5 and G6 apply also to the Prosecutors correspondingly.

Article G 9

Structure of the Court

1. The Court shall have a Plenum and three Divisions:
 - a) the Criminal Division
 - b) the Administrative Division
 - c) the Appeals Division (including the Electoral appeals competence).

2 The Court in accordance with its Rules of procedure shall be competent to make general and special assignment of judges to any Division, Panel or case.

3. The Court's Divisions shall each have a President, serving for a term of 5 years, chosen by all judges of the Division.

4. Panels shall be chaired by the President of the Division or by the judge sitting in the panels appointed thereto by the President.

Article G 10

The President of the Court

1. The Plenum of the Court elects the Court's President for a term of five years.

2. The president is elected in a secret ballot, in a session at which the eldest judge presides.

Article G 11

Competences of the President of the Court

1. The President of the State Court is responsible for:

- representing the State Court in its external relations with state bodies and organisations
- the appointment of judges to the different divisions and panels
- the appointment of the replacing judge or prosecutor in case of disqualification of a judge or of a prosecutor
- setting the time table for sessions, handling cases and distributing the cases between the members of the Court and where necessary between the Divisions
- summoning and presiding the Plenum of the Court
- the implementation of the budget of the Court
- performing general administration of the staff of the State Court
- instituting disciplinary proceedings against judges or the Chief registrar

2. The President shall propose to the Plenum of the Court the working schedule elaborated at the beginning of each calendar year, providing for the allocation of incoming cases in advance and according to objective criteria.

Article G 12

The Plenum of the Court

1. The Plenum of the Court:

- Shall elect the President of the Court-
- Shall draw up and adopt the rules of procedure of the Court
- Shall draw up and adopt the rules of procedure of the Criminal, Administrative and Appeals Divisions
- Shall elect the Chief Registrar and two deputies registrars
- Shall adopt the working schedule proposed by the president
- Shall confirm the procedures for disciplinary proceedings against judges
- Shall recommend the removal of a judge pursuant to article G6
- Shall adopt the draft budget of the Court

2. The Plenum has the authority to review at the instance of a party, or the prosecutor, any judicial decision made by any panel within any Division when it is alleged that such decision is contrary to the law or to the jurisprudence of the State Court.

3. The request for review must be lodged within 15 days from the challenged panel decision. The Plenum has the authority to grant or deny review in accordance with its rules of procedure.

4. The Plenum of the State Court shall consist of all members of the State Court. The Plenum adopts its decision with a simple majority of those participating.

Article G 13

The Criminal Division

The Criminal Division shall consist of at least five judges. It shall sit in panels of three.

Article G 14

The Prosecutor's Office

1. A Prosecutor's Office shall be established at the Criminal Division.

2. The Prosecutor's Office shall consist of the State Prosecutor General and the Deputies and a number of police officers, selected by the State Prosecutor General and serving for the purpose and by order of the prosecutor's office to which they are exclusively responsible.

Article G 15

The Administrative Division

The Administrative Division shall comprise at least five judges. It shall sit in panels of three.

Article G 16

The Appeals Division

1. The Appeals Division shall comprise at least five judges. It shall sit in panels of five judges.

2. A judge from another Division may be asked to sit in the Appeals Division.

3. The Appeals Division shall hear appeals against judgements of the Criminal Division, pursuant to Article C 24 of this Law and against judgements of the Administrative Division, pursuant to Article A 19 of this Law.

4. The Appeals Division shall hear complaints in electoral matters and pursuant to Article ADI.2.

5. The Appeals Division shall hear appeals from the courts of last resort in the District of Brcko.

Article G 17

The Registry

1. The Court shall have a Registry.

2. The Registry is managed by a Chief Registrar, under the supervision of the President of the Court and under the conditions specified in the rules of procedure of the Court.
3. The Registry shall consist of a Chief Registrar, elected by the Plenum of the State Court.
4. The Registry is responsible for the administration and servicing of all Divisions.
5. The Chief Registrar, assisted by the administrative staff, shall be responsible for preparing and implementing the budget of the State Court.

Article G 18 **Administrative staff**

1. The State Court shall have its own staff. The Court shall determine in respect of its staff the organisational hierarchy.
2. The Court shall determine the duties and responsibilities, reasons for non-attendance, replacements, absences, leave and holiday arrangements in respect of administrative staff.

Article G 19 **Language**

1. The official languages of Bosnia and Herzegovina will be used in the proceedings before the Court and in its communication with the parties. Persons participating in proceedings have the right to use any of these languages at any stage of the proceedings.
2. In criminal proceedings, the accused may use her/his own language at any stage of the proceedings. If the proceedings are conducted in a language unknown by the accused, provision shall be made for interpretation by a qualified interpreter. The accused shall be informed of the right to interpretation and may waive that right if he/she knows the language in which proceedings are being conducted. A note shall be made in the record that the participant has been so informed, and his/her response shall also be noted.

Article G 20 **Rules of procedure**

1. The Plenum of the State Court shall draw up and adopt its own internal rules of procedure in addition to the rules of procedure laid down in this law.
2. The Rules of procedure shall be published in the Official Gazette of Bosnia and Herzegovina.

