



**UNODC**

United Nations Office on Drugs and Crime

# **Draft Country Review Report of Bosnia and Herzegovina**

Review by Hungary and Portugal  
of the implementation by Bosnia and Herzegovina  
of articles 15 - 42 of Chapter III. “Criminalization and law  
enforcement” and articles 44 - 50 of Chapter IV.  
“International cooperation”  
of the United Nations Convention against Corruption for the  
review cycle 2010 - 2015

## **I. Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, *inter alia*, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by Bosnia and Herzegovina (BiH) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Bosnia and Herzegovina, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Bosnia and Herzegovina, Hungary and Portugal, by means of telephone conferences and e-mail exchanges dialogue in accordance with the terms of reference and involving, *inter alia*, the following experts:

### BiH:

#### Institutions:

- Ministry of Foreign Affairs of Bosnia and Herzegovina,
- Ministry of Security of Bosnia and Herzegovina,
- Ministry of Justice of Bosnia and Herzegovina,
- High Judicial and Prosecutorial Council of Bosnia and Herzegovina,
- Agency for Prevention of Corruption and Coordination in Fighting Corruption,
- Federal Ministry of Justice,
- Ministry of Justice of Republika Srpska,
- Judicial Commission of Brčko District of Bosnia and Herzegovina,
- Ministry of Internal Affairs of Federation of Bosnia and Herzegovina,
- Ministry of Internal Affairs of Republika Srpska,
- Police of Brčko District of Bosnia and Herzegovina

#### Focal Points:

- Tomislav Ćurić, Department for Combating Organized Crime and Corruption, Ministry of Security;

- Ms. Sandra Srdanović Ministry of Justice of Bosnia and Herzegovina

#### Hungary:

- Mr. Ádám Péceli, Prosecutor, Prosecution Service;
- Ms. Nóra Baus, Ministry of Justice;

#### Portugal:

- Ms. Patricia Ferreira, Deputy Director General, Directorate General for Justice Policy, Ministry of Justice;
- Mr. António Folgado, Head of Division for Criminal Justice, Directorate General for Justice Policy, Ministry of Justice;

#### Secretariat:

- Mr. Dimosthenis Chrysikos, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS
- Mr. Oliver Landwehr, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS

6. A country visit, agreed to by Bosnia and Herzegovina, was conducted from 1 to 4 July 2014. During the country visit, meetings were held with representatives of competent institutions in Bosnia and Herzegovina. The review team also met with civil society organizations, including Transparency International BiH and ACCOUNT – NGO-s Anti-corruption Network.

### **III. Executive summary**

#### **1. Introduction**

##### **1.1. Overview of the legal and institutional framework of Bosnia and Herzegovina in the context of implementation of the United Nations Convention against Corruption**

*Bosnia and Herzegovina signed the United Nations Convention against Corruption (UNCAC) on 16 September 2005 and ratified it on 26 October 2006.*

*According to the Dayton Agreement, Bosnia and Herzegovina (BiH) is a State consisting of two entities, each with a high degree of autonomy – the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FoBiH), plus the Brčko District (BD), which operates as a single administrative unit under the sovereignty of Bosnia and Herzegovina. From the constitutional standpoint, the current system is a very decentralized federal system where each entity has its own constitution, president, government, parliament and judiciary.*

*The criminal legislation and legislation on criminal proceedings are adopted for the State, entity and the Brčko District level. Each of them has their own Criminal Code (CC) and Criminal Procedure Code (CPC). Entity and Brčko District laws are applied solely before the courts of the Entities and the Brčko District, while the legislation at the State level is applied before the Court of BiH.*

**2. Chapter III: Criminalization and Law Enforcement**  
**2.1. Observations on the implementation of the articles under review**

*Bribery and trading in influence (arts. 15, 16, 18, 21)*

*The provisions on active bribery are contained in Art. 218 CC-BiH, Art. 381 CC-FoBiH, Art. 352 CC-RS and Art. 375 CC-BD. Passive bribery is dealt with in Art. 217 CC-BiH, Art. 380 CC-FoBiH, Art. 351 CC-RS and Art. 374 CC-BD. The definition of national public officials is provided in Art. 1(3) CC-BiH; Art. 2(3) CC-FoBiH; Art. 147 (3) CC-RS; and Art. 2(3) CC-BD, respectively. These provisions are worded in identical terms.*

*The offer of a bribe is only explicitly mentioned in the text of Art. 352 CC-RS. The element of “undue advantage” is implemented as “gifts and other benefits”.*

*Concerning active bribery, third party beneficiaries of the advantage are covered in CC-BiH but not in the other criminal codes. In the passive form of bribery, the criminal codes specify that the beneficiary of the advantage may be “another person”.*

*Trading in influence is criminalized in Art. 219 and 219a CC-BiH. Art. 382 CC-FoBiH and Art. 376 CC-BD cover trading in influence only in its passive form. Art. 353 CC-RS criminalizes both the active and passive form.*

*Art. 21 UNCAC is implemented through the definition of the bribe taker, which includes “responsible persons”. According to Art. 1(5) CC-BiH, Art. 2(6) CC-FoBiH, Art. 147(4) CC-RS and Art. 2(5) CC-BD, a “responsible person” means a person in a business enterprise or other legal person who has been entrusted with certain powers. This definition does not, however, cover employees. In RS, there is Art. 267 and 268 CC-RS, which seem to lack provisions for third party beneficiaries.*

*Money-laundering, concealment (arts. 23, 24)*

*The main provisions criminalising money laundering are found in Art. 209 CC-BiH, Art. 272 CC-FoBiH, Art. 280 CC-RS and Art. 265 CC-BD.*

*BiH applies an “all crimes approach” to money laundering, meaning that proceeds may derive from any criminal conduct and even trying to conceal the origins of property would lead to a completed offence (as opposed to an attempt). The offender himself may also be the perpetrator of the predicate crime, thus self-laundering is also a criminalized conduct (and punished even more severely).*

*Pursuant to Art. 9 CC-BiH, predicate offences committed outside BiH can trigger liability for money laundering inside BiH. If the offence is proven outside BiH, it does not have to be proven in BiH again.*

*Concealment is criminalized according to Art. 232 CC-BiH, Art. 300 CC-FoBiH, Art. 246 CC-RS and Art. 294 CC-BD.*

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20, 22)*

*The domestic provisions which correspond to art. 17 UNCAC are contained in Art. 221-223 CC-BiH, Art. 384-386 CC-FoBiH, Art. 348-350 CC-RS and Art. 378-380 CC-BD. The CCs go beyond the Convention in that the beneficiary of these crimes (most typically fraud) can be anyone, even legal persons, or other entities. The criminal codes also provide for the confiscation of the obtained financial gain.*

*Art. 19 UNCAC is implemented through the provisions of Art. 220, 224 CC-BiH, Art. 383, 387 CC-FoBiH, 347, 354 CC-RS and Art. 377, 381 CC-BD. Causing damage or obtaining advantage are also elements of the crime, while UNCAC defines these elements only as motivation. Therefore, the conduct specified in UNCAC would only be an attempt in BiH. The CCs of RS and BD are in line with UNCAC on this point, as causing damage or gaining advantage is an additional element of the crime, which leads to a more severe punishment.*

*BiH has considered criminalizing illicit enrichment, but decided not to implement Art. 20 UNCAC because of constitutional problems (presumption of innocence). However, unexplained wealth deriving from criminal activity is subject to extended confiscation.*

#### *Obstruction of justice (art. 25)*

*Art. 25(a) UNCAC is implemented through provisions in Art. 241, 236 CC-BiH; Art. 349, 366 CC-FoBiH; Art. 343 CC-BD. Art. These provisions concern obstruction of justice and tampering with evidence. 25(b) UNCAC is implemented through Art. 241a, 241b CC-BiH; Art. 358-360 CC-FoBiH; Art. 369, 387, 387a, 388 CC-RS and Art. 352, 353 CC-BD (“obstructing an official person in the execution of official duties” and similar offences).*

#### *Liability of legal persons (art. 26)*

*BiH and its entities have introduced criminal liability of legal persons (Chapter XIV – Art. 122-144 – CC-BiH; Chapter XIV – Art. 126-146 – CC-FoBiH; Chapter XIV – Art. 125-146 CC-RS; and Chapter XIV – Art. 126-148 – CC-BD). The codes distinguish between punishments (fine, seizure of property, dissolution) and security measures (publication of judgement, ban to perform business activity). In addition, it is compulsory to confiscate the proceeds gained by the legal person as a result of committing the crime. The provisions in place guarantee a wide and proportionate range of dissuasive consequences. However, in practice there is only a small number of cases at the entity level. In parallel with the criminal investigations, financial investigations have also been instigated in Republika Srpska. The investigations resulted in the orders for a temporary and permanent confiscation of property of large value.*

*The law on minor offences and administrative law (inspections) is also used against legal persons. The liability of the company is separate from the liability of the offender, and vice versa. The prosecution of the legal person will not affect the liability of the offender, and the legal person may be found liable of a crime, despite the fact that the offender cannot be prosecuted.*

#### *Participation and attempt (art. 27)*

*Art. 27(1) UNCAC is implemented in Art. 29-31 CC-BiH; Art. 31-33 CC-FoBiH; 23-25 CC-RS; and Art. 31-33 CC-BD (co-perpetration, incitement, accessories). The general rule about attempt is regulated in Art. 26 CC-BiH; Art. 28 CC-FoBiH; Art. 20 CC-RS; and Art. 28 CC-BD. Attempt is punishable if the maximum sentence for an offence is three years or more. Preparation is punishable under the same conditions.*

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30, 37)*

*The range of punishment for corruption crimes makes it possible to take into account the gravity of the relevant offences.*

*According to the four CCs, the President, members of Parliament (MPs) and members of the government enjoy immunity for any act carried out in course of their official duties. Investigations can be launched even if the person still enjoys immunity and all investigative steps prior to interviewing the subject can be undertaken. Only for questioning the subject and other coercive measures, the lifting of immunities is required. Immunity can be lifted by a Parliamentary commission.*

*The law provides for mandatory prosecution (legality principle) in BiH. According to Art. 38 CPC-BiH, it is possible to abandon prosecution if there is not sufficient evidence or due to a judgment of the Constitutional Court or the European Court of Human Rights (Strasbourg). There is no possibility to challenge the decision to abandon prosecution, except if the prosecutor committed an offence (e.g. corruption) by doing so.*

*Rules on bail and parole are comprehensively regulated in the various CCs.*

*Art. 30(6) UNCAC is implemented through The Law on Civil Service in the Institutions of BiH (Art. 58 - Preventive Suspension) and corresponding provisions in the laws of the other entities.*

*BiH has established procedures for the disqualification of persons convicted of corruption offences from holding public.*

*BiH can apply disciplinary and criminal sanctions simultaneously.*

*The BiH legislation promotes the reintegration into society of persons convicted of offences (Article 117 CC-BiH - Rehabilitation – and corresponding provisions).*

*Plea bargaining was introduced 11 years ago to accelerate cases, shorten the time and costs of proceedings and catch the “big fish”. Since then, plea bargaining has been widely used at the Court of BiH. In the FoBiH and RS it is also widely used in practice. Plea bargaining does not represent an exception to the principle of mandatory prosecution. It only concerns the sentencing. Cooperating offenders can be protected as provided for in Art. 32 UNCAC.*

*Protection of witnesses and reporting persons (arts. 32, 33)*

*There is a special law on the Protection of Witnesses under Threat and Vulnerable Witnesses in all four jurisdictions.*

*A new Law on the witness protection program in BiH provides for efficient protection of witnesses before, during and after criminal proceedings, in order to enable the witnesses to testify freely and openly in criminal proceedings. However, the limitation to witnesses testifying in the Court of BiH seriously reduces the application of the law. Moreover, the scope of the law is limited to certain crimes.*

*Currently, witnesses testifying at the State level are protected by SIPA. At entity level, it is the responsibility of the law enforcement authorities.*

*On 1 January 2014, the Law on the protection of whistleblowers in the institutions of BiH came into effect. However, the law only covers the State level. A similar bill is before the FoBiH parliament and RS will also soon develop a bill, which was mentioned in its anti-corruption strategy. Central responsibility for whistleblower protection rests with the Agency for the prevention of corruption and the coordination of the fight against corruption (APIK).*

*Freezing, seizing and confiscation; bank secrecy (arts. 31, 40)*

*The domestic legal framework on freezing, seizing and confiscation can be found in a number of articles in the four criminal codes and other acts like the CPC, the Law on Enforcement Procedure before the Court of BiH and the Law on the Confiscation of Proceeds of Crime (RS). Art. 73 CPC-BiH for instance governs temporary seizure of property and arrest in property, Art. 74 CC-BiH forfeiture (confiscation), Art. 110 CC-BiH the basis of the confiscation of material gain and Art. 110a CC-BiH extended confiscation.*

*The confiscation system in value based, Art. 111 CC-BiH; Art. 115 CC-FoBiH; Art. 95 CC-RS and Art. 115 CC-BD.*

*According to the codes of BiH, FoBiH and BD, the court is responsible for the safekeeping of seized property, while in RS there is an Agency especially set up for asset management purposes. The draft amendment to the FoBiH contains provisions on an Agency for the management of confiscated assets.*

*A judge can order a bank to provide information of financial nature. In some cases, a prosecutor may order this as well, but within 72 hours a court warrant must be obtained. An order is also available for a temporary suspension of a transaction (temporary seizure). There is no register of bank accounts for individuals in BiH, although there is one for legal persons. Currently, there are about 50 banks that operate in the country. In practice, prosecutors send letters to all banks, and once they know if the individual concerned has an account at a specific bank, they ask for a court order.*

*The reversal of the burden of proof has not been implemented. However, the provision on extended confiscation contains a different standard of proof (sufficient evidence for reasonable belief).*

*The rights of bona fide third parties are protected under Art. 74 CC-BiH, Art. 78 CC-FoBiH, Art. 62 CC-RS and Art. 78 CC-BD.*

*Statute of limitations; criminal record (arts. 29, 41)*

*The period starts from the commission of the crime. The mere fact that the suspect is a fugitive it would not be a reason for the suspension of the time limit. Concerning the interruption of the limitation period, all four codes contain a provision according to which the limitation period is interrupted if the offender – before the period elapsed - commits an equally grave (or graver) crime (e.g. Article 15(4) CC-BiH).*

*In the determination of the punishment the court has the possibility to take into consideration previous convictions only if the perpetrator is a BiH citizen living abroad.*

*Jurisdiction (art. 42)*

*BiH has implemented the territorial principle (Art. 8 CC-BiH) and the active and passive personality principle (Art. 9 CC-BiH) for establishing jurisdiction. BiH can prosecute own citizens in lieu of extradition.*

*Consequences of acts of corruption; compensation for damage (arts. 34, 35)*

*The BiH legal system offers possibilities to annul or rescind an agreement or a decision adopted by the public administration, which have been affected by acts of corruption. Art. 200 CPC-BiH gives the court the power to annul certain legal transactions. The CPC-RS also*

foresees that the courts may annul certain legal transactions if a claim under property law is filed.

Art. 195 CPC-BiH lays down the procedure for the satisfaction of a claim under property law.

*Specialized authorities and inter-agency coordination (arts. 36, 38, 39)*

Due to the highly federalised structure of BiH, there is no agency that has the powers to investigate or prosecute acts of corruption on all levels. Likewise, there is no judicial institution with the authority to resolve competence conflicts within the whole territory of BiH. The Agency for the prevention of corruption and the coordination of the fight against corruption (APIK) only has a preventive mandate, so strictly speaking it is not an Art. 36 body. APIK also has a mandate to develop a methodology for asset declaration.

The State Investigation and Protection Agency (SIPA) is an operatively independent administrative organization within the Ministry of Security of BiH, whose competencies include prevention, detection and investigation of criminal offences falling within jurisdiction of the Court of BiH. SIPA has over 850 employees working in 11 organizational units. It has a Department for the fight against economic crime and corruption.

Judges and prosecutors are appointed by the High Judicial Council. In the Court of BiH there are specialized chambers (3 panels with 3 judges each) for organised crime, corruption, and white collar crime. In RS and FoBiH, specialized structures for organized and economic crime, including corruption, also exist or are being set up.

## **2.2. Successes and good practices**

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The provisions on extended confiscation had the potential to constitute a good practice. However, at the same time, this law has not been applied yet. Therefore, BiH was encouraged to make use of these provisions in practice;
- The existence of a High Judicial Council for the appointment of judges and prosecutors was identified as a good practice.

## **2.3. Challenges in implementation**

While noting BiH's efforts in the field of anti-corruption, the reviewers identified a considerable number of challenges in implementation and/or grounds for further improvement and made the following recommendations (depending on the mandatory or optional nature of the relevant UNCAC requirements):

- Concerning Arts. 15 and 16 UNCAC:
  - include third party beneficiaries in the active bribery provisions of CC-FoBiH, CC-RS and CC-BD;
  - if necessary, clarify that third party beneficiaries include legal persons and entities;
  - ensure consistency between the provisions on bribery and trading in influence and therefore also include the term "offer" in the provision on active bribery (as is already the case for Art. 352 CC-RS).
- Concerning Art. 18 UNCAC:

- *Consider criminalizing trading in influence in the legislation of FoBiH and BD;*
- *Concerning Art. 19 UNCAC:*
  - *consider removing the requirement of damage in Art. 220 CC-BiH, Art. 383 CC-FoBiH;*
- *Concerning Art. 21 UNCAC:*
  - *include third party beneficiaries as recipients of the bribe in the active bribery provisions of CC-FoBiH, CC-RS and CC-BD;*
  - *include employees as possible perpetrators.*
- *Concerning Art. 23 UNCAC:*
  - *ensure that the provisions on money laundering are effectively enforced in practice.*
- *Concerning Art. 31 and 40 UNCAC:*
  - *BiH, FoBiH and BD tackle the issue of managing confiscated assets and, in doing so, consider the establishment of dedicated asset management agencies;*
  - *consider the introduction of a central register of all bank accounts.*
- *Concerning Art. 33 UNCAC:*
  - *laws for the protection of whistleblowers should be adopted at the entity level as soon as possible;*
  - *consider providing for the protection of whistleblowers in the private sector.*
- *Concerning Art. 36 UNCAC:*
  - *the legislation should provide for a clear division of competences, mechanisms to resolve competence conflicts and sufficient resources for the institutions;*
  - *ensure equal pay for prosecutors and judges by returning to a harmonized system of laws on salaries;*
  - *ensure the allocation of sufficient resources to the judiciary to allow them to effectively carry out their mandate;*
  - *ensure that performance assessment sufficiently takes into account the nature and complexity of the cases;*
  - *preserve the independence of the High Judicial and Prosecutorial Council of BiH and strengthen its role in the process of the preparation and adoption of its budget, as well as the budgets of the courts and prosecutors' offices;*
  - *consider broadening the mandate of APIK and strengthening its capacities;*
- *Concerning Art. 39 UNCAC:*
  - *take steps in order to improve the cooperation between banks and the FIU.*

#### **2.4. Technical assistance requests**

*BiH requested the following types of technical assistance:*

- (Art. 20) *Model legislation and legal advice on legislative drafting in the field of illicit enrichment;*
- (Art. 31(9)) *Legal advice and model legislation on confiscation. Such assistance has been partly provided through the IPA Project 2010 - EU Support to Law Enforcement;*
- (Art. 33) *A summary of good practices/lessons learned; legal advice; model legislation and on-site assistance by a relevant expert;*
- (Art. 36) *Further focused training for judicial and law enforcement personnel. However, an analysis of the completed training of judges and prosecutors on the topic of corruption should be carried out first to establish in which way the implemented training has increased the quality of their work in corruption cases. Only then, on the basis of this analysis, an assessment of the needs for further training should be made.*

### **3. Chapter IV: International cooperation**

*As a general point, the review team consistently raised the issue of the lack of practical examples of implementation and statistics. During the country visit, explanations were provided by the competent national authorities, which enabled the reviewers to gain a better picture of how the legal framework is implemented in practice. Moreover, it was reported that as far as the courts are concerned, a sophisticated information system has been introduced, so that it is now possible to obtain more detailed statistical information about all the court cases, including extradition cases.*

#### **3.1. Observations on the implementation of the arts. under review**

*Extradition; transfer of sentenced persons; transfer of criminal proceedings  
(arts. 44, 45, 47)*

*Extradition is regulated through the provisions (Chapter III) of the Law on Mutual Legal Assistance in Criminal Matters (“MLA Law”) of 2009, as amended in July 2013. Article 32 of the Law stipulates that the extradition of accused or sentenced persons from BiH to a foreign State is carried out in accordance with that law unless otherwise provided in an international agreement.*

*As confirmed during the country visit, BiH does not make extradition conditional on the existence of a treaty. Despite this, a number of bilateral agreements have been concluded. It was also stated that the UNCAC can be used as a legal basis for extradition on the condition of reciprocity. However, such requests have been received so far.*

*Article 33 MLA Law sets the threshold for the identification of extraditable offences (imprisonment of at least one year if extradition is requested for purposes of prosecution and remainder of four months of prison sentence if extradition is requested for the enforcement of a sentence).*

*Dual criminality is foreseen as an absolute requirement for granting an extradition request (article 33, paragraph 2, and article 34, paragraph 1(d) MLA Law).*

*Article 34 provides for the requirements for extradition, including grounds for refusal of an extradition request such as the nationality of the offender, the political or military nature of the offence, the granting of*

*asylum, death penalty and anticipated discriminatory treatment in the requesting State on the grounds of race, sex, national or ethnic origin, religious belief or political views. Corruption offences are not considered as political offences. The nature of the crime in question as an offence involving fiscal matters is not included among the grounds for refusal of extradition requests.*

*In relation to the extradition of nationals, the MLA Law provides (article 40, paragraph 2, as amended in July 2013) for flexibility by making such extradition subject to the provisions of international treaties concluded by BiH. If an applicable treaty envisages the extradition of nationals, then the procedure for their extradition shall be conducted in compliance with the MLA Law. If the extradition of nationals is not possible, the relevant authorities of the requesting State shall be informed to forward a letter rogatory for transfer of prosecution to BiH (article 40, paragraph 3, as amended in July 2013).*

*There is no ad hoc provision in the domestic law covering the issue of accessory extradition, as prescribed in article 44, paragraph 3, of the UNCAC.*

*The extradition procedure is regulated by articles 35-53 MLA Law. The detention of the person sought in extradition proceedings may last “up until the enforcement of the decision on extradition, but no longer than six months from the day of placing the person into custody” (article 39, paragraph 2 MLA Law, as amended in July 2013).*

*As confirmed by the BiH authorities, despite the 6-month maximum length of extradition proceedings, approximately 50 per cent of extradition cases are completed within 18 days, especially with neighboring countries. Article 52 MLA Law provides for a simplified extradition process. If no translation is involved, the simplified extradition process is completed within 24 hours.*

*Regarding the applicable evidentiary requirements in extradition proceedings, article 34, paragraph 1(h) MLA Law identifies as one of the extradition requirements the fact that “there is sufficient evidence for a suspicion that the sought foreigner committed a criminal offence or that there is a valid verdict”. It was noted that this provision introduced a “prima facie requirement of guilt” for allowing extradition. However, it was explained that this high evidentiary threshold only applies where extradition is granted in the absence of a bilateral or multilateral treaty, on the basis of reciprocity. The reviewers noted that on this point, the law could be aligned with the Council of Europe Convention on Extradition.*

*The temporary surrender of nationals for purposes of prosecution on the condition of return to serve the sentence is not followed as a practice. Conversely, the BiH authorities reported that there were three cases of foreign citizens who had been temporarily surrendered to BiH, in which an undertaking of reciprocity was provided.*

*The execution of foreign criminal judgments against a national of BiH in lieu of extradition is possible through application of chapter VI of MLA Law, in particular article 62, paragraph 2.*

*BiH is a party to the Convention on the Transfer of Sentenced Persons (1983). Chapters VII and VIII of the MLA Law regulate the transfer of prisoners from a foreign State to BiH and vice versa.*

*The transfer of criminal proceedings is regulated in chapters IX of the MLA Law (articles 83-92). In addition, BiH is a party to the European Convention on the Transfer of Proceedings in Criminal Matters (1972).*

*Mutual legal assistance (art. 46)*

*Mutual legal assistance is governed by the provisions of the MLA Law, as amended in July 2013. Such assistance can also be provided in accordance with international treaties or agreements in force. BiH is a party to the 1959 European Convention on Mutual Assistance in Criminal Matters and its Second Additional Protocol. The country has also signed a number of bilateral agreements in this field. In the absence of such treaties or agreements, assistance is provided pursuant to the MLA Law on the condition of reciprocity. MLA can also be afforded in relation to offences for which a legal person may be held liable.*

*Assistance can also be afforded in respect of petty offences punishable with imprisonment or fines in accordance with the legislation of BiH (Art. 1(3) MLA Law).*

*Dual criminality is not required as a condition for the provision of assistance. Thus, assistance can be afforded by the BiH authorities on the basis of the principle of reciprocity (article 12 MLA Law).*

*The grounds for refusal of MLA requests are stipulated in article 9 MLA Law, as amended in July 2013. Bank secrecy and the fiscal nature of the offences are not grounds for refusing MLA requests.*

*The Ministry of Justice of BiH is the central authority designated to deal with MLA requests. Exceptionally, national judicial authorities may directly address the MLA request to a foreign judicial authority, when such a communication is allowed by an international treaty. In urgent cases, MLA requests may be transmitted and received through Interpol. BiH has not yet submitted a notification to the Secretary-General of the United Nations regarding the central authority and the acceptable languages for the submission of MLA requests.*

*For the execution of MLA requests, the domestic legislation is applicable. As an exception, at the request of a court or other requesting authority, a national judicial authority can comply with the letter rogatory in the manner cited in it, provided that this does not contradict the fundamental principles of the domestic legal system and it is also stipulated in an applicable international agreement. The length of MLA proceedings depends on the complexity of the case.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)*

*Law enforcement cooperation is facilitated through the use of domestic legislation and the conclusion of bilateral and multilateral instruments on police cooperation, as well as through membership in Interpol. UNCAC could be used as a legal basis for cooperation, but no practical cases have been reported.*

*Joint investigations can be conducted through recently amended domestic legislation (article 24 MLA Law). The Sarajevo Canton Prosecutor's Office is the only one that has reported on the formal establishment of joint investigations teams with foreign prosecuting authorities. Cases of joint investigations are related to crimes, such as drug trafficking, and not to corruption.*

*Special investigative techniques such as undercover investigation and controlled delivery are authorized through the 2013 amendments of the MLA Law. At the international level, the Police Cooperation Convention for Southeast Europe, as well as bilateral agreements on police cooperation, allow for the use of such techniques. However, the evidence*

*obtained from such techniques cannot always and automatically be taken into account in court as it has to be “accompanied” by other evidence as well.*

### **3.2. Successes and good practices**

*Overall, the following points are regarded as successes and good practices in the framework of implementing Chapter IV of UNCAC:*

- *Mutual legal assistance can also be afforded in respect of petty offences punishable with imprisonment or fines in accordance with the legislation of BiH and in the cases where a decision of an administrative authority can result in proceedings before a court with subject-matter jurisdiction over criminal matters (Art. 1(3) MLA Law);*
- *Dual criminality is not required as a condition for the provision of assistance.*

### **3.3. Challenges in implementation, where applicable**

*With a view to enhancing international cooperation to combat offences covered by UNCAC, and depending on the mandatory or optional nature of the relevant UNCAC requirements, it was recommended that BiH:*

- *Explore the possibility of relaxing the strict application of the double criminality requirement, in line with Art. 44(2) of the Convention;*
- *Notify the Secretary-General of the United Nations that the UNCAC can be used as a legal basis for extradition on the condition of reciprocity (Art. 44(6a) UNCAC);*
- *Notify the Secretary-General of the United Nations of the central authority designated to deal with MLA requests and of the acceptable languages for the submission of MLA requests (Art. 46 (13) and (14) UNCAC);*
- *Continue to devote efforts into putting in place a case management system with a database containing statistics and practical examples/cases on extradition and MLA matters (Arts. 44 and 46 UNCAC);*
- *Amend the domestic legislation in order to allow the use in court of evidence collected through special investigative techniques without the need of it to be “accompanied” by other evidence as well (Art 50 (1) UNCAC).*

### **3.4. Technical assistance requests**

*BiH requested the following types of technical assistance:*

- *Summary of good practices/lessons learned in the area of law enforcement cooperation (Art. 48 UNCAC);*
- *Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation (Art. 48 UNCAC).*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

7. Bosnia and Herzegovina signed the UN Convention against Corruption on 16 September 2005 and ratified it on 26 October 2006.
8. The implementing legislation includes the acts and regulations listed under paragraph 12 below.

## **B. Legal system of Bosnia and Herzegovina**

9. The Dayton Agreement has designed Bosnia and Herzegovina (**BiH**) to be a State consisting of two entities, each with a high degree of autonomy – the Federation of Bosnia and Herzegovina (**FoBiH**) and the Republika Srpska (**RS**) –, plus the Brčko District (**BD**), which belongs to both and operates as a single administrative unit under the sovereignty of Bosnia and Herzegovina. From the constitutional standpoint, the current system is a very decentralized federal system where each entity has its own constitution, president, government, parliament and judiciary.
10. The criminal legislation and legislation on criminal proceedings are adopted for the State, entity and the Brčko District level. Entity and Brčko District laws are applied solely before the courts of the Entities and the Brčko District, while the legislation at the State level is applied before the Court of Bosnia and Herzegovina.
11. In case of differences between the languages, the English language prevails for the interpretation of the Constitution and the criminal legislation.
12. The relevant texts on corruption are the following:
  - Criminal Code of Bosnia and Herzegovina (CC-BiH)
  - Criminal Code of the Federation of Bosnia and Herzegovina (CC-FoBiH)
  - Criminal Code of Republika Srpska (CC-RS)
  - Criminal Code of Brčko District BiH (CC-BD)
  
  - Criminal Procedure Code of Bosnia and Herzegovina
  - Criminal Procedure Code of Federation of Bosnia and Herzegovina
  - Criminal Procedure Code of Republika Srpska
  - Criminal Procedure Code of Brčko District BiH
  
  - Law on Mutual Legal Assistance in Criminal Matters
  - Law on Prevention of Money Laundering and Terrorism Financing
  - Law on Witness Protection Program
  
  - Law on Civil Service of Bosnia and Herzegovina
  - Law on Civil Service of Federation BiH
  - Law on Civil Service in Republika Srpska
  - Law on Civil Service of Brčko District
  
  - Law on Agency for Prevention of Corruption and Coordination in Fight Against Corruption
  - Law on Public Procurement of Bosnia and Herzegovina
  - Law on Confiscation of Unlawfully Acquired Property in Republic of Srpska

13. Draft amendments to the Criminal Code of BiH which are intended to implement recommendations by the Council of Europe's GRECO evaluations are currently before Parliament. There is also a draft amendment to the Criminal Code of Republika Srpska

UNODC

## **C. Implementation of selected articles**

### **III. Criminalization and law enforcement**

#### **Article 15. Bribery of national public officials**

##### **Subparagraph (a) of article 15**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

14. BiH confirmed that it has fully implemented this provision of the Convention.
15. The active bribery provisions which correspond to subparagraph (a) of article 15 are codified in the following articles:

##### ***CC-BiH***

##### ***Article 218 - Giving Gifts and Other Forms of Benefits***

(1) Whoever gives or promises a gift or any other benefit for himself or another person to an official or arbitrator or juror or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, in order to perform within the scope of his functions an act, which ought not to be performed by him, or to abstain from performing an act which ought to be performed by him, or whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever gives or promises a gift or any other benefit for himself or another person to an official or arbitrator or juror or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, to perform within the scope of his functions an act, which ought to be performed by him, or to abstain from performing of an act, which ought not to be performed by him, shall be punished by a fine or imprisonment for a term not exceeding three years.

(3) The perpetrator of the criminal offence referred to in paragraph (1) and (2) of this Article who had given a bribe on request of the official or arbitrator or juror or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.

(4) The gift or any other material benefit shall be forfeited.

##### ***CC-FoBiH***

##### ***Article 381 - Giving Gifts and Other Forms of Benefits***

(1) Whoever gives or promises a gift or any other benefit to an official or responsible person in the Federation, including also a foreign official person, in order that he performs within the scope of his authority something which he ought not to perform, or that he omits something which he ought to perform, or whoever mediates in such bribing of an official or responsible person, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever gives or promises a gift or any other benefit to an official or responsible person in the Federation, including also a foreign official person, in order that he performs within the scope of his authority something which he ought to perform, or that he omits something which he ought not to perform, shall be punished by a fine or imprisonment for a term not exceeding three years.

(3) The perpetrator of criminal offence referred to in paragraphs (1) and (2) of this Article, who gives the bribe on the request of an official or responsible person in the Federation, including also a foreign official person, and reports the criminal offence before it is discovered or before he realises that the offence has been discovered, may be released from punishment.

(4) The accepted gift or material gain shall be forfeited, while in case referred to in paragraph (3) of this Article, it may be returned to the person who had given the bribe.

#### ***CC-RS***

##### ***Article 352 - Offering a Bribe***

(1) Whoever makes, offers or promises a gift or any other benefit to an official or responsible person in order that he performs, within his official authorizations or in connection to his official authorizations, an official act which must not be performed by him, or abstains from performing an official act which must be performed by him, or whoever mediates in the bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever makes, offers or promises a gift or any other benefit to an official or responsible person in order that he performs, within his official authorizations or in connection to his official authorizations, an official act which must be performed by him, or abstains from performing an official act which must be not performed by him, or whoever mediates in the bribing of the official or responsible person, shall be punished by imprisonment for a term up to three years.

(3) Provisions of paragraphs (1) and (2) of this Article shall apply also when the bribe is given, offered or promised to the foreign official or responsible person.

(4) The perpetrator of the offence referred to in paragraphs (1) and (3) of this Article who reported the offence before it has been discovered, may be acquitted.

(5) Given gift or the other benefit that is seized from the person who received the bribe may be in the case referred to in paragraph (4) of this Article returned to the person who gave the bribe.

#### ***CC-BD***

##### ***Article 375 - Giving Gifts and other Benefits***

(1) A person who gives or promises a gift or other benefit to an official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official, to perform, within the scope of his authorization, a forbidden action, or not to perform what is his duty, or a person who mediates in such bribing of an official or responsible person, shall be punished by imprisonment for a term between six months and five years.

(2) A person who gives or promises a gift or other benefit to an official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official, to perform, within the scope of his authorization, what is his duty, or not to perform what is forbidden to perform, or a person who mediates in such bribing of an official or responsible person, shall be fined or sentenced with imprisonment not exceeding three years.

(3) The perpetrator of the offence referred to in Paragraphs (1) and (2) of this Article who has given a bribe upon the request of an official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official, and reported the act prior to the discovery of such act, or prior to knowledge that the act has been discovered, may be released from punishment.

(4) The accepted gift or property gain shall be confiscated, and in the case referred to in paragraph (3) of this Article, it may be returned to the person who had given the bribe.

***The Law on Public Procurement of Bosnia and Herzegovina***

("The BiH Official Gazette", no. 49/04, 19/05, 52/05, 8/06, 24/06, 70/06, 12/09, and 60/10)

***Article 27 - Disqualification on Grounds of Conflict of Interest or Bribery***

(1) With due regard of the laws of BiH on Civil Service as well as the other relevant legislation, the contracting authority shall reject a request to participate in a procurement procedure or a bid if the candidate or bidder who submitted it, has given or is prepared to give a current or a former employee of the contracting authority a gift in the form of cash or in any non-cash form whatsoever as an attempt to influence an action or a decision or the course of the public procurement procedure. The contracting authority shall inform the bidder and the Director of the Public Procurement Agency of the rejection of the request or tender and the reasons for it in writing, and shall make a note on it in the report on the procurement procedure.

(2) In case that requests or bids received during the procurement procedure by the contracting authority cause or may cause any conflict of interest, the contracting authority shall, by acting in accordance with the relevant legislation of BiH or related internal rules, ensure that the purpose of this Law is effectively secured.

**Article 1 (3), BiH Criminal Code – Official Person**

Official person means: an elected or appointed officer to legislative, executive and judicial office within Bosnia and Herzegovina and other national and administrative institutions or services which perform particular administrative, expert and other duties, within the rights and liabilities of the authority that has founded them; a person who continuously or occasionally executes official duty in the aforementioned administrative bodies or institutions, an authorised person in a business enterprise or another legal entity that has been entrusted with the execution of public authorities by law or other regulations based on the law, who performs certain duties within the framework of the given authority; and other persons who are performing specific official duties, with or without remuneration, as stipulated by law or other regulations based on the law.

**Article 2 (3), FoBiH Criminal Code – Official Person**

An official shall be an elected or appointed officer or other official in legislative, executive and judicial bodies and other administrative organs and services of the Federation, cantons, cities and municipalities which carry out specific administrative, professional and other tasks within the rights and duties of the authority which established them; a person who regularly or occasionally executes official duties in these organs and bodies; an authorised person in a business enterprise or other legal entity who under the law or other regulation adopted under the law has been entrusted

with the exercise of public powers and who, within those powers, performs a specific function; and a person who performs a specific official function under the authority arising from the law or other regulation adopted under the law.

**Article 147 (3), RS Criminal Code – Official Person**

An official shall be an elected or appointed officer in legislative, executive and judicial organs of Republika Srpska and in other state and administrative institutions and services which carry out specific administrative, professional and other tasks within the rights and duties of the authority which established them; a person who regularly or occasionally executes official duties in these administrative organs or institutions; an authorised person in a business enterprise or other legal entity who under the law or other regulation adopted under the law has been entrusted with the exercise of public powers and who, within those powers, performs a specific function; and a person who performs a specific official function under the authority arising from the law or other regulation adopted under the law.

**Article 2 (3), BD Criminal Code – Official Person**

An official shall be an elected or appointed officer in legislative, executive and judicial bodies of the Brčko District and in other state and administrative institutions and services which carry out specific administrative, professional and other tasks within the rights and duties of the authority which established them; a person who regularly or occasionally executes official duties in these administrative organs or institutions; an authorised person in a business enterprise or other legal entity who under the law or other regulation adopted under the law has been entrusted with the exercise of public powers and who, within those powers, performs a specific function; and a person who performs a specific official function with or without compensation under the authority arising from the law or other regulation adopted under the law.

16. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

17. Concerning the element of undue advantage, the experts enquired if the term “gift/any other benefit” only refers to advantages of a financial or economic nature or whether it covers other types of advantages, and whether a definition of “benefit” exists in national law, in internal guidelines or in the jurisprudence. During the country visit, it was explained that no definition exists in the law, but the issue is dealt with in jurisprudence. Art. 1 of a draft amendment to CC-BiH defines proceeds of crime and is very comprehensive, covering also immaterial advantages. The draft was adopted in May 2015.

18. The reviewing experts noted that third party beneficiaries of the advantage are not covered in all Criminal Codes.

19. The reviewing experts noted that the offer of a bribe is only explicitly mentioned in the text of Art. 352 CC-RS. There was discussion as to whether the term “promise” could cover the term “offer” in the local language. However, since the term “offer” is included separately in the proposed offence of trading in influence (draft Article 219a CC-BiH), the reviewing experts recommended to ensure consistency of the provisions on bribery and trading in influence and therefore also include the term “offer” in the provision on active bribery (Art. 218 CC-BiH etc.).

20. In the view of the reviewing experts, criminalization of indirect bribery may also need some clarification. The criminal codes clearly define, that - regarding the more severe forms of bribery - mediating between the active and passive parties will also result in committing the crime, as perpetrator. The less grave form of this crime however (where bribing the official does not lead to the breach of duties) seems to miss this element, thus mediators are only prosecuted as accomplices, not as perpetrators.
21. The reviewing experts concluded that BiH has partially implemented Art. 15(a) UNCAC.

**(c) Challenges and recommendations**

22. The reviewing experts recommended to
- include third party beneficiaries in the active bribery provisions of CC-FoBiH, CC-RS and CC-BD;
  - if necessary, clarify that third party beneficiaries include legal persons and entities;
  - ensure consistency between the provisions on bribery and trading in influence and therefore also include the term “offer” in the provision on active bribery (as is already the case for Art. 352 CC-RS).

**Subparagraph (b) of article 15**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...  
*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

23. BiH confirmed that it has fully implemented this provision of the Convention.
24. The passive bribery provisions which correspond to subparagraph (b) of article 15 are codified in the following articles:

***CC-BiH***

***Article 217 - Accepting Gifts and Other Forms of Benefits***

(1) An official or arbitrator or juror or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, who demands or accepts a gift or any other benefit for himself or another person or who accepts a promise of a gift or a benefit for himself or another person in order to perform within the scope of his functions an act, which ought not to be performed by him, or for the omission of an act, which ought to be performed by him or whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between one and ten years.

(2) An official or arbitrator or juror or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, who demands or accepts a gift or any other benefit for himself or another person or who accepts a promise of a gift or a benefit for himself or another person in order to perform within the scope of his functions an act, which ought to be performed by him, or for the omission of an act, which ought not to be performed by him or whoever mediates in such bribing of the official or responsible person, shall be punished by imprisonment for a term between six months and five years.

(3) The punishment referred to in paragraph (1) of this Article shall be imposed on an official or arbitrator or juror or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an international official, who demands or accepts a gift or any other benefit for himself or another person following the performance or omission of an official act referred to in paragraphs 1 and 2 of this Article and in relation to it.

(4) The gifts or any other benefits shall be forfeited.

### ***CC-FoBiH***

#### ***Article 380 - Accepting Gifts and Other Forms of Benefits***

(1) An official or responsible person in the Federation, including also a foreign official person, who demands or accepts a gift or any other benefit for himself or another person, or who accepts a promise of a gift or a benefit for himself or another person, in order to perform within the scope of his authority something which he ought not to perform, or for omitting something which he ought to perform, shall be punished by imprisonment for a term between one and ten years.

(2) An official or responsible person in the Federation, including also a foreign official person, who demands or accepts a gift or any other benefit for himself or another person, or who accepts a promise of a gift or a benefit for himself or another person, in order to perform within the scope of his authority something which he ought perform, or for omitting something which he ought not perform, shall be punished by imprisonment for a term between six months and five years.

(3) The punishment referred to in paragraph (2) of this Article shall be imposed on an official or responsible person in the Federation, including also a foreign official person, who demands or accepts a gift or any other benefit for himself or another person following the performance or omission referred to in paragraphs (1) and (2) of this Article, and in relation to it.

(4) The accepted gift or material gain shall be forfeited.

### ***CC-RS***

#### ***Article 351 - Accepting a Bribe***

(1) An official or responsible person who demands or accepts a gift or any other benefit or who accepts the promise of a gift or a benefit in order to perform, in the course of his official duties, an act, which ought not to be performed by him, or not to perform an act, which ought to be performed by him, shall be punished by imprisonment for a term between one and eight years.

(2) An official or responsible person, who demands or accepts a gift or any other benefit or who accepts the promise of a gift or a benefit in order that he performs, in the course of his official duties, an act, which ought to be performed by him, or not to perform an act, which ought not to be performed by him, shall be punished by imprisonment for a term between one and five years.

(3) An official or responsible person, who demands or accepts a gift or any other benefit after the performance or failure to perform an official duty referred to in paragraphs (1)

through (3) of this Article in connection with the performance or failure to perform, shall be punished by imprisonment for a term not exceeding three years.

(4) Accepted gifts or any other benefits shall be forfeited.

