

## UNOFFICIAL, CONSOLIDATED VERSION

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CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA<sup>1</sup>

## PART ONE - BASIC PROVISIONS

## CHAPTER I - BASIC PRINCIPLES

## Article 1

**Scope and Application of This Code**

This Code shall set forth the rules of the criminal procedure that are mandatory for the proceedings of the Court of Bosnia and Herzegovina (hereinafter: the Court), the Chief Prosecutor of Bosnia and Herzegovina (hereinafter: the Prosecutor) and other participants in the criminal proceedings provided by this Code, when acting in criminal matters.

## Article 2

**Principle of Legality**

- (1) The rules set forth in this Code shall provide for an innocent person to be acquitted and for a perpetrator of an offense to be pronounced a criminal sanction in legally prescribed proceedings under the conditions provided by the Criminal Code of Bosnia and Herzegovina (hereinafter: the Criminal Code) and other laws of the state of Bosnia and Herzegovina that prescribe criminal offenses.
- (2) Prior to the rendering of a final verdict the freedom and other rights of the suspect or accused may be limited only under the conditions set forth in this Code.
- (3) A criminal penalty with respect to the criminal offenses over which the Court has jurisdiction may be pronounced only by this Court in proceedings instituted and conducted in accordance with this Code, unless otherwise specified under this Code.

## Article 3

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

- (1) A person shall be considered innocent of a crime until guilt has been established by a final verdict.
- (2) A doubt with respect to the existence of facts composing characteristics of a criminal offense or on which depends an application of certain provisions of criminal legislation shall be decided by the Court with a verdict and in a manner that is the most favorable for accused.

## Article 4

**Ne Bis in Idem**

No person shall be tried again for the criminal offense he has been already tried for and for which the legally binding decision has been rendered.

<sup>1</sup> High Representative imposed this Criminal Procedure Code. Criminal Procedure Code has been adopted by Bosnia and Herzegovina Parliamentary Assembly and published in the Official Gazette of Bosnia and Herzegovina 36/03. Correction to the text of the translation of the Criminal Procedure Code of Bosnia and Herzegovina was published in the Official Gazette of Bosnia and Herzegovina 32/03. Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina 26/04 – underline; the High Representative's Decision Enacting the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina 63/04 – *italic, underline*. Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina 13/05 – **bold, underline**; Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina 48/05 – **bold, italic**; High Representative's Decision Enacting the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina 46/06 – *italic, double underline*; Law on application of the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina published in the Official Gazette of BiH 46/06, was published in the Official Gazette of BiH 76/06; High Representative's Decision Enacting the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina 29/07 – **bold, italic, underline**. Law on application of the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina published in the Official Gazette of BiH 63/04, was published in the Official Gazette of BiH 32/07. High Representative's Decision Enacting the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina, published in the Official Gazette of Bosnia and Herzegovina 53/07 – **bold, italic, double underline**. Law on application of the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina published in the Official Gazette of BiH 29/07, was published in the Official Gazette of BiH 76/07.

### **Article 200**

#### **Decisions to Annul Certain Legal Transactions**

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

### **Article 201**

#### **Amending the Decision on a Claim under Property Law**

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

### **Article 202**

#### **Temporary Security Measures**

- (1) Temporary measures to secure a claim under property law that has accrued because of the commission of a criminal offense may be ordered in criminal proceedings according to the provisions that apply to judicial enforcement procedure.
- (2) The decision referred to in Paragraph 1 of this Article shall be made by the Court. Against this decision, an appeal is allowed, which shall be ruled on by the Panel referred to in Article 24 Paragraph 6 of this Code. The appeal shall not stay execution of the decision.

### **Article 203**

#### **Return of Articles in the Course of the Proceedings**

- (1) If a claim pertains to articles that unquestionably belong to the injured party, and they do not constitute evidence in criminal proceedings, those articles shall be given to the injured party even before proceedings are completed.
- (2) If the ownership of articles is disputed by several injured parties, they shall be referred to a civil action, and the Court in criminal proceedings shall order only the safekeeping of the items as a temporary security measure.
- (3) Items that serve as evidence shall be seized and at the end of the proceedings shall be returned to the owner. If such an item is urgently needed by the owner, it may be returned to him even before the end of the proceedings, under the provision that it be brought in on request.

### **Article 204**

#### **Security Measures Against Third Parties**

- (1) If an injured party has a claim against a third person because he possesses items obtained through a criminal offense or because he gained property as a result of a criminal offense, the Court in criminal proceedings, upon the petition of authorized officials (Article 194) and according to the provisions that apply to judicial enforcement procedure, may order temporary security measures even toward that third party. The provisions of Article 202, Paragraph 2 of this Code shall apply in this case as well.
- (2) In a verdict pronouncing the accused guilty the Court shall either revoke the measures referred to in Paragraph 1 of this Article, if they have not already been revoked, or shall refer the injured party to a civil action, in which case those measures shall be revoked unless the civil action is instituted within the period of time fixed by the Court.