Article G 21 **The Budget of the Court**

1. The State Court shall have its own budget, which shall be included in the State budget.
2. The draft of the Budget shall be approved by the Plenum of the Court.

Article G 22
Attorneys

1. To appear or practice before the Court, an attorney must be licensed to practice by an authority in Bosnia and Herzegovina which has been recognized by the Court, or else must be specially admitted by the Court.
2. Procedures for special admission of attorneys and for recognition of licensing authorities for attorneys shall be established by the Court in its Rules of procedure.
3. The Court shall have authority to regulate in its Rules of procedure the qualification and practice of all attorneys before it, specifically including the authority to impose sanctions upon any attorney who appears before it, regardless of any other affiliation of the attorney, in the discretion of the Court.
4. Such sanctions may include suspension or disbarment from practice before the Court, and such other sanctions as may be provided by law or prescribed in the Court's Rules of procedure.

CRIMINAL DIVISION

CHAPTER C I

Article C 1

Jurisdiction

The Criminal Division shall have jurisdiction over the following:

- a) Crimes against the State of Bosnia and Herzegovina; crimes against institutions established under the Dayton Agreement shall be considered as crimes against the State of Bosnia and Herzegovina.
- b) Crimes defined in the Laws of the State of Bosnia and Herzegovina, when provision is made in the said Laws that the Court has such jurisdiction.
- c) Crimes committed or initiated by any official of the State of Bosnia & Herzegovina, or by the judges, the Prosecutor General and Deputy Prosecutors of this Court; this status shall not relieve such a person of criminal responsibility nor mitigate punishment.
- d) Crimes related to torture and inhuman or degrading treatment or punishment in the territory of Bosnia and Herzegovina.
- e) Crimes committed by persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991 in accordance with the provisions of the Statute of the International Tribunal in the Hague (United Nations Security Council S/Res/827 (1993) - Annex), taking into account the primacy of this Tribunal, as laid down in Art. 9 para 2, and Art. 29 of the said Statute.

The Criminal Division shall further be competent to

- f) give preliminary rulings on the interpretation of State Laws on request by any court of the entities or any court of the Brcko district entrusted to implement State Law; the State Court has discretionary power to decide whether to take up such questions;
- g) rule on requests for judicial assistance in criminal matters, including extradition, surrender and transfer of persons, requested from any authority in the territory of Bosnia and Herzegovina, by foreign States or International Courts or Tribunals;
- h) decide any issue relating to International and inter-Entity criminal law enforcement, including relations with Interpol and other international police institutions.

Article C2

Concurrent Jurisdiction

1. In cases of concurrent jurisdiction between the State Court of Bosnia and Herzegovina and any other Court in Bosnia and Herzegovina of the Entities and the Brcko District, primacy is given to the Criminal Division of the State Court of Bosnia and Herzegovina.
2. The Criminal Division may in cases of Article C1 lit a) through e) transfer the proceedings and remove proceedings from any other court in the territory of Bosnia Herzegovina. The decision under this Article is final and binding.
3. Transfer and removal can be initiated by any party in the proceedings, including the Prosecutor or ordered ex officio by the Court.

Article C 3

Presumption of innocence

A person shall be considered innocent of a crime until guilt has been established by a final verdict. The freedom of the accused and his/her other rights may be restricted before a final verdict is rendered only in accordance with the law.

Article C 4

Rights of the accused

1. A person subjected to an investigation is not required to give any kind of statement or reply to any kind of question asked by the authorised official, except his/her own identity data, and the authorised law enforcement agency official will inform him/her of this right.
2. The suspect, who is subject to substantiated suspicion of having perpetrated a crime, has the right to take defence counsel and have his/her defence counsel present at his/her questioning conducted by the authorised official. If the suspect is deprived of liberty, she/he has the right to request the appointment of his/her defence counsel, if he/she is not able to bear the costs of defence according to his/her financial circumstances. The suspect has the right to present his/her own defence counsel, whom she/he shall, him/herself select from among professional attorneys.
3. Any authorised law enforcement agency official has the duty to instruct the suspect of the rights set out in paragraphs 2 and 3 of this article. Already in the very first examination, the accused must be informed about the charge against him/her and the grounds for the charge. The accused must be given without delay an opportunity to state his/her position concerning all facts and evidence against him/her and to present all facts and evidence in his/her favour.
4. It is forbidden to compel a confession or any other statement from a suspect, an accused, or other person participating in proceedings. The Court may not base its decision on evidence obtained by violating human rights and freedoms prescribed in the Constitution or international treaties, nor on evidence obtained in breach of this law.
5. There shall be no judgement in absentia.
6. The provisions in this law do not in any way whatsoever restrict any rights guaranteed to the accused by the Constitution of Bosnia and Herzegovina and international treaties appended to it and general accepted principles of public international law.