**CC-BD**

***Article 374 - Accepting Gifts and Other Forms of Benefits***

(1) An official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official person, who demands or accepts a gift or other benefit, or who accepts a promise of a gift or other benefit to perform, within the scope of his authorization, an action which he should not perform, or not to perform an action he should perform, shall be sentenced with one to ten years in prison.

(2) An official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official person, who demands or accepts a gift or other benefit, or who accepts the promise of a gift or other benefit to perform, within the scope of his authorization, an action which he should perform, or not to perform an action he should not perform, shall be sentenced with six months to five years in prison.

(3) An official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official person, who demands or accepts a gift or other benefit upon performing the action or failure to perform the actions from Paragraphs (1) and (2) of this Article, shall be punished by the sentence from Paragraph (2) of this Article.

(4) The accepted gift or property gain shall be confiscated.

***The Law on Public Procurement of Bosnia and Herzegovina***

***Article 27 - Disqualification on Grounds of Conflict of Interest or Corruption***

(text see above)

25. BiH provided the following example of case law:

**DISTRICT COURT IN BANJA LUKA**

Number: 11 0 K 005985 11 K as of 21st April 2011 for the criminal offence of bribery under Article 351 (2)

**VERDICT**

The defendant D. K. aka B., son of M. and mother Dj., nee R., born ... in the village of R., municipality of K., permanently residing in B.L., at the address ... , Serb by ethnicity, national of Republic of Srpska and of Bosnia and Herzegovina, married, father of one adult child, literate, mechanical engineer by profession, unemployed, military service in ... in S. , no rank, no medals, owner of a motor vehicle "Dacia" and 35 donums of agricultural land with a share in 1/6 of heritage in his father's property, no previous convictions, no other criminal proceedings initiated against him, found in custody, now at large, is

**GUILTY** for:

Having requested in mid-November 2010 from Z.R., as the director of company U.a.d. from N.G., the amount of money for performing actions in the scope of its powers concerning the inspection of the pressure vessels. On 18/01/2011, at approximately 12 hours, the above mentioned had created the minutes in the premises of the Company U. a.d. in N. G in capacity of an official thermal energy inspector for pressure vessels, of

the Republican Authority of ..., Sector for .... on conducting the regular inspection control of the pressure vessel in the said company and received from Z. R. the amount of 2,000.00 BAM in her office.

Therefore, as an official demanding and receiving the benefit to execute an action that is obligatory in the framework of his powers, he had committed the criminal offense of bribery under Article 351 (2) of the Republic of Srpska Criminal Code and this Court, by following the above legal provisions and by application of Articles 32 (1) and 33 (1) of the RS CC, is sentencing him to imprisonment for one (1) year and six (6) months.

Pursuant to Article 44 (1) of RSCC, the sentenced imprisonment will include the time spent in custody from 18/01/2011 until 18/02/2011.

## **SECOND INSTANCE SUPREME COURT of THE REPUBLIC OF SRPSKA**

Number: 11 0 K 005985 11 Kz Banja Luka, 22/9/2011 for the act of receiving bribes from Article 351(2)

### **VERDICT**

By partial appreciation of appeal filed by D.K.'s barrister, the judgment of the District Court in Banja Luka is modified.

Special Department for Organized and Most Severe Forms of Economic Crime issued the decision number: 11 0 K 005985 11 as of 21/04/2011 relating to D.K. as the person accused and found guilty of criminal offense of accepting bribe under Article 351 (2) of the Republic of Srpska Criminal Code. By application of Article 38 indent 2) and Article 39 (1) 4) of the Republic of Srpska Criminal Code, the decision is modified in sense of sentencing this person to imprisonment for ten (10) months. As provided by Article 44 (1) of the RS Criminal Code, the sentenced imprisonment will include the time spent in custody starting from 18/01/2011 until 18/02/2011.

The rest of the first-instance verdict remains unchanged.

## **COURT OF BOSNIA AND HERZEGOVINA Case no.: S1 2 K 009247 12 K**

**Date: 22/11/2012**

Accepting Gifts and Other Benefits under Article 217(1)

### **VERDICT THE DEFENDANTS:**

1. J. N., daughter O.B. and H., nee I., born ... in ... with permanent residence in the street ... , Bosniak by ethnicity, national of Bosnia and Herzegovina, economist by profession employed in Indirect Taxation Authority (ITA) in RC of Tuzla, married, mother of two children, URN: ...

2. Dj. M., aka "Dj", son of M. and Dz. nee S., born in the year ... in ... municipality of ... where he resides at the address..., Bosniak by ethnicity, national of BiH, the economist by profession employed in ITA of RC in Tuzla, married, father of two children, URN: ...

### **ARE FOUND GUILTY For having:**

requested in Zivinice, on an unspecified date preceding 16/03/2012, on the occasion of conducting previously agreed regular checks of business enterprise "M.S." Ltd. in Z.... in capacity of: associate and senior associate for audit and control from the Indirect Taxation Authority in the Regional Centre of Tuzla, a gift in amount of 3,000.00 BAM and a laptop from the owner of the said company, M.E., in favour of recording in the minutes on control of businesses, to be drafted upon conducted controls of the "M.S."

Ltd. Z. Company's commitments relating to VAT, the amount reduced by approximately 4,000.00 BAM of the real value of 26,000.00 BAM. The owner of the company "M.S." Ltd. In Ž., M. E., had agreed to the proposed and used his passenger vehicle "Passat" to hand over on 16/03/2012 to J. N. a sum of 3,000.00 BAM, which she took and appropriated, thereby committing a criminal offence of: accepting gifts and other benefits under Article 217 (1) in conjunction with Article 29 of the BiH Criminal Code.

Pursuant to above stated regulations, and by application of provisions of Articles 39, 42 and 48 of the Criminal Code of Bosnia and Herzegovina, the Court is sentencing the accused J. N. and Dj.M:

**TO IMPRISONMENT FOR A TERM OF 1 (ONE) YEAR EACH**

As provided by provisions of CC BiH's Article 217 (4), the amount of 3,000.00 BAM will be seized from the accused J. N. as the property gained by a criminal offence.

Pursuant to the provisions of Article 188 (1) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused is bound to reimburse the costs of this criminal proceeding in amount which shall be determined by a special decision of the Court.

## **SECOND INSTANCE**

Case number: S 1 2 K 009247 13 Kz Issued on: 08/03/2013

## **A D J U C A T I O N**

The appeal of M.Dj.'s Defence Counsel against the judgment of this Court is denied as ungrounded, thus having the BiH Court's judgment no.: S1 2 K 009247 12 K as of 22/11/2012 unchanged.

### **(b) Observations on the implementation of the article**

26. The reviewing experts noted that in the passive form of bribery, the criminal codes specify that the beneficiary of the advantage may differ from the public official. However, the texts seem to restrict this to natural persons ("another person"). Therefore, BiH could clarify that the term "person" also includes legal persons and other entities.
27. For the remainder, the same observations were made, *mutatis mutandis*, as for Art. 15(a) UNCAC.
28. The reviewing experts concluded that BiH has partially implemented Art. 15(b) UNCAC.

## **Article 16. Bribery of foreign public officials and officials of public international organizations**

### **Paragraph 1 of article 16**

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.

**(a) Summary of information relevant to reviewing the implementation of the article**

29. BiH confirmed that it has partially implemented this provision of the Convention.

30. BiH cited the following implementation legislation:

***CC-BiH***

***Article 218 - Giving Gifts and other Forms of Benefits***

(see above Art. 15)

***CC-FoBiH***

***Article 381 - Giving Gifts and Other Forms of Benefits***

(see above Art. 15)

***Article 2 - General Terms***

Meaning of Terms as Used in This Code

(8) A foreign official person means a member of a legislative, executive, administrative or judicial body of foreign State, a public official of an international organisation or of its bodies, judge or other official of an international court, serving in the Federation, conducting his/her tasks with or without a compensation.

***CC-RS***

***Article 352***

(see above Art. 15)

***CC-BD***

***Article 375 - Giving Gifts and Other Forms of Benefits***

(see above Art. 15)

***Article 2 - General Terms***

(7) A foreign official person means a member of a legislative, executive, administrative or judicial body of foreign State, a public official person of an international organisation and of its bodies, judge and other official person of an international court, serving in the Brčko District of Bosnia and Herzegovina, with or without compensation.

(8) International official is a civil employee working for an international organisation or an agency.

***The Law on Public Procurements of Bosnia and Herzegovina***

*Article 27 - Disqualification on Grounds of Conflict of Interest or Bribery*

31. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

32. As these offences are criminalized together with the bribery of national officials, cf. the observations regarding Article 15 UNCAC.

**Paragraph 2 of article 16**

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

33. BiH confirmed that it has partially implemented this provision of the Convention.

34. BiH cited the following implementation legislation:

***CC-BiH***

***Article 217 - Accepting Gifts and Other Forms of Benefits***

(see above Art. 15)

***CC FoBiH***

***Article 380 - Accepting Gifts and Other Forms of Benefits***

(see above Art. 15)

***Article 2 - General Terms***

**Meaning of Terms as Used in This Code**

(8) A foreign official person means a member of a legislative, executive, administrative or judicial body of foreign State, a public official of an international organisation or of its bodies, judge or other official of an international court, serving in the Federation, with or without compensation.

***CC-RS***

***Article 351 - Accepting a Bribe***

(see above Art. 15)

**CC-BD**

**Article 374 - Accepting Gifts and Other Forms of Benefits**

(see above Art. 15)

**General Terms**

**Article 2**

(7) A foreign official person means a member of a legislative, executive, administrative or judicial body of foreign State, a public official of an international organisation or of its bodies, judge or other official of an international court, serving in the Brčko District of Bosnia and Herzegovina, conducting his/her tasks with or without a compensation.

**The Law on Public Procurement of Bosnia and Herzegovina**

**Article 27 - Disqualification on Grounds of Conflict of Interest or Bribery**

35. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

36. As these offences are criminalized together with the bribery of national officials, see observations regarding Article 15 UNCAC.

**Article 17. Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

37. BiH confirmed that it has fully implemented this provision of the Convention.

38. BiH cited the following implementation legislation:

**CC-BiH**

**Article 221 - Embezzlement in Office**

(1) Whoever, with an aim of acquiring unlawful property gain for himself or another, appropriates money, securities or other movable entrusted to him by virtue of his office in the institutions of Bosnia and Herzegovina, or of generally his position within the institutions of Bosnia and Herzegovina, shall be punished by imprisonment for a term between six months and five years.

(2) If a property gain acquired by the perpetration of the criminal offence referred to in paragraph (1) of this Article exceeds the amount of 10.000 BAM, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If a property gain acquired by the perpetration of the criminal offence referred to in paragraph (1) of this Article exceeds the amount of 50.000 BAM, the perpetrator shall be punished by imprisonment for a term not less than three years.

(4) Money, securities or other mobile items as well as gained benefit shall be confiscated.

#### ***Article 222 - Fraud in Office***

(1) An official or responsible person in the institutions of Bosnia and Herzegovina, who, with an aim of acquiring an unlawful property gain for himself or another, by submitting false accounts or in some other way deceives an authorised person into making an illegal disbursement, shall be punished by imprisonment for a term between six months and five years.

(2) If a property gain acquired by the perpetration of the criminal offence referred to in paragraph (1) of this Article exceeds the amount of 10.000 BAM, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If a property gain acquired by the perpetration of the criminal offence referred to in paragraph (1) of this Article exceeds the amount of 50.000 BAM, the perpetrator shall be punished by imprisonment for a term not less than three years.

(4) Gained benefit in property shall be confiscated.

#### ***Article 223 - Using Property of the Office***

Whoever makes an unauthorised use of money, securities or other movable entrusted to him by virtue of his office or service in the institutions of Bosnia and Herzegovina generally or without authorisation confers these things to another person for unauthorised use, shall be punished by imprisonment for a term between six months and five years.

#### ***CC-FoBiH***

#### ***Article 384 - Embezzlement in Office***

(1) Whoever, with an aim of acquiring unlawful material gain for himself or for another, appropriates money, securities or other movables entrusted to him by virtue of his office or of generally his work within the institutions in the Federation, shall be punished by imprisonment for a term between six months and five years.

(2) If, by the criminal offence referred to in paragraph (1) of this Article, a material gain exceeding 10.000 BAM is acquired, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If, by the criminal offence referred to in paragraph (1) of this Article, a material gain exceeding 50.000 BAM is acquired, the perpetrator shall be punished by imprisonment for a term not less than three years.

(4) Money, securities or other mobile items as well as gained benefit shall be confiscated.

#### ***Article 385 - Fraud in Office***

(1) An official or responsible person in the Federation who, with an aim of acquiring unlawful material gain for himself or for another, by submitting false accounts or in some other way deceives an authorized person into making an illegal disbursement, shall be punished by imprisonment for a term between six months and five years.

(2) If, by the criminal offence referred to in paragraph (1) of this Article, a material gain exceeding 10.000 BAM is acquired, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If, by the criminal offence referred to in paragraph (1) of this Article, a material gain exceeding 50.000 BAM is acquired, the perpetrator shall be punished by imprisonment for a term not less than three years.

(4) The acquired material gained shall be confiscated.

#### ***Article 386 - Using Property of the Office***

Whoever makes an unauthorized use of money, securities or other movables entrusted to him by virtue of his office or generally of his work within the institutions in the Federation, or confers these things without authorization to another person for use, shall be punished by imprisonment for a term between six months and five years.

#### ***CC-RS***

#### ***Article 348 - Embezzlement in Office***

(1) Whoever unlawfully appropriates money, securities or other movables entrusted to him by virtue of his office or, generally by his position within institutions or legal persons, shall be punished by imprisonment for a term between six months and five years.

(2) If the material gain acquired in the course of the commission of the offence referred to in paragraph (1) of this Article does not exceed 200 BAM, and the perpetrator's aim was to acquire a small value, he shall be punished by a fine or imprisonment for a term not exceeding one year.

(3) If the material gain acquired in the course of the commission of the offence referred to in Paragraph (1) of this Article exceeds 10,000 BAM, the perpetrator shall be punished by imprisonment for a term between one and eight years and if the material gain exceeds 50,000 BAM, the perpetrator shall be punished by imprisonment for a term between two and ten years.

#### ***Article 349 - Fraud in Office***

(1) An official or responsible person who, with the intention of acquiring an unlawful material gain for himself or another, submits false accounts or otherwise deceives an authorized person into making an illegal disbursement, shall be punished by imprisonment for a term between six months and five years.

(2) If the material gain acquired in the course of the commission of the offence referred to in Paragraph (1) of this Article exceeds 10,000 BAM, the perpetrator shall be punished by imprisonment for a term between one and eight years and if the material gain exceeds 50,000 BAM, the perpetrator shall be punished by imprisonment for a term between two and ten years.

#### ***Article 350 - Using Property of the Office***

Whoever makes an unauthorized use of money, securities or other movables entrusted to him by virtue of his office within institutions or legal persons generally or without

authority passes the same to another for unauthorized use, shall be punished by a fine or imprisonment for a term not exceeding three years.

**CC-BD**

**Article 378 - Embezzlement**

(1) Whoever unlawfully appropriates money, securities or other movables entrusted to him by virtue of his office or, generally by his position within the BiH Brčko District institutions or legal persons, shall be punished by imprisonment for a term between six months and five years.

(2) If the material gain acquired in the course of the commission of the offence referred to in paragraph (1) of this Article does not exceed 500 BAM, and the perpetrator's aim was to acquire small value, he shall be punished by a fine or imprisonment for a term not exceeding one year.

(3) If the material gain acquired in the course of the commission of the offence referred to in paragraph (1) of this Article exceeds 10,000 BAM, the perpetrator shall be punished by imprisonment for a term between one and eight years and if the material gain exceeds 50,000 BAM, the perpetrator shall be punished by imprisonment for a term between two and ten years.

**Article 379 - Fraud in Office**

(1) An official or a responsible person in Brčko District of Bosnia and Herzegovina, who, intending to acquire an unlawful property gain for himself or another, by submitting false accounts, or in some other way deceives an authorized person into making an unlawful payment, shall be sentenced with six months to five years in prison.

(2) If the offence referred to in paragraph (1) of this Article resulted in acquisition of a property gain exceeding 10,000 BAM, the perpetrator shall be sentenced with one to ten years in prison.

(3) If the offence referred to in paragraph (1) of this Article resulted in acquisition of a property gain exceeding 50,000 BAM, the perpetrator shall be sentenced with at least three years in prison.

**Article 380 - Using Property of the Office**

Whoever unlawfully appropriates money, securities or other movables entrusted to him by virtue of his office or, generally by his position within the BiH Brčko District institutions or by legal persons, shall be punished by imprisonment for a term between six months and five years.

39. BiH provided the following example of case law:

**The Court of Bosnia and Herzegovina**

Case no. : S1 2 K 006235 11 K      Date: 18/05/2012    Embezzlement in the Office under Article 221 (3)  
Forgery of official documents under Article 226 (1)

VERDICT

THE DEFENDANTS: S.A., son of D. and mother M. nee G. , born .... , in S., permanently residing in K., at the address ... . , no. ... , unemployed, single, literate, completed Grammar

School, indigent, ethnicity: the Others, national of BiH, URN ..., no criminal records, and

G. G., son of S. and mother M., nee Š., born .... , in S. , permanently residing in E.S. - 1.1, at the address:, no. .... , mechanical technician by profession, employed in the company "A.-p." Ltd. BL, District office in: E.S., married, literate, served the army, indigent, Serb by ethnicity, national of BiH , URN: .... , no criminal records,

ARE SENTENCED

TO A SINGLE SENTENCE OF IMPRISONMENT FOR 3 (THREE) YEARS

The defendant G. G. is sentenced by this Court under Article 221 (3) relating to Article 31 (1) of the BiH Criminal Code, by application of the provisions of Articles: 39, 42 , 48, 49 and 50 of the Criminal Code of Bosnia and Herzegovina,

TO IMPRISONMENT FOR A TERM OF 1 (ONE) YEAR

Based upon Article 110 and Article 111 of the BiH Criminal Code, and Article 392 (1) of the Code on Criminal Proceedings of Bosnia and Herzegovina (hereinafter referred to as BiH CCP), the accused A.S. and G.G. are obliged to jointly conduct the payment for the benefit of the budget of Bosnia and Herzegovina in amount of 63,930.08 BAM (sixty-three thousand ninety-three hundred BAM and eight pfennigs), it being unlawfully acquired as material gain relating to company A. Ltd. Banja Luka, area of East Sarajevo, and the accused A. is to pay the amount of 5,595.80 BAM (five thousand five hundred ninety-five BAM and eighty pfennigs), which forms part of illegally gained property for the fact that a part of the material gain in the amount of 5595.80 BAM was settled by convicted L.B., relating to the company E. Ltd. Sarajevo, as well as the amount of 3,685.50 BAM (three thousand six hundred and eighty-five BAM and fifty pfennig).

SECOND INSTANCE VERDICT Case no.: S1 2 K 006235 12 Kž Date: 21/11/2012  
VERDICT

Upon partial appreciation of appeals filed by defence attorneys of S.A. and G.G., the judgment of the Court of Bosnia and Herzegovina no. S1 2 K 006235 11 K as of 18/05/2012 is modified in part relating to decision on confiscation of material gain as provided by Articles 110 and 111 of the Criminal Code of Bosnia and Herzegovina so the defendants S.A. and G.G. are confiscated of the property gained by perpetration of a criminal act, and that they are bound to conduct the individual payment for the benefit of the budget of Bosnia and Herzegovina in amount of 31.965,04 BAM (thirty-one thousand nine hundred sixty-five BAM and four pfennigs), which represents the amount of illegally acquired property obtained in the course of business with legal entity "C" Ltd. B., branch office in E.S., where the accused S.A. is to additionally pay the amount of 5,595.80 BAM (five thousand five hundred ninety-five BAM and eighty pfennigs), it being the amount of unlawfully acquired property stemming from business activities with the legal entity "D" Ltd. Sarajevo, as well as the amount of 3,685.50 (three thousand six hundred and eighty-five BAM and fifty pfennig).

The remainder of the first instance verdict remains unchanged.

**FEDERATION OF BOSNIA AND HERZEGOVINA CANTONAL COURT IN NOVI TRAVNIK**

Number: K-84/01 as of 19/04/2004

Criminal act of embezzlement in the office under Article 384 (1)

By the verdict of the Cantonal Court in Novi Travnik number: K-84/01 as of 19/04/2004, the

defendant M.N. was found guilty of continued criminal offense of embezzlement in the service stemming from Article 384 (1) of the Criminal Code of the Federation of Bosnia and Herzegovina (CC FoBiH), for which she has been sentenced to imprisonment term of 1 year and 5 months. She is also found guilty of continued criminal offense of counterfeiting documents under Article 351 (3) relating to paragraph (1) of above mentioned CC FoBiH, for which she has been sentenced to imprisonment for a term of five months, thus being sentenced to a single sentence of imprisonment of one year and nine months. The same verdict bounds the accused to compensate to the indemnified party for claim relating to property law the amount of 41,930.00 BAM, as well as to reimburse the costs of criminal proceedings and to pay the Court with the lump sum. Against this judgment were timely filed the appeals of cantonal prosecutor in Travnik and of defender of the accused M.N.

SECOND INSTANCE SUPREME COURT

FEDERATION OF BOSNIA AND HERZEGOVINA Kz - 214/04

Sarajevo, 16/06/2005

VERDICT

The appeals of cantonal prosecutor in Travnik and barrister of the accused M.N. are rejected as being ungrounded thus having the judgment of the Cantonal Court in Novi Travnik number K-84/01 as of 19/04/2004 confirmed.

**REPUBLIC OF SRPSKA BASIC COURT OF SOKOLAC**

Number: 007744 89 0 K 09 K, in Sokolac: 14/12/2009

criminal offense of unauthorised use of official property under Article 350 of the RS Criminal Code

VERDICT

THE DEFENDANT: xxxxxxxxxxxxxx, a lawyer by profession, married, mother of two children, employed in Postal Services of Republic of Srpska, Inc. Banja Luka, Branch office in: E. Sarajevo - Sokolac, employed as Head of Department for Shared Services, residing at the address: Cara Lazara, no. 22 in Sokolac, national of RS and of BiH, URN: 0109960178418, no previous convictions.

IS FOUND GUILTY

FOR: By acting in capacity of the Director of the RS Postal Services, Inc. Banja Luka, branch office in Sokolac, the defendant had conducted in the period from 04/10/2006 until 20/04/2007 repeated and unauthorized provision of official property of passenger vehicle - "TOYOTA" (license plates: 098 K- - 805) to her husband - Mr. Rajic Srpko, who at that time was not an employee of the company. This was enabled by her signatures and verification of travel orders number: 012252 of 04/10/2006, 012253 of 18/10/2006, 012254 of 19/10/2006, 012259 of 01/12/2006, 012258 of 30/12/2006, 012261 of 01/02/2007, 012263 of 29/03/2007, and 012264 of 10/04/2007.

BY WHICH: she has committed a criminal offense of unauthorised use of official property under Article 350 of RS CC.

In accordance with the above cited provisions and Article 35 of the RS CC, this Court pronounces for the defendant:

Fine in the amount of 550.00 BAM (Five hundred fifty BAM)

bound to pay within two (2) months after the verdict becomes final, or shall be compensated by imprisonment in a way that each commenced 50,00 BAM of fine are charged as one day in prison.

**SECOND INSTANCE REPUBLIC OF SRPSKA  
DISTRICT COURT IN EAST SARAJEVO**

Number: 89 0 K 07744 10 KZ East Sarajevo as of 22/06/2010 on unauthorised use of official property under Article 350

**VERDICT**

The appeal of the accused Rajic Snjezana is deducted as groundless, and the judgment of the Municipal Court in Sokolac number: 89 007744 09 K as of 14/12/2009 IS CONFIRMED.

**(b) Observations on the implementation of the article**

40. Various criminal offences in the criminal codes (embezzlement, fraud, illegal use of property) cover the provision of the Convention. The CCs go beyond the Convention in that the beneficiary of these crimes (most typically fraud) can be anyone, even legal persons, or other entities. The criminal codes also provide for the confiscation of the obtained financial gain.
41. The reviewing experts noted that the Convention uses the term „any property”, while in the provisions under review – especially in case of embezzlement – seem to restrict the object of the offence to moveable assets. This does not, however, seem to be of practical relevance.
42. The reviewing experts concluded that BiH has adequately implemented Art. 17 UNCAC.

**Article 18. Trading in influence**

**Subparagraph (a) of article 18**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

**(a) Summary of information relevant to reviewing the implementation of the article**

43. BiH confirmed that it has partially implemented this provision of the Convention.
44. BiH cited the following implementation legislation:

**CC-BiH**

**Article 219a. Giving Rewards or Other Forms of Benefits for Trading in Influence**

(1) Whoever gives, offers or promises, either directly or indirectly, a reward or any other benefit to a person with official or social or influential authority or other status to intercede that an official or responsible person in the institutions of Bosnia and Herzegovina, or a foreign official person or international official person or arbiter or juror, to perform or not to perform an official or some other activity, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever perpetrates a criminal offence referred to in paragraph (1) of this Article upon a request of a person with official or social or influential authority or status, either directly or indirectly, and reports the criminal offence before it is discovered or before he realizes that the offence has been discovered, may be released from punishment.

(3) The accepted reward or any other benefit shall be forfeited, while in the cases referred to in paragraph (2) of this Article, it can be returned to the person who had given the reward or any other benefit.

**CC-RS**

**Article 353 - Trading in Influence**

(1) Whoever demands or accepts a reward or any other benefit for himself or another person, directly or through a third party for interceding that that an official act be or not be performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term between one year and five years.

(2) Whoever, directly or through a third party, offers or gives a reward or any other benefit for interceding that that an official act be or not be performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term up to three years.

(3) Whoever intercedes that that an official act, which must not be performed, is performed, or that that an official act, which must be performed, is not performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term between one year and eight years.

(4) Whoever, directly or through a third party, promises, offers or gives a reward or any other benefit for interceding that that an official act, which must not be performed, is performed, or that that an official act, which must be performed, is not performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term between six months and five years.

(5) If a reward or any other benefit has been demanded or received in return for interceding referred to in paragraph (3) of this Article, the perpetrator shall be punished by imprisonment for a term between two and twelve years.

(6) A foreign official or responsible person who perpetrates the offence referred to in paragraphs (1) to (4) of this Article shall be punished for that offence.

(7) A reward or material gain acquired by perpetration of offences referred to in this Article shall be forfeited.

45. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

46. Art. 219a CC-BiH covers trading in influence only in its active form Art. 353 CC-RS criminalizes both the active and passive form.
47. The draft laws, use the terms of gift, benefit (BiH) and reward (RS), instead of the more generic term “undue advantage”. During the country visit, it was confirmed that these terms would encompass any financial or non-financial benefits.
48. The new law of BiH seems to apply to the exercise of real, factual influence, while according to the draft of RS and the UNCAC article, the influence can be either real or supposed. Therefore, the BiH law seems to criminalize the act in a more “narrow” fashion. The reviewing experts recommended to clarify this issue in the draft. This would also remove an inconsistency with the draft Art. 219 CC-BiH, which already mentions “real or perceived social or official or influential position or other status”.

**(c) Challenges and recommendations**

49. The reviewing experts recommend that FoBiH and BD consider criminalizing active trading in influence.

**Subparagraph (b) of article 18**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

**(a) Summary of information relevant to reviewing the implementation of the article**

50. BiH confirmed that it has partially implemented this provision of the Convention.
51. BiH cited the following implementation legislation:

***CC-BiH***

***Article 219 – Receiving Rewards or Other Forms of Benefits for Trading in Influence***

(1) Whoever requires or takes or accepts a reward or any other benefit or a promise of a reward or any other benefit for himself or the other person, directly or indirectly, to use his real or perceived official or social or influential position or status for interceding that an official or responsible person in the institutions of Bosnia and Herzegovina or foreign official person or international official person or arbiter or juror, perform or not perform an official or some other activity, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever intercedes by taking advantage of his official or social or influential position or the other status to have an official or responsible person in the institutions of

Bosnia and Herzegovina or foreign official person or international official person or arbiter or juror, to perform or not to perform an official or some other activity, shall be punished by imprisonment for a term between one and eight years.

(3) If the perpetrator had requested or took or accepted a reward or any other benefit or a promise of a reward or any other benefit for himself or the other person in return for the criminal offence referred to in paragraph (2) of this Article, he shall be punished by imprisonment for a term between one and ten years.

(4) Any received reward or any other benefit shall be confiscated.

### ***CC-FoBiH***

#### ***Article 382 - Illegal Interceding***

(1) Whoever accepts a reward or any other benefit for interceding that an official act is or is not performed, by taking advantage of his official or influential position in the Federation, shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) Whoever, by taking advantage of his official or influential position in the institutions in the Federation, intercedes that an official act is performed, which ought not to be performed, or that an official act is not performed, which ought to be performed, shall be punished by imprisonment for a term between six months and five years.

(3) If a reward or any other benefit has been received in return for the perpetration of criminal offence referred to in paragraph (2) of this Article, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(4) The accepted gift or any other benefit shall be forfeited.

### ***CC-RS***

#### ***Article 353 - Trading in Influence***

(1) Whoever demands or accepts a reward or any other benefit for himself or another person, directly or through a third party for interceding that that an official act be or not be performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term between one year and five years.

(2) Whoever, directly or through a third party, offers or gives a reward or any other benefit for interceding that that an official act be or not be performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term up to three years.

(3) Whoever intercedes that that an official act, which must not be performed, is performed, or that that an official act, which must be performed, is not performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term between one year and eight years.

(4) Whoever, directly or through a third party, promises, offers or gives a reward or any other benefit for interceding that that an official act, which must not be performed, is performed, or that that an official act, which must be performed, is not performed by taking advantage of his official or social position or his actual or presumed influence, shall be punished by imprisonment for a term between six months and five years.

(5) If a reward or any other benefit has been demanded or received in return for interceding referred to in paragraph (3) of this Article, the perpetrator shall be punished by imprisonment for a term between two and twelve years.

(6) A foreign official or responsible person who perpetrates the offence referred to in paragraphs (1) to (4) of this Article shall be punished for that offence. A reward or material gain acquired by perpetration of offences referred to in this Article shall be forfeited.

**CC-BD**

**Article 376 - Unlawful Mediation**

(1) A person who accepts a reward or other benefit to use his official position or influence in Brčko District of Bosnia and Herzegovina in order to intermediate in performing or non-performing of an official action, shall be fined and sentenced with up to three years in prison.

(2) A person who uses his official or social position or influence in institutions of Brčko District of Bosnia and Herzegovina to intermediate in performing of a forbidden official action, or in failure to perform an action which should be performed, shall be sentenced with from six months to five years in prison.

(3) If a reward or other benefit has been accepted for the commission of the criminal offence from Paragraph (2) of this Article, the perpetrator shall be sentenced with one to ten years in prison.

52. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

53. BiH has criminalized the passive form of trading in influence in Art. 219 CC-BiH.

54. The most severe form of commission of the offence is where the offender enforces his real influence in exchange of an advantage. This conduct also seems to constitute another crime (inciting an official to the abuse of his power). The difference between the two could be clarified. This is especially true in case of the CC-BD, which defines this criminal conduct without using the term of advantage.

55. The CC-FoBiH seems to criminalize the acceptance of the advantage only, the offence however lacks the solicitation of advantage. During the country visit, it was clarified that solicitation would be covered by Art. 382 CC-FoBiH as an attempt. Furthermore, the influence should be real, which might indicate, that in case of alleged influence, the act would be regarded as fraud instead of an act of corruption. It is also unclear if the beneficiary of the advantage can be a third person, different from the one with influence, and also, if the offender can obtain the advantage indirectly.

56. The law of RS seems to be in line with the provisions of UNCAC.

**(b) Challenges and recommendations**

57. The reviewing experts recommend to bring the provisions of FoBiH and BD in line with the definition of the offence in Art. 18(b) UNCAC.

## Article 19. Abuse of functions

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

### (a) Summary of information relevant to reviewing the implementation of the article

58. BiH confirmed that it has fully implemented this provision of the Convention.

59. BiH cited the following implementation legislation:

#### ***CC-BiH***

#### ***Article 220 - Abuse of Office or Official Authority***

(1) An official or responsible person in the Bosnia and Herzegovina institutions who, by taking advantage of his office or official authority, exceeds the limits of his official authority or fails to execute his official duty, and thereby acquires a benefit for himself or another person, or causes **damage** to another person or seriously violates the rights of another, shall be punished by imprisonment for a term between six months and five years.

(2) If a property gain acquired by the perpetration of the criminal offence referred to in paragraph (1) of this Article exceeds the amount of 10.000 BAM, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If a property gain acquired by the perpetration of the criminal offence referred to in paragraph (1) of this Article exceeds the amount of 50.000 BAM, the perpetrator shall be punished by imprisonment for a term of not less than three years.

(4) Any gained benefit shall be confiscated.

#### ***Article 221 - Embezzlement in Office***

(see Art. 17 UNCAC)

#### ***Article 222 - Fraud in Office***

(see Art. 17 UNCAC)

#### ***Article 223 - Using Property of the Office***

(see Art. 17 UNCAC)

#### ***Article 224 - Lack of Commitment in Office***

(1) An official or responsible person in the institutions of Bosnia and Herzegovina, who, being aware of what he or she is doing, breaches law or other regulations or general acts, fails to exercise due supervision or in any other way manifestly acts in a clearly unconscientious manner in the discharge of his official duties, and such action of his results in a serious violation of rights of another or a property damage whose value exceeds the amount of 1.000 BAM, shall be punished by imprisonment for a term between three months and five years.

(2) If a serious violation of another man's right or damage to property exceeding the amount of 10.000 BAM has occurred as a result of the criminal offence referred to in paragraph (1) of this Article, the perpetrator shall be punished by imprisonment for a term between one and ten years.

***CC-FoBiH***

***Article 383 - Abuse of Office or Official Authority***

(1) An official or responsible person in the Federation who, by taking advantage of his office or official authority and by exceeding the limits of his official authority or by failing to perform his official duty, acquires a benefit to himself or to another person or causes damage to another person or seriously violates the rights of another, shall be punished by imprisonment for a term between six months and five years.

(2) If, by the criminal offence referred to in paragraph (1) of this Article, a material gain exceeding 10.000 BAM is acquired, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If, by the criminal offence referred to in paragraph (1) of this Article, a material gain exceeding 50.000 BAM is acquired, the perpetrator shall be punished by imprisonment for a term not less than three years.

(4) Gained benefit shall be confiscated.

***Article 384 - Embezzlement in Office***

(see Art. 17 UNCAC)

***Article 385 - Fraud in Office***

(see Art. 17 UNCAC)

***Article 386 - Using Property of the Office***

(see Art. 17 UNCAC)

***Article 387 - Lack of Commitment in Office***

(1) An official or responsible person in the in the Federation who, by violating law, other regulations or general act or by omitting to perform his supervisory duty, acts in an obviously careless manner in the discharge of his official duty, which results in a serious violation of a right of another or a material damage exceeding 1.000 BAM, shall be fined or punished by imprisonment for a term between three months and five years.

(2) If a serious violation of another man's right or damage to property exceeding the amount of 10.000 BAM has occurred as a result of the criminal offence referred to in paragraph (1) of this Article, the perpetrator shall be punished by imprisonment for a term between one and ten years.

***Article 388 - Disclosure of Official Secret***

(1) An official or responsible person in the Federation who, without authorization, communicates, conveys or in any other way makes accessible to another person data which constitute official secret, or who obtains such data with an aim of conveying it to an unauthorized person, shall be punished by imprisonment for a term between six months and five years.

(2) The punishment referred to in paragraph (1) of this Article shall also be imposed on whoever, with an aim of making an authorized use of such data, illegally uses data kept as official secret, or whoever makes such data public without a permit.

(3) If the criminal offence referred to in paragraph (1) of this Article is perpetrated for gain or in respect of a particularly confidential information, or for the purpose of making public or using such data outside the Federation, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(4) An official or responsible person in the Federation, who perpetrates the criminal offence referred to in paragraph (1) of this Article out of negligence, shall be punished by a fine or imprisonment for a term not exceeding three years.

(5) There shall be no criminal offence referred to in paragraph (2) of this Article, if somebody makes public or mediates in making public an official secret of the institution in the Federation the contents of which are in contravention with the constitutional order of the Federation, with an aim of disclosing to the public the irregularities attached to organizing, performance and management of the office, provided that the making public has no substantial prejudicial consequences for the Federation.

(6) Provisions referred to in paragraphs (1) through (4) of this Article shall also be applied to a person who has disclosed an official secret after his function as an official or responsible person in the Federation has ceased.

#### ***CC-RS***

##### ***Article 347 - Misuse of Office or Official Authority***

(1) An official or responsible person who, with the intent to acquire for himself or another a non-material gain or to cause damage to another, abuse his office or official authority, by overstepping his official authority or fails to execute his official duty, shall be punished by imprisonment for a term between three months and three years.

(2) If the offence referred to in paragraph (1) of this Article resulted in serious damage to another or seriously violation of the rights of another, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(3) An official or responsible person who, with the intent to acquire for himself or another a material gain, abuse his office or official authority, by overstepping his official authority or fails to execute his official duty shall be punished by imprisonment for a term between six months and five years.

(4) If the material gain acquired in the course of the commission of the offence referred to in paragraph (3) of this Article exceeds 10,000 BAM, the perpetrator shall be punished by imprisonment for a term between one and eight years and if the material gain exceeds 50,000 BAM, the perpetrator shall be punished by imprisonment for a term between two and ten years.

##### ***Article 348 - Embezzlement in Office***

(see Art. 17 UNCAC)

##### ***Article 349 - Fraud in Office***

(see Art. 17 UNCAC)

##### ***Article 350 - Unauthorised Use of Official Property***

(see Art. 17 UNCAC)

##### ***Article 354 - Careless Performance of Official Duties***

(1) An official person who knowingly breaches the law or other regulations, fails to exercise due supervision or in any other way manifestly acts in a clearly careless manner in the performance of his official duties, although he was aware or was obligated to be aware and could have been aware that it could result in a serious breach of the rights of another or serious damage to property, and thereby such breach or property damage occurs, shall be punished by a fine or imprisonment for a term not exceeding two years.

(2) If the serious breach of the rights of another or damage to property in the amount that exceeds 50,000 BAM has occurred as a result of the offence referred to in paragraph (1) of this Article, the perpetrator shall be punished by imprisonment for a term between one and eight years.

#### ***Article 355 - Disclosure of Official Secret***

(1) An official who, without authority, communicates, conveys or otherwise renders available to another person information which constitutes an official secret, or who obtains such information with the intention of conveying it to an unauthorized person, shall be punished by imprisonment for a term between three months and three years.

(2) The punishment referred to in paragraph (1) of this Article shall be pronounced against anyone who, with the intention of making the unauthorized use of such information, obtains unlawfully the information kept as an official secret or who without permission publishes such information.

(3) If the offence referred to in paragraph (1) of this Article has been committed for material gain or with respect to highly confidential information or for the purpose of disclosing or using the information abroad, the perpetrator shall be punished by imprisonment for a term between one and eight years.

(4) If the offence referred to in paragraph (1) of this Article is committed out of negligence, the perpetrator shall be punished by a fine or imprisonment for a term not exceeding one year.

(5) There shall be no criminal offense referred to in paragraph (2) of this Article if a person, with the intention of making public irregularities in the organization, performance or management of the service, discloses or facilitates the disclosure of an official secret which is contrary to the constitutional order of Republic of Srpska, provided that the disclosure has no detrimental effects for Republic of Srpska.

(6) An official secret shall also be understood to mean the information or documents that have been designated as official secret by virtue of a law, a regulation or an enactment of a competent body enacted in pursuance of law declaring them to be an official secret and the disclosure of which would have serious consequences for the service.

#### ***CC-BD***

#### ***Article 377 - Misuse of Office or Official Authority***

(1) An official or a responsible person in Brčko District of Bosnia and Herzegovina who uses his office or official authority to acquire a benefit for himself or for another, cause a damage to another or to seriously violate the rights of another by having exceeded the limits of his official authority, or having failed to perform his official duty, shall be sentenced with six months to five years in prison.

(2) If the offence referred to in paragraph (1) of this Article resulted in acquiring a property gain exceeding the amount of 10,000 BAM, the perpetrator shall be sentenced with one to ten years in prison.

(3) If the offence referred to in paragraph (1) of this Article resulted in acquiring a property gain exceeding the amount of 50,000 BAM, the perpetrator shall be sentenced with at least three years in prison.

***Article 378 - Embezzlement in Office***

(see Art. 17 UNCAC)

***Article 379 - Fraud in Performing the Official Duty***

(see Art. 17 UNCAC)

***Article 380 - Unauthorised Use of Office Property***

(see Art. 17 UNCAC)

***Article 381 - Unprofessional Exercise of Official Duties***

(1) An official or a responsible person in Brčko District of Bosnia and Herzegovina, who, by violation of the law, other regulation or a general document, or by failing to exercise due supervision, demonstrates obvious negligence in exercise of official duties, thereby causing severe violation of another's right or a property damage exceeding 1,000 BAM, shall be fined or sentenced with up to three years in prison.

(2) If the offence referred to in paragraph (1) of this Article resulted in a serious violation of another's right or in property damage exceeding 10,000 BAM, the perpetrator shall be sentenced with six months to five years in prison.

***Article 382 - Disclosure of Official Secret***

(1) An official person or a responsible person in Brčko District of Bosnia and Herzegovina, who without authorization, reports, gives or in some other way renders available, the information which is regarded as an official secret, or a person who obtains such information intending to give it to an unauthorized person, shall be sentenced with six months to five years in prison.

(2) The sentence from paragraph (1) of this Article shall also be imposed on a person who unlawfully uses information regarded as an official secret, with an aim of making unauthorized use of such information, or a person who makes this information public without authorization.

(3) If the offence referred to in paragraph (1) of this Article has been committed out of hope of material gain, or if it refers to particularly confidential data, or publishing or using information outside Brčko District the perpetrator shall be sentenced with one to ten years in prison.

(4) An official or responsible person in Brčko District who commits the criminal offence from paragraph (1) of this Article out of negligence shall be fined or sentenced with up to three years in prison.

(5) The offence from paragraph (1) of this Article will not be considered as committed, if a person makes an official secret public, or mediates in publication of a secret of an institution in Brčko District, the contents of which is in contravention with the Constitution and the order of Brčko District as established by the Statute, with an aim to reveal improprieties in organization, activity and management of a body, if the publication does not have negative bearing against Brčko District.

(6) Provisions from paragraph (1) to (4) of this Article shall also be applied to a person who has revealed an official secret after his official function or responsibility in Brčko District has ceased.