## **CHAPTER XVIII**

### **MISCELLANEOUS PROVISIONS**

### **Article 205**

#### **Discontinuance of the Proceedings if the Suspect or Accused Dies**

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

### **Article 206**

#### **Procedure in Case of Mental Incapacity of the Suspect or the Accused**

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

### **Article 207**

#### **Mental Disorder Suffered by the Suspect or Accused in the Course of the Proceedings**

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

- (4) If in the case referred to in Paragraph 1 of this Article the verdicts of other courts are also taken into account when the penalty is pronounced, a certified copy of the new final verdict shall also be delivered to those courts.

#### **Article 325**

##### **Resumption of the Criminal Proceeding**

If a criminal proceeding was dismissed by a legally binding decision or the charges were rejected by a legally binding verdict due to a lack of permission otherwise required by this Code, the proceeding shall resume at the petition of the Prosecutor upon termination of the reasons for rendering the aforesaid decision.

#### **Article 326**

##### **Reopening a Proceeding Completed by a Legally Binding Decision**

- (1) Except for the cases referred to in Article 325, if a criminal proceeding was dismissed by a legally binding decision prior to the main trial, the criminal proceeding may be repeated on a petition of the Prosecutor if new evidence is introduced enabling the Court to ascertain that the conditions to reopen the criminal proceeding have been fulfilled.
- (2) A criminal proceeding that was dismissed by a legally binding decision prior to the commencement of the main trial may be reopened if the Prosecutor dropped the charges and it is proven that the Prosecutor dropped the charges in connection with the criminal abuse of his official post of Prosecutor. The provision of Article 327, Paragraph 2 of this Code shall be applied when proving the criminal offense committed by the Prosecutor.

#### **Article 327**

##### **Reopening the Proceedings for the Benefit of the Accused**

A criminal proceeding that was completed by a legally binding verdict may be reopened in favor of the accused:

- a) if it is proven that the verdict was based on a false document or on the false testimony of a witness, expert or interpreter;
- b) if it is proven that the verdict came about because of a criminal offense committed by the judge or person who performed the investigation;
- c) if new facts are presented or new evidence submitted, which despite the due attention and cautiousness were not presented at the main trial, and which in themselves or in relation to the previous evidence would tend to bring about the acquittal of the person who has been convicted or his conviction under a less severe criminal law;
- d) if an individual has been tried more than once for the same action or if more than one person has been convicted of an of an action which could have been performed by only one person or by some of them;
- e) if, in the case of a conviction for a continuous criminal offense or for another criminal offense that on the basis of the law covers several actions of the same kind or several actions of different kinds, new facts are presented or new evidence is submitted that shows that the accused did not commit an action included in the criminal offense covered by the conviction, and the existence of those facts would have essentially affected the fashioning of punishment;
- f) if the Constitutional Court of Bosnia and Herzegovina, the Human Rights Chamber or the European Court for Human Rights establish that human rights and basic freedoms were violated during the proceeding and that the verdict was based on these violations;
- g) In the cases referred to in Items a) and b) of Paragraph 1 of this Article, it must be proven by a legally binding verdict that these persons in question were found guilty of the criminal offenses in question. If the proceeding against these persons could not be conducted because they have died or because circumstances exist which preclude criminal prosecution, the facts referred to in Items a) and b) of the Paragraph 1 of this Article may be established with other evidence as well.

#### **Article 328**

##### **Reopening the Proceeding to the Detriment of the Accused**

- (1) A criminal proceeding may be reopened to the detriment of the accused if the verdict refusing the indictment was rendered due to the withdrawal of the Prosecutor from the indictment, and it is proven that this withdrawal was brought about by the criminal offense of corruption or criminal offense of abuse of the official post or other responsible duty by the Prosecutor.
- (2) In the case referred to in Paragraph 1 of this Article, the provision of Article 327, Paragraph 2 of this Code shall be applied.

#### **Article 329**

##### **Persons Authorized to File a Petition**

- (1) A petition to reopen a criminal proceeding may be filed by the parties and the defense attorney, and following the death of the accused the petition may be filed in his favor by the Prosecutor and by the persons cited in Article 293, Paragraph 2, of this Code.
- (2) A petition to reopen a criminal proceeding in favor of a convicted person may be filed even after the convicted person has served his sentence and regardless of the statute of limitation, amnesty or pardon.
- (3) If the Court learns that a reason exists for reopening a criminal proceeding, the Court shall so inform the convicted person or the person authorized to file the petition on his behalf.