Article C 5

Ne bis in idem

No person shall be tried before a court in the territory of Bosnia and Herzegovina for any offence, for which he or she has already been tried by the Criminal Division of the Court of Bosnia and Herzegovina. A person who has been tried by another court in the territory of Bosnia and Herzegovina may subsequently be prosecuted and/or tried by the Criminal Division of the Court of Bosnia and Herzegovina only if the Criminal Division would have first instance jurisdiction under Article C 1 and if the other court's proceedings were evidently to shield the accused from criminal liability or the case was not diligently prosecuted. In considering a penalty to be imposed on a person convicted of a crime under the present Law, the Criminal Division of the Court of Bosnia and Herzegovina shall take into account the extent to which any penalty imposed by any court on the same person for the same act has already been served.

CHAPTER C II

Article C 6

Division, Panels and Investigating judge

1. The judges shall sit in panels of three members of the Criminal Division.
2. Individual judges may serve as investigating judges. In this capacity they shall be competent to deal with appeals against decisions of the Prosecutor's Office in the investigative stage only. Having decided in this function in an investigation once, a judge is responsible for all other decisions in the same case until the end of the investigation procedure. He/she is excluded from this case in all later stages.
3. The Criminal Division is chaired by its President; he or she appoints a rapporteur for each case pending.
4. No appeal shall lie in respect of the decision accepting or rejecting the constitution of the panel, without prejudice to the right to raise objections to the decision when invoking the remedy of appeal against the final judgement.

CHAPTER C III

Article C 7

The Prosecutor's Office

1. The prosecution of criminal perpetrators is the duty of the Prosecutor General. The State-Prosecutor and Deputy Prosecutors shall act independently as a separate organ of the Court.
2. The Prosecutor must undertake criminal prosecution ex officio if suspicion exists that a crime mentioned in this law has been committed. Under these premises the Prosecutor has to investigate on behalf of an injured party too. Private complaints, charges and information of an injured party shall be submitted in writing or given orally for entry in the record. If the investigations come to an end without an indictment, the Prosecutor has to deliver a written report to the party who considers that he or she is injured by a crime. The injured party may lodge an appeal against this decision to the Investigating Judge who has the right to order the start of new investigations or to file an indictment.
3. In other cases (Article C1 lit f to lit h) the Prosecutor assists and advises the Criminal Division.
4. If so requested, the Prosecutor has to enforce the Criminal Division's or a judge's decision.
5. The Prosecutor and his/ her officials participating in criminal proceedings must truthfully and completely establish the facts which are important to the rendering of a lawful decision. They have a duty to study and establish with equal attention both those facts which are against the suspect or the accused and those facts which are in his/her favour, and to make available all the facts and evidence to the suspect or the accused and their defence counsels, which are in their favour, both before the beginning of, and during the proceedings.
6. The prosecutor has the following powers and duties:

- to take the necessary steps to uncover crimes and to identify the perpetrators and to guide preliminary criminal proceedings and supervise the activities of any law enforcement agencies acting on behalf of the Prosecutor pertaining to the identification of crimes and their perpetrators;
- to order that an examination be conducted;
- to draft and defend an indictment before the Criminal Division;
- to file - if necessary - appeals against court decisions which have not become final.

7. Upon a determination that a prima facie case exists, the Prosecutor shall prepare an indictment containing a concise statement of the facts and the crime or crimes with which the accused is charged under the Statute. The indictment shall be transmitted to the Criminal Division.

Article C 8

Duty to report crimes

1. Responsible officials of government bodies and agencies, Ombuds-institutions of the State or its Entities, public enterprises and public institutions have a duty to report crimes which are automatically investigated of which they have been informed or which they have learned of in some other manner.
2. In lodging a report, the responsible officials from paragraph 1 of this article shall present evidence known to them and shall take steps to preserve evidence pertaining to the crime, articles upon which or with which the crime was committed, and other evidentiary material.
3. Private citizens are entitled to report crimes which are automatically prosecuted, and they have a duty to do so in case the failure to report crimes constitutes an offence of itself according to the Law of the State of Bosnia and Herzegovina and/or the Law of its Entities.

Chapter C IV

Article C 9

The Registrar of the Criminal Division

1. The Registrar of the Criminal Division assists both the work of the judges and the prosecutor's office.
2. The Registrar works on behalf of, and pursuant to, orders of the Criminal Division, a judge or members of the prosecutor's office.
3. He or she shall draw up the minutes of the hearings.

CHAPTER C V

Article C 10

Defence Counsel

1. A suspect or accused is entitled to be assisted effectively by defence counsel throughout the course of the criminal proceedings.

2. More than one person may have the same defence counsel only if the same criminal proceedings are not conducted against them all. An accused person may have more than one defence counsel, and it shall be considered that the defence is secured if one of the defence counsels is participating in the proceedings.
3. Before the first examination a suspect or accused must be instructed that she/he has the right to engage defence counsel and that his/her defence counsel may attend his/her examination.
4. If the suspect, or the accused, fails to take defence counsel on his/her own, defence counsel may also be engaged ex officio or by his/her legal representative, spouse, extramarital partner, blood relative in a direct line, adopted parent, adopted child, brother, sister or foster parent.
5. If the person is mute, deaf or incapable of effectively defending him/herself, or if the proceedings are being conducted for a crime for which the penalty of extended imprisonment may be pronounced, the accused must have defence counsel from the very first examination.
6. When a crime is at stake for which a prison sentence may be pronounced, the accused must have defence counsel at least when the indictment is delivered. If the accused does not have sufficient means to pay for legal assistance, he or she shall be given it free when the interests of justice so require.
7. Only an attorney authorised to practice before the Court pursuant to Article G 22 may be engaged as defense counsel.