60. BiH provided the following example of case law:

**FEDERATION OF BOSNIA AND HERZEGOVINA SUPREME COURT**

FEDERATION OF BOSNIA AND HERZEGOVINA Number: 070-0-Kzk-06-000020  
Sarajevo, 21/05/2008

on abuse of office or authorities under Article 383 (3)

**VERDICT**

The defendants:

1. Z. R., son of S and mother D. nee C., born .... in B., where he resides at the address... no. ...., URN ..., Bosniak by ethnicity, national of BiH and of Croatia, lawyer by profession, married, father of one under aged child, served military ... in B., is registered in the military records of B.O., so far no criminal records, now on the loose,

2. S.A., son of M. and mother a S. nee C., born .... in B.O., Municipality of B.K., residing in L., situated in Municipality of B.K., URN ..., Bosniak by ethnicity, national of BiH, literate, married, father of three under aged children, military service conducted in Sarajevo in 1982, is not registered in MR, so far no criminal records, now on the loose,

**ARE GUILTY For:**

Z.R. individually: By holding the position of Minister of Agriculture, thus being in capacity of an official, consciously breached the law and obviously acted in careless manner while performing his duties, which led to the property damage of the other person in amount exceeding 10,000.00 BAM. Therefore, he intentionally breached the law in capacity of an official, and obviously acted in careless manner in performance of his duties resulting in property damage of the other person exceeding 10,000.00 BAM, thus committing offences under paragraphs (1) and (2) of continued criminal offense of negligent performance of duty under Article 387 paragraph (2) in conjunction with paragraph (1) of the Criminal Code of the Federation of Bosnia and Herzegovina. Hence, aiming to obtain personal unlawful gain he brought another person into deception by presenting false facts and persuaded the letter to conduct an action resulting in his property damage, thus committing the criminal offense of fraud under Article 294 paragraph (1) of the Criminal Code of the Federation of Bosnia and Herzegovina.

The defendants Z.R. and S.A. together:

**ARE GUILTY**

The first defendant, Z.R., on the account of being an official, and the second defendant, Š. A., on the account of being a responsible person, who took advantage of official position and the authorities to gain the profit for the other in amount which exceeds 50,000.00 BAM, thus committing the criminal offense of abuse of office or authority under Article 383 (3) relating to paragraph (1) of the Criminal Code of the Federation of Bosnia and Herzegovina,

**IMPOSED**

**SINGLE SENTENCE FOR 1 (ONE) YEAR AND EIGHT (8) MONTHS**

Where the defendant Š. A., is responsible for a criminal offense under Article 383 (3) relating to paragraph (1) of the Criminal Code of the Federation of Bosnia and Herzegovina and is sentenced TO IMPRISONMENT FOR A TERM OF 1 (ONE) YEAR.

Pursuant to Article 57 (1) of the Criminal Code of the Federation of Bosnia and Herzegovina, period of Z.R.'s imprisonment will include the time spent in custody starting from 14/10/2004 until 29/12/2004.

Pursuant to Article 212 (3) and (4) of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, the property claims of the indemnified US Canton and "U-Sana Forests" Company from BK are referred to civil proceedings. The defendant Z.R. is obliged to pay upon the property claim of the indemnified K.B. the amount of 3.000 BAM, while the remaining part the indemnified is to be settled by civil proceedings.

**(b) Observations on the implementation of the article**

61. The reviewing experts noted that a breach of official duties where the official does not exceed his/her competences would constitute a different crime that is criminalized only at entity level, namely "lack of commitment".
62. Causing damage or obtaining advantage are also elements of the crime, while UNCAC defines these elements only as motivation. Therefore, the conduct specified in UNCAC would only be an attempt in BiH. The CCs of RS and BD are in line with UNCAC on this point, as causing damage or gaining advantage is an additional element of the crime, which leads to a more severe punishment.

**(c) Challenges and recommendations**

63. The reviewing experts recommend to consider removing the requirement of damage in Art. 220 CC-BiH, Art. 383 CC-FoBiH.

**Article 20. Illicit enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

**(a) Summary of information relevant to reviewing the implementation of the article**

64. BiH stated that it has not implemented this provision of the Convention.
65. Nevertheless, it cited the following legislation:

***CC-BiH***

***Article 110a - Expanded confiscation of Material Gain Acquired Through Perpetration of a Criminal Offence***

(1) When a criminal proceeding is conducted for criminal offences from Chapters XVII, XVIII, XIX, XXI, XXI A and XXII of this Law, by a decision from Article 110 Paragraph (2), the Court may confiscate the proceeds, income, profit or other benefits derived from proceeds for which the prosecutor provides sufficient evidence for reasonable believe that such proceeds, income, profit or other benefits derived from proceeds was acquired through the perpetration of these criminal offences, but the perpetrator did not provide evidence that the proceeds, income, profit or other benefits derived from proceeds was acquired legally.

(2) In cases when the conditions for the forfeiture of proceeds, income, profit or other benefits from proceeds, laid down by law, are not met in the criminal procedure, the request for the forfeiture may be filed in a civil procedure.

***CC-FoBiH***

***Article 114a - Expanded Confiscation of Material Gain Acquired Through Perpetration of a Criminal Offence***

In cases of criminal proceedings for criminal offences referred to in chapters XVII, XVIII, XIX, XXI, XXI A and XXII of this Law, the court can also decide, on basis of Article 114 paragraph (2), to order confiscation of material gain for which the prosecutor provides sufficient evidence that there is reasonable suspicion that it was acquired through execution of these criminal offences, and the accused person did not provide evidence to prove that the material gain was acquired legally.

***Draft Law on Confiscation of Unlawfully Acquired Property by Committing Criminal Acts and Offences in the BiH Federation (annexed to the Report)***

***CC-RS***

***The Law on Confiscation of Unlawfully Acquired Property in Republic of Srpska (annexed to the Report)***

***CC-BD***

***Article 114a - Expanded Confiscation of Material Gain Acquired Through Perpetration of a Criminal Offence***

In cases of criminal proceedings for criminal offences referred to in chapters XVII, XVIII, XIX, XXI, XXI A and XXII of this Law, the court can also decide, on basis of Article 114 paragraph (2), to order confiscation of material gain for which the prosecutor provides sufficient evidence that there is reasonable suspicion that it was acquired through execution of these criminal offences, and the accused person did not provide evidence to prove that the material gain was acquired legally.

**(b) Observations on the implementation of the article**

66. The country under review has not implemented this optional article of UNCAC, yet unexplained wealth deriving from criminal activity is subject to extended confiscation.
67. On 18 September 2014, the law on extended confiscation at the entity level of the FoBiH entered into force.
68. During the country visit, it was explained that currently asset declaration forms exist for elected officials. Prosecutors and judges – but not civil servants – are obliged to declare assets.

(c) **Technical assistance needs**

69. BiH asked for model legislation and legal advice on legislative drafting in this field.

**Article 21. Bribery in the private sector**

**Subparagraph (a) of article 21**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

(a) **Summary of information relevant to reviewing the implementation of the article**

70. BiH confirmed that it has partially implemented this provision of the Convention.

71. BiH cited the following implementation legislation:

***CC-BiH***

***Article 1(5)***

(5) The person responsible is the person within a business company or another legal entity who has been, regardless of its function or the basis of its special authorization, entrusted with a certain scope of duties related to the application of laws or regulations adopted based on the laws or a general act of the business company or another legal entity in the management and handling of assets or that are related to management of production or another business process or supervision over them. The person responsible is also considered to be an official person, in the sense of paragraph (3) of this Article, when it comes to activities, the perpetration of which was done by the perpetrator marked as the person responsible, which are not set out as a criminal act by the provisions of the chapter on the crimes against an official duty and other duty of responsibility, or provisions on the crimes committed by an official person set out in another chapter of this law or other law of Bosnia and Herzegovina.

***CC-FoBiH***

***Article 381 - Giving Gifts and Other Forms of Benefits***

(see above Art. 15)

***Article 2 - Meaning of Terms as Used in this Code***

(6) A responsible person means a person in a business enterprise or other legal person who, in the line of duty or on the basis of specific authorisation, has been entrusted with a portfolio related to the implementation of law or regulations passed on the basis of

law, or general act of a business enterprise or other legal person in managing and administrating the property, or is related to managing a productive or other economic process or supervision of such process.

Official persons as defined in paragraph (3) of this Article are also considered responsible persons when the actions as whose perpetrator the responsible person has been indicated are at issue, and at the same time are not stipulated as criminal offence by provision of the chapter dealing with criminal offences against official and other responsible duty, or as criminal offences of an official person stipulated under some other chapter of this Code or under other law of the Federation or of the Cantons.

#### ***CC-RS***

##### ***Article 268 - Unlawful Giving of Gifts***

(1) Whoever gives or attempts to give or promises a reward, gift or any other benefit to a person representing property interests of a legal person in order to obtain some unlawful advantage in concluding a contract referred to in paragraph (1) of Article 258 of this Code, shall be punished by imprisonment for a term between one and eight years.

(2) Whoever gives or attempts to give or promises a reward, gift or any other benefit or advantage to a person representing property interests of a legal person as a reciprocal favour for concluding a contract or performing some act, shall be punished by imprisonment for a term between six months and five years.

(3) The perpetrator of the criminal offence referred to in preceding paragraphs who had given a gift or reward on request or reported the offence before it has been discovered or before knowing that the offence has been discovered, may be released from punishment.

(4) The gift or reward shall be forfeited, while in case referred to in paragraph (3) of this Article, can be returned to the giver.

#### ***CC-BD***

##### ***Article 375 - Giving Gifts and Other Forms of Benefits***

(see above Art. 15)

##### ***Article 2 - General Terms***

(5) A responsible person means a person in a business enterprise or another legal person that, in the line of duty or on the basis of specific authorisation, has been entrusted with a portfolio related to the implementation of law or regulations based on law or enactment of a business enterprise or other legal person in managing and administrating the property, or is related to managing a productive or other economic activity or supervision of such activity. Official persons as defined in paragraph (3) of this Article are also considered responsible persons when the actions whose perpetrator is the indicated responsible person are at issue, and at the same time are not stipulated as criminal offence by provision of the chapter dealing with criminal offences against official and other responsible duty, or as criminal offences of an official person stipulated under some other chapter of this Code or other laws of the Brčko District.

72. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

73. The reviewing experts observed that the bribery provisions apply not only to officials but also to “responsible persons”. There is a legal definition of this term in Art. 1(5) CC-BiH, Art. 2(6) CC-FoBiH, Art. 147(4) CC-RS and Art. 2(5) CC-BD).
74. The reviewing experts observed that for RS, the passive side uses the term “legal person” instead of “entity”. The law seems to lack provisions for third party beneficiaries (where someone else is given the bribe, on behalf of the representative or employee of the economic entity). On the other hand, the law does not require a breach of duty as a component of crime resulting in a wider criminalization.
75. Concerning FoBiH and BD, in addition to the problems raised with regard to the bribery of officials, the personal scope of the crime seems to restrict the offenders to the executive leaders of a company, and therefore it might exclude the employees as possible perpetrators. The reviewing experts recommended addressing these deficiencies.

**(c) Challenges and recommendations**

76. The reviewing experts recommend to
- include third party beneficiaries as recipients of the bribe in the active bribery provisions of CC-FoBiH, CC-RS and CC-BD;
  - include employees as possible perpetrators.

**Subparagraph (b) of article 21**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

...

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

**(a) Summary of information relevant to reviewing the implementation of the article**

77. BiH confirmed that it has partially implemented this provision of the Convention.
78. BiH cited the following implementation legislation:

***CC-FoBiH***  
***Article 380 - Accepting Gifts and Other Forms of Benefits***

(see above Art. 15)

## ***Article 2 - Meaning of Terms as Used in this Code***

(6) A responsible person means a person in a business enterprise or other legal person who, in the line of duty or on the basis of specific authorisation, has been entrusted with a portfolio related to the implementation of law or regulations passed on the basis of law, or general act of a business enterprise or other legal person in managing and administrating the property, or is related to managing a productive or other economic process or supervision of such process.

Official persons as defined in paragraph (3) of this Article are also considered responsible persons when the actions as whose perpetrator the responsible person has been indicated are at issue, and at the same time are not stipulated as criminal offence by provision of the chapter dealing with criminal offences against official and other responsible duty, or as criminal offences of an official person stipulated under some other chapter of this Code or under other law of the Federation or of the Cantons.

### ***CC-RS***

#### ***Article 267, Unallowed Acceptance of Gifts or Presents***

(1) Whoever, while representing the property interests of a legal person, demands or accepts an award, gift or any other benefit in order to achieve an agreement to be concluded or not concluded, or to have an action performed and not performed to the harm of the legal person, thereby causing significant property damage to the legal person, shall be punished by imprisonment term ranging between one year and eight years.

(2) The perpetrator from paragraph 1 of this article who after concluded or not concluded agreement, or any other action performed or not performed, demands or accepts an award, gift or any other benefit, shall be punished by imprisonment term ranging between six months and five years.

(3) The award, gift or any other benefit shall be confiscated.

### ***CC-BD***

#### ***Article 374, Accepting Gifts and Other Benefits***

(see above Art. 15)

#### ***Meaning of Terms, Article 2***

(5) A responsible person means a person in a business enterprise or another legal person that, in the line of duty or on the basis of specific authorisation, has been entrusted with a portfolio related to the implementation of law or regulations based on law or enactment of a business enterprise or other legal person in managing and administrating the property, or is related to managing a productive or other economic activity or supervision of such activity.

Official persons as defined in paragraph 3 of this Article are also considered responsible persons when the actions whose perpetrator is the indicated responsible person are at issue, and at the same time are not stipulated as criminal offence by provision of the chapter dealing with criminal offences against official and other responsible duty, or as criminal offences of an official person stipulated under some other chapter of this Code or other laws of the Brčko District.

79. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

80. The reviewing experts made the same observations and recommendations as with Art. 21(a) UNCAC.

**Article 22. Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

81. BiH confirmed that it has partially implemented this provision of the Convention.

82. BiH cited the following implementation legislation:

***CC-BiH***  
***Article 221 - Embezzlement in Office***

(see above Art. 17)

***CC-FoBiH***  
***Article 384, Embezzlement in Office***

(see above Art. 17)

***Article 2, Meaning of Terms as Used in This Code***

***CC-RS***  
***Embezzlement in Office, Article 348***

(see above Art. 17)

***CC-BD***  
***Misappropriation, Article 378.***

(see above Art. 17)

83. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

84. The reviewing experts concluded that FoBiH, RS and BD have adequately implemented this article of the Convention through analogous application of the provisions reported under article 17 of the UNCAC.

**Article 23. Laundering of proceeds of crime**

**Subparagraph 1 (a) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

85. BiH confirmed that it has fully implemented this provision of the Convention.

86. BiH cited the following implementation legislation:

***The Law on Prevention of Money Laundering and Financing of Terrorist Activities***

***CC-BiH***

***Money Laundering, Article 209***

(1) Whoever accepts, exchanges, keeps, disposes of, uses in commercial or other activity, converts or transfers, otherwise conceals or tries to conceal money or property, their nature, source, location, use of, movement, ownership or any other right, when such money or proceeds is gained by the perpetration of a criminal offence:

a) abroad or on the territory of the entire Bosnia and Herzegovina or on the territory of the two entities or on the territory of one entity and Brčko District of Bosnia and Herzegovina; or

b) prescribed by the Criminal Code of Bosnia and Herzegovina or by other law at the state level,

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

(2) If the perpetrator of the act referred to in Paragraph (1) is also a perpetrator of or an accomplice to the criminal offense whose perpetration resulted in the money or proceeds referred to Paragraph (1) of this Article, he/she shall be punished by imprisonment for a term between one and ten years.

(3) If the money or property gain referred to in Paragraph (1) of this Article exceeds the amount of 200,000 BAM, the perpetrator shall be punished by imprisonment for a term of at least three years.

(4) If the perpetrator, during the perpetration of the criminal offences referred to in Paragraphs (1) and (2) of this Article, acted negligently with respect to the fact that the money or property gain has been acquired through perpetration of criminal offence, he/she shall be punished by a fine or imprisonment for a term not exceeding three years.

(5) Money, proceeds and income or other benefits derived from the proceeds acquired through a criminal offence referred to in the paragraphs (1) to (4) of this Article shall be confiscated.

(6) Knowledge, intent or purpose as an element of a criminal offence set forth in the paragraph (1) of this Article may be inferred from objective, factual circumstances.

### ***Co-perpetration, Article 29***

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.

### ***Accessory, Article 31***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

### ***CC-FoBiH Article 272, Money Laundering***

(1) Whoever receives, exchanges, holds, disposes of, uses in economic or other business activity, or otherwise conceals or tries to conceal money or property for which he/she knows to be acquired by perpetration of criminal offence, shall be punished by imprisonment for a term between six months and five years.

(2) If the money or property referred to in Paragraph (1) of this Article is of large value, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) If, perpetrating the criminal offence referred to in Paragraphs (1) and (2) of this Article, the perpetrator acted out of negligence regarding the circumstance that the money or property were acquired by perpetration of criminal offence, shall be punished by a fine or imprisonment for a term not exceeding three years.

(4) Money and property referred to in Paragraphs (1) through (3) of this Article shall be confiscated.

### ***Article 31, Accomplices***

If several persons jointly perpetrate a criminal offence, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution can be made to its perpetration, each of them shall be punished by a punishment prescribed for that criminal offence.

***Article 33, Accessory***

(1) Whoever intentionally helps another in perpetration of a criminal offence, shall be punished as if he himself perpetrated such offence, but may be punished less severely.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating a criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or items acquired by perpetration of the criminal offence.

***CC-RS***

***Money Laundering, Article 280***

(1) Whoever receives, exchanges, keeps, disposes of or uses in corporate or other business or conceals or tries to conceal money or property he knows was obtained by commission of criminal offence, shall be punished by imprisonment for a term between six months and five years.

(2) If the perpetrator referred to in Paragraph (1) of this Article is at the same time an accessory or accomplice in the criminal offence that resulted in obtaining money or property gain referred to in the preceding Paragraph, he/she shall be punished by imprisonment for a term between one and eight years.

(3) If the money or property referred to in Paragraphs (1) and (2) of this Article is of high value, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(4) If the criminal offences referred to in preceding Paragraphs are committed by a group of people who joined with the intention of committing such criminal offences, the perpetrator shall be punished by imprisonment for a term between two and twelve years.

(5) If, while committing the criminal offences referred to in Paragraphs 1, 2 and 3 of this Article, the perpetrator acted negligently concerning the fact that the money or property were obtained by commission of a criminal offence, he/she shall be punished by imprisonment for a term not exceeding three years.

(6) The money and property referred to in preceding Paragraphs shall be forfeited.

***Accomplices, Article 23***

If several persons who, by participating in the perpetration of a criminal offence or otherwise, have jointly perpetrated a criminal offence, each of them shall be punished as prescribed by law.

***Accessories, Article 25***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he/she himself/herself perpetrated such offence, but the punishment may be less severe.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetration of the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to cover up the criminal offence, to hide the

perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or items acquired by the perpetration of the criminal offence.

***CC-BD***

***Money Laundering, Article 265***

(1) A person who accepts, exchanges, keeps, disposes of, uses in commercial or other business, or in other way conceals the money or property that person knows to have been obtained through a criminal offence, or conceals or attempts to conceal it shall be sentenced to prison from six months to five years.

(2) If the money or property gain referred to in Paragraph 1 of this Article is of large value, the perpetrator shall be sentenced to prison from one to ten years.

(3) If in the commission of the criminal offences from Paragraphs 1 and 2 of this Article, the perpetrator was negligent to whether the money or property gain have been obtained through a criminal offence, the perpetrator shall be fined or sentenced to prison of up to three years.

(4) The money or property gain from Paragraphs 1 to 3 of this Article shall be forfeited.

***Accomplices, Article 31***

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.

***Accessory, Article 33***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

87. BiH provided the following example of case law:

**Court of Bosnia and Herzegovina**

Number: S1 2 K 003427 09 K (X-K-05/64-2)

Sarajevo, 13th December 2010; Money Laundering from Article 209, Paragraph 2

Defendants:

A. K., the son of A. and mother M., maiden name D., born in ... year in V., R ..., place of residence..., O., Bosnia and Herzegovina, Bosniak ethnicity, occupation: food technician, single, BiH citizenship, Social Security Number ... and

H. K., the daughter of E., born in ... year in B, place of residence in ... O., Bosnia and Herzegovina, reported address in ... on the occasion of the company registration Z ..., municipality V., R ..., holder of a travel document R ... Number ..., issued by ... R ... in T., Social Security Number ..., are

## FOUND GUILTY

For:

In the period from 10th June 2005 until 15th September 2005, after K.A. founded and registered the company Z.B. under Registration Number ... with the office in ... D. , where N. was registered as a director and responsible person, now H.K., while both of them were registered as authorized persons to represent without restrictions in legal activities of the legal entity Z., they opened a transaction account for the legal transactions of a legal entity Z., the transaction account with ... the Bank ... where both of them were enrolled as authorized signatories of that account, and all this with the intention to carry out the legalization of illegally acquired money realized by avoiding the payment of taxes on goods sold for cash in retail by legal person X MG to other persons known to him, and with the aim of concealing the legalization of this cash and with the intention that such funds are returned to the regular flow of business X; the defendants had previously agreed with their acquaintance in the legal entity X MG, for a compensation, to carry out "Money laundering" through their company Z, which is the criminal offense of tax evasion; The defendant had taken the money from the representative of the X, having in mind that this money had been gained through cash payments and therefore by tax evasion; At the same time, X was providing certified order forms and statements but in a blank form to Z , and the cash was then transferred to their transaction account with ... bank, 28 times with the total amount of 4,835,728.71 BAM; also they used "Loans on behalf of KA" and 22 loans amounted to 960,043.00 BAM and immediately deposit the same money on the account

X and 280 payments through bank for "goods" in the amount of 5,679,985.62 BAM, based on previously obtained blank certified orders; X kept corresponding fictitious documents (delivery notes, invoices, etc.) in order to create an illusion that between Y.B. and X.M.G. there was actual sale of goods for goods that had never been in the business of such entities, but the actual turnover of goods and their sale for cash by X. to other companies, so the money in the amount of 5,679,985.62 BAM was placed into regular operations of X as "clean" or legal money, while concealing the owners of X and simultaneously providing them to escape the taxes in the amount of 803,238.43 BAM pursuant to the Law on taxes on goods and services ("Official Gazette", No. 62/04) and the Regulation on the application of this Act ("Official Gazette of BiH ", No. 63 / 04) Therefore , a larger value for money that they knew it was acquired by the perpetration of the crime received and disposed of in order to use it in business operations , and the value of money exceeds the amount of 50,000.00 BAM,

Thus, as co-perpetrators, they committed the criminal offense of money laundering under Article 209 Paragraph 2 and Paragraph 1 of the Criminal Code of BiH, as well as in connection with money under Article 209 Paragraph 2 in conjunction with paragraph 1 CC BiH , and in conjunction with Article 29 of the same law,

So by the Court , on the basis of these regulations, by applying the provisions of Articles 39 , 42 and 48 Criminal Code of Bosnia and Herzegovina

## SENTENCED

Defendant A.K. to imprisonment for a term of three (3 ) years and six (6 ) months,  
Defendant H.K. to imprisonment for a term of three (3 ) years and six (6 ) months.

Pursuant to Article 188 Paragraph 1 of the Criminal Procedure Code in conjunction with Article 186 Paragraph 2 CPC, the defendants shall jointly undertake to reimburse costs of the criminal proceedings, whose court will decide the amount by a special decision.

88. BiH provided the following statistics:

2013

| PROSECUTOR'S OFFICE  | STATUS                          | NUMBER OF CASES,<br>I.E. PRIME<br>SUSPECTS | NUMBER<br>OF<br>PERSONS | AMOUNT OF MONEY<br>THAT IS SUSPECTED<br>TO HAVE COME FROM<br>CRIMES OF MONEY<br>LAUNDERING | AMOUNT OF<br>MATERIAL GAIN<br>SEIZED UPON FINAL<br>JUDGMENTS |
|--|---------------------------------|--|-------------------------|--|--|
| CANTONAL PROSECUTOR'S OFFICE OF SARAJEVO   | ORDER TO CONDUCT INVESTIGATION  | 0  | 1                       | 870,204 KM   |  |
|  | DENUNCIATION/REPORT             | 3  | 83                      |  |  |
| DISTRICT PROSECUTOR'S OFFICE IN BANJA<br>LUKA, SPECIAL PROSECUTOR'S OFFICE FOR<br>FIGHT AGAINST ORGANIZED AND SERIOUS<br>ECONOMIC CRIME SPECIAL PROSECUTOR'S<br>OFFICE | ORDER TO CONDUCT INVESTIGATION  | 1  | 2                       |  |  |
|  | CONVICTION - PRISON SENTENCE    | 1  | 2                       |  | cca 14 million KM  |
|  | DENUNCIATION/REPORT             | 1  | 3                       |  |  |
| DISTRICT PROSECUTOR'S OFFICE IN BANJA LUKA   | DENUNCIATION/REPORT             | 1  | 1                       |  |  |
| DISTRICT PROSECUTOR'S OFFICE IN DOBOJ  | DENUNCIATION/REPORT             | 1  | 1                       |  |  |
| DISTRICT PROSECUTOR'S OFFICE IN EAST<br>SARAJEVO   | INDICTMENT RAISED               | 0  | 1                       |  |  |
|  | INDICTMENT CONFIRMED            | 0  | 1                       | 845,926 KM   |  |
| DISTRICT PROSECUTOR'S OFFICE IN TREBINJE   | ORDER TO CONDUCT INVESTIGATION  | 1  | 4                       |  |  |
|  | DENUNCIATION/REPORT             | 1  | 4                       |  |  |
| PROSECUTOR'S OF BOSNIA AND HERZEGOVINA   | ORDER TO CONDUCT INVESTIGATION  | 0  | 2                       | 12,235,558 KM  |  |
|  | INDICTMENT RAISED               | 0  | 1                       |  |  |
|  | INDICTMENT CONFIRMED            | 0  | 1                       | 5,536,191 KM   |  |
|  | CONVICTION - SUSPENDED SENTENCE | 0  | 2                       | 1,074,844 KM   |  |
|  | CONVICTION - PRISON SENTENCE    | 1  | 3                       | 1,074,844 KM   |  |
|  | DENUNCIATION/REPORT             | 3  | 17                      |  |  |

NOTE: The column "number of cases" represents the number of prosecuted persons with status of prime suspects in specific cases, and the column "number of persons" the total number of persons. For example, if for an offense is stated that there were 0 cases and one person, this means that one person is prosecuted for that offense, but did not have the status of the prime suspect in the case.

2014

| PROSECUTOR'S OFFICE  | STATUS                         | NUMBER OF CASES,<br>I.E. PRIME<br>SUSPECTS | NUMBER<br>OF<br>PERSONS | AMOUNT OF MONEY<br>THAT IS SUSPECTED<br>TO HAVE COME FROM<br>CRIMES OF MONEY<br>LAUNDERING | AMOUNT OF<br>MATERIAL GAIN<br>SEIZED UPON FINAL<br>JUDGMENTS |
|--|--------------------------------|--|-------------------------|--|--|
| CANTONAL PROSECUTOR'S OFFICE OF SARAJEVO   | ORDER TO CONDUCT INVESTIGATION | 2  | 4                       | 887,000 KM   |  |
|  | INDICTMENT RAISED              | 1  | 1                       |  |  |
|  | INDICTMENT CONFIRMED           | 1  | 1                       | 1,241,487 KM   |  |
| DISTRICT PROSECUTOR'S OFFICE T IN BANJA LUKA, SPECIAL PROSECUTOR'S OFFICE FOR FIGHT AGAINST ORGANIZED AND SERIOUS ECONOMIC CRIME SPECIAL PROSECUTOR'S OFFICE | ORDER TO CONDUCT INVESTIGATION | 0  | 1                       |  |  |
| DISTRICT PROSECUTOR'S OFFICE IN BANJA LUKA   | DENUNCIATION/REPORT            | 1  | 2                       |  |  |
| PROSECUTOR'S OF BOSNIA AND HERZEGOVINA   | ORDER TO CONDUCT INVESTIGATION | 0  | 16                      | 4,790,664 KM   |  |
|  | INDICTMENT RAISED              | 1  | 15                      |  |  |
|  | INDICTMENT CONFIRMED           | 1  | 14                      | 22,767,371 KM  |  |
|  | DENUNCIATION/REPORT            | 3  | 23                      |  |  |

NOTE: The column "number of cases" represents the number of prosecuted persons with status of prime suspects in specific cases, and the column "number of persons" the total number of persons. For example, if for an offense is stated that there were 0 cases and one person, this means that one person is prosecuted for that offense, but did not have the status of the prime suspect in the case.

**(b) Observations on the implementation of the article**

89. All four CCs are largely in compliance with the provisions of UNCAC. All levels of authority in BiH apply an all-crimes approach to money laundering: proceeds may derive from any criminal conduct and even trying to conceal the origins of property would lead to a completed offence (as opposed to an attempt). The offender himself may also be the perpetrator of the predicate crime, thus laundering own proceeds is also a criminalized conduct (and punished even more severely).
90. So far, there have been very few cases of money laundering and almost all happened on the State level.
91. Asked if prosecution for money laundering is possible if the predicate crime cannot be prosecuted, the representative of BD thought this was possible and referred to a case where tax evasion as the predicate offence was not proven, but a money laundering conviction at State level was obtained through plea bargain.
92. The reviewing experts concluded that BiH has partially implemented Art. 23(a)(i) UNCAC. They observe, however, the low number of prosecutions and convictions, which indicate the low level of enforcement of these provisions. Moreover, they took note of Moneyval's 8<sup>th</sup> Compliance Report on Bosnia and Herzegovina and of Moneyval's public statement of 1 June 2014 which highlights major deficiencies of the AML/CFT regime in BiH.

**(c) Challenges and recommendations**

93. The reviewing experts recommend that the Bosnian authorities ensure that the provisions on money laundering are effectively enforced in practice.

**Subparagraph 1 (b) (i) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

94. BiH confirmed that it has fully implemented this provision of the Convention.

95. BiH cited the same implementation legislation as above.

96. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

97. The reviewing experts made the same observations as with Art. 23(a) UNCAC.

**Subparagraph 1 (b) (ii) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) Subject to the basic concepts of its legal system: ...*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

98. BiH confirmed that it has fully implemented this provision of the Convention.

99. BiH cited the following implementation legislation:

***CC-BiH  
Attempt, Article 26***

(1) Whoever intentionally commences execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence when, for the criminal offence in question, three years prison sentence or more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone.

(2) The perpetrator shall be punished for the attempted criminal offence within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced.

***Co-perpetration, Article 29***

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.

***Incitement, Article 30***

(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he/she has perpetrated such offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years prison sentence or more severe punishment is prescribed by law, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence.

(3) Incitement to commit a criminal offence shall be construed to mean, in particular: pleading, persuading or prompting, portraying benefits of the perpetration of the criminal offence, giving or promising gifts, abusing the State of subordination or dependency, making a person believe in and keeping a person under a mistake of fact or law, deceiving.

#### ***Accessory, Article 31***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he/she himself/herself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

#### ***Organised crime, Article 250***

(1) Whoever perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina as a member of an organized crime group, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than three years.

(2) Whoever as a member of an organized crime group perpetrates a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of five years or a more severe punishment may be imposed, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than five years.

(3) Whoever organises or directs at any level an organized crime group which by joint action perpetrates or attempts to perpetrate criminal offence prescribed by the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term not less than ten years or a long-term imprisonment.

(4) Whoever becomes a member of an organized crime group which by joint action perpetrates or attempts to perpetrate criminal offence prescribed by the law of Bosnia and Herzegovina, unless a heavier punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than one year.

(5) A member of an organized crime group referred to in paragraph (1) through (4) of this Article, who exposes that group, may be released from punishment.

#### ***CC-BiH***

##### ***Money Laundering, Article 209***

(see above)

#### ***CC-FoBiH***

##### ***Article 31, Accomplices***

If several persons jointly perpetrate a criminal offence, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution can be made to its perpetration, each of them shall be punished by a punishment prescribed for that criminal offence.

### ***Article 32, Incitement***

(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he had perpetrated such offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence.

(3) Incitement to commit a criminal offence shall be construed to mean, in particular: pleading, persuading or prompting, portraying benefits of the perpetration of the criminal offence, giving or promising gifts, abusing the State of subordination or dependency, making a person believe in and keeping a person under a mistake of fact or law, deceiving.

### ***Accessory, Article 33***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he/she himself/herself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

### ***Article 340, Associating for the Purpose of Perpetrating Criminal Offences***

(1) Whoever organises or directs at any level a group of people or otherwise associates three or more persons with an aim of perpetrating criminal offences prescribed by law in the Federation, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a specific punishment is foreseen for such organizing or associating for the purpose of perpetrating a particular criminal offence, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever becomes a member of the group of people or an association referred to in paragraph 1 of this Article, shall be punished by a fine or imprisonment for a term not exceeding one year.

(3) A member of the group of people, who exposes such a group or a member of the association, who exposes such an association prior to his having perpetrated criminal offence within its ranks or for its sake, may be released from punishment.

(4) The organiser, who prevents the perpetration of the criminal offences referred to in paragraph 1 of this Article by exposing the group of people or association or otherwise, shall be punished by a fine or imprisonment for a term not exceeding one year, but may be released from punishment.

### ***Article 342, Organised Criminal Group***

(1) Whoever perpetrates a criminal offence prescribed by law in the Federation as a member of an organized criminal group, unless a specific punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than three years.

(2) Whoever, as a member of an organized criminal group, perpetrates a criminal offence prescribed by law in the Federation for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a specific punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than five years.

(3) Whoever organises or directs at any level an organized criminal group which by joint action perpetrates or attempts to perpetrate a criminal offence prescribed by law in the Federation, shall be punished by imprisonment for a term not less than ten years or by long-term imprisonment.

(4) Whoever becomes a member of an organized criminal group, which by joint action perpetrates or attempts to perpetrate criminal offence prescribed by law in the Federation, unless a specific punishment is foreseen for a particular criminal offence, shall be punished by imprisonment for a term not less than one year.

(5) A member of an organized criminal group referred to in paragraphs 1 through 4 of this Article, who exposes the organized criminal group, may be released from punishment.

### ***Article 272, Money Laundering***

(see above)

### ***CC-RS Attempt, Article 20***

(1) Whoever intentionally commences execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence for which the punishment of imprisonment for a term of three years or a more severe punishment may be pronounced, and for the attempt of another criminal offences only when the law explicitly prescribes punishment for the attempt alone.

(2) Perpetrator shall be punished within the limits of the punishment prescribed for the criminal offence in case of attempt, but may be also punished less severely.

### ***Accomplices, Article 23***

If several persons who, by participating in the perpetration of a criminal offence or otherwise, have jointly perpetrated a criminal offence, each of them shall be punished as prescribed by law.

### ***Incitement, Article 24***

(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he himself has perpetrated the offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence.

#### ***Accessories, Article 25***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be less severe.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetration of the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to cover up the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or items acquired by the perpetration of the criminal offence.

#### ***Money Laundering, Article 280***

(see above)

#### ***Article 383.a Organized crime***

(1) Whoever perpetrates a criminal offense prescribed by the Criminal Code of the Republika Srpska, as a member of an organized criminal group, where for an individual criminal offense a more severe punishment is not provided, shall be punished by imprisonment term of at least three years.

(2) Whoever, as a member of an organized criminal group, perpetrates a criminal offense prescribed by the Criminal Offense of the Republika Srpska, punishable by imprisonment for a term of three or more, where for an individual offense a more severe punishment is not prescribed, shall be punished by imprisonment term of at least five years.

(3) Whoever organizes or directs at any level an organized crime group which by joint action perpetrates or attempts to perpetrate a criminal offence prescribed by the Criminal Code of the Republika Srpska, shall be punished by imprisonment for a term of not less than ten years or long term imprisonment.

(4) Whoever becomes a member of an organized criminal group which by joint action perpetrates or attempts to perpetrate a criminal offence prescribed by the Criminal Code of the Republika Srpska, where for an individual criminal offence a more severe punishment is not prescribed, shall be punished by imprisonment for a term of not less than one year.

(5) The member of the organized criminal group referred to in paragraphs 1 through 4 of this Article, who exposes the organized crime group, may be released from punishment.

#### ***CC-BD***

#### ***Accomplices, Article 31***

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.

### ***Incitement, Article 32***

(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he himself has perpetrated such offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has never been attempted, shall be punished as if it was the attempt of the criminal offence.

### ***Accessory, Article 33***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

### ***Associating to Commit a Criminal Offence, Article 334***

(1) Whoever organizes or otherwise associates three or more persons with an aim of perpetrating criminal offences prescribed by the Code of Brčko District of BiH, for which a three-year imprisonment sentence, or a more severe sentence may be imposed, unless a separate punishment is foreseen for such organizing or associating for the purpose of perpetrating a particular criminal offence, shall be sentenced to six months to five years in prison.

(2) Whoever becomes a member of the group of people or an association from Paragraph 1 of this Article, shall be punished by a fine or sentenced to one year in prison.

(3) A member of a group of people who exposes such a group or a member of an association who exposes such an association prior to him having perpetrated criminal offence within its ranks or for its sake, may be released from punishment.

(4) The organiser who prevents the perpetration of the criminal offences referred to in Paragraph 1 of this Article by exposing the group of people or association or otherwise, shall be punished by a fine or sentenced to one year in prison, and may be released from punishment.

### ***Criminal Enterprise, Article 336***

(1) A person who commits a criminal offence defined by the Code of Brčko District as a member of a criminal enterprise, shall be sentenced with three years or more in prison, if a separate punishment is not prescribed for a particular criminal offence.

(2) A person who commits a criminal offence prescribed by the Code of Brčko District as a member of a criminal enterprise, punishable by three years or more imprisonment sentence, shall be sentenced with five years in prison or more, if a separate punishment is not prescribed for a particular criminal offence.

(3) A person who organizes or in any way directs a criminal enterprise which commits or attempts to commit a criminal offence defined by the Code of Brčko District through a joint activity, shall be sentenced with ten years or more in prison or long-term imprisonment, if a separate punishment is not prescribed for a particular criminal offence.

(4) A person who becomes a member of a criminal enterprise, who commits or attempts to commit a criminal offence defined in the Code of Brčko District of Bosnia and Herzegovina, shall be sentenced with one year or more in prison, if a separate punishment is not prescribed for a particular criminal offence.

(5) A member of the criminal enterprise from Paragraphs 1 through 4 of this Article who uncovers the criminal enterprise, may be released from punishment.

### ***Money Laundering, Article 265***

(see above)

100. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

101. The reviewing experts concluded that BiH has implemented this provision of the Convention.

### **Subparagraphs 2 (a) and (b) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

102. BiH confirmed that it has fully implemented this provision of the Convention. BiH has an all-crimes approach to money laundering: proceeds may derive from any criminal conduct.

103. BiH cited the same implementation legislation as above.

104. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

105. The reviewing experts concluded that BiH has implemented this provision of the Convention.

### **Subparagraph 2 (c) of article 23**

2. For purposes of implementing or applying paragraph 1 of this article:

...

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

#### **(a) Summary of information relevant to reviewing the implementation of the article**

106. BiH confirmed that it has fully implemented this provision of the Convention.

107. BiH cited the following implementation legislation:

***CC-BiH  
Money Laundering, Article 209***

(see above)

***Applicability of criminal legislation of Bosnia and Herzegovina to those perpetrating a criminal offense within the territory of Bosnia and Herzegovina  
Article 8***

(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrated a criminal offense within its territory.

(2) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrated a criminal offense aboard a domestic vessel, regardless of its location at the time of perpetration of the offence.

(3) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offense aboard a domestic civil aircraft while in flight, or aboard a domestic military aircraft, regardless of its location at the time of perpetration of the offence.

***Applicability of criminal legislation of Bosnia and Herzegovina to those perpetrating a criminal offense outside the territory of Bosnia and Herzegovina  
Article 9.***

(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who, outside of its territory, perpetrates:

- a) Any criminal offense against integrity of Bosnia and Herzegovina prescribed in Chapter Sixteen of this Code (Criminal Offences against the Integrity of Bosnia and Herzegovina);
- b) The criminal offense of Counterfeiting of Money or of Counterfeiting of Securities of Bosnia and Herzegovina, the criminal offense of Counterfeiting of Instruments of Value or Forgery of Trademarks, Measures and Weights issued on the basis of regulations enacted by the institutions of Bosnia and Herzegovina, set forth in Articles 205 through 208 of this Code;
- c) A criminal offense which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;
- d) A criminal offense against an official or responsible person in the institutions of Bosnia and Herzegovina, related to his duty.

(2) The criminal legislation of Bosnia and Herzegovina shall apply to a citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates any criminal offence.

(3) The criminal legislation of Bosnia and Herzegovina shall apply to a non-citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates against Bosnia and Herzegovina or its citizen any criminal offence not included in paragraph (1) of this Article.

(4) The criminal legislation of Bosnia and Herzegovina shall apply to a non-citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates against a foreign State or a non-citizen of Bosnia and Herzegovina a criminal offence which, under the law in force in the place of perpetration of the criminal offence, carries a punishment of imprisonment for a term of five years or a more severe punishment.

(5) In the cases referred to in paragraphs (2) and (3) of this Article, the criminal legislation of Bosnia and Herzegovina shall apply only if the perpetrator of the criminal offence is found within the territory of Bosnia and Herzegovina, or has been extradited to it, while in the case referred to in paragraph (4) of this Article, only if the perpetrator is found within the territory of Bosnia and Herzegovina and is not extradited to another country.

***CC-FoBiH***  
***Article 272, Money Laundering***

(see above)

***Article 12, Applicability of Criminal Legislation in the Federation to Those Perpetrating a Criminal Offence within the Territory of the Federation***

(1) The criminal legislation in the Federation shall apply to anyone who perpetrates a criminal offence within the territory of the Federation.

(2) The criminal legislation in the Federation shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the criminal offence.

(3) The criminal legislation in the Federation shall apply to anyone who perpetrates a criminal offence aboard a domestic civil aircraft while in flight, or aboard a domestic military aircraft regardless of its location at the time of perpetration of the criminal offence.

***Article 13, Applicability of the Criminal Legislation in the Federation for Criminal Offences Perpetrated within the Territory of Bosnia and Herzegovina***

(1) The criminal legislation in the Federation shall apply to anyone who, within the territory of Bosnia and Herzegovina, perpetrates:

- a) Any criminal offence against the constitutional order of the Federation prescribed in Chapter XV (Criminal Offences against The Constitutional Order of the Federation) of this Code;
- b) A criminal offence against an official or responsible person, related to his duty.

(2) The criminal legislation in the Federation shall be applied to a citizen of Bosnia and Herzegovina who, outside the territory of the Federation perpetrates a criminal offence other than those specified in paragraph 1 of this Article.

(3) The criminal legislation in the Federation shall be applied to an alien who, outside the territory of the Federation, perpetrates against Bosnia and Herzegovina, citizen of Bosnia and Herzegovina or against the Federation or a citizen of the Federation any criminal offence which is not specified in paragraph 1 of this Article.

(4) The criminal legislation in the Federation shall be applied to an alien who, outside the territory of the Federation, perpetrates against a foreign State or an alien a criminal offence for which, under the law in force in the place of perpetration of a criminal offence, a punishment of imprisonment for a term of five years or a more severe punishment may be imposed. Unless otherwise prescribed by law, a court may not in such a case impose harsher punishment than the punishment prescribed by the law of the country in which the criminal offence was perpetrated.

(5) In the cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation in the Federation shall be applied only if the perpetrator of the criminal offence is found within the territory of the Federation or has been extradited to the Federation, while in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Federation and is not extradited to another State.

**CC-RS**  
***Money Laundering, Article 280***

(see above)

***Application of the Criminal Legislation of Republika Srpska to Anyone who commits a Criminal Offence in the Territory of Republika Srpska, Article 119***

(1) The criminal legislation of Republika Srpska shall apply to anyone who commits a criminal offence in the territory of Republika Srpska.