CHAPTER C VI

THE PROCEDURE IN GENERAL

Article C 11 Principle

The Court and all law enforcement agencies participating in criminal proceedings must truthfully and completely establish the facts which are important to the rendering of a lawful decision. They have a duty to study and establish with equal attention both those facts which are against the suspect or accused and those facts which are in his/her favour, and to make available all the facts and items of evidence to the suspect or accused and their defence counsels, which are in their favour, both before the beginning of, and during, the proceedings.

Article C 12 Rules of Procedure and Evidence

1. The Plenum of the Court shall adopt rules of procedure and evidence for the conduct of the proceedings, trials and appeals, the admission of evidence, the protection of victims and witnesses and other appropriate matters on the basis of the principles of the Codes of Criminal Procedure of the Federation of Bosnia and Herzegovina and Republika Srpska.
2. These rules of procedure and evidence enter into force when they are published in the Official Gazette of the State of Bosnia and Herzegovina, at the latest one-week after their adoption or at such other time as may be ordered by the Court. They remain in force unless other Rules or amendments shall have been adopted by Parliament and are published in the Official Gazette of the State of Bosnia and Herzegovina.

Chapter C VII
Investigative Actions/Intrusive Measures

Article C 13
Search of Dwellings and Persons

1. A search of the dwelling and other premises of the accused or of other persons may be undertaken if it is probable that the accused will be apprehended in the search or that clues to the crime or items important to criminal proceedings will be found.
2. A search of persons may be undertaken when it is likely that it will reveal clues and objects relevant to the criminal proceedings.
3. Searches described in this Article are prohibited except to the extent they shall have been authorised by an investigative judge upon the substantiated petition of the competent prosecutor. However, the Court may find that an emergency or other exigent circumstances are sufficient to justify a search without prior judicial authorisation.

Article C 14
Temporary Confiscation of Articles

Articles which are to be confiscated under the criminal code or which might serve as evidence in criminal proceedings shall be temporarily confiscated and turned over to the court for safekeeping, or their safekeeping shall be provided for in some other manner.

Article C 15
Surveillance and Technical Recording of Telephone and Other Conversations

1. An investigating judge of the Court of Bosnia and Herzegovina may order the following measures against persons in respect of whom there exists a reasonable suspicion that they have taken part in the commission of serious crimes:
 - surveillance and recording of telephone conversations and other forms of communication via technical devices;
 - wiretapping.
2. Measures under this article are forbidden except to the extent they shall have been authorised by a judge as provided in the previous paragraph.
3. Measures under this article shall be ordered by an investigative judge upon the substantiated petition of the competent prosecutor, unless there is another manner to obtain evidence or their obtaining would have involved disproportional difficulties.

Article C 16
Examination of the Accused

1. The accused has to be informed of the charges against him/her and the grounds on which he/she is suspected.
2. The examination should be conducted so that the personality of the accused is fully respected.

3. No statement or confession may be extorted from the accused by the use of force, threat or other similar means.

Article C 17 **Interrogation of Witnesses**

1. Persons shall be summoned as witnesses if there is likelihood that they may give information on the crime and perpetrator and on other important circumstances.

2. Any person summoned as a witness has a duty to respond to that summons; unless this law states otherwise, she/he also has a duty to testify.

3. The following may be exempted from the duty to testify:

- the spouse or the extramarital partner of the accused;
- direct blood relatives of the accused, relatives in the lateral line up to and including the third degree, and relatives by marriage up to and including the second degree;
- an adopted child or adopted parent of the accused;
- a religious confessor concerning matters which the accused confessed to him/her.

The court conducting proceedings must warn persons mentioned in this article before they are interrogated or as soon as it learns of their relation to the accused, that they may not testify, except to the extent that the accused has knowingly and voluntarily waived his or her right to object under this article. This caution and the response shall be entered in the record.

4. Witnesses shall be interrogated separately and not in the presence of other witnesses. The witness must make his/her responses orally.

5. A witness may be required to take an oath only by a judge. The text of the oath is as follows: "I swear that I have spoken the truth about everything the court has asked me and that I have withheld nothing known to me about this matter". The following persons may not be sworn:

- minors at the moment of interrogations;
- persons proven or suspected with good reason to have committed the crime or participated in the crime for which they are being interrogated;
- persons having been sentenced for giving false evidence shall not be examined under oath.

6. If a witness who is duly subpoenaed fails to appear and does not justify his/her absence, or if without permission or good cause he/she leaves the place where she/he is to be interrogated, an order can be issued to compel him/her to appear, and he/she may also be fined up to an amount equivalent to KM 1000.

7. Should a witness appear and then refuse to testify without a legitimate reason after being warned of the consequences, she/he may be fined up to 500 KM; if even then he/she refuses to testify, he/she may be imprisoned. Imprisonment shall last until the witness consents to testify or until his/her interrogation has become unnecessary, or until criminal proceedings are concluded, but this imprisonment may not last longer than 1 month.

C 18

On-the-Spot Inquest

1. On-the-spot inquest shall be undertaken when direct observation is necessary to establish or clarify some important fact in proceedings.
2. In order to verify evidence presented or to establish facts which are important to clarify matters, the authority conducting proceedings may order a reconstruction of the event, which shall be done by reproducing the actions or situations under the conditions under which the event took place according to the evidence presented. If the statements by particular witnesses or accused persons describe the actions or situations differently, the reconstruction of the events shall, as a rule, be done separately with each of them.
3. Reconstruction may not be done in such a manner as to violate public peace and order and morals or endanger human life or health.
4. The authority conducting the on-the-spot inquest or reconstruction may request the aid of a specialist in criminology, communications or some other discipline, who, to the extent necessary, will also undertake to find, safeguard or describe clues, make the necessary measurements and recordings and sketches, or gather other data.
5. An expert witness may also be summoned to the on-the-spot inquest or reconstruction if his/her presence might be of benefit to the presentation of findings and opinions.

Chapter C VIII

Measures to Guarantee the Presence of the Accused and the Conduct of Criminal Proceedings

Article C 19

Measures against the accused

1. The measures which may be taken against an accused to guarantee his/her presence and the successful conduct of criminal proceedings are the summons, compulsion to appear, bail and custody.
2. In deciding which of these measures to apply, the competent body shall adhere to the conditions specified for the application of each of these measures, taking care not to invoke a more severe measure if the same purpose can be achieved with a less severe one.
3. These measures shall be automatically revoked upon termination of the grounds which brought them about or replaced by another less severe measure.

Article C 20

Compulsion to Appear

1. The court may issue an order for the arrest of the accused if it has rendered a decision to take him/her into custody or if the accused has not appeared when duly summoned, and has not justified his/her absence, or if the summons could not be served, or if circumstances make it obvious that the accused is evading the service of the summons. The order must contain the first and last name of the accused who is to be brought in, the crime with which she/he is charged and the relevant

provision in the criminal law, the grounds for ordering his/her arrest, the official seal and the signature of the judge ordering his/her arrest.

2. An arrest order issued pursuant to any provision of this law may be executed by any law enforcement authority in the territory of Bosnia and Herzegovina.

Article C 21

Bail

1. An accused who is to be taken into custody or who has already been taken into custody solely because of a fear that he/she will flee, may be discharged or released if she/he personally or someone else on his/her behalf furnishes an assurance that he/she will not flee before the end of criminal proceedings, and the accused him/herself pledges that she/he will not conceal him/herself and will not leave the place where he/she resides without permission. Bail shall always be set as an amount of money which shall be fixed in view of the severity of the crime, the personal and family situation of the accused, and the financial resources of the person furnishing bail. Bail consists of depositing cash, securities, valuables or other valuable personal property which is easy to monetise and store, or of placing a mortgage for the amount of bail on real estate belonging to the person furnishing bail, or of a personal pledge of one or several individuals that they will pay the amount of bail that has been set, should the accused flee.

2. If the accused flees, a decision shall be delivered providing that the value supplied as bail shall be forfeited to the State of Bosnia and Herzegovina.

Article C 22

Custody

1. The accused shall be taken into custody

- even though bail has been given, if she/he does not appear when duly summoned and does not justify his/her failure to appear,
- if he/she is preparing to flee,
- if there are reasonable grounds for the assumption that the accused will flee,
- if custody is mandatory by national or international law.

2. A warrant of arrest must be filed in writing by a Judge, and in the investigative stage by the Investigating Judge.

3. Every person deprived of liberty has the right to inform immediately a person of his/her choice about this fact, the reasons for his/her deprivation of liberty and the place where she/he is held in custody. A foreigner may also inform the Consular authorities of the country of his/her residence or of her/his nationality.

Chapter C IX

Article C 23

Penalties

1. The penalties imposed upon physical persons by the Division shall be limited to life imprisonment, imprisonment up to 15 years and fines.

2. No death penalty or inhuman or degrading punishment of any kind is permitted.
3. In imposing the sentences, the Divisions shall take into account such factors as the gravity of the offence and the individual circumstances of the convicted person.
4. The Divisions may order the return of any property and proceeds of crime to their rightful owners and grant adequate compensation.

Chapter C X

Appeal

Article C 24

The Right to File an Appeal

1. Appeals of persons convicted by the Criminal Division or of the Prosecutor can be lodged with the Appeals Division on the following grounds in cases of Article C1 a) through e) only:
 - an error on a question of law invalidating the decision;
 - a substantial error of fact which has occasioned a miscarriage of justice.
2. The Prosecutor may file an appeal either against or in favour of the accused.
3. An appeal against a decision has to be filed within 15 days from the date of delivery of the copy of the verdict to the party.
4. The accused may waive the right of appeal only after the verdict has been delivered to him/her. The prosecutor may waive the right of appeal against the interests of the accused from the moment when the verdict is announced to the end of the period allowed for filing an appeal against the interests of the accused, and may withdraw an appeal already filed at any stage before a decision is rendered by the Appeals Division.
5. The waiver and withdrawal of an appeal cannot be revoked.