(2) The criminal legislation of Republika Srpska shall also apply to anyone who commits a criminal offence aboard a national vessel, regardless of the whereabouts of the vessel at the time of commission.

(3) The criminal legislation of Republika Srpska shall also apply to anyone who commits a criminal offence aboard national civilian or military aircraft while in the air, regardless of the whereabouts of the aircraft at the time of commission.

***Application of the Criminal Legislation of Republika Srpska to Aliens Who Had Committed a Criminal Offence Abroad, Article 122***

(1) The criminal legislation of Republika Srpska shall also apply to any alien who commits any criminal offence outside the territory of Republika Srpska against Republika Srpska or its citizen and not only the offenses referred to in Article 120 of this Code if he happens to be found in the territory of Republika Srpska or if he is extradited to Republika Srpska.

(2) The criminal legislation of Republika Srpska shall also apply to any alien who commits any criminal offence abroad against a foreign country or an alien, which is punishable by five or more years of imprisonment pursuant to the legislation of the country where the offense was committed, if he happens to be found in the territory of Republika Srpska and he is not extradited to the foreign country. Unless otherwise provided by this Code, in this case the court shall not pronounce a sentence that is more severe than the one provided for in the legislation of the country where the criminal offence was committed.

***CC-BD***

***Money Laundering, Article 265***

(see above)

***Application of Criminal Legislation of the Brčko District to Anyone Perpetrating a Criminal Offence in the Brčko District, Article 12***

(1) Criminal legislation of the Brčko District shall apply to anyone who perpetrates a criminal offence within its territory.

(2) Criminal legislation of the Brčko District shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the offence.

(3) Criminal legislation of the Brčko District shall apply to anyone who perpetrates a criminal offence aboard a domestic aircraft while in flight, regardless of its location at the time of perpetration of the offence.

***Application of Criminal Legislation of the Brčko District to a Brčko District Citizen who Perpetrates a Criminal Offence Abroad and a Foreign Citizen who Perpetrates a Criminal Offence Abroad, Article 13***

(1) Criminal legislation of the Brčko District shall apply to a Brčko District citizen who perpetrates a criminal offence abroad, if he is found in the Brčko District territory or has been extradited.

(2) Criminal legislation of the Brčko District shall also apply to a foreign citizen who, outside the Brčko District territory, perpetrates a criminal offence against the Brčko District or its citizen, if he is found in the Brčko District territory or has been extradited.

(3) Criminal legislation of the Brčko District shall be applied to a foreign citizen who, while being abroad, perpetrates a criminal offence against a foreign State or a foreign citizen

for which, under the law in force in the State of perpetration of the criminal offence, a sentence of imprisonment for a term of five years or a more severe penalty may be imposed, if he is found in the Brčko District territory. In such cases, unless otherwise stipulated by this Code, the court may not pronounce a sentence more severe than the sentence prescribed by the law of the State in which the criminal offence was perpetrated.

(4) If a criminal proceeding in the cases referred to in Article 12 of this Code has been initiated in another State and has not been terminated, the Public Prosecutor of the Brčko District shall decide whether to institute prosecution.

(5) In the cases referred to in Article 13 of this Code, prosecution shall be instituted only if the perpetrated criminal offence is also punishable under the laws of the State in which the criminal offence was perpetrated. The prosecution shall not be instituted even in this case if, under the law of the respective State, the prosecution is to be instituted at the request of the injured party, and such a request has not been filed.

(6) The prosecutor may institute prosecution referred to in Article 13, Paragraph 3 of this Code, irrespective of the law of the State in which the criminal offence was perpetrated, if the criminal offence in question was, at the time of perpetration, defined as a criminal offence under the international law.

(7) In the cases referred to in Article 12 of this Code, prosecution of a foreign citizen may be ceded to the foreign State under the reciprocity conditions.

108. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

109. During the country visit, the BiH authorities confirmed that pursuant to Art. 9 CC-BiH, predicate offences committed outside BiH can trigger liability for money laundering inside BiH. If the offence is proven outside BiH, it does not have to be proven in BiH again.

110. However, such a case has not yet been dealt with at the entity nor at the State level.

111. The reviewing experts concluded that BiH has legislatively implemented Art. 23(c) UNCAC.

**Subparagraph 2 (d) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

**(a) Summary of information relevant to reviewing the implementation of the article**

112. BiH stated that it has not implemented this provision of the Convention.

**(b) Observations on the implementation of the article**

113. The submission of information on the money-laundering legislation during the country visit was sufficient to ensure compliance with this provision of the UNCAC.

**Subparagraph 2 (e) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

114. BiH confirmed that it has criminalized self-laundering

115. BiH cited the following implementation legislation:

***CC-BiH  
Money Laundering, Article 209***

(2) If the perpetrator of the act referred to in Paragraph (1) is also a perpetrator of or an accomplice to the criminal offense whose perpetration resulted in the money or proceeds referred to in the previous Paragraph, the perpetrator shall be punished by imprisonment for a term between one and ten years.

***CC-FoBiH  
Article 272, Money Laundering  
(see above)***

***Article 54, Concurrence of Criminal Offences***

(1) If the perpetrator, by a single action or by several actions, has perpetrated several criminal offences, for which he/she is tried at the same time, the court shall first determine the punishment for each of the criminal offences separately, and then proceed with imposing a compound punishment of imprisonment, long-term imprisonment or a compound fine for all the criminal offences taken together.

(2) The court shall adhere to the following rules in imposing compound punishment:

a) If the court has determined punishment of long-term imprisonment for one of concurrent criminal offences, it shall impose only that punishment;

b) If the court has determined punishment of imprisonment for the concurrent criminal offences, the compound punishment must be higher than each of the individual punishments, but may not be as high as the sum of all incurred punishments, nor may it exceed a period of twenty years;

c) If for each of the concurrent criminal offences a punishment of imprisonment not exceeding three years is prescribed, the compound punishment may not exceed eight years;

d) If fines only have been determined by court for the concurrent criminal offences, the compound punishment must be higher than any individual determined fine, but it may not exceed the sum of all determined fines.

(3) If the court has determined punishments of imprisonment for some of the concurrent criminal offences, and fines for other concurrent criminal offences, it shall impose the compound punishment of imprisonment and the compound fine, pursuant to the provisions set forth in paragraph 2, items b) through d) of this Article.

(4) The court shall impose an accessory punishment if it is determined for at least one of the concurrent criminal offences, and if the court has determined several fines, it shall impose the compound fine pursuant to the provisions set forth in paragraph 2, item d) of this Article.

(5) If the court has determined punishments of imprisonment and juvenile imprisonments for the concurrent criminal offences, it shall impose the compound punishment pursuant to the provisions set forth in paragraph 2, items b) and c) of this Article.

**CC-RS**

***Money Laundering, Article, 280***

(2) If the perpetrator referred to in Paragraph 1 of this Article is at the same time an accessory or accomplice in the criminal offence that resulted in obtaining money or property gain referred to in the preceding Paragraph.

**CC-BD**

***Money Laundering, Article 265***

(see above)

***Concurrence of Criminal Offences, Article 54***

(1) If the perpetrator, by a single action or by several actions, has perpetrated several criminal offences, for which he is tried at the same time, the court shall firstly assess the punishment for each of the offences separately, and then proceed with imposing a compound punishment of imprisonment, long-term imprisonment or a compound fine for all the offences together.

(2) The court shall adhere to the following rules in imposing compound punishment:

a) If the court has ruled punishment of long-term imprisonment for one of several concurrent criminal offences perpetrated, this will be the only punishment imposed;

b) If the court has determined punishment of imprisonment for the concurrent criminal offences, the compound punishment must be higher than each of the individual punishments, but the compound punishment may not be as high as the sum of all incurred punishments, nor may it exceed a period of twenty years;

c) If for each of the criminal offences perpetrated in concurrence a punishment of imprisonment not exceeding three years is prescribed, the compound punishment may not exceed eight years;

d) If fines only have been meted out by court for criminal offences in concurrence, the compound punishment must be higher than any individual determined fine, but it may not exceed the sum of all fines meted out.

(3) If the court has meted out punishments of imprisonment for some of the concurrent criminal offences, and fines for others, it shall impose one punishment of imprisonment and one fine, in accordance with the provisions set forth in items b) through d) of paragraph 2 of this Article.

(4) The court shall impose a subsidiary punishment if it is determined for any of the concurrent criminal offences, and if it has meted out several fines, it shall impose a single fine following the provisions set forth in item d), paragraph 2 of this Article.

(5) If the court has meted out a punishment of imprisonment and juvenile imprisonment for the concurrent criminal offences, it shall impose a single punishment of imprisonment as the compound sentence, applying the rules set forth in items b) and c) of paragraph 2 of this Article.

116. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

117. The reviewing experts noted that that CC-BiH and CC-RS explicitly regulate self-laundering, while CC-FoBiH and CC-BD do not. However, during the country visit, it was confirmed that self-laundering is criminalized.

118. The reviewing experts concluded that BiH has chosen to criminalize self-laundering.

**Article 24. Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

119. BiH confirmed that it has fully implemented this provision of the Convention.

120. BiH cited the following implementation legislation:

***CC-BiH  
Accessory After the Fact, Article 232***

(1) Whoever harbours a person who has perpetrated a criminal offence prescribed by the law of Bosnia and Herzegovina, or aids him to avert being discovered, by concealing instruments, traces or in any other way, or whoever harbours a convicted person or takes steps towards frustrating the execution of punishment, imposed security measure or educational institutional measure prescribed by the law of Bosnia and Herzegovina, shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) Whoever renders assistance to the perpetrator of a criminal offence for which a punishment of imprisonment of three years or a more severe punishment may be imposed under the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term between six months and five years.

(3) Whoever renders assistance to the perpetrator of a criminal offence for which a punishment of long-term imprisonment is prescribed by the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term between one and ten years.

(4) The imposed punishment referred to in paragraph 1 of this Article may not be more severe either in type or in magnitude than the punishment imposed for a criminal offence in respect of which accessory after the fact took place.

(5) No punishment shall be imposed for the criminal offence referred to in paragraph 1 through 3 of this Article on a person who is the spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or

cohabiting partner, or defence lawyer, medical doctor or confessional priest of the indicted person.

***Accessory, Article 31***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

***CC-FoBiH***

***Concealing, Article 300***

(1) Whoever purchases, receives in pledge or otherwise procures, conceals or resells an object, which he knows was acquired by a criminal offence or what has been received for such an object through sale or exchange, shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) Whoever perpetrates the criminal offence referred to in paragraph 1 of this Article without knowing that the object was acquired by a criminal offence, although he could have known it according to the circumstances of the case, shall be punished by a fine or imprisonment for a term not exceeding six months.

***CC-RS***

***Concealment, Article 246***

(1) Whoever buys, accepts as a pawn, or in some other way procures, conceals or passes on an item of which he knows has been obtained by a commission of criminal offence, or something that has been received for the item through sale or barter, shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) If the criminal offence referred to in Paragraph 1 of this Article has been committed by a group of people or organized criminal group or if the value of property being concealed exceeds 20.000 KM, the perpetrator shall be punished by imprisonment for a term between six months and five years, and if the value of property being concealed exceeds 100.000 KM, The perpetrator shall be punished by imprisonment for a term between one and ten years.

(3) Whoever commits the offense referred to in Paragraph 1 of this Article, although he was able and obligated to know the item in question had been obtained by commission of a criminal offence, shall be punished by a fine or imprisonment for a term not exceeding two years.

***CC-BD***

***Concealment, Article 294***

(1) A person who purchases, accepts as a pawn, or in some other way obtains, conceals or sells an item for which he knows that it is obtained through the commission of a

criminal offence, or something received through sale or exchange of such item, shall be fined or sentenced to prison to up to three years.

(2) A person who commits the criminal offence referred to in Paragraph 1 of this Article not knowing that the respective item was obtained through criminal offence, although he could have known that judging the circumstances, shall be fined or sentenced to up to six months in prison.

121. BiH provided the following example of case law:

**COURT OF BOSNIA AND HERZEGOVINA**

Case no.: S1 2 K 005269 11 K

Release date: 16th September 2011

III-defendant D. M. the criminal offense of Accessory After the Fact, under Article 232, paragraph 2

For:

III-defendant D. M. under item 2 of this judgment, committed the criminal offense of Accessory After the Fact, under Article 232, paragraph 2

III-accused D. M.

Shall be sentenced to imprisonment of one (1) year which shall not be executed if the accused does not commit a new criminal offense in another 2 (two) years after this Decision has become binding.

Pursuant to Article 74 of the Criminal Code of Bosnia and Herzegovina shall be imposed

SECURITY MEASURE OF FORFEITURE OF THE ITEM.

**(b) Observations on the implementation of the article**

122. During the country visit, it was explained that concealment applies to all objects other than money, including any kind of property.

123. The reviewing experts concluded that BiH has implemented Art. 24 UNCAC.

**Article 25. Obstruction of justice**

**Subparagraph (a) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

(a) **Summary of information relevant to reviewing the implementation of the article**

124. BiH confirmed that it has fully implemented this provision of the Convention.

125. BiH cited the following implementation legislation:

***CC-BiH***

***Obstruction of Justice, Article 241***

(1) Whoever uses physical force, threats or intimidation or the promise, offering or giving of undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a criminal proceedings conducted pursuant to the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term between one and ten years.

(2) Whoever uses physical force, threats or intimidation to interfere with the exercise of official duties by a judge, prosecutor or law enforcement official person in relation to a criminal proceedings conducted pursuant to the law of Bosnia and Herzegovina, shall be punished by imprisonment for a term not less than three years.

***Tampering With Evidence, Article 236***

(1) Whoever makes a witness or a court witness give a false testimony in court, minor offence, administrative or disciplinary proceedings before the institutions of Bosnia and Herzegovina by use of threat or any other form of force or promise of a gift or some other benefit, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever, with the aim of preventing or hampering the collection of evidence in court, minor offence, administrative or disciplinary proceedings before the institutions of Bosnia and Herzegovina, conceals, destroys, damages or renders unserviceable, someone else's object or documents that may be used as evidence, shall be punished by a fine or imprisonment for a term not exceeding three years.

***CC-FoBiH***

***Article 349, Tampering With Evidence***

(1) Whoever, by use of force, threat or any other form of coercion or by promising a gift or some other benefit, induces a witness or an expert witness to give a false testimony in court, minor offence, administrative or disciplinary proceedings in the Federation, shall be punished by imprisonment for a term between six months and five years.

(2) Whoever, with an aim of preventing or hampering the collection of evidence in court, minor offence, administrative or disciplinary proceedings in the Federation, conceals, damages, destroys or renders unusable someone else's object or documents that may be used as evidence, shall be punished by a fine or imprisonment for a term not exceeding three years.

(3) The punishment referred to in paragraph 1 of this Article shall be imposed on whoever, with an aim of preventing or making presentation of evidence in court, minor offence, administrative or disciplinary proceedings in the Federation significantly more difficult, removes, destroys, moves or dislocates a boundary marker, geodetic mark or any other sign designed to mark the ownership or other right on movable or immovable property or the use water, or whoever, with the same aim, falsely places such sign.

***Preventing Presentation of Evidence, Article 366***

(1) Whoever, with the intention of preventing or impairing the presentation of evidence, conceals, destroys, damages or renders unusable property or documents belonging to another which may be used as evidence, or moves or dislocates a boundary marker, geodetic mark or any other marker designed to demarcate the ownership of real property, or who, with the same intention, places a marker in a way which is misleading, shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) Whoever, by force, threat or similar manner, or by promise of gift or some other benefit, makes a witness or an expert witness to give false testimony at a trial, in minor offence proceedings or in any administrative or disciplinary proceedings, shall be punished by imprisonment for a term between three months and three years.

***CC-BD***

***Obstruction of Evidentiary Procedure, Article 343***

(1) A person who uses force, threat or other kind of force or who promises a gift or some other benefit to make a witness or an expert witness give a false testimony in the course of the court, misdemeanour, administrative or disciplinary proceedings in Brčko District of BiH, shall be sentenced with six months to five years in prison.

(2) A person who conceals, damages, destroys someone else's object or document that may be used as evidence, aiming to prevent or significantly hamper the collecting of evidence on trial, in the course of a court, misdemeanour, administrative or disciplinary proceedings in Brčko District of BiH, shall be fined or sentenced with up to three years in prison.

(3) The punishment from Paragraph 1 of this Article shall be imposed on a person who conceals, destroys, moves or removes a boundary marking stone, geodetic mark or any other mark denoting ownership or other property right or the use of water, or on a person who falsely places such mark, aiming to prevent or significantly hamper the evidentiary procedure in the course of a court, misdemeanour, administrative or disciplinary proceedings in Brčko District of BiH.

126. BiH provided the following example of case law:

**Court of Bosnia and Herzegovina**

The Crime of Obstruction of Justice under Article 241 Paragraph 2

Defendant:

F. C., son of J. and of mother H., maiden name G., born .... in Sarajevo, residing in Sarajevo, B, Bosniak ethnicity, a lawyer by profession, employed, married, father of two adult children, Social Security Number: ... citizen of Bosnia and Herzegovina, previously convicted.

**GUILTY**

For:

On 11th March 2009 in Sarajevo, municipality C. , during the search of the catering facility Lj.B.B on the square... , during the search of the catering facility Lj.B.B., by order of the Court of Bosnia and Herzegovina; the catering facility is registered in the name of F. T . , and it is operated and managed by his son in law A. W . , F. T . , as a lawyer of his son in law, he used physical force to prevent official people of the State Investigation and Protection Agency to carry out official duties in the criminal proceedings conducted by the law of Bosnia and Herzegovina; he used force in the

attempt to prevent the officers in performing their duty of the search of this facility by order of the Court of Bosnia and Herzegovina; the defendant commanded them to leave and raised his voice to the authorized officials of the State Investigation and Protection

Agency telling them to leave the building , then with a strong blow of the right hand he broke a glass at the entrance to the catering facility Lj.B.B, with the aim of preventing the execution of the search, and therefore created an objective risk of injury to the authorized officials and endanger authorized officials who could be injured by parts of scattered broken glass, and that the authorized officials at the time were inside the building and outside of the catering facility in the immediate vicinity of breaking glass; which was followed by his arrest by members of the State Investigation and Protection Agency.

Therefore, he used physical force to prevent officials of the State Investigation and Protection Agency to carry out official duties in the criminal proceedings conducted by the law of Bosnia and Herzegovina, thereby committing the offense of Obstruction of Justice under Article 241 Paragraph 2 CC BiH and the court, on the basis of the above legal provisions , with the application of Articles 39 , 42 and 48 CC BiH has sentenced the defendant.

#### S E N T E N C E

by imprisonment for a term of 1 (one) year

Pursuant to Article 188 Paragraph 1 in connection with Article 186, paragraph 2 CPC, the accused is obliged to compensate the costs of the criminal proceedings of which the Court will determine the amount of a special decision after obtaining the necessary data.

#### APPEAL JUDGEMENT

Case no: S1 2 K 003443 11 Kž (X-KŽ-08/638-4) Issued: 28/09/2011

#### J U D G E M E N T

Appeal is refused as unfounded, the appeals to the Prosecutor's Office of Bosnia and Herzegovina, so the Sentence of the Court of Bosnia and Herzegovina shall be confirmed. No :S1 2 K 003443 09 K (X-K-08/638-4) from 17/12/2010.

#### **REPUBLIKA SRPSKA**

#### **BASIC COURT IN VISEGRAD**

NUMBER: 91 0 K 018451 11 K Visegrad, 20th March 2012

Attack against an Official Person while Carrying out Security Work, Discovering or Apprehending Perpetrators of Criminal Offences under Article 387 and paragraph 2 of the Criminal Code of the Republika Srpska.

#### V E R D I C T

DEFENDANT: P.M. son of xxxxxxxxxxxxxxx, residing in Visegrad, Okolišta bb, mechanical technician by profession, unemployed, unmarried, Serb, citizen of BiH, Social Security: 0310985130018, previously convicted if found:

#### G U I L T Y

For:

On 8th July 2011, around 22.40 p.m, in the town of Visegrad, on the plateau of Sports Center "Delta" at the time of guitar fests within the cultural and sports events "Visegrad motorcycle trails" he attacked an official person - police officer of the Ministry of Interior of the Republika

Srpska during performance of his security duties. Having been warned of misconduct in the form of urinating in a public place near the beer stand, the defendant responded by

hitting the police officer with his closed right fist into the face on the left cheekbone and caused him bodily injury in the form of swollen and red cheekbone. Having hit the police officer the defendant continued to attack him by grabbing the shirt of police officer Nedic Srecko with both hands trying to knock him to the ground and thus ripping off three buttons of his official uniform shirt. Therefore, the defendant attacked an official person while carrying out security work in the Republika Srpska and inflicted minor body injuries to the official person. Hence, the defendant committed a criminal offence of Attack against an Official Person while Carrying out Security Work, Discovering or Apprehending Perpetrators of Criminal Offences from Article 387 and paragraph 2 of the Criminal Code of the Republika Srpska, and pursuant to Article 29, 33, 37, 38 and 39 and Article 387a Paragraph 2 of the Criminal Code of the Republika Srpska the defendant shall be:

S E N T E N C E D

BY IMPRISONMENT FOR A TERM OF 3 (THREE) MONTHS

**(b) Observations on the implementation of the article**

127. The reviewing experts concluded that BiH has implemented Art. 25(a) UNCAC.

**Subparagraph (b) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

128. BiH confirmed that it has fully implemented this provision of the Convention.

129. BiH cited the following implementation legislation:

***CC-BiH***

***Obstructing an Official Person in Execution of Official Duty, Article 241a***

(1) Whoever, by force or threat of immediate use of force, prevents an official person in the institutions of Bosnia and Herzegovina from performing an official act falling within the scope of his authority or, by using the same means, coerces him to perform an official act, shall be punished by imprisonment for a term between three months and three years.

(2) If, by the criminal offense referred to in Paragraph (1) of this Article, the official person is maltreated or a minor bodily injury is inflicted upon him, or the criminal offense has been perpetrated by threatening to use weapons, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(3) Whoever perpetrates the criminal offense referred to in Paragraphs (1) and (2) of this Article against an official person carrying out the work related to the security of Bosnia

and Herzegovina, to the apprehension of perpetrators of criminal offenses or to the guarding of confined persons, shall be punished by imprisonment for a term between one and ten years.

(4) If the perpetrator of the criminal offense referred to in Paragraphs (1) through (3) of this Article has been provoked by illegal or rude treatment on the part of the official person, he may be relieved of punishment.

***Attack against an Official Person while Carrying out Security Work, Discovering or Apprehending Perpetrators of Criminal Offences, Article 241b***

(1) Whoever attacks or seriously threatens to attack an official person in the institutions of Bosnia and Herzegovina or a person assisting while performing tasks related to security in Bosnia and Herzegovina, while detecting or apprehending the perpetrator of criminal offences or guarding a person deprived of liberty, shall be punished by imprisonment for a term between three months and three years.

(2) If an official person or a person assisting him has sustained light bodily injuries as a result of the criminal offence referred to in paragraph (1) of this Article or if the criminal offence referred to in paragraph (1) of this Article was committed at gunpoint, the perpetrator shall be punished by imprisonment for a term of six months.

(3) If an official person or a person assisting him has sustained serious bodily injuries as a result of the criminal offence referred to in paragraph (1) of this Article, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(4) If the perpetrator of the criminal offence referred to in paragraphs (1) through (3) of this Article was provoked by an unlawful or inconsiderate treatment by the official person or a person assisting him, the perpetrator may be relieved of punishment.

***CC-FoBiH***

***Obstructing an Official Person in Execution of Official Activity Article 358***

(1) Whoever, by force or threat of immediate use of force, prevents an official person from performing an official act falling within the scope of his authority or, by using the same means, coerces him to perform an official act, shall be punished by imprisonment for a term not exceeding five years.

(2) If, by the criminal offence referred to in paragraph 1 of this Article, the official person is insulted, maltreated or a slight bodily injury is inflicted upon him, or the criminal offence referred to in paragraph 1 of this Article is perpetrated by threat of use of weapons, the perpetrator shall be punished by imprisonment for a term between six months and three years.

(3) Whoever perpetrates the criminal offence referred to in paragraphs 1 and 2 of this Article against an official person engaged in the work related to public security or to the security of the Federation or to the maintenance of public order, apprehension of perpetrators of criminal offences or to the guarding of confined persons, shall be punished with imprisonment for a term between one and ten years.

(4) If the perpetrator of the criminal offence referred to in paragraphs 1 through 3 of this Article is provoked by illegal or rude treatment on the part of the official person, he may be released from punishment.

***Attacking an Official while Carrying out Security Work Article 359***

(1) Whoever attacks or seriously threatens to attack an official person or a person who assists an official person in carrying out work related to public security or security of the Federation, or duties related to the maintenance of public order, shall be punished by imprisonment for a term between three months and three years.

(2) If, by the criminal offence referred to in paragraph 1 of this Article, a slight bodily injury is inflicted upon the official person or upon the person who assists him, or if the criminal offence referred to in paragraph 1 of this Article is perpetrated with threat of using weapons, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(3) If, by the criminal offence referred to in paragraph 1 of this Article, a serious bodily injury is inflicted upon the official person or upon the person who assists him, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(4) If the perpetrator of the criminal offence referred to in paragraphs 1 through 3 of this Article is provoked by illegal or rude treatment on the part of the official person or the person who assists him, he may be released from punishment.

***Participation in a Group of People which Obstructs an Official Person in Execution of Official Activity Article 360***

(1) Whoever participates within a group of people, which by joint action obstructs or attempts to obstruct an official person in the performance of an official act, or in the same way coerces him to perform an official act, for the mere participation shall be punished by imprisonment for a term not exceeding three years.

(2) Whoever organises or directs at any level a group of people which perpetrates the criminal offence referred to in paragraph 1 of this Article, shall be punished by imprisonment for a term between one and five years.

***CC-RS***

***Coercion of a Member of Judiciary Article 369***

***(THIS ARTICLE WILL BE AMENDED - TBC)***

(1) Whoever, by force or serious threat compels a judge, prosecutor to do an act or omit to do an act or suffers, shall be punished by a fine or imprisonment for a term not exceeding two years.

(2) Whoever commits the offence referred to in Paragraph 1 of this Article by threat of murder, serious bodily injury or kidnapping or whoever commits it in a group of people or organized criminal group, shall be punished by imprisonment for a term between six months and five years.

***Obstructing an Official in Execution of His Official Duty Article 387***

(1) Whoever, by force or threat of immediate use of force, prevents an official person in the institutions of Republika Srpska from performing an official act falling within the scope of his authority or, by using the same means, coerces him to perform an official act, shall be punished by imprisonment term of maximum three years.

(2) If, by the criminal offense referred to in paragraph 1 of this Article, the official person is maltreated or a light bodily harm is inflicted upon him, or the criminal offense has been perpetrated by threatening to use weapons, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(3) Whoever perpetrates the criminal offense referred to in paragraphs 1 and 2 of this Article against an official person carrying out the work related to the security of Republika Srpska, to the apprehension of perpetrators of criminal offenses or to the guarding of confined persons, shall be punished by imprisonment for a term between one and ten years.

(4) If the perpetrator of the criminal offense referred to in paragraphs 1 through 3 of this Article has been provoked by illegal or rude treatment on the part of the official person, he may be relieved of punishment.

***Attack against an Official Person while Carrying out Security Work, Discovering or Apprehending Perpetrators of Criminal Offenses Article 387a***

(1) Whoever attacks or seriously threatens to attack an official person of the institutions of Republika Srpska or a person who assists an official person in carrying out work related to the security of Republika Srpska, discovering or apprehending perpetrators of criminal offenses or to the guarding of confined persons shall be punished by imprisonment term of maximum three years.

(2) If, by the criminal offense referred to in paragraph 1 of this Article, a light bodily harm is inflicted upon the official person or upon the person who assists him, or if the criminal offense referred to in paragraph 1 of this Article is perpetrated with the threat to use weapons, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(3) If, by the criminal offense referred to in paragraph 1 of this Article, a grievous bodily harm is inflicted upon the official person or upon the person who assists him, the perpetrator shall be punished by imprisonment for a term between one and ten years.

(4) If the perpetrator of the criminal offense referred to in paragraph 1, 2 and 3 of this Article has been provoked by illegal or rude treatment on the part of the official person or the person who assists him, he may be relieved of punishment.

***Attacking an Official Person in the Execution of Official Duties Article 388***

(1) Whoever attacks or seriously threatens to attack an official person or a person assisting an official in the execution of his duties shall be punished by imprisonment for a term not exceeding three years.

(2) If the perpetrator in the course of the commission of the offence referred to in paragraph 1 of this Article inflicted a bodily injury upon the official person or upon his assistant, or if the perpetrator abuses him or threatens to use a weapon, the perpetrator shall be punished by imprisonment for a term between three months and three years.

(3) If the offence referred to in paragraphs 1 and 2 of this Article was committed against a judge or public prosecutor in discharge of their duties or against official person while performing duties of security, the perpetrator shall be punished by imprisonment for a term between six months and five years.

(4) If the perpetrator of the offence referred to in paragraphs 1 through 3 of this Article was provoked by unlawful or harsh treatment on the part of an official person or his assistant, he may be released from the punishment.

***CC-BD***

***Obstructing an Official in Execution of an Official Duty Article 352***

(1) A person who by using force, or threat of immediate use of force, prevents an official in executing of an official duty within the scope of his powers, or a person who, in the same way, compels an official to perform an official duty, shall be sentenced with three months to three years in prison.

(2) If an official is insulted, abused, or caused bodily injury by the criminal offence from Paragraph 1 of this Article, or if the criminal offence from Paragraph 1 of this

Article was committed through threats of using weapons, the perpetrator shall be sentenced with six months to three years in prison.

(3) A person who commits the offence referred to in paragraphs 1 and 2 of this Article against an official in performing duties of public safety, or safety of Brčko District of Bosnia and Herzegovina, or duties of keeping of public order, apprehension of the perpetrator of a criminal offence or guarding a person deprived of liberty, shall be sentenced with three months to five years in prison.

(4) If the perpetrator of the offence referred to in paragraphs 1 to 3 of this Article has been provoked by an unlawful or brutal conduct of the official, he may be released from punishment.

#### ***Attack on an Official Executing Security Duties Article 353***

(1) A person who attacks or seriously threatens to attack an official person, or a person assisting him in carrying out of public safety duties or safety in Brčko District of Bosnia and Herzegovina, or duties of keeping of public order, shall be sentenced with three months to three years in prison.

(2) If the perpetrator, while committing the offence referred to in Paragraph 1 of this Article, ill-treated the official person or the person assisting him, inflicted a light bodily injury, or if the criminal offence from Paragraph 1 of this Article was committed with a threat that weapons will be used, he shall be sentenced with six months to five years in prison.

(3) If an official or the person assisting him suffers grievous bodily harm through the criminal offence from Paragraph 1 of this Article the perpetrator shall be punished by a sentence of imprisonment from one to ten years.

(4) If the perpetrator of the criminal offence referred to in Paragraphs 1 to 3 of this Article has been provoked by unlawful or brutal conduct of an official person or the person assisting the official, he may be released from punishment.

#### **Participating in a Group Preventing Officials in Executing the Official Duty Article 354**

(1) A person who participates in a group, who, by joint action, prevents or tries to prevent an official in executing of an official duty, or thus compels him to execute the official duty; he shall be sentenced for the act of participation with up to three years in prison.

(2) A person who organizes, or leads a group in any way, which commits the criminal offence referred to in Paragraph 1 of this Article, shall be sentenced with one to five years in prison.

130. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

131. The reviewing experts concluded that BiH has implemented Art. 25(b) UNCAC.

### **Article 26. Liability of legal persons**

#### **Paragraphs 1 and 2 of article 26**

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

**(a) Summary of information relevant to reviewing the implementation of the article**

132. BiH confirmed that it has fully implemented this provision of the Convention.

133. BiH cited the following implementation legislation:

***CC-BiH***

***Applicability of Criminal Legislation of Bosnia and Herzegovina to Legal Persons  
Article 11***

The criminal legislation of Bosnia and Herzegovina shall be applied to legal persons pursuant to Chapter XIV (Liability of Legal Persons for Criminal Offences) of this Code and other laws of Bosnia and Herzegovina.

***Liability of Legal Persons  
Article 122***

(1) This Chapter regulates criminal liability of a legal person, with the exclusion of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska, the Brčko District of Bosnia and Herzegovina, canton, city, municipality and local community, for a criminal offence perpetrated by the perpetrator in the name of, for account of or in favour of the legal person. This Chapter regulates punishments and other criminal sanctions that may be imposed on a legal person, as well as legal consequences of the sentence for a criminal offence imposed on the legal person.

(2) The application of some punishments or other criminal sanctions that may be imposed on legal persons may be excluded or limited under the conditions stipulated by a law and for certain legal persons.

(3) The criminal procedure against legal persons shall be conducted according to the Criminal Procedure Code of Bosnia and Herzegovina.

***Territorial Applicability of this Code regarding Criminal Liability of Legal Person  
Article 123***

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for offences perpetrated within the territory of Bosnia and Herzegovina.

(2) Domestic and foreign legal persons shall, pursuant to this Code, also be liable for a criminal offence perpetrated outside the territory of Bosnia and Herzegovina if the legal person has its seat in the territory of Bosnia and Herzegovina or if it carries out its activities in the territory of Bosnia and Herzegovina, if the offence was perpetrated against the State of Bosnia and Herzegovina, its citizens or domestic legal persons.

(3) Pursuant to this Code a domestic legal person shall also be liable for a criminal offence perpetrated outside the territory of Bosnia and Herzegovina against a foreign State, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 9 (Applicability of Criminal Legislation of Bosnia and Herzegovina for Offences Perpetrated Outside the Territory of Bosnia and Herzegovina) of this Code.

***Basis of Liability of a Legal Person***  
***Article 124***

For a criminal offence perpetrated in the name of, for account of or for the benefit of the legal person, the legal person shall be liable:

- a) When the purpose of the criminal offence is arising from the conclusion, order or permission of its managerial or supervisory bodies; or
- b) When its managerial or supervisory bodies have influenced the perpetrator or enabled him to perpetrate the criminal offence; or
- c) When a legal person disposes of illegally obtained property gain or uses objects acquired in the criminal offence; or
- d) When its managerial or supervisory bodies failed to carry out due supervision over the legality of work of the employees.

***Limits of Liability of a Legal Person***  
***Article 125***

(1) With the conditions referred to in Article 124 (Basis of Liability of a Legal Person) of this Code, a legal person shall also be liable for a criminal offence when the perpetrator not guilty for the perpetrated criminal offence.

(2) Liability of the legal person shall not exclude culpability of physical or responsible persons for the perpetrated criminal offence.

(3) For criminal offences perpetrated out of negligence, a legal person may be liable under the conditions referred to in Article 124, item d) of this Code, and in that case the legal person may be punished less severely.

(4) When in the legal person except from the perpetrator there is no other person or body that could direct or supervise the perpetrator, the legal person shall be liable for the criminal offence within the limits of the perpetrator's liability.

***Liability Incident to the Change of Status of a Legal Person***  
***Article 126***

(1) A legal person under bankruptcy may be liable for a criminal offence regardless of whether the criminal offence was perpetrated before the beginning of the bankruptcy proceedings or in the meantime, but no punishment may be imposed on a legal person under bankruptcy, but only the security measure of forfeiture or the confiscation of property gain.

(2) In the event that the legal person has ceased to exist before the criminal proceedings are completed with a final judgment, and in the criminal proceedings that legal person was found liable, punishments and other sanctions shall be imposed on the legal person which is its legal successor, if its managerial or supervisory bodies had knowledge of the perpetrated criminal offence before the cessation of existence of the legal person.

(3) The security measure of forfeiture or the confiscation of material gain shall be imposed upon the legal person, which is the legal successor of the convicted legal person, if its management or supervision bodies had knowledge of the perpetrated criminal offence.

(4) In the event the legal person has ceased to exist upon the final completion of the criminal proceedings, the criminal sanction shall be executed pursuant to the provisions of paragraphs 2 and 3 of this Article.

***Liability of a Legal Person for an Attempt***

### ***Article 127***

(1) If the perpetrator commences the execution of a planned criminal offence, but does not complete such offence, under the terms of Article 124 (Basis of Liability of a Legal Person) of this Code, the legal person shall be liable where the law prescribes that the attempt is punishable.

(2) The legal person shall be punished equally as if it were for the completed criminal offence but may nevertheless be punished less severely.

(3) If the managerial or supervisory authorities of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

### ***Continued Offence and Liability of Legal Person***

#### ***Article 128***

Where the same grounds for liability of the legal person exist in regard to several same-type and time-related criminal offences perpetrated by several perpetrators, such legal person shall be liable as if a single criminal offence has been perpetrated.

### ***Complicity of Legal Persons***

#### ***Article 129***

(1) In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 124 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person responsible for the criminal offence.

### ***General Reasoning for Less Severe Punishment of Legal Person or Release from Punishment***

#### ***Article 130***

(1) A legal person, whose managerial or supervisory authority has willingly reported on the perpetrator upon a criminal offence perpetrated, may be punished less severely.

(2) A legal person whose managerial or supervisory authority, following the perpetration of a criminal offence, decides to return the illegally obtained material gain or to remove the caused harmful effects or to communicate the information concerning the grounds for holding the other legal persons responsible, may be released from punishment.

### ***Punishment for Legal Persons***

#### ***Article 131***

The following types of punishment may be imposed upon the legal persons:

- a) Fines;
- b) Seizure of property;
- c) Dissolution of the legal person.

### ***Fines for Legal Persons***

#### ***Article 132***

(1) Fines imposable on a legal person shall be no less than 5.000 KM and shall not exceed 5.000.000 KM.

(2) In the event that, by perpetrating the criminal offence, the legal person has caused material damage to another party or the legal person has come into possession of an unlawful material gain, the scope of the imposed fine may be twice as much as the amount of this damage or benefit.

(3) A failure to pay a fine within the deadline set under the final verdict shall result in an immediate forced collection procedure.

***Seizure of Property***  
***Article 133***

(1) The seizure of property may be imposed for criminal offences for which a punishment of imprisonment for a term of five years or more severe punishment is prescribed.

(2) From a legal person at least half of the property or the major part of the property or the entire property may be seized.

(3) In the event of bankruptcy proceedings being brought about as a consequence of the imposed seizure punishment, the creditors shall be permitted to settle their claims out of the mass of the seized bankruptcy assets.

***Dissolution of the Legal Person***  
***Article 134***

(1) Dissolution of a legal person may be imposed in the case that its activities were entirely or partly being used for the purpose of perpetrating criminal offences.

(2) Besides the dissolution of a legal person, the property seizure punishment may be imposed.

(3) In addition to the dissolution of a legal person, the court shall propose the opening of a liquidation procedure.

(4) Creditors may be paid out from the property of the legal person upon which the punishment of dissolution has been imposed.

***Meting out Punishment for Legal Persons***  
***Article 135***

(1) When meting out punishment for a legal person, in addition to the general rules of meting out punishments referred to in Article 48 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.

(2) When meting out the fine for criminal offences for which, in addition to a fine also a property seizure punishment is imposed, the punishment may not exceed a half of the amount of the legal person's property.

***Imposing a Suspended Sentence to a Legal Person***  
***Article 136***

(1) The court may impose a suspended sentence on the legal person instead of a fine.

(2) When imposing a suspended sentence the court may impose on the legal person a fine not exceeding 1.500.000 KM, but at the same time decide that the same shall not be

executed unless the legal person becomes liable for other criminal offences within the period of time not shorter than one year or longer than five years.

***Security Measures for Legal Persons***  
***Article 137***

In addition to the security measure of forfeiture referred to in Article 74 (Forfeiture) of this Code, the following security measures may be imposed for criminal offences perpetrated by legal persons:

- a) A publication of judgment;
- b) A ban on performing a certain activity.

***Publication of Judgement***  
***Article 138***

(1) The security measure of a judgement publication shall be ordered in case it would be useful for the public to learn about the judgement, especially if the announcement would be useful in order to remove a threat to life or health of people or to provide for safety of traffic or to protect or promote social values.

(2) Concerning the significance of a criminal offence the court shall also assess the need for the public to learn about the judgment, the need as to whether the judgment shall be published in the printed media, by way of radio or television or in several aforesaid media altogether and at the same time as to whether its grounds shall be published entirely or as an abstract. The court shall make sure that the applied method of publication allows that all those concerned by the need for publication of the judgment should be informed.

***Ban on Certain Activities***  
***Article 139***

(1) By ordering the security measure of a ban on certain activity, the court may prohibit a legal person from manufacturing certain products or performing certain businesses, or prohibit a legal person from performing certain activities of trade in commodities or from performing other business or activities.

(2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain activity would present a threat to life and limb of people or be prejudicial to the economic and financial operation of other persons or detrimental to the economy, or if the legal person has already been sentenced for the same or a similar criminal offence over the past two years preceding the perpetration of the criminal offence.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day of the entering into force of the judgement.

***Confiscating Material Gain from a Legal Person***  
***Article 140***

If a legal person acquires material gain by the perpetration of a criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

***Legal Consequences Incident to Conviction for a Legal Person***  
***Article 141***

(1) Legal consequences incident to conviction for a legal person are: bar on work based on a permit, authorization or concession issued by the authorities of foreign countries, bar on work based on a permit, authorization or concession issued by the institutions of Bosnia and Herzegovina.

(2) Legal consequences incident to conviction for a legal person may take effect even when a fine has been imposed on a legal person for the perpetration of a criminal offence.

Period Set by Statute of Limitation Regarding the Institution of Criminal Prosecution and

***Execution of Criminal Sanctions Imposed on Legal Persons***  
***Article 142***

(1) On the bar to prosecution of a legal person by the lapse of time, Article 14 (Period Set by Statute of Limitation Regarding the Institution of Criminal Prosecution) of this Code is applied.

(2) The execution of a sentence imposed on the legal person shall become time-barred when the following periods from the date of the entry into force of the judgement whereby such punishment has been imposed have elapsed: three years for execution of a fine; five years for execution of the property seizure punishment and of the punishment of dissolution of legal person.

(3) The execution of a security measure shall become time-barred after : the lapse of six months from the date of entry into force of the judgement whereby the publication of the judgement was imposed; the period that equals the time for which the measure of ban on performing certain activity of the legal person was imposed.

***Laws Prescribing the Criminal Offences of Legal Persons***  
***Article 143***

Legal persons may be held accountable for criminal offences defined in this Code and other criminal offences defined by a law of Bosnia and Herzegovina.

***Punishments for Criminal Offences***  
***Article 144***

(1) For criminal offences for which a fine or imprisonment for a term not exceeding three years is prescribed, a legal person shall be punished by a fine of not exceeding 850.000 KM or not exceeding ten times the amount of the damage caused or material gain acquired through the perpetration of a criminal offence.

(2) For criminal offences for which imprisonment for a term not less than three years is prescribed, a legal person shall be punished by a fine of not exceeding 2.500.000 KM or not exceeding twenty times the amount of the damage caused or material gain acquired through the perpetration of a criminal offence.

(3) For criminal offences for which imprisonment for a term of five years or more is prescribed, to a legal person a property seizure punishment may be imposed instead of a fine.

(4) For criminal offences referred to in paragraph 1 of this Article, to a legal person a punishment of dissolution of the legal person may be imposed instead of the fine, under the requirements referred to in Article 134 (Punishment of Dissolution of a Legal Person) of this Code.

## ***Applicability of Criminal Legislation in the Federation to Legal Persons***

### ***Article 11***

The criminal legislation in the Federation shall be applied to legal persons pursuant to Chapter XIV (Liability of Legal Persons for Criminal Offences) of this Code and other laws in the Federation.

### ***Article 126***

#### ***Liability of Legal Person***

(1) This Chapter regulates criminal liability of a legal person, with the exclusion of Bosnia and Herzegovina, the Federation, the Republika Srpska, the District of Brčko of Bosnia and Herzegovina, canton, city, municipality and local community, for a criminal offence perpetrated by the perpetrator in the name of, for account of or in favour of the legal person.

(2) This Chapter regulates punishments and other criminal sanctions that may be imposed on a legal person, as well as legal consequences incident to conviction of a legal person for a criminal offence.

(3) For certain legal persons, the application of some punishments or other criminal sanctions that may be imposed on legal persons may be excluded or limited under the conditions stipulated by a law.

(4) The criminal proceedings against business enterprises shall be conducted pursuant to the Criminal Procedure Code of Bosnia and Herzegovina.

### ***Article 127***

#### ***Territorial Applicability of this Code regarding Criminal Liability of Legal Persons***

(1) A domestic and foreign legal person shall be, in accordance with this Code, liable for criminal offences perpetrated within the territory of the Federation.

(2) A domestic and foreign legal person who have their seat or carry out their activities in the territory of the Federation shall, in accordance with this Code, also be liable for a criminal offence perpetrated outside the territory of the Federation, if the criminal offence was perpetrated against Bosnia and Herzegovina, the Federation, its citizens or domestic legal persons.

(3) A domestic legal person shall, in accordance with this Code, also be liable for a criminal offence perpetrated outside the territory of the Federation against a foreign State, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 13 (Applicability of Criminal Legislation of the Federation for Offences Perpetrated within the Territory of Bosnia and Herzegovina) of this Code.

### ***Article 128***

#### ***Basis of Liability of a Legal Person***

For a criminal offence that the perpetrator has perpetrated in the name of, for the account of or for the benefit of the legal person, the legal person shall be liable:

- a) When the purpose of the criminal offence is arising from the conclusion, order or permission of the managerial or supervisory bodies of a legal person; or
- b) When the managerial or supervisory bodies of a legal person have influenced the perpetrator or enabled him to perpetrate the criminal offence; or
- c) When a legal person disposes of illegally acquired material gain or uses objects obtained through the criminal offence; or
- d) When the managerial or supervisory bodies of a legal person have failed to carry out due supervision over the legality of work of the employees.

**Article 129**  
***Limits of Liability of a Legal Person***

- (1) With the conditions referred to in Article 128 (Basis of Liability of a Legal Person) of this Code, a legal person shall be liable for a criminal offence even when the perpetrator is not liable for the perpetrated criminal offence.
- (2) Liability of the legal person shall not exclude liability of physical or responsible persons for the perpetrated criminal offence.
- (3) For criminal offences perpetrated out of negligence, a legal person may be liable under the conditions referred to in Article 128, item d) of this Code, and in that case the legal person may be punished less severely.
- (4) When in the legal person, except from the perpetrator, there is no other person or body that could direct or supervise the perpetrator, the legal person shall be liable for the criminal offence within the limits of the perpetrator's responsibility.

**Article 130**  
***Liability Incident to the Change of Status of a Legal Person***

- (1) A legal person under bankruptcy may be criminally liable for a criminal offence regardless of whether the criminal offence was perpetrated before the beginning of the bankruptcy proceedings or in the meantime, but no punishment may be imposed on a legal person under bankruptcy, but only the security measure of forfeiture or the confiscation of material gain.
- (2) In the event that the legal person has ceased to exist before the final completion of the criminal proceedings, and in the criminal proceedings that legal person was found liable, punishments and other criminal sanctions shall be imposed on the legal person which is the legal successor of the legal person whose criminal liability was established, if its managerial or supervisory bodies had knowledge of the perpetrated criminal offence before the cessation of existence of the legal person.
- (3) The security measure of forfeiture or the confiscation of material gain shall be imposed upon the legal person, which is the legal successor of the legal person whose criminal liability was established, if its management or supervision bodies had knowledge of the perpetrated criminal offence.
- (4) In the event the legal person has ceased to exist upon the final completion of the criminal proceedings, the imposed criminal sanction shall be executed pursuant to the provisions of paragraphs 2 and 3 of this Article.

**Article 131**  
***Liability of a Legal Person for an Attempt***

- (1) If the perpetrator commences the execution of a planned criminal offence, but does not complete such offence, the legal person shall be liable under the terms of Article 128 (Basis of Liability of a Legal Person) of this Code if the law prescribes that the attempt is punishable.
- (2) The legal person shall be punished for an attempt equally as if it were for the completed criminal offence but may nevertheless be punished less severely.
- (3) If the managerial or supervisory bodies of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

**Article 132**  
***Continued Criminal Offence and Criminal Liability of Legal Person***

Where the same grounds for criminal liability of the legal person exist concerning several same-type and time-related criminal offences perpetrated by several perpetrators, such legal person shall be liable as if a single criminal offence has been perpetrated. In the event that the continued criminal offence and the liability of legal persons where the same grounds for criminal liability of the legal person exist concerning several same-type and time-related criminal offences perpetrated by several perpetrators, such legal person shall be liable as if a single criminal offence has been perpetrated.

**Article 133**  
***Complicity of Legal Persons***

(1) In the event that two or more legal persons participate in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 128 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person criminally liable for the criminal offence.

**Article 134**  
***General Reasoning for Less Severe Punishment of Legal Person or Release from Punishment***

(1) A legal person, whose managerial or supervisory body has willingly reported on the perpetrator upon a criminal offence perpetrated, may be punished less severely.

(2) A legal person whose managerial or supervisory body, following the perpetration of a criminal offence, decides to return the illegally acquired material gain or to remove the caused harmful effects or to communicate the information concerning the grounds for holding other legal persons liable, may be released from punishment.

**Article 135 Punishments for Legal Persons**

The following punishments may be imposed upon legal persons for criminal offences:

- a) Fine;
- b) Seizure of property;
- c) Dissolution of the legal person.

**Article 136**  
***Fine for Legal Persons***

(1) Fine imposable on a legal person shall be no less than 5,000 KM and shall not exceed 5.000,000 KM.

(2) In the event that, by the criminal offence perpetrated by the legal person, a material damage has been caused to another party or illegal material gain has been acquired, the maximum measure of the imposed fine may be twice as much as the amount of this damage or gain.

(3) A failure to pay a fine within the deadline set under the verdict shall result in an immediate forced collection procedure.

**Article 137**  
**Seizure of Property**

- (1) Seizure of property may be imposed for criminal offences for which a punishment of imprisonment for a term of five years or more severe punishment is prescribed.
- (2) From a legal person at least half of the property or the major part of the property or the entire property may be seized.
- (3) In the event of bankruptcy proceedings being brought about as a consequence of the imposed punishment of the seizure of property, the creditors shall be permitted to settle their claims out of the mass of the seized bankruptcy assets.

**Article 138**  
**Dissolution of a Legal Person**

- (1) Punishment of dissolution of a legal person may be imposed in the case that its activities were entirely or on a major part being used for the purpose of perpetrating criminal offences.
- (2) In addition to the dissolution of a legal person, the punishment of seizure of property may be imposed.
- (3) Together with the imposed dissolution of a legal person, the court shall propose the opening of a liquidation procedure.
- (4) Creditors may be paid out from the property of the legal person against which the punishment of dissolution of legal person has been imposed.

**Article 139**  
**Meting out Punishment for a Legal Person**

- (1) When meting out punishment for a legal person, in addition to the general rules of meting out punishments referred to in Article 49 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.
- (2) When meting out the fine for criminal offences for which, in addition to a fine also a punishment of seizure of property is imposed, the imposed punishment may not exceed a half of the amount of the legal person's property.

**Article 140**  
**Imposing a Suspended Sentence to a Legal Person**

- (1) The court may impose on the legal person for a criminal offence a suspended sentence instead of a fine.
- (2) In a suspended sentence, the court may determine to the legal person a fine not exceeding 1.500.000 KM, but at the same time decide that it shall not be executed unless the legal person becomes liable for other criminal offence within the period of time not shorter than one year or longer than five years.

**Article 141**  
**Security Measures for Legal Persons**

In addition to the security measure of forfeiture referred to in Article 78 (Forfeiture) of this Code, the following security measures may be imposed on a legal person for a criminal offence:

- a) A publication of judgement;
- b) A ban on performing a certain economic activity.

#### ***Article 142***

##### ***Publication of Judgement***

(1) The security measure of a publication of judgement shall be imposed in case it would be useful for the public to learn about the judgement, especially if the publication of judgement would be useful in order to remove a threat to life or health of people or to provide for safety of traffic or to obtain certain benefits for economy or to protect or to promote social values.

(2) Concerning the significance of a criminal offence and the need for the public to learn about the judgement, the court shall assess whether the judgement shall be published in the printed media, by way of radio or television or in several aforesaid media altogether, and at the same time whether the grounds of the judgement shall be published entirely or as an abstract, taking into account that the applied method of publication allows that all those who would benefit from the publication of the judgement be informed.

#### ***Article 143***

##### ***Ban on Performing a Certain Economic Activity***

(1) By the security measure of a ban on performing a certain economic activity, the court may prohibit a legal person from manufacturing certain products or performing certain businesses, or prohibit a legal person from performing certain activities of trade in commodities or from performing other economic activity.

(2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain economic activity would present a threat to life and health of people or be detrimental to the economic and financial operation of other legal persons or detrimental to the economy, or if the legal person has already been sentenced for the same or a similar criminal offence over the past two years preceding the perpetrated criminal offence.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day of the entering into force of the judgement.

#### ***Article 144***

##### ***Confiscating Material Gain from a Legal Person***

If a legal person acquires material gain through the perpetrated criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

#### ***Article 145***

##### ***Legal Consequences Incident to Conviction for a Legal Person***

(1) Legal consequences incident to conviction for a legal person are:

- a) Ban on work based on a permit, authorisation or concession issued by the authorities of foreign countries;
- b) Ban on work based on a permit, authorisation or concession issued by the institutions in the Federation.

(2) Legal consequences incident to conviction for a legal person may take effect even when a fine has been imposed on a legal person for the perpetration of a criminal offence.

**Article 146**

***Application of Statute of Limitations Regarding the Institution of Criminal Prosecution and Execution of Criminal Sanctions Imposed on Legal Persons***

(1) Article 15 (Application of Statute of Limitations Regarding the Institution of Criminal Prosecution) of this Code shall be applied with respect to statute of limitations regarding the institution of criminal prosecution of a legal person.

(2) The execution of the punishment imposed on the legal person shall become time-barred when the following periods from the date of the entry into force of the judgement whereby such punishment has been imposed have elapsed:

a) Three years for execution of a fine;  
b) Five years for execution of the punishment of seizure of property and of the punishment of dissolution of legal person.

(3) The execution of a security measure shall become time-barred after the lapse of:

a) Six months from the date of entry into force of the judgement whereby the security measure of the publication of judgement was imposed;  
b) The period that equals the time for which the security measure of ban on performing certain economic activity was imposed.

**CC-RS**

**CH. XIV: LIABILITY OF LEGAL PERSONS FOR CRIMINAL OFFENCES**

***Liability of Legal Persons***

**Article 125**

(1) This Chapter shall regulate liability of a legal person, with the exclusion of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina, canton, city, municipality and local community, for a criminal offence perpetrated in the name of, on account of or for the benefit of the legal person.

(2) For certain legal persons, the application of some punishments or other criminal sanctions that may be pronounced against legal persons may be excluded or limited under the conditions stipulated by this Code

(3) Provisions of the General Part of this Code shall be applied accordingly unless otherwise prescribed by this Chapter.

(4) The criminal procedure against legal persons shall be conducted pursuant to the provisions of the Criminal Procedure Code of Republika Srpska.

***Applicability of this Code with Respect to the Territory of Perpetration of Criminal Offense Regarding Criminal Liability of Legal Person***

**Article 126**

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offences perpetrated on the territory of Republika Srpska.

(2) Domestic and foreign legal persons who have their seats in the territory of Republika Srpska or perform their activities in the territory of Republika Srpska, shall,

pursuant to this Code, be liable for a criminal offence perpetrated outside the territory of the Republika Srpska, if the offence was perpetrated against Republika Srpska, its citizens or domestic legal persons.

### ***Basis of Liability of a Legal Person***

#### ***Article 127***

For a criminal offence perpetrated in the name of, on account of or for the benefit of the legal person, the legal person shall be liable:

- 1) When the elements of the criminal offence are arising from the decision, order or permission of its managerial or supervisory bodies; or
- 2) When its managerial or supervisory bodies have influenced the perpetrator or enabled him to perpetrate the criminal offence; or
- 3) When a legal person disposes of illegally gained property or uses items acquired by the criminal offence; or
- 4) When its managerial or supervisory bodies failed to carry out due supervision over the legality of work of the employees.

### ***Limits to Liability of a Legal Person***

#### ***Article 128***

(1) Along with the conditions referred to in Article 127 of this Code, a legal person shall be liable for a criminal offence even when the perpetrator is not criminally liable for the perpetrated criminal offence.

(2) Liability of the legal person shall not exclude criminal liability of physical or responsible persons for the perpetrated criminal offence.

(3) For criminal offences perpetrated out of negligence, a legal person may be liable under the conditions referred to in Article 127, item 4) of this Code, and in that case the legal person may be punished less severely.

(4) When in the legal person there is no other person or body except the perpetrator, which could direct or supervise the perpetrator, the legal person shall be liable for the criminal offence within the limits of the perpetrator's liability.

### ***Liability of a Legal Person during the Change of Status***

#### ***Article 129***

(1) A legal person under bankruptcy may be criminally liable for a criminal offence regardless of whether the criminal offence was perpetrated before the beginning of the bankruptcy proceedings or in the meantime, but no punishment may be pronounced a legal person under bankruptcy, but only the security measure of forfeiture of items or forfeiture of property gain obtained by commission of criminal offense.

(2) In the event that the legal person has ceased to exist before the criminal proceedings are completed with a final verdict, and the criminal proceedings established the criminal liability of that legal person, punishments and other criminal sanctions shall be pronounced against the legal person which is the legal successor of the person found to be criminally liable, if its managerial or supervisory bodies had knowledge of the perpetrated criminal offence before the cessation of existence of the legal person.

(3) The security measure of forfeiture or forfeiture of property gain obtained by commission of criminal offense shall be pronounced against the legal person, which is the legal successor of the legal person found to be criminally liable, if its management or supervision bodies had knowledge of the perpetrated criminal offence.

(4) In the event the legal person has ceased to exist after the final completion of the criminal proceedings, the pronounced criminal sanction shall be executed pursuant to the provisions of paragraphs 2 and 3 of this Article.

***Liability of a Legal Person for an Attempt***  
**Article 130**

(1) If the perpetrator had commenced the execution of a planned criminal offence, but had not completed such offence, the legal person shall be liable under the terms referred to in Article 127 of this Code, if the law prescribes that the attempt is punishable.

(2) Legal person shall be punished for attempt with the same punishment as prescribed for the completed criminal offense, but may be punished less severely.

(3) If the managerial or supervisory bodies of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

***Continued Criminal Offence***  
**Article 131**

Where the same grounds for liability of the legal person exist in regard to several same-type and time-related criminal offences perpetrated by several perpetrators, such legal person shall be liable as if a single criminal offence was perpetrated.

***Complicity of Legal Persons*** Article 132

(1) In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be liable pursuant to Article 127 of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person guilty for the criminal offence.

***General Reasons for Mitigation of Punishment against Legal Person or Release from Punishment***  
**Article 133**

(1) A legal person, whose managerial or supervisory body has willingly reported the perpetrator after a criminal offence perpetrated, may be punished less severely.

(2) A legal person whose managerial or supervisory body, following the perpetration of a criminal offence, decides to return the property illegally gained or to remove the caused harmful effects or to communicate the information concerning the grounds for holding other legal persons liable, may be released from punishment.

***Punishment against Legal Persons***  
**Article 134**

The following types of punishment may be pronounced against the legal persons: 1) fines; 2) forfeiture of property; 3) dissolution of the legal person.

***Fines against Legal Persons***  
**Article 135**

(1) Fines shall be no less than 5.000 KM and shall not exceed 5.000.000 KM.

(2) In the event that, by perpetrating the criminal offence, the legal person has caused material damage to another party or the legal person has come into possession of an unlawful property gain, the scope of the pronounced fine may be twice as much as the amount of this damage or benefit.

***Forfeiture of Property Article  
136***

(1) The forfeiture of property may be pronounced for criminal offences for which a punishment of imprisonment for a term of five years or more severe punishment is prescribed.

(2) At least half of the property or the major part of the property or the entire property may be forfeited from a legal person, if activities of the legal person, partly or entirely were used to perpetrate the criminal offence.

(3) In the event of bankruptcy proceedings being brought about as a consequence of the pronounced forfeiture, the creditors shall be able to settle their claims out of the forfeited bankruptcy estate.

***Dissolution of the Legal Person as a Punishment  
Article 137***

(1) Dissolution of a legal person may be pronounced in the case that the activities of the legal person were entirely or partly being used for perpetrating criminal offences.

(2) Besides the dissolution of a legal person, the court may pronounce the forfeiture of property.

(3) In addition to the dissolution of a legal person, the court shall propose the opening of a liquidation procedure.

(4) Creditors may be paid out from the property of the legal person against whom the punishment of dissolution has been pronounced.

***Meting out Punishment against Legal Persons  
Article 138***

(1) When meting out punishment against a legal person, in addition to the general rules of meting out punishments, the court shall also take into account the economic power of the legal person.

(2) When meting out the fine for criminal offences for which, in addition to a fine also a forfeiture of property is pronounced, the pronounced punishment may not exceed half of the amount of the legal person's property.

***Pronouncing Suspended Sentence against a Legal Person  
Article 139***

(1) The court may pronounce a suspended sentence against the legal person instead of a fine.

(2) When pronouncing a suspended sentence, the court may pronounce a fine against the legal person in the amount of 1.500.000 KM, but at the same time decide that the same shall not be executed provided that the legal person does not become liable e for

new criminal offence within the period defined by the court, but the period which may not be less than one year or longer than five years.

***Security Measures Against Legal Persons  
Article 140***

In addition to the security measure of forfeiture of items, the following security measures may be pronounced against legal person for perpetrated criminal offences:

- a) A publication of verdict;
- b) A ban on performing a certain business activity.

***Publication of Verdict  
Article 141***

(1) The security measure of a publication of verdict shall be pronounced in case it would be useful for the public to learn about the verdict, especially if the announcement would be useful in order to remove a threat to life or health of people or to provide for safety of traffic or certain benefits for the economy.

(2) Concerning the significance of a criminal offence and the need for public to learn about the verdict, the court shall also assess the need as to whether the verdict shall be published in the printed media, through radio or television or in several aforesaid media and at the same time as to whether to publish the explanation of the verdict entirely or as an abstract. The court shall make sure that the applied method of publication allows that all those concerned be informed.

***Ban on Certain Activities  
Article 142***

(1) By ordering the security measures of a ban on a certain activity, the court may prohibit a legal person from manufacturing certain products or performing certain businesses, or prohibit a legal person from performing certain activities of trade in commodities or from performing other business i.e. activities.

(2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain activity would present a threat to life and limb of people or be prejudicial to the economic and financial operation of other persons or detrimental to the economy, or if the legal person has already been sentenced for the same or a similar criminal offence over the past two years preceding the perpetration of the criminal offence.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day of the entering into force of the judgement.

***Forfeiture of the Property Gain from a Legal Person  
Article 143***

If a legal person acquires property gain by the perpetration of a criminal offence, such property gain shall be forfeited from the legal person.

***Legal Consequences of Conviction of a Legal Person Article 144***

(1) Legal consequences of the conviction of a legal person are:

- a) Ban to work based on a permit, authorization or concession issued by the authorities of a foreign country;

b) Ban to work based on a permit, authorization or concession issued by the institutions of Republika Srpska.

(2) Legal consequences of conviction of a legal person may take effect even when a fine has been pronounced against a legal person for the perpetration of a criminal offence.

***Application of the Statute of Limitations to Prosecution and Execution of Criminal Sanctions Pronounced Against Legal Persons Article 145***

(1) Provisions of Article 111 of this Code shall apply with respect to application of the statute of limitations to prosecution.

(2) The statute of limitations shall apply to execution of a sentence pronounced against the legal person when the following periods from the date of the entry into force of the verdict whereby such punishment has been pronounced have elapsed:

1) Three years for execution of a fine;

2) Five years for execution of the property forfeiture punishment and of the punishment of dissolution of legal person.

(3) The statute of limitations shall apply to execution of a security measure after the lapse of:

1) Six months from the date of entry into force of the decision whereby the publication of the verdict was pronounced;

2) The period that equals the time for which the measure of ban on performing certain business activity of the legal person was pronounced.

***Laws Prescribing the Criminal Offences of Legal Persons Article 146***

Legal persons may be held criminally liable for criminal offences defined in this Code and other criminal offences defined by law of Republika Srpska.

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***Application of Criminal Legislation to Legal Persons in the Brčko District Article 11***

Criminal legislation in the Brčko District shall be applied to legal persons pursuant to Chapter XIV (Liability of Legal Persons for Criminal Offences) of this Code and other laws of the Brčko District.

***Liability of Legal Persons Article 126***

(1) This Chapter of this Code regulates liability of a legal person, with the exclusion of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republika Srpska, Brčko District of Bosnia and Herzegovina, canton, town, municipality and local community, for a criminal offence perpetrated by the perpetrator in the name of, for account of or in favour of the legal person.

(2) This Chapter of this Code regulates punishments and other criminal sanctions that may be imposed on a legal person, as well as legal consequences of the sentence for a criminal offence imposed on the legal person.

(3) The application of some punishments or other criminal sanctions that may be imposed on legal persons may be excluded or limited under the conditions stipulated by law and for certain legal persons.

(4) Criminal procedure against business enterprises shall be conducted according to the Law on Criminal Procedure of Bosnia and Herzegovina.

***Territorial Applicability of this Code in relation to Criminal Liability of Legal Person***  
**Article 127**

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offences perpetrated within the territory of the Brčko District.

(2) Domestic and foreign legal persons shall, pursuant to this Code, also be liable for a criminal offence perpetrated outside the territory of the Brčko District if the legal person has its seat in the territory of the Brčko District or if it carries out its activities in the territory of the Brčko District, if the offence was perpetrated against the Brčko District, its citizens or domestic legal persons.

(3) Pursuant to this Code a domestic legal person shall also be liable for a criminal offence perpetrated outside the territory of the Brčko District against a foreign State, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 11 of this Code.

***Basis of Liability of a Legal Person***  
**Article 128**

For a criminal offence perpetrated in the name of, for account of or for the benefit of the legal person, the legal person shall be liable:

- a) When the purpose of the criminal offence arises from the conclusion, order or permission of its managerial or supervisory bodies; or
- b) When its managerial or supervisory bodies have influenced the perpetrator or enabled him to perpetrate the criminal offence; or
- c) When a legal person disposes of illegally obtained material gain or uses objects acquired by the criminal offence; or
- d) When its managerial or supervisory bodies failed to carry out due supervision over the legality of work of the employees.

***Limits of Liability of a Legal Person for a Criminal Offence***  
**Article 129**

(1) Under conditions referred to in Article 128 (Basis of Liability of a Legal Person) of this Code, a legal person shall also be liable for a criminal offence when the perpetrator is not criminally liable for the perpetrated criminal offence.

(2) Liability of the legal person shall not exclude criminal liability of physical or responsible persons for the perpetrated criminal offence.

(3) For criminal offences perpetrated out of negligence, a legal person may be liable under the conditions referred to in Article 128, item d) of this Code, and in that case the legal person may be punished less severely.

(4) When in the legal person except from the perpetrator there is no other person or body that could instruct or supervise the perpetrator, the legal person shall be liable for the criminal offence within the limits of the perpetrator's liability.

***Liability Incident to the Change of Status of a Legal Person***  
**Article 130**

(1) A legal person under bankruptcy may be criminally liable for a criminal offence regardless of whether the criminal offence was perpetrated before the beginning of the

bankruptcy proceedings or in the meantime, but no punishment may be imposed on a legal person under bankruptcy, but only the security measure of forfeiture or the confiscation of material gain acquired through perpetration of a criminal offence.

(2) In the event that the legal person has ceased to exist before the criminal proceedings are completed with a final judgement, and in the criminal proceedings that legal person was found liable, punishments and other criminal sanctions shall be imposed on the legal person which is its legal successor, if its managerial or supervisory bodies had knowledge of the perpetrated criminal offence before the cessation of existence of the legal person.

(3) The security measure of forfeiture or the confiscation of material gain shall be imposed upon the legal person, which is the legal successor of the sentenced legal person, if its managerial or supervisory bodies had knowledge of the perpetrated criminal offence.

(4) In the event the legal person has ceased to exist upon the final completion of the criminal proceedings, the criminal sanction shall be executed pursuant to the provisions of paragraphs 2 and 3 of this Article.

#### ***Liability of a Legal Person for an Attempt*** **Article 131**

(1) If the perpetrator commences the execution of a planned criminal offence, but does not complete such offence, under the terms of Article 128 (Basis of Liability of a Legal Person) of this Code, the legal person shall be liable where the law prescribes that the attempt is punishable.

(2) The legal person shall be punished equally as if it were for the completed criminal offence but may nevertheless be punished less severely.

(3) If the managerial or supervisory authorities of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

#### ***Continued Criminal Offence and Criminal Liability of Legal Person*** **Article 132**

Where the same grounds for criminal liability of the legal person exist in regard to several same-type and time-related criminal offences perpetrated by several perpetrators, such legal person shall be liable as if a single criminal offence has been perpetrated.

#### ***Complicity of Legal Persons*** **Article 133**

(1) In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 128 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person criminally responsible for the criminal offence.

#### ***General Reasoning for Less Severe Punishment of Legal Person or Release from Punishment*** **Article 134**

(1) A legal person, whose managerial or supervisory authority has willingly reported on the perpetrator upon a criminal offence perpetrated, may be punished less severely.

(2) A legal person whose managerial or supervisory authority, following the perpetration of a criminal offence, decides to return the illegally obtained material gain or to remove the caused harmful effects or to communicate the information concerning the grounds for holding other legal persons responsible, may be released from punishment.

### ***Punishment for Legal Persons Article 135***

The following types of punishment may be imposed upon the legal persons for criminal offences:

- a) Fines;
- b) Seizure of property;
- c) Dissolution of the legal person.

### ***Fines for Legal Persons Article 136***

(1) Fines imposable on a legal person shall be no less than KM 5.000 and shall not exceed KM 5.000.000.

(2) In the event that, by perpetrating the criminal offence, the legal person has caused material damage to another party or the legal person has come into possession of an unlawful material gain, the maximum measure of the imposed fine may be twice as much as the amount of this damage or gain.

(3) A failure to pay a fine within the deadline set under the verdict shall result in an immediate forced collection procedure.

### ***Seizure of Property Article 137***

(1) The seizure of property may be imposed for criminal offences for which a sentence of imprisonment for a term of five years or more severe punishment is prescribed.

(2) At least half of the property or the major part of the property or the entire property may be seized from a legal person.

(3) In the event of bankruptcy proceedings being brought about as a consequence of the imposed seizure punishment, the creditors shall be permitted to settle their claims out of the seized bankruptcy estate.

### ***Dissolution of a Legal Person Article 138***

(1) Dissolution of a legal person may be imposed in the case that its activities were entirely or partly used for the purpose of perpetrating criminal offences.

(2) Besides the dissolution of a legal person, the property seizure punishment may be imposed.

(3) In addition to the dissolution of a legal person, the court shall propose the opening of liquidation proceedings.

(4) Creditors may be paid out of the property of the legal person upon which the punishment of dissolution has been imposed.

***Meting out Punishment for Legal Persons***  
***Article 139***

- (1) When meting out punishment for a legal person, in addition to the general rules of meting out punishments referred to in Article 49 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.
- (2) When meting out the fine for criminal offences for which, in addition to a fine a property seizure punishment is also imposed, the punishment may not exceed a half of the value of the legal person's property.

***Imposing a Suspended Sentence on a Legal Person***  
***Article 140***

- (1) The court may impose a suspended sentence on the legal person instead of a fine.
- (2) When imposing a suspended sentence the court may impose on the legal person a fine not exceeding KM 1.500.000, but at the same time decide that the same shall not be executed unless the legal person becomes liable for other criminal offences within the legally set period of time not shorter than one year or longer than five years.

***Security Measures for Legal Persons***  
***Article 141***

In addition to the security measure of forfeiture referred to in Article 78 (Forfeiture) of this Code, the following security measures may be imposed for criminal offences perpetrated by legal persons:

- a) Publication of judgment;
- b) Ban on performing a certain economic activity.

***Publication of Judgement***  
***Article 142***

- (1) The security measure of a judgement publication shall be ordered in case it would be useful for the public to learn about the judgement, especially if the announcement would be useful in order to remove a threat to life or health of people or to provide for safety of traffic or to obtain certain benefits for economy.
- (2) Concerning the significance of a criminal offence and the need for public to learn about the verdict, the court shall also assess the need as to whether the verdict shall be published in the printed media, through radio or television or in several aforesaid media and at the same time as to whether to publish the explanation of the verdict entirely or as an abstract. The court shall make sure that the applied method of publication allows that all those concerned be informed.

***Ban on Certain Economic Activities***  
***Article 143***

- (1) By ordering the security measure of a ban on certain economic activities, the court may prohibit a legal person from manufacturing certain products or performing certain businesses, or prohibit a legal person from performing certain activities of trade in commodities or from performing other economic activity.
- (2) The security measure referred to in paragraph 1 of this Article may be imposed on a legal person if its further performing of a certain economic activity would present a

threat to life and health of people or be prejudicial to the economic and financial operation of other legal

persons or detrimental to the economy, or if the legal person has already been sentenced for the same or a similar criminal offence over the past two years preceding the perpetration of the criminal offence.

(3) The security measure referred to in paragraph 1 of this Article may be imposed for a period of six months to five years, commencing on the day of the entering into force of the judgement.

#### **Confiscating Material Gain from a Legal Person Article 144**

If a legal person acquires material gain by the perpetration of a criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

#### ***Legal Consequences Incident to Conviction of a Legal Person Article 145***

(1) Legal consequences incident to conviction of a legal person are:

- a) Bar on work based on a permit, authorisation or concession issued by the authorities of foreign countries;
- b) Bar on work based on a permit, authorisation or concession issued by the institutions of the Brčko District.

(2) Legal consequences incident to conviction of a legal person may take effect even when a fine has been imposed on a legal person for the perpetration of a criminal offence.

Statute of Limitations Regarding the Criminal Prosecution and Execution of Criminal

#### ***Sanctions Imposed on Legal Persons Article 146***

(1) Article 15 (Statute of Limitations Regarding the Criminal Prosecution) of this Code shall apply to the statute of limitations regarding the criminal prosecution of a legal person.

(2) The execution of a sentence imposed on the legal person shall fall under the statute of limitations when the following periods from the date of the entry into force of the judgement whereby such punishment has been imposed have elapsed:

- a) Three years for execution of a fine;
- b) Five years for execution of the property seizure punishment and of the punishment of dissolution of legal person.

(3) The execution of a security measure shall fall under the statute of limitations after the lapse of:

- a) Six months from the date of entry into force of the judgement whereby the security measure of publication of the judgement was imposed;
- b) The period that equals the time for which the security measure of ban on performing certain economic activity of the legal person was imposed.

#### ***Laws Prescribing Criminal Offences of Legal Persons Article 147***

Legal persons may be held accountable for criminal offences defined in this Code and other criminal offences defined by law in Brčko District.

#### ***Punishments for Criminal Offences Article 148***

(1) For criminal offences for which a fine or imprisonment for a term not exceeding three years is prescribed, a legal person shall be fined up to 850.000 KM or less than tenfold amount of the damage caused or material gain acquired through the perpetration of a criminal offence.

(2) For criminal offences for which imprisonment for a term not less than three years is prescribed, a legal person shall be punished by a fine of up to 2.500.000 KM or a fine not exceeding twentyfold amount of the damage caused or material gain acquired through the perpetration of a criminal offence.

(3) For criminal offences for which imprisonment for a term of five or more years is prescribed, a property seizure punishment may be imposed on a legal person instead of a fine.

(4) For criminal offences referred to in paragraph 1 of this Article, a punishment of dissolution of the legal person may be imposed on a legal person instead of a fine, under the requirements referred to in Article 138 (Punishment of Dissolution of a Legal Person) of this Code.

134. BiH provided the following statistics:

| YEAR | STATUS                         | NUMBER OF LEGAL PERSONS |
|------|--------------------------------|-------------------------|
| 2013 | DENUNCIATION/REPORT            | 76                      |
|      | ORDER TO CONDUCT INVESTIGATION | 15                      |
|      | INDICTMENT RAISED              | 1                       |
|      | INDICTMENT CONFIRMED           | 0                       |
| 2014 | DENUNCIATION/REPORT            | 61                      |
|      | ORDER TO CONDUCT INVESTIGATION | 3                       |
|      | INDICTMENT RAISED              | 1                       |
|      | INDICTMENT CONFIRMED           | 2                       |

**(b) Observations on the implementation of the article**

135. The reviewing experts observed that all four CCs are largely in line with Art. 26(1) UNCAC. The liability is a criminal one, stipulated in the criminal codes and triggering criminal law consequences.

136. The codes distinguish between punishments (fine, seizure of property, dissolution) and security measures (publication of judgement, ban to perform business activity). In addition, it is compulsory to confiscate the proceeds gained by the legal person as a result of committing the crime. The provisions in place guarantee a wide and proportionate range of dissuasive consequences.

137. During the country visit, a representative of BD stated that the legislation on the criminal liability of legal persons is quite comprehensive but that in practice there was only a small number of cases. This was due to the fact that the legal concept was new, that prosecution was time consuming, and that prosecutors are more inclined to work on cases involving natural persons.

138. In Republika Srpska, financial investigations have been instigated with the aim of identification, blocking and confiscation of property gain acquired through perpetration of a criminal offence. In 2014, 81 cases of financial investigations were processed. The investigations resulted in the orders for a temporary and permanent confiscation of property of large value.
139. For FoBiH it was stated that a review of cantonal cases had shown that there were several cantons where only natural persons had been prosecuted so far. A representative from the Supreme Court of FoBiH also criticised the current law. According to him, great problems stemmed from the fragmentation of the police and courts. However, while there were no indictments, the law on minor offences and administrative law (inspections) were used against legal persons.
140. By contrast, in the Court of BiH, many judgments against legal persons were said to have been handed down.
141. The reviewing experts concluded that BiH has largely implemented Art. 26(1) and (2) UNCAC.

### **Paragraph 3 of article 26**

*3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

142. BiH confirmed that it has fully implemented this provision of the Convention.
143. BiH cited the following implementation legislation:

***CC-BiH***  
***Limits of Liability of a Legal Person***  
***Article 125***

(2) Liability of the legal person shall not exclude culpability of physical or responsible persons for the perpetrated criminal offence.

***CC-FoBiH***  
***Limits of Liability of a Legal Person***  
***Article 129***

(2) Liability of the legal person shall not exclude criminal liability of physical or responsible persons for the perpetrated criminal offence.

***CC-RS***  
***Limits of Liability of a Legal Person***  
***Article 128***

(2) Liability of the legal person shall not exclude criminal liability of physical or responsible persons for the perpetrated criminal offence.

***CC-BD***  
***Limits of Liability of a Legal Person***  
***Article 129***

(2) Liability of the legal person shall not exclude criminal liability of physical or responsible persons for the perpetrated criminal offence.

144. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

145. The liability of the company is separate from the liability of the offender, and vice versa. The prosecution of the legal person does not affect the liability of the offender, and the legal person may be found liable of a crime, despite the fact that the offender cannot be prosecuted.

146. The reviewing experts concluded that BiH has implemented Art. 26(3) UNCAC.

**Paragraph 4 of article 26**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions*

**(a) Summary of information relevant to reviewing the implementation of the article**

147. BiH confirmed that it has fully implemented this provision of the Convention.

148. BiH cited the following implementation legislation: CC-BiH, arts. 131-140; CC-FoBiH, arts. 135-142; CC-RS, arts. 134-145; CC-BD, arts. 135-145 (texts see above).

149. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

150. The codes distinguish between punishments (fine, seizure of property, dissolution) and security measures (publication of judgement, ban to perform business activity). In addition, it is compulsory to confiscate the proceeds gained by the legal person as a result of committing the crime. The provisions in place guarantee a wide and proportionate range of dissuasive consequences.

151. During the country visit, BiH clarified that the term “seizure” in the text refers to a sanction like confiscation, not a provisional measure.

152. It was also clarified that while seizure “may be imposed for criminal offences for which a punishment of imprisonment for a term of five years or more severe punishment is prescribed”, this threshold is not a minimum threshold but rather referred to the maximum punishment that can be imposed for a certain offence.

153. The reviewing experts concluded that BiH has implemented Art. 26(4) UNCAC.

## **Article 27. Participation and attempt**

### **Paragraph 1 of article 27**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

154. BiH confirmed that it has fully implemented this provision of the Convention.

155. BiH cited the following implementation legislation:

***CC-BiH  
Co-perpetration  
Article 29***

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.

***Incitement  
Article 30***

(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he has perpetrated such offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence.

(3) The incitement to the commission of a criminal offence shall particularly mean the following: pleading, inducement or persuasion, demonstrating the benefits of the commission of a criminal offence, giving or promising gifts, misuse of subordination or dependency relations, leading or keeping a person in a State of actual or legal misconception.

***Accessory  
Article 31***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

***Complicity of Legal Persons***  
***Article 129***

(1) In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 124 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person responsible for the criminal offence.

***CC-FoBiH***  
***Accomplices***  
***Article 31***

If several persons jointly perpetrate a criminal offence, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution can be made to its perpetration, each of them shall be punished by a punishment prescribed for that criminal offence.

***Article 32***  
***Incitement***

(1) Whoever intentionally incites another to perpetrate a criminal offence shall be punished as if he had perpetrated such offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence.

(3) The incitement to the commission of a criminal offence shall particularly mean the following: pleading, inducement or persuasion, demonstrating the benefits of the commission of a criminal offense, giving or promising gifts, misuse of subordination or dependency relations, leading or keeping a person in a State of actual or legal misconception.

***Article 33***  
***Accessory***

(1) Whoever intentionally helps another in perpetration of a criminal offence, shall be punished as if he himself perpetrated such offence, but may be punished less severely.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating a criminal offence,

removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the existence of the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or items acquired by perpetration of the criminal offence.

***Article 133***  
***Complicity of Legal Persons***

(1) In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 128 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person criminally responsible for the criminal offence.

***CC-RS***  
***Accomplices***  
***Article 23***

If several persons who by participating in the perpetration of a criminal offence or otherwise, have jointly perpetrated a criminal offence, each of them shall be punished as prescribed by law.

***Incitement***  
***Article 24***

(1) Whoever intentionally incites another to perpetrate a criminal offence shall be punished as if he himself has perpetrated the offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of five years or a more severe punishment is prescribed by law, and the criminal offence has never been attempted, shall be punished as for the attempt of the criminal offence.

***Accessories***  
***Article 25***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be less severe.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetration of the criminal offence, removing obstacles

to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to cover up the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or items acquired by the perpetration of the criminal offence.

***Complicity of Legal Persons***  
***Article 132***

(1) In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be liable pursuant to Article 127 of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person criminally responsible for the criminal offence.

***CC-BD***  
***Accomplices***  
***Article 31***

If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.

***Incitement***  
***Article 32***

(1) Whoever intentionally incites another to perpetrate a criminal offence, shall be punished as if he himself has perpetrated such offence.

(2) Whoever intentionally incites another to perpetrate a criminal offence for which a punishment of imprisonment for a term of three years or a more severe punishment is prescribed by law, and the criminal offence has never been attempted, shall be punished as if it was the attempt of the criminal offence.

(3) Incitement to commit a criminal offence shall be construed to mean, in particular: pleading, persuading or prompting, portraying benefits of the perpetration of the criminal offence, giving or promising gifts, abusing the State of subordination or dependency, making a person believe in and keeping a person under a mistake of fact or law, deceiving.

***Accessory***  
***Article 33***

(1) Whoever intentionally helps another to perpetrate a criminal offence shall be punished as if he himself perpetrated such offence, but the punishment may be reduced.

(2) The following, in particular, shall be considered as helping in the perpetration of a criminal offence: giving advice or instructions as to how to perpetrate a criminal offence, supplying the perpetrator with tools for perpetrating the criminal offence, removing obstacles to the perpetration of criminal offence, and promising, prior to the perpetration of the criminal offence, to conceal the criminal offence, to hide the perpetrator, the tools used for perpetrating the criminal offence, traces of the criminal offence, or goods acquired by perpetration of the criminal offence.

***Complicity of Legal Persons***  
***Article 133***

In the event that two or more legal persons are found to have partaken in the perpetration of a criminal offence, each shall be subject to liability pursuant to Article 128 (Basis of Liability of a Legal Person) of this Code.

(2) Where there is complicity of legal persons referred to in paragraph 1 of this Article, each legal person shall be held accountable as if it were the only legal person criminally responsible for the criminal offence.

156. BiH provided the following example of case law:

**The Court of Bosnia and Herzegovina**

Case number: S1 2 K 006235 11 K Date: 18 May 2012

Embezzlement in Office under Article 221(3) and Forging of Official Document under Article 226(1).

**V E R D I C T**

THE ACCUSED: S. A., son of sin D. and mother M. nee G., born on ....., in S., permanently residing in K., ... M.b. Street, number ..., unemployed, single, literate, finished the Gymnasium, indigent, "Others" by ethnicity, citizen of BiH, Single Reference Number (JMBG): :..., no previous convictions,

G. G., son of S. and mother M., nee Š., born on....., in S., permanently residing in I. S. - I.I., G. Street, number ....., mechanical technician by profession, employed with the company "A.-p." d.o.o. B. L., BU I. S., married, literate, served the army, indigent, Serb, Single Reference Number (JMBG):....., no previous convictions,

**ARE GUILTY**

BECAUSE: Between 1 January 2008 and 20 July 2009 in Sarajevo, under the prearranged agreement, while performing the clerical-storekeeper duties in the Agency Department, S.A. modified the financial documents and official records wherein he reduced the quantities of the consumable stationery issued to the basic organisational units of the Agency or increased the number of issued products adding the articles as if they had been issued, thus falsely presenting the quantities of goods issued to the Agency units, thereafter G. G., employee with the supplier for the company "A.-p" d.o.o. B. L., BU Istočno Sarajevo, and L. B., employee of the supplier "E." d.o.o. S., sold for cash the undelivered surpluses of the stationery created in the foregoing manner, through "A.-prom" d.o.o. B. L., BU Istočno Sarajevo, in the amount of KM 63,930.08, and through the company "E." d.o.o. Sarajevo, in the total amount of KM 11,191.80, which amounts they shared with S. A., thus creating a deficit amounting to KM 36,188.27 in 2008, and KM 38,933.61 in 2009, thereby, they damaged the budget of BiH in the total amount of KM 75,121.88.