Article C 25

Decisions on appeals

1. The Presiding judge of the Appeals Division shall issue a decision rejecting an appeal which is lodged out of time.
2. The Appeals Division may confirm, reverse or revise decisions delivered by the Criminal Division.
3. The Appeals Division may reject an appeal as being evidently inadmissible or manifestly unfounded by a unanimous decision of its panel without any statement of reasons.

CHAPTER C XI

Disqualification

Article C 26

1. A judge or prosecutor may not perform his/her judicial duties in the following cases:
 - if she/he has been adversely affected by the crime;

- if the suspect or accused, his/her defence counsel, the injured party, their legal representative or authorised agent, is his/her spouse or extramarital partner or direct blood relative at whatever degree and in a lateral line up to the fourth degree, or a relative by marriage up to the second degree;

- if in the same criminal case he or she has performed actions as defence counsel, legal representative or authorised agent of the injured party, or has been examined as a witness or expert.

2. As soon as a judge or prosecutor learns that any of the grounds for disqualification exists, she/he must interrupt all work on that case and inform the president of the court, who shall appoint his/her replacement. If it is a question of disqualification of the president of the court, he/she shall appoint his/her own replacement.

3. If a judge or prosecutor feels that there are other circumstances which justify his/her disqualification, he /she shall so inform the president of the court.

Chapter C XII

Costs of Criminal Proceedings/Rehabilitation

Article C 27

Definition

The costs of criminal proceedings are the expenses incurred in connection with criminal proceedings from the time they are instituted until they are completed and expenditures for investigative actions.

Article C 28

Costs

1. In every verdict and decision terminating criminal proceedings a decision shall be made as to who will cover the costs of proceedings and as to the amount of those costs.

2. When the court finds the accused guilty, it may declare in the judgement that he or she must reimburse all or a portion of the costs of criminal proceedings. Juvenile offenders are not required to reimburse any costs of criminal proceedings.

3. Costs of interpretation shall not be collected from individuals who, under the provisions of this law, are required to compensate costs of criminal proceedings.

4. When criminal proceedings are dismissed or when a judgement is rendered which acquits the accused or rejects the charge, the decision or verdict shall pronounce that the costs of criminal proceedings and necessary expenditures of the accused and necessary expenditures and remuneration of defence counsel shall be borne by the State of Bosnia and Herzegovina.

5. A person who has deliberately filed a false charge shall pay the costs of criminal proceedings caused by the false charge.

Article C 29

Rehabilitation - Compensation

A person who has been unjustifiably convicted of a crime or deprived of liberty shall be entitled to rehabilitation, compensation for damages at public expense, and other rights as set forth by law.

Chapter C XIII

Definitions

Article C 30

Expressions used in this part of the law are defined as follows:

- The term "suspect" is a person against whom there exists grounded suspicion of having perpetrated a crime.
- The term "accused" signifies a person against whom an indictment has been filed.
- The term "accused" is also used as a general term designating the accused, the indicted or the convicted person.
- The term "indicted" signifies a person against whom an indictment has entered into force.
- The term "convicted person" signifies a person pronounced criminally responsible for a particular crime in a final verdict.
- The term "injured party" designates a person injured or threatened in some personal or property right or by a crime.

Article C 31

Reopening of the proceedings

The reopening of the proceedings can be requested by a person convicted for a criminal offence when substantial facts are made known of which there could be no knowledge at the time of the conviction.

ADMINISTRATIVE DIVISION

CHAPTER I

Article A1 Jurisdiction

1. The Administrative Division is competent to decide the applications against the administrative acts and decisions of the State Administration or the Public Agencies acting on its behalf, applying the Administrative law, which are final and no longer subject to any administrative remedy.
2. The Administrative Division shall have jurisdiction over the following:
 - a) The legality of enforceable administrative acts based on administrative law, performed in the exercise of public functions by the authorities of Bosnia and Herzegovina or the authorities of the District of Brcko for which judicial review is not otherwise provided by law. Notwithstanding the preceding sentence, the Administrative Division shall not be competent to review an administrative decision whenever the law providing for the administrative decision also provides that judicial review in the first instance shall take place in the Appeals Division.
 - b) The legality and interpretation of public-administrative procurements and the administrative decisions concerning them.
 - c) The legality of administrative regulations having general application and of the administrative acts and decisions authorised thereunder. The fact that a regulation as such has not been challenged within the stipulated period does not exclude the possibility of challenging the subsequent acts and decisions pursuant thereto.
 - d) Assessment of omission to act. If the State of Bosnia and Herzegovina has failed to take a decision or to perform an act in respect of which it has a legal or contractual obligation, within a three month period of having been requested to do so.
 - e) Assessment of the liability of the State of Bosnia and Herzegovina for damage caused by the Administration or its Agencies whilst exercising public functions.

Article A2 Conflicts of jurisdiction and competence

1. In cases of concurrent administrative jurisdiction between the State Court of Bosnia and Herzegovina and any other Court in Bosnia and Herzegovina of the Entities and the Brcko District, primacy is given to the Administrative Division of the State Court of Bosnia and Herzegovina.
2. The Administrative Division may in cases of Article A 1, para 2, lit a) through e) transfer the proceedings to and remove proceedings from any other court in the territory of Bosnia and Herzegovina. The decision under this Article is final and binding.