S. A. - alone

Between 1 January 2008 and 20 July 2009, acting in his capacity as clerk-storekeeper in the Agency Department-Service, and being in charge of the Agency's warehouse with analytical scales, model HT-1500 NH, the individual value of each amounting to KM 1,228.50, S. produced the false documents on exists of goods from the Agency's warehouse, pertaining to the analytical scales, as follows: exit number 537/08 of 31 December 2008, for R. Office in M.; exist number 558/08 for the B. L. Office and exit number 559/08 for the S. Office, although the foregoing scales had not been delivered to the referenced offices, thereafter he kept them for himself and misappropriated them, thus damaging the budget of BiH in the amount of KM 3,685.50, THEREFORE: with the aim of obtaining illegal gain for himself and for others, S. A. misappropriated movable items he has been entrusted with in the service of the institutions of BiH and, in his capacity as a responsible person in the institutions of BiH, he entered false data in the official or business records, a book or a file , while, G.G., intentionally helped him with the

perpetration of the criminal offence of Embezzlement in Office in violation of in Article 221(3) in conjunction with paragraph (1) of the CC of BiH,

WHEREBY: they committed the following criminal offences: the accused S.A., under Count 1 and Count 2 of the Indictment, committed the criminal offence of Embezzlement in Office in violation of in Article 221(3) in conjunction with paragraph (1) of the CC of BiH, and the criminal offence of Forging of Official Document in violation of in Article 226(1) of the CC of BiH, by applying Article 53 of the CC of BiH, while the accused G.G., under Count 1 of the Indictment, committed the criminal

offence of Embezzlement in Office, in helping, in violation of in Article 221(3), in conjunction with paragraph (1) of the CC of BiH, and Article 31 of the CC of BiH.

Therefore, pursuant to Article 221(3), in conjunction with paragraph (1) of the CC of BiH and Article 226(1) of the CC of BiH and the provisions of Articles 39, 42, 48 and 50(1)(b) of the CC of BiH, the Court sentences the accused S. A.:

- for the criminal offence of Embezzlement in Office in violation of under Article 221(3), in conjunction with paragraph (1) of the CC of BiH, to imprisonment of 2 (two) years and 10 (ten) months;
- for the criminal offence of Forging of Official Document in violation of Article 226(1) of the CC of BiH, to imprisonment of 4 (four) months.

Pursuant to Article 53(2)(b) of the CC of BiH, the Court

**S E N T E N C E S THE ACCUSED S.A.  
TO A COMPOUND SENTENCE OF IMPRISONMENT OF 3 (THREE) YEARS**

Pursuant to Article 221(3), in conjunction with paragraph (1) of the CC of BiH, Article 31 of the CC of BiH, by applying the provisions of Articles: 39, 42, 48, 49 and 50 of the Criminal Code of Bosnia and Herzegovina, the Court

**S E N T E N C E S THE ACCUSED G.G.  
TO IMPRISONMENT OF 1 (ONE) YEAR**

Pursuant to Article 110 and Article 111 of the CC of BiH, and Article 392(1) of the Criminal Procedure Code of BiH (hereinafter: CPC of BiH), the Accused A. S. and G. G. shall be obliged to jointly and severally pay the amount of KM 63,930.08 (sixty three thousand nine hundred and thirty and 08/100 KM) to the budget of Bosnia and Herzegovina, which amount constitutes illegally acquired material gain which pertains to the company A. d.o.o. Banja Luka, BU Istočno Sarajevo, and the accused A. and the amount of KM 5,595.80 (five thousand five hundred and ninety five and 80/100), which constitutes a part of illegally acquired material gain, because a part of material gain amounting to KM 5,595.80 has been paid by the accused L. B., which amount pertains to the company E. d.o.o. Sarajevo, including the amount of KM 3,685.50 (three thousand six hundred and eighty five and 50/100 KM).

**(b) Observations on the implementation of the article**

157. The reviewing experts concluded that BiH has implemented Art. 27(1) UNCAC.

**Paragraph 2 of article 27**

*2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

158. BiH confirmed that it has fully implemented this provision of the Convention.
159. BiH cited the following implementation legislation:

***CC-BiH***

### ***Attempt - Article 26***

(1) Whoever intentionally commences execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone.

(2) An attempted criminal offence shall be punished within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced.

### ***Inappropriate Attempt - Article 27***

If a person tries to perpetrate a criminal offence by inappropriate means or against an inappropriate object may be released from sentencing or punished less severely.

### ***Voluntary Abandonment of the Attempt - Article 28***

(1) A perpetrator, who voluntarily abandons the execution of a punishable attempt, may be released from punishment.

(2) In the event of voluntary abandonment of an attempt, the perpetrator shall be punished for those acts that constitute other separate criminal offences.

### ***CC-FoBiH Article 28 - Attempt***

(1) Whoever intentionally commences perpetration of a criminal offence, but does not complete it, shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offence when the law expressly prescribes punishment for the attempt alone.

(2) A perpetrator shall be punished for an attempt of criminal offence within the limits of the punishment prescribed for the same criminal offence completed, but may also be punished less severely.

### ***Article 29 - Inappropriate Attempt***

A perpetrator, who tries to perpetrate a criminal offence by inappropriate means or toward an inappropriate object, may be released from punishment or punished less severely.

### ***Article 30 - Voluntary Abandonment of the Attempt***

(1) A perpetrator, who tried to perpetrate a criminal offence, but has voluntarily abandoned the perpetration of a punishable attempt, may be released from punishment.

(2) In the event of voluntary abandonment of an attempt, the perpetrator shall be punished for those acts that constitute other separate criminal offences.

### ***Article 131 - Liability of a Legal Person for an Attempt***

(1) If the perpetrator commences the execution of a planned criminal offence, but does not complete such offence, the legal person shall be liable under the terms of Article 128

(Basis of Liability of a Legal Person) of this Code if the law prescribes that the attempt is punishable.

(2) The legal person shall be punished for an attempt equally as if it were for the completed criminal offence but may nevertheless be punished less severely.

(3) If the managerial or supervisory bodies of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

#### ***CC-RS***

##### ***Attempt - Article 20***

(1) Whoever intentionally commences execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence for which the punishment of imprisonment for a term of three years or a more severe punishment may be pronounced, and for the attempt of another criminal offences only when the law explicitly prescribes punishment for the attempt alone.

(2) Perpetrator shall be punished within the limits of the punishment prescribed for the criminal offence in case of attempt, but may be also punished less severely. .

##### ***Inappropriate Attempt - Article 21***

If a person tries to perpetrate a criminal offence by inappropriate means or on an inappropriate object, he may be released from punishment.

##### ***Voluntary Abandonment of the Attempt - Article 22***

(1) A perpetrator, who has attempted a criminal offence and voluntarily abandoned the commission, may be released from punishment.

(2) In the event of voluntary abandonment of an attempt, the perpetrator shall be punished for those acts that constitute some other separate criminal offences.

Complicity in Criminal Offence

##### ***Liability of a Legal Person for an Attempt - Article 130***

(1) If the perpetrator had commenced the execution of a planned criminal offence, but had not completed such offence, the legal person shall be liable under the terms referred to in Article 127 of this Code, if the law prescribes that the attempt is punishable.

(2) Legal person shall be punished for attempt with the same punishment as prescribed for the completed criminal offence, but may be punished less severely.

(3) If the managerial or supervisory bodies of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

#### ***CC-BD***

##### ***Attempt - Article 28***

(1) Whoever intentionally commences execution of a criminal offence, but does not complete such offence, shall be punished for the attempted criminal offence when, for the criminal offence in question, the punishment of imprisonment for a term of three years or a more severe punishment may be imposed, and for the attempt of another criminal offences when the law expressly prescribes punishment of the attempt alone.

(2) An attempted criminal offence shall be punished within the limits of the punishment prescribed for the same criminal offence perpetrated, but the punishment may also be reduced.

***Inappropriate Attempt - Article 29***

If a person attempts to perpetrate a criminal offence by inappropriate means or against an inappropriate object may be released from sentencing or punished less severely.

***Voluntary Abandonment of the Attempt - Article 30***

(1) A perpetrator, who attempted to commit a criminal offence but voluntarily abandoned the execution of a punishable attempt, may be released from punishment.

(2) In the event of voluntary abandonment of a punishable attempt, the perpetrator shall be punished for those acts that constitute other separate criminal offences.

***Liability of a Legal Person for an Attempt - Article 131***

(1) If the perpetrator commences the execution of a planned criminal offence, but does not complete such offence, under the terms of Article 128 (Basis of Liability of a Legal Person) of this Code, the legal person shall be liable where the law prescribes that the attempt is punishable.

(2) The legal person shall be punished equally as if it were for the completed criminal offence but may nevertheless be punished less severely.

(3) If the managerial or supervisory authorities of the legal person have prevented the perpetrator from completing the commenced criminal offence, the legal person may be released from punishment.

160. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

161. The reviewing experts concluded that BiH has implemented Art. 27(2) UNCAC.

**Paragraph 3 of article 27**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

162. BiH confirmed that it has fully implemented this provision of the Convention.

163. BiH cited the following implementation legislation:

***CC-BiH***

***Preparation of a Criminal Offence - Article 248***

Whoever procures or prepares means or removes obstacles or engages in any other activity that creates conditions for a direct perpetration, but is not a substantive part of the act of perpetration, of a criminal offence prescribed by the law of Bosnia and Herzegovina, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a heavier punishment is foreseen for preparation of a particular criminal offence, shall be punished by a fine or imprisonment for a term not exceeding three years.

***CC-FoBiH***

***Article 339 - Preparation of a Criminal Offence***

Whoever procures or prepares means or removes obstacles or engages in any other activity that creates conditions for a direct perpetration, but is not a substantive part of the perpetration of a criminal offence prescribed by law in the Federation, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a specific punishment is foreseen for the preparation of a particular criminal offence, shall be punished by a fine or imprisonment for a term not exceeding three years.

***CC-RS***

***Preparation of a Criminal Offence - Article 361a.***

Whoever procures or prepares means or removes obstacles or engages in any other activity that creates conditions for a direct perpetration, but is not a substantive part of the act of perpetration of a criminal offence prescribed by law, for which a punishment of imprisonment of five years or a more severe punishment may be imposed, unless more severe punishment is foreseen for preparation of a particular criminal offence, shall be punished by a fine or imprisonment term of maximum three years.

***CC-BD***

***Preparation of a Criminal Offence - Article 333***

Whoever procures or prepares means, or removes obstacles, or engages in any other activity that creates conditions for a direct perpetration, but is not part of the act of perpetration of a criminal offence prescribed by the Code of Brčko District of BiH, for which a punishment of imprisonment of three years or a more severe punishment may be imposed, unless a separate punishment has been prescribed for preparation of a particular criminal offence, shall be fined or sentenced with up to three years in prison.

164. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

165. The reviewing experts concluded that BiH has implemented Art. 27(3) UNCAC.

## Article 29. Statute of limitations

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

### (a) Summary of information relevant to reviewing the implementation of the article

166. BiH confirmed that it has fully implemented this provision of the Convention.
167. BiH cited the following implementation legislation:

#### ***CC-BiH***

#### ***Article 14***

#### ***Period Set by Statute of Limitation Regarding the Institution of Criminal Prosecution***

(1) Unless it is stipulated otherwise in this Code, criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

- a) Thirty-five years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed;
- b) Twenty years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed;
- c) Fifteen years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed;
- d) Ten years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed;
- e) Five years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed;
- f) Three years in the case of a criminal offence for which the punishment of imprisonment for a term not exceeding one year or a fine is prescribed.

(2) If several punishments are prescribed for a single criminal offence, the period of limitation shall be determined according to the most severe punishment prescribed.

#### ***Article 15***

#### ***Running and Interruption of the Period Set by Statute of Limitation Regarding the Institution of Criminal Prosecution –***

(1) The running of the period set by statute of limitation to institute criminal prosecution commences on the day on which the criminal offence has been perpetrated.

(2) The running of the period set by statute of limitation is suspended for any time during which the prosecution cannot be instituted or continued by reason of a provision of law.

(3) The running of the period set by statute of limitation is interrupted by every motion that relates to the prosecution of the perpetrator on account of the criminal offence perpetrated.

(4) The running of the period set by statute of limitation is also interrupted if the perpetrator, before the period of limitation has elapsed, has perpetrated a new criminal offence of the same gravity or graver.

- (5) After each interruption, the period set by statute of limitation commences anew.
- (6) The period set by statute of limitation to institute criminal prosecution expires in any case when twice as much time lapses as is set by the statute of limitation for the initiation of criminal prosecution.

**Article 16**

***Period Set by Statute of Limitation Regarding the Execution of Punishment***

Unless it is stipulated otherwise in this Code, the imposed sentence shall not be executed when the following time periods have elapsed from the date of entry into force of the judgement by which a punishment has been imposed:

- a) Thirty-five years if a punishment of long-term imprisonment has been imposed;
- b) Twenty years if a punishment of imprisonment for a term exceeding ten years has been imposed;
- c) Fifteen years if the punishment of imprisonment for a term exceeding five years has been imposed;
- d) Ten years if the punishment of imprisonment for a term exceeding three years has been imposed;
- e) Five years if the punishment of imprisonment for a term exceeding one year has been imposed;
- f) Three years if the punishment of imprisonment for a term not exceeding one year or a fine has been imposed.

**Article 17**

***Period Set by Statute of Limitation Regarding the Execution of Accessory Punishment and Security Measures***

- (1) The execution of a fine as an accessory punishment shall be barred after the lapse of two years from the date of entry into force of the judgement whereby such punishment has been imposed.
- (2) The execution of the security measure of mandatory psychiatric treatment and the security measure of forfeiture shall be barred after the lapse of five years from the date of entry into force of the judgement whereby these measures have been ordered.
- (3) The execution of the security measure of ban on carrying out a certain occupation, activity or duty shall be barred after the lapse of the period for which this measure has been ordered.

**Article 18**

***The Running and Interruption of the Period Set by Statute of Limitation Regarding the Execution of Punishments and Security Measures***

- (1) The running of the period set by statute of limitation to execute the punishment commences on the date of entry into force of the judgement whereby such punishment has been imposed, and in the case of the revocation of a suspended sentence, on the date of entry into force of the decision on the revocation of a suspended sentence.
- (2) The period set by statute of limitation shall not run during the time the punishment cannot be executed pursuant to law.
- (3) The running set by statute of limitation is interrupted with every action of a competent body taken in regard to execution of the punishment.
- (4) After each interruption, the period set by statutes of limitation shall commence anew.

(5) The period set by statute of limitations to execute the punishment shall expire in any case when twice as much time lapses as is set by the statute of limitation for the execution of punishments.

(6) The provisions of paragraphs 2 through 5 of this Article shall be applied accordingly to the bar to the execution of the security measures

#### ***Article - 19***

##### ***Criminal Offences not subject to the Statute of Limitations***

Criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences of genocide, crimes against humanity and war crimes, or for other criminal offences that, pursuant to international law, are not subject to the statute of limitations.

#### ***CC-FoBiH***

##### ***Article 15***

##### ***Application of Statute of Limitations Regarding the Institution of Criminal Prosecution***

(1) Unless otherwise stipulated in this Code, criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

- a) Thirty-five years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed;
- b) Twenty years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed;
- c) Fifteen years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed;
- d) Ten years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed;
- e) Five years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed;
- f) Three years in the case of a criminal offence for which the punishment of imprisonment for a term not exceeding one year or a fine is prescribed.

(2) If several punishments are prescribed for a single criminal offence, the period of limitation shall be determined according to the most severe punishment prescribed.

#### ***Article 16***

##### ***Running and Interruption of the Period Set by Statute of Limitations Regarding the Institution of Criminal Prosecution***

(1) The running of the period set by statute of limitations to institute criminal prosecution commences on the day on which the criminal offence has been perpetrated.

(2) The running of the period set by statute of limitations is suspended for any time during which the prosecution cannot be instituted or continued because of a provision of law.

(3) The running of the period set by statute of limitations is interrupted by any action that relates to the prosecution of the perpetrator on account of the criminal offence perpetrated.

(4) The running of the period set by statute of limitations is also interrupted if the perpetrator, before the period of limitation has elapsed, has perpetrated a new criminal offence of the same gravity or graver.

(5) After each interruption, the period set by statute of limitations commences anew.

(6) The statute of limitations shall apply in any case when twice as much time lapses as is set by the statute of limitation for the initiation of criminal prosecution.

**Article 17**

***Period Set by Statute of Limitations Regarding the Execution of Punishment***

Unless otherwise stipulated in this Code, the imposed sentence shall not be executed when the following time periods have elapsed from the date of entry into force of the judgement by which a punishment has been imposed:

- a) Thirty-five years if a punishment of long-term imprisonment has been imposed;
- b) Twenty years if a punishment of imprisonment for a term exceeding ten years has been imposed;
- c) Fifteen years if the punishment of imprisonment for a term exceeding five years has been imposed;
- d) Ten years if the punishment of imprisonment for a term exceeding three years has been imposed;
- e) Five years if the punishment of imprisonment for a term exceeding one year has been imposed;
- f) Three years if the punishment of imprisonment for a term not exceeding one year or a fine has been imposed

**Article 18**

***Period Set by Statute of Limitations Regarding the Execution of Accessory Punishment and Security Measures***

(1) The execution of a fine as an accessory punishment shall be barred after the lapse of two years from the date of entry into force of the judgement whereby such punishment has been imposed.

(2) The execution of the security measure of mandatory psychiatric treatment, security measure of mandatory medical treatment of addiction and the security measure of forfeiture shall be barred after the lapse of five years from the date of entry into force of the judgement whereby these measures have been ordered.

(3) The execution of the security measure of ban on carrying out a certain occupation, activity or duty and the security measure of ban on driving motor vehicle shall be barred after the lapse of the period for which this measure has been ordered.

**Article 19**

***The Running and Interruption of the Period Set by Statute of Limitations Regarding the Execution of Punishments and Security Measures***

(1) The running of the period set by statute of limitation to execute the punishment commences on the date of entry into force of the judgement whereby such punishment has been imposed, and in the case of the revocation of a suspended sentence, on the date of entry into force of the decision on the revocation of a suspended sentence.

(2) The period set by statute of limitations shall not run during the time the punishment cannot be executed pursuant to law.

(3) The running set by statute of limitations is interrupted with every action of a competent body taken in regard to execution of the punishment.

(4) After each interruption, the period set by statute of limitations shall commence anew.

(5) The statute of limitations shall apply in any case when twice as much time lapses as is set by the statute of limitations for the execution of punishments.

(6) The provisions of paragraphs 2 through 5 of this Article shall also be applied to the period set by the statute of limitations for the execution of the security measures.

**Article 20**

***Criminal Offences not subject to the Statute of Limitations***

Criminal prosecution and execution of a sentence are not subject to the statute of limitations for criminal offences that, pursuant to international law, are not subject to the statute of limitations.

**CC-RS**

**Article 111**

***Application of Statute of Limitations to Criminal Prosecution***

(3) Unless otherwise prescribed by this Code, the criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

- 1) Thirty-five years in the case of a criminal offence for which a punishment of long-term imprisonment is prescribed;
- 2) Twenty years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding ten years is prescribed;
- 3) Fifteen years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding five years is prescribed;
- 4) Ten years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding three years is prescribed;
- 5) Five years in the case of a criminal offence for which the punishment of imprisonment for a term exceeding one year is prescribed;
- 6) Three years in the case of a criminal offence for which the punishment of imprisonment for a term not exceeding one year or a fine is prescribed.

(2) If several punishments are prescribed for a single criminal offence, the statute of limitations applicable to the most severe punishment prescribed shall be applied.

**Article 112**

***Running and Interruption of the Period Set by Statute of Limitations Regarding the Institution of Criminal Prosecution***

(1) The running of the period set by statute of limitations to institute criminal prosecution shall commence on the day on which the criminal offence has been perpetrated.

(2) The running of the period set by statute of limitations shall be suspended for any time during which the prosecution cannot be instituted or continued by the virtue of law.

(3) The running of the period set by statute of limitations shall be interrupted by every procedural action undertaken with respect to the prosecution of the perpetrator on account of the criminal offence perpetrated.

(4) The running of the period set by statute of limitations shall also be interrupted if the perpetrator, before the period of statute of limitations has elapsed, has perpetrated a new criminal offence of the same gravity or graver.

(5) After each interruption, the period set by statute of limitations shall commence anew.

(6) The statute of limitations to institute criminal prosecution shall apply in any case when twice as much time elapsed as was set by the statute of limitations pursuant to the law.

**Article 113**

***Period Set by Statute of Limitations Regarding the Execution of Punishment***

Unless otherwise prescribed by this Code, the pronounced sentence shall not be executed when the following time periods have elapsed:

- 1) Thirty-five years if a punishment of long-term imprisonment has been pronounced;
- 2) Twenty years if a punishment of imprisonment for a term exceeding ten years has been pronounced;
- 3) Fifteen years if the punishment of imprisonment for a term exceeding five years has been pronounced;
- 4) Ten years if the punishment of imprisonment for a term exceeding three years has been pronounced;
- 5) Five years if the punishment of imprisonment for a term exceeding one year has been pronounced;
- 6) Three years if the punishment of imprisonment for a term not exceeding one year or a fine has been pronounced.

**Article 114**

***Application of Statute of Limitations Regarding the Execution of Accessory Punishment and Security Measures***

(1) (The statute of limitations shall apply to execution of a fine as an accessory punishment after two years have elapsed from the date when the verdict pronouncing that punishment became final.

(2) The statute of limitations shall apply to execution of the security measure of mandatory psychiatric treatment, the measure of mandatory addiction treatment and the security measure of forfeiture after five years have elapsed from the date when the decision pronouncing those measures became final. .

(3) The statute of limitations shall apply to execution of the security measure of ban on carrying out a certain occupation, activity or duty or the measure of revocation of driving license after the period for which this measure has been pronounced has elapsed.

**Article 115**

***The Running and Interruption of the Period Set by Statute of Limitations Regarding the Execution of Punishments***

(1) The running of the period set by statute of limitations to execute the punishment shall commence on the date when the verdict became final, and in the case of the revocation of a suspended sentence, on the date when the decision on the revocation of a suspended sentence became final.

(2) The period set by statute of limitations shall not run during the time the punishment cannot be executed by virtue of law.

(3) The running set by statute of limitations shall be interrupted with every action of a competent body taken in regard to execution of the punishment.

(4) After each interruption, the period set by statutes of limitation shall commence anew.

(5) The statute of limitations to execute the punishment shall apply in any case when twice as much time elapsed as was set by the statute of limitations for the execution of

punishments pursuant to the law but it shall not be applied if the execution of sentence is ongoing.

(6) The provisions of Paragraphs 2 through 5 of this Article shall be applied accordingly to statute of limitations with respect to execution of security measures.

### ***CC-BD***

#### ***Article 15***

##### ***Statute of Limitations Regarding Criminal Prosecution***

(1) Unless otherwise stipulated by this Code, criminal prosecution shall not be instituted when the following time periods have elapsed since the perpetration of a criminal offence:

- a. Thirty-five years in the case of a criminal offence for which a sentence of long-term imprisonment is prescribed;
- b) Twenty years in the case of a criminal offence for which a sentence of imprisonment for a term exceeding ten years is prescribed;
- c) Fifteen years in the case of a criminal offence for which a sentence of imprisonment for a term exceeding five years is prescribed;
- d) Ten years in the case of a criminal offence for which a sentence of imprisonment for a term exceeding three years is prescribed;
- e) Five years in the case of a criminal offence for which a sentence of imprisonment for a term exceeding one year is prescribed;
- f) Three years in the case of a criminal offence for which a sentence of imprisonment for a term not exceeding one year or a fine is prescribed.

(2) If several penalties are prescribed for a single criminal offence, the period of limitation shall be determined according to the most severe penalty prescribed.

#### ***Article 16***

##### ***Running and Interruption of the Statute of Limitations on Criminal Prosecution***

(1) Statute of limitations on criminal prosecution shall commence on the day on which the criminal offence has been perpetrated.

(2) Statute of limitations shall be suspended for any legally prescribed time period during which the prosecution cannot be instituted or continued.

(3) Statute of limitations shall be interrupted by any procedural action instituted to prosecute the perpetrator on account of the criminal offence perpetrated.

(4) Statute of limitations shall also be interrupted if the perpetrator commits a new equally grave or graver criminal offence before the limitation period has elapsed.

(5) After each interruption, the statute of limitations shall commence anew.

(6) Statute of limitations on criminal prosecution shall occur in any case after the elapse of double the time that is set by law for the statute of limitations of criminal prosecution

#### ***Article 17***

##### ***Statute of Limitations on Enforcement of a Sentence***

Unless otherwise stipulated by this Code, the imposed sentence shall not be enforced when the following time periods have elapsed from the date of entry into force of the judgement by which a sentence has been imposed:

- a) thirty-five years if a sentence of long-term imprisonment has been imposed;
- b) twenty years if a sentence of imprisonment for a term exceeding ten years has

- been imposed;
- c) fifteen years if a sentence of imprisonment for a term exceeding five years has been imposed;
  - d) ten years if a sentence of imprisonment for a term exceeding three years has been imposed;
  - e) five years if a sentence of imprisonment for a term exceeding one year has been imposed; f) three years if a sentence of imprisonment for a term not exceeding one year or a fine has been imposed.

**Article 18**  
***Statute of Limitations on Enforcement of Subsidiary Sentence and Security Measures***

- (1) The statute of limitations on collection of a fine as a subsidiary sentence shall commence after the expiration of two years from the date of effectiveness of the judgment ordering that sentence.
- (2) The statute of limitations on enforcement of the security measure of mandatory psychiatric treatment, the security measure of mandatory addiction treatment and the security measure of forfeiture shall commence after the expiration of five years from the date of effectiveness of the judgement whereby these measures have been ordered.
- (3) The statute of limitations on enforcement of the security measure of a ban to perform an occupation, activity or duty and security measure of a ban on driving a motor vehicle shall commence after the expiration of the period for which this measure is imposed by the court.

**Article 19**  
***Running and Interruption of the Statute of Limitations on Enforcement of a Sentence and Security Measures***

- (1) The statute of limitations on enforcement of a sentence shall commence on the date of effectiveness of the judgement whereby such sentence has been imposed, and in the case of revocation of a suspended sentence, on the date of effectiveness of the decision on revocation of a suspended sentence.
- (2) The statute of limitations shall not run during the time the sentence cannot be enforced pursuant to law.
- (3) The statute of limitations shall be interrupted by any action of a competent body taken in regard to the enforcement of a sentence.
- (4) After each interruption, the statute of limitations shall commence anew.
- (5) The statute of limitations on enforcement of a sentence shall commence in any case when twice as much time elapses than the law sets for the statute of limitations on enforcement of the sentence.
- (6) The provisions referred to in paragraphs 2 through 5 of this Article shall also be applied to the statute of limitations on enforcement of security measures.

**Article 20**  
***Criminal Prosecution and Enforcement of Sentences not Subject to the Statute of Limitations***

Criminal prosecution and enforcement of sentences shall not be subject to the statute of limitations on criminal offences that, pursuant to international laws, are not subject to the statute of limitations.

168. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

169. The reviewing experts noted that the statute of limitations period starts from commission of crime. The mere fact that the suspect is a fugitive it would not be a reason for the suspension of the time limit. There is a draft law according to which privatisation-related crimes would not be subject to the limitation.

170. Concerning the interruption of the limitation period, all four codes contain a provision, according to which the limitation period is interrupted if the offender – before the period elapsed - commits an equally grave (or graver) crime (e.g. Article 15(4) CC-BiH). It was clarified during the country visit that if, however, the offender is released from the charge or suspicion of committing the latter crime, then the first crime would be time barred.

171. The experts were told that in practice, there were considerable problems related to relative limitation because the suspension works only if the prosecution/procedure concerns an identified individual. The absolute statute of limitation is twice as long.

172. The reviewing experts concluded that BiH has implemented Art. 29 UNCAC.

**Article 30. Prosecution, adjudication and sanctions**

**Paragraph 1 of article 30**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

173. BiH confirmed that it has fully implemented this provision of the Convention.

174. BiH cited the following implementation legislation:

***CC-BiH  
Criminal Offence - Article 20***

A criminal offence is an unlawful act that is prescribed as a criminal offence by law, the characteristics of which are specified by law and for which a criminal sanction is prescribed by law.

### ***General Principles of Meting out Punishments - Article 48***

(1) The court shall impose the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and, in particular: the degree of guilt, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.

(2) In ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and it will also consider the period of time which has elapsed since the pronouncement of the previous conviction, or since the punishment has been served or pardoned.

(3) In fixing a fine, the court shall take into consideration the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.

### ***Meting out Punishment for Legal Persons - Article 135***

(1) When meting out punishment for a legal person, in addition to the general rules of meting out punishments referred to in Article 48 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.

(2) When meting out the fine for criminal offences for which, in addition to a fine also a property seizure punishment is imposed, the punishment may not exceed a half of the amount of the legal person's property.

### ***CC-FoBiH***

#### ***Article 21 - Criminal Offence***

A criminal offence is an unlawful act that is prescribed as a criminal offence by law, the characteristics of which are specified by law and for which a criminal sanction is prescribed by law.

### ***Article 49 - General Principles of Meting out Punishments***

(1) The court shall mete out the punishment for the perpetrator of a criminal offence within the limits prescribed by law for that criminal offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and in particular: the degree of guilt, the motives for perpetrating the offence, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, the personal history of the perpetrator prior to the perpetration, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.

(2) In meting out the punishment for the perpetrator of a criminal offence perpetrated in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and the period of time which has elapsed since the previous conviction or served or pardoned punishment.

(3) In meting out a fine, the court shall take into consideration also the situation of the perpetrator in terms of property, taking into account the amount of his salary, his other income, his assets and his family obligations.

#### ***Article 139 - Meting out Punishment for a Legal Person***

(1) When meting out punishment for a legal person, in addition to the general rules of meting out punishments referred to in Article 49 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.

(2) When meting out the fine for criminal offences for which, in addition to a fine also a punishment of seizure of property is imposed, the imposed punishment may not exceed a half of the amount of the legal person's property.

#### ***CC-RS***

#### ***Criminal Offence - Article 7***

(1) A criminal offence is an unlawful act that threatens or violates protected values and is defined as a criminal offence by law due to the danger it poses and for which a criminal sanction is prescribed by law.

(2) The offence that poses minor danger due to little significance or insignificance or absence of harmful consequences shall not be considered a criminal offence although it has characteristics of a statutory criminal offence. The act is considered to be of little significance if its nature, seriousness, circumstances under which it was committed, low degree of culpability of the perpetrator or his personal circumstances indicate so.

#### ***General Principles of Meting out Punishments - Article 37***

(1) The court shall mete out the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all the circumstances bearing on the magnitude of punishment (extenuating and aggravating circumstances), and, in particular the degree of culpability, the motives for perpetrating the offence, the degree of danger or damage to the protected object, the circumstances in which the offence was perpetrated, the past conduct of the perpetrator, his personal situation and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the character of the perpetrator.

(2) In meting out the punishment for the perpetrator of a criminal offence perpetrated in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated from the same motive, and the period of time which has elapsed since the previous conviction or served or pardoned punishment.

(3) In meting out a fine, the court shall take into consideration the financial situation of the perpetrator.

#### ***General Reasons for Mitigation of Punishment Against Legal Person or Release from Punishment - Article 133***

(1) A legal person, whose managerial or supervisory body has willingly reported the perpetrator after a criminal offence perpetrated, may be punished less severely.

(2) A legal person whose managerial or supervisory body, following the perpetration of a criminal offence, decides to return the property illegally gained or to remove the caused harmful effects or to communicate the information concerning the grounds for holding other legal persons liable, may be released from punishment.

## **CC-BD**

### ***Criminal Offence - Article 21***

Criminal offence is an unlawful act that is prescribed as a criminal offence by law, the characteristics of which are specified by law and for which a criminal sanction is prescribed by law.

### ***General Rules for Meting out Punishments- Article 49***

(1) The court shall mete out the punishment within the limits provided by law for that particular offence, having in mind the purpose of punishment and taking into account all circumstances bearing on the severity of punishment (extenuating and aggravating circumstances), and, in particular: degree of guilt, motives for perpetrating the offence, degree of danger or injury to the protected object, circumstances under which the offence was perpetrated, past conduct of the perpetrator, his personal status and his conduct after the perpetration of the criminal offence, as well as other circumstances related to the personality of the perpetrator.

(2) A circumstance representing the characteristics of a particular criminal offence may not be taken into consideration also as an aggravating or extenuating circumstance, unless it surpasses the measure that is necessary for the existence of a criminal offence or a particular form of a criminal offence, or if there are two or more such circumstances but only one is sufficient for the existence of a more serious or less serious criminal offence. If a criminal offence was perpetrated out of hatred as provided in Article 37, paragraph 2 of this Code, the court shall take it into consideration as an aggravating circumstance and mete out a more severe punishment, unless a more stringent punishment is stipulated by law for a qualified form of a criminal offence.

(3) In ruling on the punishment for the criminal offence in recidivism, the court shall take into special consideration whether the most recent offence is of the same type as the previous one, whether both acts were perpetrated out of the same motive, and it shall also consider the period of time which has elapsed since the pronouncement of the previous conviction, or since the punishment has been served or pardoned.

(4) In fixing a fine, the court shall also take into consideration the income scale of the perpetrator, taking into account the amount of his salary, his other incomes, his assets and his family obligations.

### ***Meting out Punishment for Legal Persons - Article 139***

(1) When meting out punishment for a legal person, in addition to the general rules of meting out punishments referred to in Article 49 (General Principles of Meting out Punishments) of this Code, the economic power of the legal person shall also be taken into account.

(2) When meting out the fine for criminal offences for which, in addition to a fine a property seizure punishment is also imposed, the punishment may not exceed a half of the value of the legal person's property.

### ***Imposing a Suspended Sentence on a Legal Person - Article 140***

(1) The court may impose a suspended sentence on the legal person instead of a fine.

(2) When imposing a suspended sentence the court may impose on the legal person a fine not exceeding KM 1.500.000, but at the same time decide that the same shall not be

executed unless the legal person becomes liable for other criminal offences within the legally set period of time not shorter than one year or longer than five years.

175. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

176. The reviewing experts concluded that BiH has implemented Art. 30(1) UNCAC.

**Paragraph 2 of article 30**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

177. BiH confirmed that it has fully implemented this provision of the Convention.

178. BiH cited the following implementation legislation:

***The Law on Immunity of BiH (Official Gazette of BiH, Number 37/03) - Articles 3 and 4 Article 3 - Persons entitled to immunity (criminal and civil non-liability)***

Delegates to the House of Peoples and Members of the House of Representatives shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliamentary Assembly of Bosnia and Herzegovina.

Members of the Presidency of Bosnia and Herzegovina and members of the Council of Ministers of Bosnia and Herzegovina shall not be held civilly liable for any acts carried out within the scope of their duties in the Presidency or Council of Ministers, respectively.

***Article 4 - Duration and Definition of Immunity***

The immunity granted to the individuals listed in Article 3. of this Law may be invoked at any time for acts carried out within the scope of their duties in the said institutions, but may not be treated as a general bar preventing criminal prosecution or the institution of civil proceedings.

For the purpose of this Law, the phrase “acts carried out within the scope of their duties” shall refer to acts arising out of an individual’s duties in the Parliamentary Assembly, Presidency, or the Council of Ministers of Bosnia and Herzegovina, as respectively applicable and as defined in the Constitution of Bosnia and Herzegovina.

***The Law on Immunity of FoBiH - Article 3***

(Persons entitled to immunity (criminal and civil non-liability))

Members of the House of Representatives and Delegates to the House of Peoples, as well as the members of the Cantonal Legislatures shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Parliament of the Federation of Bosnia and Herzegovina, or the Cantonal Legislatures.

The President and Vice-President of the Federation, members of the Federation Government as well as the members of the Cantonal Governments shall not be held civilly liable for any acts carried out within the scope of their duties in the executive authority of the Federation, or the executive authority of the respective Canton.

#### ***Article 4 - Duration and Definition of Immunity***

The immunity granted to the individuals listed in Article 3. of this Law may be invoked at any time for acts carried out within the scope of their duties in the said institutions, but may not be treated as a general bar preventing criminal prosecution or the institution of civil proceedings.

For the purpose of this Law, the phrase “acts carried out within the scope of their duties” shall refer to acts arising out of an individual’s duties in the Federation Parliament, the Cantonal Legislature, the Federation Executive or in the Cantonal Executive, as respectively applicable, and as defined in the Constitution of the Federation.

#### ***The Law on Immunity of Republika Srpska Article 3***

Persons entitled to immunity - non-liability in criminal and civil proceedings

- 1) Deputies in the National Assembly and Members of the Council of Peoples shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the legislative authority of Republika Srpska.
- 2) The President and Vice-Presidents of Republika Srpska, as well as members of the Government of Republika Srpska, shall not be held civilly liable for any acts carried out within the scope of their duties in their respective institutions.

#### ***The Law on Immunity of BD BiH (2/03)***

Article 3 - (Persons entitled to immunity (criminal and civil non-liability))

Deputies in the Assembly shall not be held criminally or civilly liable for any acts carried out within the scope of their duties in the Assembly.

Mayor shall not be held civilly responsible for any acts carried out within the scope of his duties in the Government of Brčko District.

#### ***Article 4 - (Duration and Definition of Immunity)***

The immunity granted to the individuals listed in Article 3. of this Law may be invoked within such deadlines and as stipulated in laws regulating criminal and civil proceedings, for acts carried out within the scope of their duties in the said institutions, but may not be treated as a general bar preventing criminal prosecution or the institution of civil proceedings for acts not related to or not arising directly from their scope of duties.

For the purpose of this Law, the phrase “acts carried out within the scope of their duties” shall refer to acts related to or directly arising out of the delegates’ duties in the

Assembly, that is, the Mayor's duties in the Government of Brčko District, as regulated by the Statute, laws and other regulations of Brčko District.

The Law on HJPC - in BiH

(Official Gazette of BiH, No. 25/04, 93/05, 48/07 and 15/08) - Article 10(3) Article 10. Incompatibility and Immunity

(1) Neither a member of the Council, nor a member of any panel thereof, nor any member of the staff of the Council, shall hold office or perform any duties in a political party, or in associations or foundations connected to political parties. Members and staff as aforesaid shall

likewise refrain from participating in political party activities.

(2) A member shall sign a declaration of interests as described in the Council's Book of Rules upon assuming duties on behalf of the Council.

(3) Members of the Council, or of a panel within the Council, are immune from civil liability for opinions expressed and decisions taken within the scope of official duties.

#### ***Article 71 - Privilege and Immunity***

(1) A complaint or communication alleging judicial or prosecutorial misconduct with the Office of the Disciplinary Counsel or information obtained through an investigation shall be privileged, except as to requests from the Council.

(2) The staff of the Council and the Office of the Disciplinary Counsel and international experts having a contract with or being seconded to the Council shall be immune from civil liability for any conduct performed in the course of their official duties.

#### ***Article 87 - Immunity of Judges and Prosecutors***

(1) A judge or prosecutor shall not be prosecuted, arrested, or detained, nor be subject to civil liability for opinions expressed or decisions taken within the scope of official duties.

(2) The privilege of immunity shall not bar or delay the criminal or civil investigation, conducted in accordance with the law, of a matter concerning a judge or prosecutor.

179. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

180. According to the CCs, the President, members of Parliament (MPs) and members of the government enjoy immunity for any act carried out in course of their official duties. Investigations can be launched even if the person still enjoys immunity and all investigative steps prior to interviewing the subject can be undertaken. Only for questioning the subject and other coercive measures, the lifting of immunities is required. Immunity can be lifted by a Parliamentary commission.

181. The BiH authorities pointed out that in the past, there were a lot of persons in BiH who enjoyed immunity. However this situation was ended by the High Representative. Now there are only professional immunities.

182. The reviewing experts concluded that BiH has adequately implemented Art. 30(2) UNCAC.

### **Paragraph 3 of article 30**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

183. BiH confirmed that it has fully implemented this provision of the Convention.

184. BiH cited the following implementation legislation:

##### ***CPC-BiH*** ***Article 17 - Principle of Legality of Prosecution***

The Prosecutor shall initiate prosecution if there is evidence that a criminal offence has been committed unless otherwise prescribed by this Code.

##### ***Article 38 - Abandoning Prosecution***

The Prosecutor may abandon prosecution before the end of a main trial or during the proceedings before the Panel of the Appellate Division when provided by this Code.

##### ***Article 326 - Reopening a Proceeding Completed by a Legally Binding Decision***

(1) Except for the cases referred to in Article 325 of this Code, 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.

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(2) of this Code shall be applied when proving the criminal offence committed by the Prosecutor.

##### ***Article 327 - Reopening the Proceedings for the Benefit of the Accused***

(1) A criminal proceeding that was completed by a legally binding verdict may be reopened in favour 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 offence 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 for 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 offence or for another criminal offence 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 offence 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 proceedings and that the verdict was based on these violations;

(2) In the cases referred to in Subparagraphs 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 offences 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 Subparagraphs 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 offence of corruption or criminal offence 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(2) of this Code shall be applied.

#### ***CPC-FoBiH***

#### ***Article 18 - Principle of Legality of Prosecution***

The Prosecutor is obligated to initiate a prosecution if there is evidence that a criminal offence has been committed unless otherwise prescribed by this Code.

#### ***Article 52 - Abandoning Prosecution***

The Prosecutor may abandon prosecution before the end of a main trial, and during the proceedings before the Panel of the Appellate Division when provided by this Code.

#### ***Article 332 - Hearing Before the Panel of Appellate Division***

(1) Provisions that apply to the main trial in the first instance proceeding shall be accordingly applied to a hearing before the panel of appellate division.

(2) If the panel of appellate division finds that it is necessary to repeat the evidence presented in the first instance proceeding, testimonies of examined witnesses and experts and written findings and opinions of experts shall be admitted as evidence and may be read or reproduced if, during their testimonies, those witnesses and experts were cross-examined by the opposing party or the defence attorney or they were not cross-

examined by the opposing party or the defence attorney although it was made possible, as well as if otherwise prescribed by this Code, and if it is about the evidence referred to in Subparagraph e), Paragraph (2) of Article 276 of this Code.

(3) The provisions referred to in Paragraph 2 of this Article shall not relate to privileged witnesses referred to in Article 97 of this Code.

### ***Article 333 - Requirements for Filing an Appeal and Deciding the Appeal***

(1) An appeal is permitted against the verdict of the second instance court if:

- a) the second instance court altered the first instance verdict in which the accused has been released from the charge and pronounced the guilty verdict;
- b) with regard to the appeal from the acquitting verdict, the second instance court pronounced a verdict at the trial finding the accused guilty as charged.

(2) An appeal from the second instance verdict shall be decided on by a third instance panel consisting of three judges.

(3) The provisions of Article 324 of this Code shall also be applied to co-accused who has not filed an appeal from the second instance verdict.

### ***Article 334 - Appeals Permitted against the Decision***

(1) The parties, the defence attorney and persons whose rights have been violated may always file an appeal against the decision of the court rendered in the first instance unless explicitly prohibited to file an appeal under this Code.

(2) An appeal is not allowed against a decision of the Panel rendered during the investigation, unless otherwise provided by this Code.

(3) A decision rendered in order to prepare the main trial and the verdict may be contested only in an appeal against the verdict.

## ***CPC-RS***

### ***Principle of Legality of Prosecution - Article 17***

The Prosecutor shall be obliged to initiate a prosecution if there is evidence that a criminal offence has been committed, unless otherwise prescribed by this Code.