Article A 3 Panels

1. The judges shall act as panels of three members of the Administrative Division.
2. The Administrative Division is chaired by a president elected by all judges of the Division.

3. No appeal shall lie in respect of the decision accepting or rejecting the constitution of the panel, without prejudice to the right to raise objections to the decision when invoking the remedy of appeal against the final judgement.

Article A 4
The Registry of the Administrative Division

1. The registry assists the work of the judges.
2. The registry shall be in charge of the application of the requirements prescribed in the detailed rules of procedure.
3. The registrar shall assist the Administrative Division in the enforcement of the judgement.

CHAPTER II
THE PARTIES

Article A5
General Legal Capacity

1. Only natural and legal persons having legal capacity to exercise their civil rights are entitled to challenge the acts and decisions listed in Article A1.
2. Natural persons, not having legal capacity or not having reached the age of majority, shall be represented by a parent or guardian.

Article A6
Locus standi to be plaintiff

1. The acts, decisions and regulations listed in Article A1 may be challenged by the persons to whom they are addressed and by those who are directly and individually affected by them.
2. The regulations having general application may be challenged by natural or legal persons directly and individually affected by them.
3. Compensation for damage resulting from the performance of public activities by the Administration or its Agencies and agents exercising public functions may be claimed by those who suffered loss or adverse consequences as a result.
4. Groups representing collective interests (associations, corporations, trade unions) may challenge acts or decisions affecting either their own rights or the collective interest that they represent.
5. Civil servants may challenge acts and decisions relating to conditions of employment which affect them directly or indirectly.
6. In the event of the death of the plaintiff, his/her heirs may replace him/her in the legal proceedings, or may issue fresh proceedings in defence of their legitimate interests.

Article A7
Locus standi to be defendant

The defendant party in the proceedings before the Administrative Division is the State of Bosnia and Herzegovina. It is represented in the proceedings before the Court by the State Attorney of Bosnia and Herzegovina.

Article A8
Interventions

The Court may allow persons having a direct and individual interest in the act, decision, or regulation at issue, or the failure to act on the part of the Administration or its Agencies, to join in the proceedings as subsidiary parties, supporting the applicant or the State of Bosnia and Herzegovina.

Article A9
Representation and Counsel

1. The applicant may be represented and defended during the proceedings by a lawyer of his/her choice.
2. Only an attorney authorised to practice before the Court pursuant to Article G 22 may be engaged as counsel.

Article A10
Effects of the application

Actions brought before the Administrative division shall not have suspensive effect unless the Court decides otherwise.

Article A11
Scope of the application

The applicants will be able to claim:

1. A declaration that the act, decisions or regulations challenged are contrary to law and their invalidation.
2. Where appropriate, the recognition of a specific legal status and the right to be restored to the situation the plaintiff occupied prior to the execution of the act, decision or regulation challenged.
3. A finding of the Administration's liability, including payment of compensation for consequent damage.
4. Where there has been an omission to act by the Administration or the Public Agencies, an order to comply with their statutory obligations.

CHAPTER III THE GENERAL PROCEDURE

Article A12 Application

1. The application shall be lodged in writing with a brief motivation and duly signed.
2. The application must be lodged within two months from the day following the day the applicant received the notification of the act, decision or the publication of the regulation challenged.

Article A 13 Rules of procedure and evidence

1. The Plenum of the Court shall adopt the detailed rules of procedure and evidence for the conduct of the proceedings, trials and appeals, the admission of evidence and other appropriate matters.
2. The detailed rules of procedure shall enter into force after their publication in the Official Gazette of Bosnia and Herzegovina, at the latest within one week from their adoption or at such other time as may be ordered by the Court. They remain in force until other rules or amendments have been adopted by the Parliament and are published in the Official Gazette of Bosnia and Herzegovina.

Article A14 Joinder of Parties

1. At the discretion of the Court more than one application can be joined when they involved common issues of law and facts, in particular,
 - a) when they concern the same act, decision or regulation
 - b) when they concern several acts, one being the implementation, confirmation or repetition of the other.
2. The Court shall be entitled to decide to join several applications at any procedural stage.
3. Applicants shall be entitled to challenge various acts in a single application or to apply jointly in respect of the same act.

Article A15 Inquiries / Evidence

1. The Court shall consider the full administrative record of the case, which the State Attorney shall assemble and present.
2. The Court shall order the taking of evidence to the extent it considers it necessary. The following areas of enquiry may be investigated:
 - witnesses
 - experts
 - documentation, including the administrative record to be produced by the State attorney.

Article A 16

Judgement orders

1. The judgement may contain one of the following declarations:
 - a) Inadmissibility of the application for the reasons indicated in Article A 12.
 - b) A complete or partial allowance of the application or its rejection.
 - c) In case of allowance, the nullification the act, decision or regulation challenged on the grounds that it is contrary to Law. The judgement may also order the plaintiff's restoration to the situation he /she occupied prior to the execution of the act, decision or regulation in question.
 - d) Award of damages in compensation. In such cases it shall also fix the level of damages.
2. The judgement shall include an order for the payment of costs to the plaintiff or the defendant in accordance with Article A18.
3. The applicant shall be informed of the decision, which is final and binding, within the time limits set out in the rules of procedure adopted by the Court and published in the Official Gazette.