### ***Abandoning Prosecution - Article 46***

The Prosecutor may abandon prosecution before the end of a main trial, and before the higher instance court he may abandon a prosecution when provided by this Code.

### ***Continuation of a Criminal Proceeding and Reopening a Proceeding Completed by a Legally Binding Decision - Article 342***

(1) If a criminal proceeding was dismissed by a legally binding decision or the charges were dropped by a final verdict due to non-existence of an approval as required, the proceeding shall continue upon motion by the Prosecutor, once the reasons for which the referenced decisions were rendered cease to exist.

(2) If, apart from cases referred to in paragraph 1 of this Article, a criminal proceeding has been dismissed by a legally binding decision prior to the main trial, reopening of the criminal proceeding may be granted upon motion by the Prosecutor if new evidence is

introduced enabling the Court to ascertain that the conditions to reopen the criminal proceeding have been fulfilled.

(3) 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 charges were dropped due to the criminal offence of Abuse of Office committed by the Prosecutor. The provision of Article 343, Paragraph 2 of this Code shall be applied when proving the criminal offence committed by the Prosecutor.

#### ***Reopening the Proceedings for the Benefit of the Accused - Article 343***

(1) A criminal proceeding completed by a legally binding verdict may be reopened in favour of the accused:

- (a) if it is proven that the verdict was based on a false document or on a false testimony of a witness, expert witness or interpreter;
- b) if it is proven that the judgment ensued from a criminal offence committed by a judge or a person who conducted investigation;
- c) if new facts are presented or new evidence is submitted which, despite due attention and caution, could not have been presented at the main trial, and which per se or in relation to the previous evidence would tend to bring about the acquittal of the person who has been convicted or his conviction under a less severe criminal law;
- d) if an individual has been multiply convicted for the same criminal offence or if more than one person has been convicted of a criminal offence which could have been committed by only one person or by some of them;
- e) if, in case of a conviction for a continued criminal offence or for another criminal offence that, as defined by law, includes several identical actions or several various actions, new facts are presented or new evidence is submitted demonstrating that the accused did not commit an action included in the criminal offence covered by the conviction, and the existence of these facts would have essentially affected the meting out punishment;
- f) if the Constitutional Court of Bosnia and Herzegovina, the Human Rights Chamber or the European Court for Human Rights or the Constitutional Court of Republika Srpska establish that human rights and fundamental freedoms were violated during the proceeding and that the verdict was based on these violations;
- g) if, by a decision of the Constitutional Court of Republika Srpska or by the Constitutional Court of Bosnia and Herzegovina the law under which the final convicting verdict was pronounced has been annulled.

(2) In the cases referred to in Subparagraphs a) and b) of Paragraph (1) of this Article, it must be proven by a legally binding verdict that the abovementioned persons were found guilty of the relevant criminal offences.

(3) If the proceeding against these persons could not be conducted because they have passed away or because circumstances exist which preclude criminal prosecution, the facts referred to in Subparagraphs a) and b) of Paragraph 1 of this Article may also be established with other evidence.

#### ***Reopening the Proceedings to the Detriment of the Accused - Article 344***

(1) Criminal proceedings may be reopened to the detriment of the accused if the verdict dismissing the indictment was rendered because the Prosecutor had dropped the charges and it is proven that the charges were dropped due to the criminal offence against official duty or other duty by the Prosecutor.

(2) In the case referred to in Paragraph (1) of this Article, the provision of Article 343, Paragraph 2, of this Code shall be applied.

#### ***CPC-BD***

#### ***Article 17 - Principle of Legality of Prosecution***

The Prosecutor shall be obliged to initiate prosecution if there is evidence that a criminal offence has been committed, unless otherwise stipulated by this Code.

***Article 38 - The Principle of Abandoning Prosecution***

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

***Article 326 - Reopening a Proceeding Completed by a Legally Binding Decision***

(1) If a criminal proceeding was dismissed by a legally binding decision prior to the main trial, except for the cases referred to in Article 325, the reopening of the criminal proceeding may be allowed upon a petition of the Prosecutor if new evidence is introduced enabling the Court to ascertain that the conditions to reopen the criminal proceeding have been fulfilled.

(2) A criminal proceeding that was dismissed by a legally binding decision prior to the commencement of the main trial may be reopened if the Prosecutor dropped the charges and it is proven that the Prosecutor dropped the charges due to abuse of office of Prosecutor. The provision of Article 327, Paragraph 2 of this Code shall be applied when proving the criminal offence committed by the Prosecutor.

***Article 327 - Reopening the Proceedings for the Benefit of the Accused***

(1) A criminal proceeding completed by a legally binding verdict may be reopened in favour of the accused:

- (a) if it is proven that the verdict was based on a false document or on a false testimony of a witness, expert witness or interpreter;
- (b) if it is proven that the judgment ensued from a criminal offence committed by a judge or a person who conducted investigation;
- (c) if new facts are presented or new evidence is submitted which, despite due attention and caution, could not have been presented at the main trial, and which per se or in relation to the previous evidence would tend to bring about the acquittal of the person who has been convicted or his conviction under a less severe criminal law;
- (d) if an individual has been multiply convicted for the same criminal offence or if more than one person has been convicted for a criminal offence which could have been committed by only one person or by some of them;
- (e) if, in case of a conviction for a continued criminal offence or for another criminal offence that, as defined by law, includes several identical actions or several various actions, new facts are presented or new evidence is submitted demonstrating that the accused did not commit an action included in the criminal offence covered by the conviction, and the existence of these facts would have essentially affected the meting out 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 fundamental freedoms were violated during the proceedings and that the verdict was based on these violations;

(2) In the cases referred to in Subparagraphs a) and b) of Paragraph (1) of this Article, it must be proven by a legally binding verdict that the abovementioned persons were found guilty of the relevant criminal offences. If the proceeding against these persons could not be conducted because they have passed away or because circumstances exist which preclude criminal prosecution, the facts referred to in Subparagraphs a) and b) of Paragraph 1 of this Article may also be established with other evidence.

***Article 328 - Reopening the Proceedings to the Detriment of the Accused***

(1) Criminal proceedings may be reopened to the detriment of the accused if the verdict dismissing the indictment was rendered because the Prosecutor had dropped the charges and it is proven that the charges were dropped due to the criminal offence against official duty or other 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.

185. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

186. The laws, at all levels, provides for mandatory prosecution (legality principle) in BiH.

187. According to Art. 38 CPC-BiH and respective provisions in the other codes, it is possible to abandon prosecution if there is not sufficient evidence or due to a judgment of the Constitutional Court or the European Court of Human Rights (Strasbourg). This can be done in writing or during the hearing it is stated in court. However, during the country visit it was stated that this rule is not applied often. There is no possibility to challenge the decision to abandon prosecution, except if the prosecutor committed an offence (e.g. corruption) by doing so.

188. The reviewing experts concluded that BiH has adequately implemented Art. 30(3) UNCAC.

**Paragraph 4 of article 30**

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

189. BiH confirmed that it has fully implemented this provision of the Convention.

190. BiH cited the following implementation legislation:

***CPC-BiH***  
***Article 123 - Types of Measures***

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

- (2) When deciding which of the above mentioned measures is to be applied, the competent body shall meet certain conditions for application of the measures, attempting not to apply more severe measure if the same effect can be achieved by application of a less severe measure.
- (3) These measures shall also be cancelled ex officio immediately after the reasons for their application cease to exist, or they shall be replaced with a less severe measure when the conditions for it are created.
- (4) The provisions of this Chapter shall be applied to the suspect as well, as appropriate.

#### ***Article 126 - House Arrest and Travel Ban***

- a If there are circumstances indicating that the accused might flee, hide or go to an unknown place or abroad, the Court may, by a reasoned decision, place the suspect or accused under house arrest.
- b In circumstances referred to in Paragraph (1) of this Article, the Court may also, either as
  - an additional measure to the house arrest or as a separate measure, order a temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina (travel ban).

#### ***Article 126.a - Other Prohibiting Measures***

- (1) When the circumstances of the case so indicate, the Court may order one or more of the following prohibiting measures:
  - a) prohibition from performing certain business or official activities, b) prohibition from visiting certain places or areas,
  - c) prohibition from meeting with certain persons,
  - d) order to report occasionally to a specified State body, and e) temporary withdrawal of the driver's license.
- (2) Other prohibiting measures referred to in Paragraph (1) of this Article may be imposed in addition to the house arrest as well as in addition to a travel ban referred to in Article 126 of this Code, or as separate measures.

#### ***Article 126.b - Imposing the Prohibiting Measures***

- (1) The Court may impose the house arrest, travel ban and other prohibiting measures by a reasoned decision upon the proposal of a party or the defence attorney.
- (2) When deciding on custody, the Court may impose the house arrest, travel ban and other prohibiting measures ex officio, instead of ordering or prolonging the custody.
- (3) In the decision imposing the prohibiting measures, the suspect or accused shall be warned that the custody may be ordered against him or her if he/she violates the obligation under the imposed measure.
- (4) In the course of an investigation, the prohibiting measures shall be ordered and revoked by the preliminary proceedings judge and, after the issuance of an indictment - by a preliminary hearing judge, and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge.
- (5) The prohibiting measures may last as long as they are needed, but not later than the date on which the verdict becomes legally binding if a person was not pronounced the sentence of imprisonment and at the latest until the person has been committed to serve the sentence if a person was pronounced the sentence of imprisonment. Travel ban may also last until the pronounced fine is paid in full and/or the property claim and/or confiscation of material gain enforced in full.

(6) The preliminary proceedings judge, preliminary hearing judge, the judge, or the presiding judge must review every two months whether the imposed prohibiting measure is still needed.

(7) A decision ordering, extending or revoking the prohibiting measures may be appealed by a party or the defence attorney, while the Prosecutor may also appeal a decision rejecting his motion for the ordering of a measure. An appeal shall be decided by the Panel referred to in Article 24 Paragraph (7) of this Code within three days of receipt of the appeal. An appeal shall not stay the execution of decision.

#### ***Article 126c - Content of the Prohibiting Measures***

(1) In a decision ordering the house arrest for the suspect or accused, the Court shall specify the place where the suspect or accused shall stay for as long as the measure lasts, as well as the boundaries beyond which the suspect or accused may not go. The place may be restricted to the suspect's or accused's home.

(2) In a decision imposing the travel ban, the Court shall order temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

(3) In a decision prohibiting the suspect or accused from visiting certain places or areas, the Court shall specify places and areas and the distance within which the suspect or accused may not approach them.

(4) In a decision prohibiting the suspect or accused from meeting with certain persons, the Court shall specify the distance within which the suspect or accused may not approach a certain person.

(5) In a decision ordering the suspect or accused to report occasionally to a specified body, the Court shall appoint an official person that the suspect or accused must report to, the time limit in which the suspect or accused must report and the manner of keeping records of reporting.

(6) In a decision ordering temporary withdrawal of a driver's license, the Court shall specify categories for which a driver's license shall be suspended. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

#### ***Article 126d Limitations in the Content of the Prohibiting Measures***

(1) The prohibiting measures shall not restrict the right of the suspect or accused to communicate with his/her defence attorney in Bosnia and Herzegovina.

(2) The prohibiting measures shall not restrict the right of the suspect or accused to live in his/her home in Bosnia and Herzegovina, to see members of his/her family and close relatives freely or just in Bosnia and Herzegovina or just in a place specified under the house arrest and unless the proceedings involve the criminal offence committed to the detriment of the family member or close relatives, nor shall they restrict the right of the suspect or accused to perform its professional activity unless the proceedings involve the criminal offence related to the performance of that activity.

#### ***Article 126e Enforcement of Prohibiting Measures***

(1) A decision ordering the house arrest shall be submitted also to the body enforcing the measure.

(2) A decision ordering the travel ban shall be submitted also to the border police, and the temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border shall be entered into the Central Data Processing Centre.

(3) The measures of house arrest, travel ban, prohibition from visiting certain places or areas, prohibition from meeting with certain persons and temporary withdrawal of a driver's license shall be enforced by a police body.

(4) The measure ordering the suspect or accused to report occasionally to a specified body shall be enforced by a police body or the body that the suspect or accused must report to.

#### ***Article 126f Verification of Prohibiting Measures and Obligation to Submit Report***

(1) At any time, the Court may order verification of prohibiting measures and request the competent body in charge of the enforcement to submit a report. The body shall be obliged to submit the report to the Court without delay.

(2) If the suspect or accused is not fulfilling obligations ordered by the measure, the enforcement body shall inform the Court about it and the Court may pronounce additional prohibiting measure or place him/her into custody.

#### ***Article 126g Special Provision on Travel Ban***

(1) Exceptionally, in emergency cases, in particular in cases involving a criminal offence for which a prison sentence of ten years or more severe punishment may be pronounced, the order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, may be issued by the Prosecutor.

(2) The Prosecutor may issue the order referred to in Paragraph (1) of this Article when ordering the conduct of an investigation, when questioning the suspect or when issuing an apprehension order under Article 125, Paragraph (2) of this Code, or whenever the emergent action is needed for the effective conduct of the process until the beginning of the main trial.

(3) In the course of an investigation, the Prosecutor shall immediately inform the preliminary proceedings judge and after the issuance of an indictment - a preliminary hearing judge and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - that judge or the presiding judge, who shall decide about the order within 72 hours. In case the judge fails to issue the said order, the travel documents and the identity card shall be returned.

(4) The order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, shall be executed by a police body, and may also be executed by judicial police. If a suspect or accused refuses to surrender the travel documents and/or the identity card, the order shall be executed by force.

(5) The suspect or accused shall be issued a receipt on withdrawn documents. For the identity card, the suspect or accused shall be issued a special certificate or card that shall replace the identity card in all respects, but it may not be used for crossing the State border.

#### ***Article 127 Conditions for Posting Bail***

An accused who is to be placed in custody or has already been placed in custody only for a flight risk may be allowed to remain at liberty or may be released if he personally or someone else on his behalf furnishes a surety that he will not flee before the end of the criminal proceedings and the accused himself pledges that he will not hide and will not leave his residence without permission.

#### ***Article 128 The Contents of Bail***

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

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

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

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

#### ***Article 129 Cancellation of Bail***

(1) Notwithstanding the bail posted, the accused shall be placed in custody if without justification he fails to appear when duly summoned, if he is preparing to flee or if there occurs another legal ground for his custody after he has been released.

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

(3) If a prison sentence is pronounced in the verdict, the bail bond shall be cancelled only when the convicted person begins to serve the sentence.

#### ***Article 130 Decision on Bail***

In the course of an investigation, a decision on bail and the cancellation of the bail shall be issued by the preliminary proceedings judge and after the issuance of an indictment - by a preliminary hearing judge and after the case has been submitted to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge. A decision setting the bail and a decision cancelling the bail shall be taken following the hearing of the Prosecutor.

#### ***CPC-FoBiH***

#### ***Article 137 Types of Measures***

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

(2) When deciding which of the above mentioned measures is to be applied, the competent body shall meet certain conditions for application of specific measures,

attempting not to apply a more severe measure if the same effect can be achieved by application of a less severe measure.

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

#### ***Article 140 House Arrest and Travel Ban***

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

(2) Under circumstances as referred to in Paragraph (1) of this Article, the Court may, either as an additional measure to the a house arrest, or as a special measure order temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the prohibition of use of the identity card for crossing the State border of Bosnia and Herzegovina (travel ban).

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

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

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

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

(7) A decision ordering, extending or revoking the measures referred to in Paragraphs 1 and 2 of this Article may be appealed by the parties and the defence attorney, while the Prosecutor may also appeal a decision rejecting his motion for the application of the measure. An appeal shall be decided by the panel referred to in Article 25, Paragraph 6 of this Code within three (3) days following the receipt of the appeal. An appeal shall not stay the execution of a decision.

#### ***Article 140a. Other Prohibiting Measures***

(1) When the circumstances of the case so indicate, the Court may order one or more of the following prohibiting measures:

a) prohibition from performing certain business or official activities, b) prohibition from visiting certain places or areas,  
c) prohibition from meeting with certain persons,  
d) order to report occasionally to a specified State body, and e) temporary withdrawal of the driver's license.

(2) Other prohibiting measures referred to in Paragraph (1) of this Article may be imposed in addition to the house arrest as well as in addition to a travel ban referred to in Article 140 of this Code, or as separate measures.

### ***Article 140.b - Imposing the Prohibiting Measures***

- (1) The Court may impose the house arrest, travel ban and other prohibiting measures by a reasoned decision upon the proposal of a party or the defence attorney.
- (2) When deciding on custody, the Court may impose the house arrest, travel ban and other prohibiting measures ex officio, instead of ordering or prolonging the custody.
- (3) In the decision imposing the prohibiting measures, the suspect or accused shall be warned that the custody may be ordered against him or her if he/she violates the obligation under the imposed measure.
- (4) In the course of an investigation, the prohibiting measures shall be ordered and revoked by the preliminary proceedings judge and, after the issuance of an indictment - by a preliminary hearing judge, and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge.
- (5) The prohibiting measures may last as long as they are needed, but not later than the date on which the verdict becomes legally binding if a person was not pronounced the sentence of imprisonment and at the latest until the person has been committed to serve the sentence if a person was pronounced the sentence of imprisonment. Travel ban may also last until the pronounced fine is paid in full and/or the property claim and/or confiscation of material gain enforced in full.
- (6) The preliminary proceedings judge, preliminary hearing judge, the judge, or the presiding judge must review every two months whether the imposed prohibiting measure is still needed.
- (7) A decision ordering, extending or revoking the prohibiting measures may be appealed by a party or the defence attorney, while the Prosecutor may also appeal a decision rejecting his motion for the ordering of a measure. An appeal shall be decided by the Panel referred to in Article 25 Paragraph (6) of this Code within three days of receipt of the appeal. An appeal shall not stay the execution of decision.

### ***Article 140c - Content of the Prohibiting Measures***

- (1) In a decision ordering the house arrest for the suspect or accused, the Court shall specify the place where the suspect or accused shall stay for as long as the measure lasts, as well as the boundaries beyond which the suspect or accused may not go. The place may be restricted to the suspect's or accused's home.
- (2) In a decision imposing the travel ban, the Court shall order temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.
- (3) In a decision prohibiting the suspect or accused from visiting certain places or areas, the Court shall specify places and areas and the distance within which the suspect or accused may not approach them.
- (4) In a decision prohibiting the suspect or accused from meeting with certain persons, the Court shall specify the distance within which the suspect or accused may not approach a certain person.
- (5) In a decision ordering the suspect or accused to report occasionally to a specified body, the Court shall appoint an official person that the suspect or accused must report to, the time limit in which the suspect or accused must report and the manner of keeping records of reporting.

(6) In a decision ordering temporary withdrawal of a driver's license, the Court shall specify categories for which a driver's license shall be suspended. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

#### ***Article 140d Limitations in the Content of the Prohibiting Measures***

(1) The prohibiting measures shall not restrict the right of the suspect or accused to communicate with his/her defence attorney in Bosnia and Herzegovina.

(2) The prohibiting measures shall not restrict the right of the suspect or accused to live in his/her home in Bosnia and Herzegovina, to see members of his/her family and close relatives freely or just in Bosnia and Herzegovina or just in a place specified under the house arrest and unless the proceedings involve the criminal offence committed to the detriment of the family member or close relatives, nor shall they restrict the right of the suspect or accused to perform its professional activity unless the proceedings involve the criminal offence related to the performance of that activity.

#### ***Article 140e Enforcement of Prohibiting Measures***

(1) A decision ordering the house arrest shall be submitted also to the body enforcing the measure.

(2) A decision ordering the travel ban shall be submitted also to the border police, and the temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border shall be entered into the Central Data Processing Centre.

(3) The measures of house arrest, travel ban, prohibition from visiting certain places or areas, prohibition from meeting with certain persons and temporary withdrawal of a driver's license shall be enforced by a police body.

(4) The measure ordering the suspect or accused to report occasionally to a specified body shall be enforced by a police body or the body that the suspect or accused must report to.

#### ***Article 140f Verification of Prohibiting Measures and Obligation to Submit Report***

(1) At any time, the Court may order verification of prohibiting measures and request the competent body in charge of the enforcement to submit a report. The body shall be obliged to submit the report to the Court without delay.

(2) If the suspect or accused is not fulfilling obligations ordered by the measure, the enforcement body shall inform the Court about it and the Court may pronounce additional prohibiting measure or place him/her into custody.

#### ***Article 140g. Special Provision on Travel Ban***

(1) Exceptionally, in emergency cases, in particular in cases involving a criminal offence for which a prison sentence of ten years or more severe punishment may be pronounced, the order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, may be issued by the Prosecutor.

(2) The Prosecutor may issue the order referred to in Paragraph (1) of this Article when ordering the conduct of an investigation, when questioning the suspect or when issuing an apprehension order under Article 139, Paragraph (2) of this Code, or whenever the emergent action is needed for the effective conduct of the process until the beginning of the main trial.

(3) In the course of an investigation, the Prosecutor shall immediately inform the preliminary proceedings judge and after the issuance of an indictment - a preliminary

hearing judge and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - that judge or the presiding judge, who shall decide about the order within 72 hours. In case the judge fails to issue the said order, the travel documents and the identity card shall be returned.

(4) The order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, shall be executed by a police body, and may also be executed by judicial police. If a suspect or accused refuses to surrender the travel documents and/or the identity card, the order shall be executed by force.

(5) The suspect or accused shall be issued a receipt on withdrawn documents. For the identity card, the suspect or accused shall be issued a special certificate or card that shall replace the identity card in all respects, but it may not be used for crossing the State border.

#### ***Article 141 Conditions for Posting Bail***

An accused who is to be placed in custody or has already been placed in custody only for a flight risk may be allowed to remain at liberty or may be released if he personally or someone else on his behalf furnishes a surety that he will not flee before the end of the criminal proceedings and the accused himself pledges that he will not hide and will not leave his residence without permission.

#### ***Article 142 The Contents of Bail***

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

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

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

(4) If the accused flees, a decision shall be issued ordering that the amount posted as bail shall be credited to the budget of the Federation.

#### ***Article 143 Cancellation of Bail***

(1) Notwithstanding the bail posted, the accused shall be placed in custody if without justification he fails to appear when duly summoned, if he is preparing to flee or if there occurs another legal ground for his custody after he has been released.

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

(3) If a prison sentence is pronounced in the verdict, the bail bond shall be cancelled only when the convicted person begins to serve the sentence.

#### ***Article 144 Decision on Bail***

In the course of an investigation, a decision on bail and the cancellation of the bail shall be issued by the preliminary proceedings judge and after the issuance of an indictment - by a preliminary hearing judge and after the case has been submitted to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge. A decision setting the bail and a decision cancelling the bail shall be taken following the hearing of the Prosecutor.

### ***CPC-RS***

#### ***Types of Measures Article 181***

- (1) Measures that may be taken against the accused in order to secure his presence and successful conduct of the criminal proceedings shall be: summons, apprehension, prohibiting measures, bail and custody/detention.
- (2) When deciding which of the above mentioned measures to take, the competent body shall meet certain requirements for application of the measures, attempting not to apply more severe measure if the same effect can be achieved by application of a less severe measure.
- (3) These measures shall also be cancelled ex officio immediately after the reasons for their application cease to exist, or they shall be replaced with a less severe measure when the requirements for it are met.
- (4) The provision of this Chapter shall be applied to the suspect as well, as appropriate.

#### ***House Arrest and Travel Ban - Article 184***

- (1) If there are circumstances indicating that the accused might flee, hide or go to an unknown place or abroad, the Court may, by a reasoned decision, place the suspect or accused under house arrest.
- (2) In circumstances referred to in Paragraph (1) of this Article, the Court may also, either as an additional measure to the house arrest or as a separate measure, order a temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina (travel ban).

#### ***Other Prohibiting measures - Article 185***

- (1) When the circumstances of the case so indicate, the Court may order one or more of the following prohibiting measures:
  - a) prohibition from performing certain business or official activities, b) prohibition from visiting certain places or areas,
  - c) prohibition from meeting with certain persons,
  - d) order to report occasionally to a specified State body, and e) temporary withdrawal of the driver's license.
- (2) Other prohibiting measures referred to in Paragraph (1) of this Article may be imposed in addition to the house arrest as well as in addition to a travel ban referred to in Article 184 of this Code, or as separate measures.

#### ***Imposing the Prohibiting Measures - Article 186.***

- (1) The Court may impose the house arrest, travel ban and other prohibiting measures by a reasoned decision upon the proposal of a party or the defence attorney.

(2) When deciding on custody, the Court may impose the house arrest, travel ban and other prohibiting measures ex officio, instead of ordering or prolonging the custody.

(3) In the decision imposing the prohibiting measures, the suspect or accused shall be warned that the custody may be ordered against him or her if he/she violates the obligation under the imposed measure.

(4) In the course of an investigation, the prohibiting measures shall be ordered and revoked by the preliminary proceedings judge and, after the issuance of an indictment - by a preliminary hearing judge, and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge.

(5) The prohibiting measures may last as long as they are needed, but not later than the date on which the verdict becomes legally binding if a person was not pronounced the sentence of imprisonment and at the latest until the person has been committed to serve the sentence if a person was pronounced the sentence of imprisonment. Travel ban may also last until the pronounced fine is paid in full and/or the property claim and/or confiscation of material gain enforced in full.

(6) The preliminary proceedings judge, preliminary hearing judge, the judge, or the presiding judge must review every two months whether the imposed prohibiting measure is still needed.

(7) A decision ordering, extending or revoking the prohibiting measures may be appealed by a party or the defence attorney, while the Prosecutor may also appeal a decision rejecting his motion for the ordering of a measure.

(8) An appeal shall be decided by the Panel referred to in Article 24 Paragraph (5) of this Code within three days of receipt of the appeal. An appeal shall not stay the execution of decision.

#### ***Content of the Prohibiting Measures - Article 187***

(1) In a decision ordering the house arrest for the suspect or accused, the Court shall specify the place where the suspect or accused shall stay for as long as the measure lasts, as well as the boundaries beyond which the suspect or accused may not go. The place may be restricted to the suspect's or accused's home.

(2) In a decision imposing the travel ban, the Court shall order temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

(3) In a decision prohibiting the suspect or accused from visiting certain places or areas, the Court shall specify places and areas and the distance within which the suspect or accused may not approach them.

(4) In a decision prohibiting the suspect or accused from meeting with certain persons, the Court shall specify the distance within which the suspect or accused may not approach a certain person.

(5) In a decision ordering the suspect or accused to report occasionally to a specified body, the Court shall appoint an official person that the suspect or accused must report to, the time limit in which the suspect or accused must report and the manner of keeping records of reporting.

(6) In a decision ordering temporary withdrawal of a driver's license, the Court shall specify categories for which a driver's license shall be suspended. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

### ***Limitations in the Content of the Prohibiting Measures - Article 188***

(1) The prohibiting measures shall not restrict the right of the suspect or accused to communicate with his/her defence attorney in Bosnia and Herzegovina.

(2) The prohibiting measures shall not restrict the right of the suspect or accused to live in his/her home in Bosnia and Herzegovina, to see members of his/her family and close relatives freely but only in Bosnia and Herzegovina or just in a place specified under the house arrest and unless the proceedings involve the criminal offence committed to the detriment of the family member or close relatives, nor shall they restrict the right of the suspect or accused to perform its professional activity unless the proceedings involve the criminal offence related to the performance of that activity.

### ***Enforcement of Prohibiting Measures - Article 189***

(1) A decision ordering the house arrest shall be submitted also to the body enforcing the measure.

(2) A decision ordering the travel ban shall be submitted also to the border police, and the temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border shall be entered into the Central Data Processing Centre.

(3) The measures of house arrest, travel ban, prohibition from visiting certain places or areas, prohibition from meeting with certain persons and temporary withdrawal of a driver's license shall be enforced by a police body.

(4) The measure ordering the suspect or accused to report occasionally to a specified body shall be enforced by a police body or the body that the suspect or accused must report to.

### ***Verification of Prohibiting Measures and Obligation to Submit Report - Article 190***

(1) At any time, the Court may order verification of prohibiting measures and request the competent body in charge of the enforcement to submit a report. The body shall be obliged to submit the report to the Court without delay.

(2) If the suspect or accused is not fulfilling obligations ordered by the measure, the enforcement body shall inform the Court about it and the Court may pronounce additional prohibiting measure or place him/her into custody.

### ***Special Provision on Travel Ban - Article 191***

(1) Exceptionally, in emergency cases, in particular in cases involving a criminal offence for which a prison sentence of ten years or more severe punishment may be pronounced, the order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, may be issued by the Prosecutor.

(2) The Prosecutor may issue the order referred to in Paragraph (1) of this Article when ordering the conduct of an investigation, when questioning the suspect or when issuing an apprehension order under Article 183, Paragraph (2) of this Code, or whenever the emergent action is needed for the effective conduct of the process until the beginning of the main trial.

(3) In the course of an investigation, the Prosecutor shall immediately inform the preliminary proceedings judge and after the issuance of an indictment - a preliminary hearing judge and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - that judge or the presiding judge, who shall decide about the order within 72 hours. In case the judge fails to issue the said order, the travel documents and the identity card shall be returned.

(4) The order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, shall be executed by a police body, and may also be executed by judicial police. If a suspect or accused refuses to surrender the travel documents and/or the identity card, the order shall be executed by force.

(5) The suspect or accused shall be issued a receipt on withdrawn documents. For the identity card, the suspect or accused shall be issued a special certificate or card that shall replace the identity card in all respects, but it may not be used for crossing the State border.

#### ***Conditions for Posting Bail - Article 192***

A suspect or an accused who is to be placed in custody or has already been placed in custody only for a flight risk may be allowed to remain at liberty or may be released if he personally or someone else on his behalf furnishes a surety that he will not flee before the end of the criminal proceedings and the suspect or accused himself pledges that he will not hide and will not leave his residence without permission.

#### ***The Contents of Bail - Article 193***

(1) Bail shall always be expressed as an amount of money that is set on the basis of the seriousness of the criminal offence, the personal and family circumstances of the suspect or accused, and the property situation of the person posting bail.

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

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

(4) If the accused flees, a decision shall be issued ordering that the amount posted as bail shall be credited to the budget of Republika Srpska.

#### ***Cancellation of Bail - Article 194***

(1) Notwithstanding the bail posted, the suspect or accused shall be placed in custody if without justification he fails to appear when duly summoned, if he is preparing to flee or if there occurs another legal ground for his custody after he has been released.

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

(3) If a prison sentence is pronounced in the verdict, the bail bond shall be cancelled only when the convicted person begins to serve the sentence.

### ***Decision on Bail - Article 195***

(1) In the course of an investigation, a decision on bail and the cancellation of the bail shall be issued by the preliminary proceedings judge and after the issuance of an indictment - by a preliminary hearing judge and after the case has been submitted to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge.

(2) A decision setting the bail and a decision cancelling the bail shall be taken following the hearing of the Prosecutor.

### ***General Provisions - Article 196***

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

(2) Custody shall be ordered or extended by a decision of the Court issued on the motion of the Prosecutor after the Court has heard the suspect or the accused regarding the circumstances surrounding the grounds for proposed custody, except in the case prescribed by Article 197(1) a) of this Code.

(3) The Prosecutor shall submit to the Court a reasoned proposal to extend custody no later than five days before the expiration of the deadline set in the decision on ordering custody. The Court shall forward the proposal to the suspect or the accused and his defence attorney without delay.

(4) The duration of custody must be reduced to the shortest time necessary. It is the duty of all authorities participating in the criminal proceedings and of the agencies extending them legal aid to proceed with particular urgency if the accused is in custody.

### ***CPC-BD***

#### ***Article 123 Types of Measures***

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

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

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

(4) The provisions of this Chapter shall be applied to the suspect as well, as appropriate.

#### ***Article 126 - House Arrest and Travel Ban***

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

(2) In circumstances referred to in Paragraph (1) of this Article, the Court may also, either as an additional measure to the house arrest or as a separate measure, order a temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the prohibition to use the identity card for crossing the State border of Bosnia and Herzegovina (travel ban).

### ***Article 126.a - Other Prohibiting Measures***

(1) When the circumstances of the case so indicate, the Court may order one or more of the following prohibiting measures:

- a) prohibition from performing certain business or official activities, b) prohibition from visiting certain places or areas,
- c) prohibition from meeting with certain persons,
- d) order to report occasionally to a specified State body, and e) temporary withdrawal of the driver's license.

(2) Other prohibiting measures referred to in Paragraph (1) of this Article may be imposed in addition to the house arrest as well as in addition to a travel ban referred to in Article 126 of this Code, or as separate measures.

### ***Article 126.b - Imposing the Prohibiting Measures***

(1) The Court may impose the house arrest, travel ban and other prohibiting measures by a reasoned decision upon the proposal of a party or the defence attorney.

(2) When deciding on custody, the Court may impose the house arrest, travel ban and other prohibiting measures ex officio, instead of ordering or prolonging the custody.

(3) In the decision imposing the prohibiting measures, the suspect or accused shall be warned that the custody may be ordered against him or her if he/she violates the obligation under the imposed measure.

(4) In the course of an investigation, the prohibiting measures shall be ordered and revoked by the preliminary proceedings judge and, after the issuance of an indictment - by a preliminary hearing judge, and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge.

(5) The prohibiting measures may last as long as they are needed, but not later than the date on which the verdict becomes legally binding if a person was not pronounced the sentence of imprisonment and at the latest until the person has been committed to serve the sentence if a person was pronounced the sentence of imprisonment. Travel ban may also last until the pronounced fine is paid in full and/or the property claim and/or confiscation of material gain enforced in full.

(6) The preliminary proceedings judge, preliminary hearing judge, the judge, or the presiding judge must review every two months whether the imposed prohibiting measure is still needed.

(7) A decision ordering, extending or revoking the prohibiting measures may be appealed by a party or the defence attorney, while the Prosecutor may also appeal a decision rejecting his motion for the ordering of a measure. An appeal shall be decided by the Appellate Panel within three days of receipt of the appeal. An appeal shall not stay the execution of decision.

### ***Article 126c - Content of the Prohibiting Measures***

(1) In a decision ordering the house arrest for the suspect or accused, the Court shall specify the place where the suspect or accused shall stay for as long as the measure lasts, as well as the boundaries beyond which the suspect or accused may not go. The place may be restricted to the suspect's or accused's home.

(2) In a decision imposing the travel ban, the Court shall order temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State

border of Bosnia and Herzegovina. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

(3) In a decision prohibiting the suspect or accused from visiting certain places or areas, the Court shall specify places and areas and the distance within which the suspect or accused may not approach them.

(4) In a decision prohibiting the suspect or accused from meeting with certain persons, the Court shall specify the distance within which the suspect or accused may not approach a certain person.

(5) In a decision ordering the suspect or accused to report occasionally to a specified body, the Court shall appoint an official person that the suspect or accused must report to, the time limit in which the suspect or accused must report and the manner of keeping records of reporting.

(6) In a decision ordering temporary withdrawal of a driver's license, the Court shall specify categories for which a driver's license shall be suspended. The decision shall contain personal data of the suspect or accused, and may contain other information as necessary.

#### ***Article 126d Limitations in the Content of the Prohibiting Measures***

(1) The prohibiting measures shall not restrict the right of the suspect or accused to communicate with his/her defence attorney in Bosnia and Herzegovina.

(2) The prohibiting measures shall not restrict the right of the suspect or accused to live in his/her home in Bosnia and Herzegovina, to see members of his/her family and close relatives freely or just in Bosnia and Herzegovina or just in a place specified under the house arrest and unless the proceedings involve the criminal offence committed to the detriment of the family member or close relatives, nor shall they restrict the right of the suspect or accused to perform its professional activity unless the proceedings involve the criminal offence related to the performance of that activity.

#### ***Article 126e Enforcement of Prohibiting Measures***

(1) A decision ordering the house arrest shall be submitted also to the body enforcing the measure.

(2) A decision ordering the travel ban shall be submitted also to the border police, and the temporary withdrawal of travel documents together with the prohibition of issuance of new travel documents, as well as the enforcement of the prohibition to use the identity card for crossing the State border shall be entered into the Central Data Processing Centre.

(3) The measures of house arrest, travel ban, prohibition from visiting certain places or areas, prohibition from meeting with certain persons and temporary withdrawal of a driver's license shall be enforced by a police body.

(4) The measure ordering the suspect or accused to report occasionally to a specified body shall be enforced by a police body or the body that the suspect or accused must report to.

#### ***Article 126f Verification of Prohibiting Measures and Obligation to Submit Report***

(1) At any time, the Court may order verification of prohibiting measures and request the competent body in charge of the enforcement to submit a report. The body shall be obliged to submit the report to the Court without delay.

(2) If the suspect or accused is not fulfilling obligations ordered by the measure, the enforcement body shall inform the Court about it and the Court may pronounce additional prohibiting measure or place him/her into custody.

#### ***Article 126g Special Provision on Travel Ban***

(1) Exceptionally, in emergency cases, in particular in cases involving a criminal offence for which a prison sentence of ten years or more severe punishment may be pronounced, the order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, may be issued by the Prosecutor.

(2) The Prosecutor may issue the order referred to in Paragraph (1) of this Article when ordering the conduct of an investigation, when questioning the suspect or when issuing an apprehension order under Article 125, Paragraph (2) of this Code, or whenever the emergent action is needed for the effective conduct of the process until the beginning of the main trial.

(3) In the course of an investigation, the Prosecutor shall immediately inform the preliminary proceedings judge and after the issuance of an indictment - a preliminary hearing judge and after the case has been referred to the judge or the Panel for the purpose of scheduling the main trial - that judge or the presiding judge, who shall decide about the order within 72 hours. In case the judge fails to issue the said order, the travel documents and the identity card shall be returned.

(4) The order for a temporary withdrawal of travel documents and the identity card together with prohibiting the issuance of new documents that might be used for crossing the State border, shall be executed by a police body, and may also be executed by judicial police. If a suspect or accused refuses to surrender the travel documents and/or the identity card, the order shall be executed by force.

(5) The suspect or accused shall be issued a receipt on withdrawn documents. For the identity card, the suspect or accused shall be issued a special certificate or card that shall replace the identity card in all respects, but it may not be used for crossing the State border.

#### ***Article 127 Conditions for Posting Bail***

A suspect or an accused who is to be placed in custody or has already been placed in custody only for a flight risk may be allowed to remain at liberty or may be released if he personally or someone else on his behalf furnishes a surety that he will not flee before the end of the criminal proceedings and the accused himself pledges that he will not hide and will not leave his residence without permission.

#### ***Article 128 The Contents of Bail***

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

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

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

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

#### ***Article 129 Cancellation of Bail***

(1) Notwithstanding the bail posted, the accused shall be placed in custody if without justification he fails to appear when duly summoned, if he is preparing to flee or if there occurs another legal ground for his custody after he has been released.

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

(3) If a prison sentence is pronounced in the verdict, the bail bond shall be cancelled only when the convicted person begins to serve the sentence.

#### ***Article 130 Decision on Bail***

(1) In the course of an investigation, a decision on bail and the cancellation of the bail shall be issued by the preliminary proceedings judge and after the issuance of an indictment - by a preliminary hearing judge and after the case has been submitted to the judge or the Panel for the purpose of scheduling the main trial - by that judge or the presiding judge.

(2) A decision setting the bail and a decision cancelling the bail shall be taken following the hearing of the Prosecutor.

191. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

192. The reviewing experts concluded that BiH has adequately implemented Art. 30(4) UNCAC.

#### **Paragraph 5 of article 30**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

193. BiH confirmed that it has fully implemented this provision of the Convention.

194. BiH cited the following implementation legislation:

***CC-BiH***  
***Release on Parole - Article 44***

(1) A convicted person who has served one half of his sentence, and as an exception, a convicted person who has served one third of his sentence, may be released from serving the punishment of imprisonment under condition that he does not perpetrate another criminal offence before expiration of the time of the sentence (parole, conditional release).

(2) A convicted person who has served one-half of his sentence, may be released from serving the punishment of imprisonment if in the course of serving his sentence he has improved to the point where he can reasonably be expected to behave himself well after his release from

serving the punishment of imprisonment, and particularly not perpetrate criminal offences. In determining whether to release a convicted person on parole, account shall be taken of his conduct during the term of the sentence, as well as other circumstances indicating that the purpose of the punishment has been attained.

(3) A convicted person who has served one third of his sentence may be released on parole, provided that the conditions referred to in paragraph 1 of this Article exist, and provided that special circumstances relating to the personality of the convicted person manifestly indicate that the purpose of the punishment has been attained.

(4) The person punished by long-term imprisonment may be granted conditional release after three-fifths of the punishment have been served.

***Revocation of Parole - Article 45***

(1) The court shall order revocation of parole if the convicted person, while on parole, perpetrates one or more criminal offences for which a punishment of imprisonment for a term of more than one year or a more severe punishment has been imposed.

(2) The court may order revocation of parole if the parolee perpetrates one or more criminal offences for which a punishment of imprisonment for a term up to one year has been imposed. In deciding whether to revoke the parole or not, the court shall take into special consideration the similarity in the nature of the acts perpetrated, their significance, the motives from which they were perpetrated, as well as other circumstances indicating the appropriateness of revoking parole.

(3) When the court orders revocation of parole, it shall impose punishment considering the previously imposed sentence as an already fixed punishment. The part of the punishment that the convicted person served under the earlier sentence shall be credited toward service of the subsequent sentence, whereas the period of time spent on parole shall not be credited.

(4) The provisions of paragraphs 1 through 3 of this Article shall also be applied when the parolee is tried for a criminal offence perpetrated prior to his release on parole.

(5) If the parolee is convicted to imprisonment for a term up to one year, and if the court does not order revocation of parole, the term of the release on parole shall be extended for a period of time the convicted person spent serving the punishment of imprisonment.

***Amnesty - Article 118***

(1) By an amnesty, to the persons covered by it, a release from criminal prosecution, complete or partial release from the execution of punishment, substitution of the imposed punishment by a less severe one, deletion of the conviction, or cancellation of legal consequences incident to conviction is given.

(2) An amnesty for the criminal offences prescribed under this Code, may be granted by the Parliamentary Assembly of Bosnia and Herzegovina by virtue of a law..

#### ***Pardon - Article 119***

(1) By means of pardon, to the specifically designated persons, complete or partial release from the execution of punishment, substitution of the imposed punishment by a less severe one, deletion of the conviction, or annulment or shortening the duration of the security measure of prohibition to carry out a certain occupation, activity or duty, or a certain legal consequence incident to conviction is given.

(2) A pardon for the criminal offences determined under the criminal legislation of Bosnia and Herzegovina, may be granted by the decision of the Presidency of Bosnia and Herzegovina pursuant to a special law..

#### ***CC - FoBiH***

##### ***Article 45 - Release on Parole***

(1) A convicted person who has served one half of his sentence, and as an exception, a convicted person who has served one third of his sentence, may be released from serving the punishment of imprisonment under condition that he does not perpetrate another criminal offence before expiration of the time of the sentence (parole, conditional release).

(2) A convicted person who has served one-half of his sentence, may be released from serving the punishment of imprisonment if in the course of serving his sentence he has improved to the point where he can reasonably be expected to behave himself well after his release from serving the punishment of imprisonment, and particularly not perpetrate criminal offences. In determining whether to release a convicted person on parole, account shall be taken of his conduct during the term of the sentence, as well as other circumstances indicating that the purpose of the punishment has been attained.

(3) A convicted person who has served one third of his sentence may be released on parole, provided that the conditions referred to in paragraph 1 of this Article exist, and provided that special circumstances relating to the personality of the convicted person manifestly indicate that the purpose of the punishment has been attained.