Article A17

Effects and publication of the judgement

1. A judgement declaring the inadmissibility or refusal of the application shall only take effect between the parties.
2. A judgement appraising the application shall apply to all persons affected by the act, decision or regulation challenged.
3. The judgement shall be notified to the parties and shall be published in the Official Gazette of Bosnia and Herzegovina.

Article A18

Court costs

1. The judgement shall include an order to any parties who initiated or maintained the proceedings in bad faith or through recklessness to pay Court costs.
2. The Court may decide that each of the parties shall be responsible for their own costs.

CHAPTER IV

APPEAL

Article A19

Lodging an appeal

1. The parties may lodge an appeal against a judgement of the Administrative Division before the Appeals Division within 15 days from the notification of judgement, in order to revise the legality of the judgement of first instance.
2. Lodging an appeal will suspend the effect of a judgement of the Administrative Division, unless specific legislation stipulates to the contrary. The Administrative Division is entitled to adopt the necessary preventive measures, at the request of the party concerned, to ensure that the judgement will be fully complied with, if it is confirmed by the Appeal Judgement.

3. The Administrative Division may also order the provisional execution of the judgement, if this is possible, at the request of the party concerned, if suspending the effects of the judgement may cause that party damage in respect of which reparation is difficult or impossible. The party concerned shall be required to provide an adequate security in case the Appeals Division should subsequently overturn the judgement.

Article A20
The Decision of the Appeals Division

1. The Appeals Division may uphold or overturn the judgement reached in the Administrative Division. If the judgement is overturned, the Appeals Division shall also determine the original application.

2. The decision of the Appeals Division shall be final and binding on all the parties, according to provisions of Article A16.

Article A 21
Execution of judgement

1. The Administrative Division, author of the judgement of first instance, assisted by the Registrar, has jurisdiction to enforce the judgement of first instance or the decision on appeal.

2. The parties must comply with the judgement within two months of notification being received.

APPEALS DIVISION

Article AD1 Jurisdiction

1. The Appeals Division shall have jurisdiction over the following:
 - any judgement or decision delivered by the Criminal Division, pursuant to Article C24 of this Law;
 - any judgement or decision delivered by the Administrative Division, pursuant to Article A19 of this Law;
 - appeals from the Courts of last resort in the District of Brcko, according to Article G15 of the present Law.
2. The Appeals Division shall also have jurisdiction over:
 - complaints concerning violations of the electoral code and the additional regulations and directives issued by the Permanent Election Commission,
 - any other case for which competence is provided by the laws of Bosnia and Herzegovina.

Article AD2 Panels

1. The Appeals Division shall act in panels of five judges.
2. The Appeals Division is chaired by its president.

Article AD3 Rules of procedure

1. The Plenum of the Court shall adopt the detailed rules of procedure and evidence for the conduct of the proceedings before the Appeals Division, trials and the admission of evidence and other appropriate matters.
2. The rules of procedure enter into force when they are published in the Official Gazette of the State of Bosnia and Herzegovina, at the latest one-week after their adoption, or at such other time as may be ordered by the Court.

Article AD4 The Registry of the Appeals Division

1. The registry assists the work of the judges.
2. The registry shall be in charge of the application of the requirements prescribed in the detailed rules of procedure.

Article AD5
Procedure in electoral appeals

An appeal may be lodged before the Appeals Division against a decision of any authority in Bosnia & Herzegovina, its entities within the meaning of Article AD1.2 and which is not subject to another ordinary appeal.

The complaint shall be lodged by individuals, political parties and political coalitions. The Appeals Division will not act on anonymous complaints. All complaints shall be made public unless, in exceptional circumstances determined otherwise in the detailed rules of procedure.

The application shall be lodged in written with a brief motivation and duly signed within 5 days from the day of the decision of the last instance.

The Appeals Division will decide on the appeal within 10 days.

AD6
Representation and counsel

1. The applicant may be represented and defended during the hearings by a lawyer of his/her choice.
2. Only an attorney authorised to practice before the Court pursuant to Article G 22 may be engaged as counsel.

AD7
Judgement orders

The decisions of the Appeals Division are final and binding.

FINAL CHAPTER

Article F1 Transitional provisions

If six months after the entry into force of the present law, the judges and the Prosecutors are not appointed pursuant to Article G4 and G8, the Office of the High Representative shall appoint them for a maximum period of five years.

Article F2

Should the Office of the High Representative set up a unit for the establishment of the State Court, these functions of the unit will be taken over by the Chief Registrar once she/he is appointed under Article G16.2.

Article F3

This Law shall be published in the Official Gazette of Bosnia and Herzegovina.
The present law has to be published in the Official Gazette of Bosnia and Herzegovina, at the latest one week after its adoption by the Parliament.

Article F4 Entry into force of the present Law

The present law shall entry into force eight days after the date of its publication in the Official Gazette of Bosnia and Herzegovina.

Article F5

The State Court shall begin to function at the latest 6 months after the entry into force of the present law.