(4) The person punished by long-term imprisonment may be granted conditional release after three-fifths of the punishment have been served.

##### ***Article 46 - Revocation of Parole***

(1) The court shall order revocation of parole if the convicted person, while on parole, perpetrates one or more criminal offences for which a punishment of imprisonment for a term of more than one year or a more severe punishment has been imposed.

(2) The court may order revocation of parole if the parolee perpetrates one or more criminal offences for which a punishment of imprisonment for a term up to one year has been imposed. In deciding whether to revoke the parole or not, the court shall take into special consideration the similarity in the nature of the acts perpetrated, their significance, the motives from which they were perpetrated, as well as other circumstances indicating the appropriateness of revoking parole.

(3) When the court orders revocation of parole, it shall impose punishment considering the previously imposed sentence as an already fixed punishment. The part of the punishment that the convicted person served under the earlier sentence shall be credited toward service of the subsequent sentence, whereas the period of time spent on parole shall not be credited.

(4) The provisions of paragraphs 1 through 3 of this Article shall also be applied when the parolee is tried for a criminal offence perpetrated prior to his release on parole.

(5) If the parolee is convicted to imprisonment for a term up to one year, and if the court does not order revocation of parole, the term of the release on parole shall be extended for a period of time the convicted person spent serving the punishment of imprisonment.

#### ***Article 122 - Amnesty***

(1) By an amnesty, to the persons covered by it, a release from criminal prosecution, complete or partial release from the execution of punishment, substitution of the imposed punishment by a less severe one, deletion of the conviction, or cancellation of legal consequences incident to conviction is given.

(2) An amnesty for the criminal offences prescribed under this Code and other laws of the Federation may be granted by the Parliament of the Federation while, for the criminal offences prescribed under the laws of cantons, an amnesty may be granted by the Cantonal Assembly.

(3) Amnesty shall be granted by virtue of law.

#### ***Article 123 - Pardon***

(1) By means of pardon, to the specifically designated persons, complete or partial release from the execution of punishment, substitution of the imposed punishment by a less severe one, deletion of the conviction, or annulment or shortening of the duration of the security measure of ban on carrying out a certain occupation, activity or duty, or a certain legal consequence incident to conviction is given.

(2) A pardon for the criminal offences falling within the jurisdiction of the Federation may be granted by the decision of the President of the Federation pursuant to a special law.

#### ***CC - RS***

##### ***Release on Parole - Article 108***

(1) A convicted person who has served one half of his sentence may be released on parole provided that he does not perpetrate another criminal offence before sentence term has expired (parole, conditional release).

(2) A convicted person who has served one-half of his sentence, and exceptionally a convicted person who has served one third of his sentence, may be released on parole, but not before he has served at least one year of the sentence. During the parole, the court may order the measure of intensified supervision by a social welfare body.

(3) The person sentenced by long-term imprisonment may be released on parole after three-fifths of the sentence have been served provided that he does not perpetrate another criminal offence in future.

(4) When deciding whether to release a convicted person on parole, the court shall take into account his conduct during the serving of the sentence, of his discharging of working duties in accordance with his working ability as well as other circumstances indicating that the purpose of the punishment has been attained.

##### ***Revocation of Parole - Article 109***

(1) The court shall order revocation of parole if the convicted person, while on parole, perpetrates one or more criminal offences for which a punishment of imprisonment for a term exceeding one year has been pronounced.

(2) The court may order revocation of parole if the parolee perpetrates one or more criminal offences for which a punishment of imprisonment for a term not exceeding one year has been pronounced. In deciding whether to revoke the parole or not, the court shall take into special consideration the similarity in the nature of the offences perpetrated, their significance, the motives out of which they were perpetrated, as well as other circumstances indicating the justifiability of revoking parole.

(3) When the court orders revocation of parole, it shall pronounce the punishment pursuant to the provisions of Articles 42 and 43, Paragraph 2 of this Code considering the previously pronounced sentence as an already fixed punishment. The part of the punishment that the convicted person served under the earlier sentence shall be credited to the service of the new sentence, whereas the period of time spent on parole shall not be credited.

(4) The provisions of Paragraphs 1 through 3 of this Article shall also be applied when the parolee is tried for a criminal offence perpetrated prior to his release on parole.

(5) If the parolee is convicted to imprisonment for a term not exceeding one year, and the court does not order revocation of parole, the parole shall be extended for a period of time the convicted person spent serving the punishment of imprisonment.

(6) The preceding provisions shall be accordingly applied to revocation of parole to a person serving juvenile imprisonment.

#### ***Amnesty - Article 116***

Persons subject to act of amnesty shall be released from criminal prosecution, completely or partially released from the execution of punishment, or substitution of the pronounced punishment by a less severe one, deletion of sentence or revocation of legal consequences of conviction shall be given.

#### ***Pardon - Article 117***

(1) By means of pardon, to the specifically identified persons, release from criminal prosecution, complete or partial release from the execution of punishment, substitution of the pronounced punishment by a less severe one or by suspended sentence, deletion or revocation of sentence or shortening the duration of the security measure or a certain legal consequence of the conviction shall be given.

(2) A person convicted for the criminal offences with long-term imprisonment shall not be granted pardon before the convicted person has served three fifths of the imprisonment sentence.

#### ***The Law on Pardon of RS (Official Gazette of RS, No.32/94 and 2/95) Article 2***

By means of pardon:

1. Release from criminal prosecution or complete or partial release from the execution of punishment, substitution of the pronounced punishment by a less severe one or by suspended sentence, or deletion of sentence shall be granted;

2. Revocation or defining a shorter duration of the pronounced security measures of prohibition to carrying out a certain occupation, activity or duty, or public presentations, prohibition to driving a motor vehicle imposed on the perpetrator who is a driver by profession, or expulsion of foreign nationals from the country, shall be granted;

Certain legal consequence incidents foreseen by law shall be revoked or their duration shortened.

#### ***CC -BD***

##### ***Release on Parole - Article 45***

(1) A convicted person who has served one half of his sentence, and as an exception, a convicted person who has served one third of his imprisonment, may be released from serving the punishment of imprisonment on condition that he does not perpetrate another criminal offence before the expiration of the sentence (parole, conditional release).

(2) A convicted person who has served one-half of his imprisonment, may be released from serving the punishment of imprisonment if in the course of serving his sentence he has improved to the point where he can reasonably be expected to behave himself well after his release from serving the punishment of imprisonment, and particularly not to perpetrate criminal offences. In determining whether to release a convicted person on parole, account shall be taken of his conduct during the term of the sentence, as well as other circumstances indicating that the purpose of the punishment has been attained.

(3) A convicted person who has served one third of his sentence may be released on parole, provided that the conditions referred to in paragraph 1 of this Article exist, and provided that special circumstances relating to the personality of the convicted person manifestly indicate that the purpose of the punishment has been attained.

(4) The person punished by long-term imprisonment may be granted conditional release after three-fifths of the punishment has been served.

##### ***Revocation of Parole - Article 46***

(1) The court shall order revocation of parole if the convicted person, while released on parole, perpetrates one or more criminal offences for which a punishment of imprisonment for a term exceeding one year or a more severe punishment has been imposed.

(2) The court may order revocation of parole if the parolee perpetrates one or more criminal offences for which a punishment of imprisonment for a term of up to one year has been imposed. In deciding whether to revoke the parole or not, the court shall take into special consideration the similarity in the nature of the acts perpetrated, their significance, the motives from which they were perpetrated, as well as other circumstances indicating the appropriateness of revoking parole.

(3) When the court orders revocation of parole, it shall impose punishment considering the previously imposed sentence as an already fixed punishment. The part of the punishment that the convicted person served under the earlier sentence shall be credited toward service of the subsequent sentence, whereas the period of time spent on parole shall not be credited.

(4) The provisions of paragraphs 1 through 3 of this Article shall also be applied when the parolee is tried for a criminal offence perpetrated prior to his release on parole.

(5) If the parolee is convicted to imprisonment for a term up to one year, and if the court does not order revocation of parole, the term of the release on parole shall be extended for a period of time the convicted person spent serving the punishment of imprisonment.

##### ***Amnesty - Article 122***

(1) Persons covered by an act of amnesty shall be given a release from criminal prosecution, complete or partial release from the execution of punishment, substitution

of the imposed punishment for a less severe one, deletion of the conviction, or cancellation of a certain legal consequence incident to conviction.

(2) An amnesty shall be granted by virtue of law.

### ***Pardon - Article 123***

(1) By means of pardon, specifically designated persons shall be given complete or partial release from the execution of punishment, substitution of the imposed punishment for a less severe one, or release from the execution of punishment, substitution of the imposed punishment for a less severe one or a suspended sentence, or a deletion of the conviction, or annulment or shortening the duration of the security measure of prohibition to carry out a certain occupation, activity or duty, or a ban on driving a motor vehicle for the perpetrators who are professional drivers, or a certain legal consequence incident to conviction.

### ***The Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures***

consolidated version (Official Gazette of BiH, No. 12/10)

#### ***Article 123***

(General Provision on Conditional Release)

In order to encourage personal efforts of prisoners in social reintegration when at liberty, prisoners who are reasonably expected to resettle successfully and not commit criminal offences, may be conditionally released in accordance with a criminal code.

### ***Law on Pardon of Bosnia and Herzegovina***

(Official Gazette of BiH, No. 93/05) (Forms of pardons)

By means of pardon, specifically designated persons shall be:

- a) given complete or partial release from the execution of punishment or substitution of the pronounced punishment by a less severe one or by suspended sentence;
- b) granted revocation or shorter duration of the pronounced security measures of prohibition to carrying out a certain occupation, activity or duty;
- c) granted revocation of a certain legal consequence incidence to conviction or shortening its duration;
- d) granted deletion of the conviction.

### ***The Law on Execution of Criminal Sanctions of FoBiH***

VII CONDITIONAL RELEASE, RELEASE OF CONVICTED PERSONS AND ASSISTANCE AFTER HAVING SERVED PRISON

#### ***Conditional Release - Article 108***

Pursuant to the provisions of the Criminal Code of the Federation the conditional release of the convicted persons shall be decided on by the Commission for Conditional Release. The Commission appointed by the Government of the Federation of Bosnia and Herzegovina (hereinafter: the Government of the Federation) shall decide on the conditional release of persons who serve their sentences in the Establishments of the Federation. The Commission for Conditional Release has a chairman and four members and their deputies. The Commission for Conditional Release shall be appointed by representatives of the Supreme Court of the Federation of Bosnia and Herzegovina, Federation Prosecutor's Office, Federation Ministry and other Federation administrative authorities whose jurisdiction includes issues of social welfare and protection. The Commission for Conditional Release shall issue its Rules of Procedure.

### ***Article 109***

The Commission for Conditional Release shall decide on petitions by the convicted persons or members of their immediate family or on proposals of the Head of the Establishment. Petitions or proposals shall be forwarded to the Commission for Conditional Release through the Establishment. Along with the petition, the Establishment shall also provide information on the success achieved in the treatment of the convicted person and other information relevant for the decision of the Commission, as well as its opinion on the grounds for the petition.

### ***Article 110***

The Commission for Conditional Release may render one decision if it decides on the release of several convicted persons. A Decision shall be delivered to the Establishment which is obliged to, in case of a positive decision, notify in writing the convicted person and the sentencing Court. If a decision is negative, only the convicted person shall be notified accordingly. If the petition was submitted by a family member, the Federation Ministry shall inform them of the outcome.

### ***Article 111***

No appeal lies from the decision of the Commission for Conditional Release, nor can an administrative litigation be instigated thereof. 2. Release of convicted persons

## ***THE LAW ON EXECUTION OF CRIMINAL SANCTIONS OF RS***

Official Gazette of RS, No. 12/10/

**CONDITIONAL RELEASE AND RELEASE OF CONVICTED PERSONS - Parole - Article 154**

(1) In order to encourage personal efforts of convicted persons in social reintegration when at liberty, convicted persons who are reasonably expected not to commit criminal offences, may be conditionally released in accordance with the provisions of the Criminal Code and this Law.

(2) A conditional release of convicted persons shall be decided on by a Commission for Conditional Release appointed by the Minister.

(3) The Commission for Conditional Release consists of five members, which includes a representative of the Ministry, a Judge of the Supreme Court of Republika Srpska or a judge of the District Court, and three independent members from the relevant professional fields.

(4) One of the members of the Commission for Conditional Release is a chairman.

(5) Quorum for decision-making consists of three members.

(6) The Commission for Conditional Release is appointed for a period of four years. (7) The Commission for Conditional Release adopts its Rules of Procedure.

### ***Article 155***

(1) A decision on the conditional release shall be rendered at the proposal of the Head of the Establishment, or upon petition of the convicted person.

(2) Along with a petition or a proposal, the Establishment shall also provide the Commission for Conditional Release with information on the success achieved in the treatment of the convicted person and other information relevant for the decision of the

Commission for Conditional Release, as well as its opinion on the grounds for the petition.

(3) When deciding on the conditional release, the Commission for Conditional Release shall particularly assess the following:

- a) prior convictions,
- b) conduct during the term of the sentence,
- c) personal involvement in the process of re-education,
- g) attitude towards the committed criminal offence,
- d) assessment of the possibility of recidivism,
- f) the remaining part of the non-served part of the sentence,
- e) an opinion on the grounds for the petition or proposal for conditional release, and f) measures within the post penal protection

#### ***Article 156***

(1) The Commission shall issue a reasoned decision on conditional release.

(2) A Decision on conditional release shall be forwarded to the Establishment which is obliged to deliver one copy to the convicted person on the occasion of the release, to the Court which sentenced the conditionally released person to the term of imprisonment, to the Court which pronounced the first instance verdict, the police organ and the social service responsible for the permanent or temporary place of residence.

(3) In case of rejection of the petition or proposal, a reasoned decision shall be delivered to the petitioner or the party submitting the proposal.

#### ***Article 157***

(1) No appeal lies from the Decision of the Commission for Conditional Release, nor an administrative litigation may be initiated thereof.

(2) If a proposal or a petition for a conditional release is dismissed, a new proposal or petition cannot be filed prior to expiry of four months in case of a sentence for up to two years in prison, that is, six months in case of a sentence to a term of imprisonment of two and more years, as of the date of a binding decision.

#### ***Article 158***

(1) A convicted person who behaves himself well, who is a hard worker and active participant in the re-education process and who served at least 4/5 of his prison sentence, upon proposal of the treatment service or a petition of the convicted person, may be conditionally released from prison no more than three months prior to expiry of his sentence.

(2) By a decision, the Head of the Establishment shall decide on the conditional release as referred to in Paragraph 1 of this Article, taking into account the elements under Article 155(3) of this Law.

(3) Provisions of this Article on conditional release shall not apply to persons whose monetary fines have been substituted with a prison penalty and to persons granted a conditional release by the Commission for Conditional Release.

#### ***Article 159***

(1) A convicted person granted a conditional release shall be obliged to, every 15 days during the conditional release, report to the police station and the social welfare service

responsible for the convicted person's permanent or temporary place of residence, which shall be obliged to inform the Establishment in case of non-reporting in time.

(2) While on parole, a convicted person shall not be allowed to leave the territory of Republika Srpska or BiH in case of foreign nationals or persons without citizenship, who do not have a permanent place of residence in Republika Srpska, that is, BiH.

(3) The Establishment in which the convicted person served his prison term until the conditional release, shall be obliged, in cooperation with the bodies as referred to in paragraph 1 of this Article, to monitor realisation and achievement of the purpose of conditional release.

(4) Convicted persons shall not have the rights under this law.

### ***Article 160***

(1) If a convicted person commits a serious disciplinary offence in the period between the date of the issuance of the Decision as referred to in Article 158 of this Law and the date of the conditional release, the Head of the Establishment shall mandatorily revoke a Decision on conditional release.

(2) If a convicted person commits a serious disciplinary offence in the period between the date of the issuance of a Decision by the Commission for Conditional Release and the date of the conditional release, the Head of the Establishment shall be obliged to file with the Minister a proposal for revocation of the Decision on conditional release.

(3) By a Decision, the Minister shall decide on the proposal referred to in Paragraph 2 of this Article.

(4) If, while on parole, a convicted person fails to meet his obligations as stipulated in Article 159 of this Law, commits the minor offences of breach of the public peace and order with the elements of violence, and in other cases when assessed as justifiable, the Minister may, at the proposal of the Head of the Establishment, revoke the Decision on conditional release.

(5) A Decision on revocation of the conditional release as referred to in Paragraph 4 of this Article shall be forwarded to the Establishment which shall deliver one copy each to the convicted person, the Court which sentenced the conditionally released person to term of imprisonment, the Court that pronounced the first instance verdict, the police organ and the social welfare service being territorially responsible for his permanent or temporary place of residence.

(6) Upon receipt of the Decision on revocation of the conditional release, a convicted person shall be obliged to immediately report to the Establishment to serve the unserved portion of the original term of imprisonment.

(7) The unserved portion of the original term of imprisonment shall mean the time from the date of the conditional release to the date of regular expiry of the term of imprisonment.

(8) A convicted person may file with the Minister an appeal from the Decision on revocation of the conditional release as referred to in Article 4 of this Law, within three days from receipt of the Decision.

(9) An appeal from the Decision on revocation of the conditional release shall not stay the execution.

(10) If a convicted person fails to report to the Establishment, the Establishment shall be obliged to order the issuance of a warrant.

**THE LAW OF THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA ON THE EXECUTION OF CRIMINAL SANCTIONS, DETENTION AND OTHER MEASURES**

**Article 21 (General Provision on Conditional Release)**

In order to encourage personal efforts of prisoners in social reintegration when at liberty, prisoners who are reasonably expected to behave themselves well while at liberty and not commit criminal offences, may be conditionally released in accordance with a criminal code.

**LAW ON PARDON OF THE BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA**

**Article 4 (Forms of pardons)**

By means of pardon, specifically designated persons shall be:

- a) given complete or partial release from the execution of punishment or substitution of the pronounced punishment by a less severe one or by suspended sentence;
- b) granted revocation or shorter duration of the pronounced security measures of prohibition to carrying out a certain occupation, activity or duty;
- c) granted revocation of a certain legal consequence incidence to conviction or shortening its duration;
- d) granted deletion of the conviction.

195. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

196. The reviewing experts observed that the conditions in the CCs are primarily focusing on the offender's behaviour in the course of execution of punishment, as well as his foreseeable conduct, while the gravity of the crime is not taken into account when deciding upon releasing the him on parole. During the country visit, it was confirmed that it is indeed the behaviour of the offender, not the offence, that determines his eligibility for parole.

197. The reviewing experts concluded that BiH has partially implemented Art. 30(5) UNCAC.

**Paragraph 6 of article 30**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

198. BiH confirmed that it has fully implemented this provision of the Convention.
199. BiH cited the following implementation legislation:

***The Law on Civil Service in the Institutions of BiH***  
***Article 58 - Preventive Suspension***

1. If an order to conduct an investigation against a civil servant is issued for a criminal offence of corruption or a criminal offence against official or other responsibility, or if a civil servant is placed into custody, the appointing authority shall suspend him immediately.
2. Once a procedure provided for under Article 57 of this Law is initiated, a civil servant shall be immediately suspended from duties by the appointing authority in the following cases:
  - a) Criminal proceedings for a crime punishable by a term of imprisonment of at least five years are initiated against the civil servant;
  - b) The civil servant was caught committing a crime punishable by a term of imprisonment of at least five years;
  - c) Reasonable grounds exist indicating that crime has been committed.
3. Once an action provided for under Article 55 of this Law is initiated, the appointing authority shall suspend the civil servant if:
  - a) there exists a grounded suspicion that the civil servant might breach his official duties again during the disciplinary action;
  - b) there exists a grounded suspicion that the civil servant might influence the witnesses;
  - c) there exist other reasons the appointing authority considers to be reasonable.
4. In case of civil servants holding the managerial posts, suspension shall be imposed by the appointing body;
5. In case of preventive suspension:
  - a) The suspended civil servant shall receive his full salary until such time as the termination of the criminal proceedings or a disciplinary action;
  - b) The disciplinary action shall be suspended until such time as a final ruling by a competent Court is issued.

***The Law on Civil Service of FoBiH***  
***Article 59 - Preventive Suspension***

1. Once a procedure as referred to in Article 58 of this Law has been initiated, the civil servant shall be immediately suspended from duties by the head of the civil service authority in the following cases:
  - a) The criminal proceedings for a crime committed during his/her duties are initiated against the civil servant and/or;
  - b) The civil servant is held in custody;
2. Once a procedure as referred to in Article 58 of this Law is initiated, a civil servant may be suspended from duties by the civil service authority in the following cases:
  - a) The criminal proceedings for a crime punishable by a term of imprisonment of at least five years are initiated against the civil servant;
  - b) The civil servant was caught in flagrante delicto committing a crime punishable by a term of imprisonment of at least five years, and
  - c) There exist serious reasons indicating that the crime has been committed.
3. In case of preventive suspension:
  - a) The suspended civil servant shall receive his/her full salary;
  - b) The disciplinary action shall be suspended until such time as a final ruling is reached by a court having jurisdiction thereof.

***THE LAW ON CIVIL SERVICE IN THE ADMINISTRATION BRČKO DISTRICT***  
***Article 104 (Cases of Removal)***

(1) By a decision of the Head of the administrative body, an officer or employee shall mandatorily be removed from service if:

- a) an order to conduct an investigation has been issued against him for a criminal offence he committed while performing his official duties or other responsible duties,
- b) a disciplinary action has been instigated against him due to a serious breach of his official duties, wherein the nature of the breach is such that his stay in the service during the disciplinary action could damage the interests of the service, which shall be evaluated by the officer in charge of the ethics issues,
- c) he has been ordered into custody during the investigation procedure.

(2) Removal from service shall last until completion of the criminal proceedings or a disciplinary action instigated due to a serious violation of official duties, that is, until expiry of a custody time.

***The Law on Civil Servants of RS***  
***Article 74***

A civil servant shall be removed from the Republic administrative authorities in the following cases:

- a) if an indictment for a criminal offence committed while performing his official duties and tasks has been confirmed,
- b) if a civil servant is held in custody, or
- c) if his presence at work would damage the interests of the authority or disturb the conduct of the disciplinary action.

***Article 75***

A civil servant may be removed from the Republic administrative authorities in the following cases:

- a) if an indictment against the civil servant has been confirmed for a criminal offence punishable by a term of imprisonment of at least three years, or
- b) if a disciplinary action has been initiated due to a serious breach of official duties until such time as the termination of the disciplinary action.

***LAW ON THE HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA***

***Article 76 - Mandatory Suspension***

(1) A judge or prosecutor who is being held in pre-trial confinement shall be suspended from duty. Such suspension shall last for the same length of time as the person's pre-trial confinement.

(2) The suspension may be extended under Article 77 of this Law if the judge or prosecutor is released from pre-trial confinement.

***Article 77 - Discretionary Suspension***

A judge or prosecutor may be suspended from duty if:

- (a) if a criminal investigation is initiated against the judge or prosecutor;
- (b) if an indictment for a criminal act is brought by a competent prosecutor;
- (c) if a procedure for his or her dismissal has been initiated;

- (d) if a disciplinary proceeding has been initiated for a disciplinary violation, and the Council determines that disciplinary liability cannot be properly adjudicated without suspension of the judge or prosecutor during the proceedings; or
- (e) if the performance of official functions is impaired because of his or her mental, emotional, or physical condition.

#### ***Article 78 - Initiation of Suspension Proceedings***

- (1) The First Instance Disciplinary Panel of the Council may suspend a judge or a prosecutor upon its own initiative, upon the request of the Office of Disciplinary Counsel, or upon the request of the Court President or the Chief Prosecutor who has authority over the judge or prosecutor in question.
- (2) The relevant Court President or Chief Prosecutor shall immediately, upon learning of any of the events listed in Articles 76 and 77 of this Law, forward the information to the Council.

#### ***Article 79 - Suspension Decisions and Appeals***

- (1) A decision on suspension from duty made in accordance with the provisions of Articles 76 and 77 shall be taken by the First Instance Disciplinary Panel of the Council.
- (2) All appeals of decisions relating to suspensions shall be made to the Second Instance Disciplinary Panel of the Council. An appeal shall not stay the enforcement of the decision referred to in paragraph (1) of this Article.
- (3) The decision of the Second Instance Disciplinary Panel may be contested by filing a complaint with the Court of Bosnia and Herzegovina.

#### ***Article 80 - Limits on Length of Suspension***

- (1) The suspension of a judge or prosecutor may be ordered for any period not to exceed the date of the finalisation of the disciplinary proceedings which form the basis of the suspension.
- (2) The First Instance Disciplinary Panel may, at its discretion, review a suspension of a judge or prosecutor ordered under Article 77 of this Law, and may after such review amend, annul or affirm such suspension.

#### ***Article 81 - Suspension of Salary and Other Emoluments***

- (1) In the event that a judge or prosecutor is found guilty of a criminal offence by a first instance court, the First Instance Disciplinary Panel may order that the payment of salary and other emoluments to that judge or prosecutor be suspended, pending a decision on the appeal rendered by a second instance court.
- (2) In the event that any appeal is successful, the judge or prosecutor concerned shall be entitled to the immediate payment of all salary and other emoluments which were withheld under paragraph (1) of this Article.

200. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

201. Art. 30(6) UNCAC is implemented through The Law on Civil Service in the Institutions of BiH (Art. 58 - Preventive Suspension) and corresponding provisions in the laws of the other entities.
202. The BiH authorities explained that an official will be suspended from his activity in case an investigation is ordered against him on the suspicion of corruption. According to the old law, the appointing authority had to be informed about any investigations as soon as they were launched. In order not to jeopardise them, this provision was modified and there is no longer the need for that.
203. The reviewing experts concluded that BiH has implemented Art. 30(6) UNCAC.

### **Paragraph 7 of article 30**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

- (a) *Holding public office;*  
(b) *Holding office in an enterprise owned in whole or in part by the State.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

204. BiH confirmed that it has fully implemented this provision of the Convention.
205. BiH cited the following implementation legislation:

***CC-BiH***  
***Taking Effect of the Legal Consequences Incident to Conviction - Article 113***

- (1) Sentences for particular criminal offences may entail as legal consequences the termination or loss of certain rights, or bar on the acquisition of certain rights.
- (2) Legal consequences incident to conviction may not occur when the perpetrator of a criminal offence has been imposed a fine or a suspended sentence, or when the court has released him from punishment.
- (3) Legal consequences incident to conviction may be prescribed only by law and they take effect by the force of the law in which they were set forth.

***Types of Legal Consequences Incident to Conviction - Article 114***

- (1) Legal consequences incident to conviction relating to the termination or loss of certain rights are the following: Cessation of the performance of particular jobs or functions in government agencies, business enterprises or other legal persons; termination of employment or cessation of the performance of a particular profession, occupation or activity; deprivation of permits or licenses that are issued based on a

decision of government agencies or status that is recognised by virtue of a decision of government agencies; deprivation of decorations.

(2) Legal consequences incident to conviction which consist of a bar on the acquisition of particular rights are as follows: bar on the performance of certain jobs or functions in government agencies, business enterprises or other legal persons; bar on the acquisition of a particular office, title, position or promotion in service; bar on the acquisition of permits or licenses that are issued based on a decision of government agencies or status that is recognised by virtue of a decision of government agencies.

#### ***Beginning and Duration of Legal Consequences Incident to Conviction - Article 115***

(1) The legal consequences incident to conviction take effect on the day of effectiveness of the sentence.

(2) The legal consequences incident to conviction which consist of a bar on the acquisition of particular right may not exceed ten years from the day on which the punishment has been served, pardoned or amnestied, or has been barred by the statute of limitation, except for certain legal consequences for which law provides a shorter period of duration.

(3) The legal consequences incident to conviction cease by the deletion of the sentence.

#### ***Termination of Security Measures and Legal Consequences Incident to Conviction on the Basis of the Court Decision - Article 116***

(1) The court may decide to discontinue the application of the security measure of a prohibition to carry out a certain occupation, activity or duty, if three years have elapsed from the day on which the security measure took effect.

(2) The court may decide to terminate the legal consequence of a sentence consisting in the bar on the acquisition of a certain right after the lapse of three years from the day on which the punishment has been served, pardoned or amnestied, or barred by the statute of limitation.

(3) In deciding whether to order the termination of a security measure or a legal consequence of a sentence, the court shall take into account the conduct of the convicted person after the conviction, his readiness to compensate damage caused by the perpetration of a criminal offence and to return material gain acquired by the perpetration of a criminal offence, as well as other circumstances which indicate the justifiability of the termination of a security measure or a legal consequence of a sentence.

(4) The termination of legal consequences incident to conviction in no way affects the rights of third parties originating from the judgement.

#### ***CC- FoBiH***

#### ***Article 117 - Taking Effect of the Legal Consequences Incident to Conviction***

(1) Sentences for particular criminal offences may entail as legal consequences the termination or loss of certain rights, or ban on gaining certain rights.

(2) Legal consequences incident to conviction may not occur when the perpetrator of a criminal offence has been imposed a fine, judicial admonition or a suspended sentence, or when the perpetrator was released from punishment.

(3) Legal consequences incident to conviction may be prescribed only by law and they take effect by the force of the law in which they were set forth.

### ***Article 118 - Types of Legal Consequences Incident to Conviction***

(1) Legal consequences incident to conviction relating to the termination or loss of certain rights are the following:

- a) Cessation of the performance of particular jobs or functions in government agencies, trading or business enterprises or other legal persons;
- b) Termination of employment or cessation of the performance of a particular profession, occupation or activity;
- c) Deprivation of permits or licenses that are issued based on a decision of government agencies or a status that is recognised by virtue of a decision of government agencies
- d) Deprivation of decorations.

(2) Legal consequences incident to conviction which consist of a ban on gaining particular rights are as follows:

- a) Ban on the performance of certain jobs or functions in government agencies, business enterprises or other legal persons;
- b) Ban on the acquisition of a particular office, title, position or promotion in service;
- c) Ban on the acquisition of particular permits or licenses that are issued by a decision of government bodies, ban on acquisition of particular permits or licenses that are issued by a decision of government agencies or a status that is recognised by virtue of a decision of government agencies .

### ***Article 119 - Beginning and Duration of Legal Consequences Incident to Conviction***

(1) The legal consequences incident to conviction take effect on the day of entering into force of the judgment.

(2) The legal consequences incident to conviction which consist of a ban on gaining particular right last not more than ten years from the day on which the punishment has been

served, pardoned or amnestied, or has been barred by the statute of limitation if, for certain legal consequences, a shorter duration is not prescribed by law .

(3) The legal consequences incident to conviction cease by the deletion of the sentence.

### ***Article 120 - Termination of Security Measures and Legal Consequences Incident to Conviction on the Basis of the Court Decision***

(1) The court may decide to discontinue the application of the security measure of a ban to carry out a certain occupation, activity or duty, if three years have elapsed from the day on which the security measure was imposed.

(2) The court may decide to terminate the legal consequence incident to conviction consisting in the ban on gaining certain right after the lapse of three years from the day on which the punishment has been served, pardoned or amnestied, or barred by the statute of limitation.

(3) In deciding whether to order the termination of a security measure or a legal consequence incident to conviction, the court shall take into account the conduct of the convicted person after the conviction, his readiness to compensate damage caused by the perpetration of a criminal offence and to return material gain acquired through the perpetration of a criminal offence, as well as other circumstances which indicate the justifiability of the termination of a security measure or a legal consequence incident to conviction.

(4) The termination of legal consequences incident to conviction in no way affects the rights of third parties originating from the judgement.

### ***CC of RS***

#### ***Legal Consequences of Conviction Taking Effect - Article 97***

- (1) Conviction for particular criminal offences or on particular punishments may entail, as legal consequences, the termination or loss of certain rights, or ban on the acquisition of certain rights.
- (2) Legal consequences of conviction may not take effect when a fine, suspended sentence or court admonition has been pronounced against the perpetrator of a criminal offence, or when the court has released him from punishment.
- (3) Legal consequences of conviction may be prescribed only by law and they take effect by the force of the law in which they were set forth.

#### ***Types of Legal Consequences of Conviction - Article 98***

- (1) Legal consequences of conviction relating to the termination or loss of certain rights are the following:
  - 1) Cessation of the performance of particular jobs or functions in governmental bodies and authorities, business enterprises or other legal persons;
  - 2) Termination of employment or cessation of the performance of a particular profession, occupation or activity;
  - 3) Loss of rank of military officers or civil servants in the army;
  - 4) Deprivation of medals;
- (2) Legal consequences of conviction which consist of a ban on the acquisition of particular rights are as follows:
  - 1) Ban on performing certain jobs or functions in governmental bodies and authorities, business enterprises or other legal persons;
  - 2) Ban on giving statements in the press, radio, TV and public events, ban on performing publishing activities or ban on participating in founding an association;
  - 3) Ban on acquiring a certain occupation or promotion in service;
  - 4) Ban on acquiring particular permits or licenses that are issued by a decision of governmental bodies.

#### ***Commencement and Duration of Legal Consequences of Conviction - Article 99***

- (1) The legal consequences of conviction shall take effect on the day the sentence becomes final.
- (2) Duration of the legal consequences of conviction which consist of a ban on acquisition of particular rights may not exceed five years from the day on which the sentence has been served, pardoned or amnestied, or has been barred by the statute of limitations, except if for certain legal consequences the law provides a shorter period of duration.
- (3) The legal consequences of conviction shall cease by the deletion of the sentence.

### ***CC of BD***

#### ***Taking Effect of the Legal Consequences Incident to Conviction - Article 117***

- (1) Convictions for particular criminal offences may entail as legal consequences the termination or loss of certain rights, or bar on the acquisition of certain rights.
- (2) Legal consequences incident to conviction may not occur when the perpetrator of a criminal offence has been imposed a fine or a suspended sentence, or when the court has released him from punishment.
- (3) Legal consequences incident to conviction may be prescribed only by law and they take effect by the force of the law in which they were set forth.

### ***Types of Legal Consequences Incident to Conviction - Article 118***

(1) Legal consequences incident to conviction relating to the termination or loss of certain rights are the following:

- a) cessation of the performance of particular jobs or functions in government agencies, business enterprises or other legal entities;
- b) termination of employment or cessation of the performance of a particular title, occupation or position;
- c) deprivation of permits or licenses that are issued based on a decision of government agencies or a status that is recognised by virtue of a decision of government agencies
- d) Deprivation of decorations.

(2) Legal consequences incident to conviction which consist of a bar on the acquisition of particular rights are as follows:

- a) bar on the performance of certain jobs or functions in government agencies, business enterprises or other legal entities;
- b) bar on the acquisition of a particular title, occupation or position or promotion in service;
- c) bar on the acquisition of particular permits or licenses that are issued by a decision of government agencies or a status that is recognised by a decision of government agencies..

### ***Beginning and Duration of Legal Consequences Incident to Conviction - Article 119***

(1) Legal consequences incident to conviction shall take effect on the day of effectiveness of the sentence.

(2) Legal consequence incident to conviction which consist of a bar on the acquisition of particular right may not exceed ten years from the day on which the punishment has been served, pardoned or has fallen under the statute of limitations, except for certain legal consequences for which law provides a shorter period of duration.

(3) Legal consequences incident to conviction shall cease by the deletion of the sentence.

### ***Termination of Security Measures and Legal Consequences Incident to Conviction on the Basis of the Court Decision - Article 120***

(1) The court may decide to discontinue the application of the security measure of a prohibition to carry out a certain occupation, activity or duty, if three years have elapsed from the day on which the security measure took effect.

(2) The court may decide to terminate the legal consequence of a sentence consisting in the bar on the acquisition of a certain right after the lapse of three years from the day on which the sentence has been served, pardoned or fallen under the statute of limitations.

(3) In deciding whether to order the termination of a security measure or a legal consequence incident to conviction, the court shall take into account the conduct of the convicted person after the conviction, his readiness to compensate damage caused by the perpetration of a criminal offence and to return material gain acquired by the perpetration of a criminal offence, as well as other circumstances which indicate the justifiability of the termination of a security measure or a legal consequence incident to conviction.

(4) The termination of legal consequences incident to conviction shall in no way affect the rights of third parties originating from the judgement.

BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

206. The reviewing experts concluded that BiH has implemented Art. 30(7) UNCAC.

**Paragraph 8 of article 30**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

**(a) Summary of information relevant to reviewing the implementation of the article**

207. BiH confirmed that it has fully implemented this provision of the Convention.

208. BiH cited the following implementation legislation:

***The Law on Civil Service in the Institutions of BiH  
Article 58 - Preventive Suspension***

1. If an order to conduct an investigation against a civil servant is issued for a criminal offence of corruption or a criminal offence against official or other responsibility, or if a civil servant is placed into custody, the appointing authority shall suspend him immediately.

2. Once a procedure provided for under Article 57 of this Law is initiated, a civil servant shall be immediately suspended from duties by the appointing authority in the following cases:

- a) Criminal proceedings for a crime punishable by a term of imprisonment of at least five years are initiated against the civil servant;
- b) The civil servant was caught committing a crime punishable by a term of imprisonment of at least five years;
- c) Reasonable grounds exist indicating that crime has been committed.

3. Once an action provided for under Article 55 of this Law is initiated, the appointing authority shall suspend the civil servant if:

- a) there exists a grounded suspicion that the civil servant might breach his official duties again during the disciplinary action;
- b) there exists a grounded suspicion that the civil servant might influence the witnesses;
- c) there exist other reasons the appointing authority considers to be reasonable.

4. In case of civil servants holding the managerial posts, suspension shall be imposed by the appointing body;

5. In case of preventive suspension:

- a) The suspended civil servant shall receive his full salary until such time as the termination of the criminal proceedings or a disciplinary action;
- b) The disciplinary action shall be suspended until such time as a final ruling by a competent Court is issued.

***The Law on Civil Service of FoBiH Article 59 - Preventive Suspension***

1. Once a procedure as referred to in Article 58 of this Law has been initiated, the civil servant shall be immediately suspended from duties by the head of the civil service authority in the following cases:
  - a) The criminal proceedings for a crime committed during his/her duties are initiated against the civil servant and/or;
  - b) The civil servant is held in custody;
2. Once a procedure as referred to in Article 58 of this Law is initiated, a civil servant may be suspended from duties by the civil service authority in the following cases:
  - a) The criminal proceedings for a crime punishable by a term of imprisonment of at least five years are initiated against the civil servant;
  - b) The civil servant was caught in flagrante delicto committing a crime punishable by a term of imprisonment of at least five years, and
  - c) There exist serious reasons indicating that the crime has been committed.
3. In case of preventive suspension:
  - a) The suspended civil servant shall receive his/her full salary;
  - b) The disciplinary action shall be suspended until such time as a final ruling is reached by a court having jurisdiction thereof.

***THE LAW ON HIGH JUDICIAL AND PROSECUTORIAL COUNCIL OF BOSNIA AND HERZEGOVINA***

(Official Gazette of BiH, No. 25/04, 93/05, 48/07 and 15/08)

***Article 54***

General provisions on disciplinary responsibility for disciplinary offences

A judge, prosecutor, additional judge or juror, including presidents of the courts, chief prosecutors and their deputies, shall be held disciplinary responsible for disciplinary offences committed intentionally or out of negligence.

***The Law on Police Officers of Bosnia and Herzegovina***

(Official Gazette of BiH, No. 27/04)

***Article 62 - Conditions for Removal***

The competent authority to appoint the Head and Deputy Head may dismiss him/her before the expiration of the mandate:

- a) upon his/her own request;
- b) if he/she permanently loses the capacity to execute his/her duties and responsibilities;
- c) if he/she fails to implement measures for supervision of the police body or for control of police powers;
- d) if he/she has been held disciplinary responsible by a final decision;
- e) if he/she has been pronounced a final sentence of imprisonment for a criminal offence

***THE LAW ON POLICE OFFICERS OF REPUBLIKA SRPSKA***

***Article 96***

(1) A police officer may be temporarily suspended from performing the duties and tasks of his/her office or he/she may be suspended from the Ministry if the criminal or disciplinary proceedings have been instigated against him/her if, taking into account the nature of the criminal offence or the nature of severe violation of his/her duties, including the circumstances of the criminal offence, or severe violation of duties, there are grounds to believe that his/her presence in the Ministry would be harmful to the interests of the service or internal procedure.

(2) The Head of the basic organisational unit shall be responsible for making a decision on temporary suspension as referred to in Paragraph 1 of this Article.

(3) Suspension of a police officer imposed pursuant to Paragraph 1 of this Article may last until such time as the termination of the disciplinary or criminal proceedings.

(4) During the suspension period, official arms, badge and official ID of the police officer shall be ceased and wearing uniform banned.

(5) A police officer who received a Decision on suspension as referred to in Paragraph 1 of this Article may file an appeal against the Decision on suspension to the Police Board referred to in Article 106 of this Law within fifteen days of the receipt of the Decision. An appeal shall not stay the execution of the Decision. .

***THE LAW ON CIVIL SERVICE IN ADMINISTRATIVE BODIES OF BRČKO DISTRICT OF BiH (Official Gazette of BDBiH, No. 28/06) Article 104. (Cases of Removal)***

(1) By a decision of the Head of the administrative body, an officer or employee shall mandatorily be removed from service if:

- a) an order to conduct an investigation has been issued against him for a criminal offence he committed while performing his official duties or other responsible duties (Amendments to the Law - Official Gazette of BDBiH, No. 44/08);
- b) a disciplinary action has been instigated against him due to a serious breach of his official duties, wherein the nature of the breach is such that his stay in the service during the disciplinary action could be harmful to the interests of the service, which shall be evaluated by the officer in charge of the ethics issues,
- c) he has been ordered into custody during the investigation procedure.

(2) Removal from service shall last until such time as the completion of the criminal proceedings or a disciplinary action instigated due to a serious violation of official duties, that is, until expiry of a custody time.

***THE LAW ON POLICE OFFICIALS OF BDBiH***  
(Official Gazette of BDBiH, 41/07)  
***Article 134. Grounds for Suspension***

(1) A police official may temporarily be suspended from his assignments and duties or temporarily suspended from the Police if criminal or disciplinary proceedings have been initiated against him.

(2) Notwithstanding paragraph 1 of this Article, upon proposal of the Head of the organisational unit whose member the police official is or upon proposal of the Head of the organisational unit in charge of internal control, a police official may be temporarily suspended from his assignments and duties or suspended from the Police even prior to instigation of criminal or disciplinary proceedings if there exist grounds for suspicion that he committed a criminal offence or a serious violation of official duties and if, considering the nature of the criminal offence or the nature of the serious violation of official duties and the circumstances of the criminal offence, that is, serious violation of official duties, it may be reasonably believed that his further work would harm the interests of the service or internal procedure.

***The Law on Civil Servants of RS***  
***Article 74***

A civil servant shall be removed from the Republic administrative authorities in the following cases:

- a) if an indictment for a criminal offence committed during performance of his duties and tasks has been confirmed,
- b) if a civil servant is held in custody, or

c) if his presence at work would harm the interests of the authority or disturb the conduct of a disciplinary action.

#### **Article 75**

A civil servant may be removed from the Republic administrative authorities in the following cases:

- a) if an indictment against the civil servant has been confirmed for a criminal offence punishable by a term of imprisonment of at least three years, or
- b) if a disciplinary action has been initiated due to a serious breach of official duties until such time as the termination of the disciplinary action.

209. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

210. During the country visit it was confirmed that at all levels of authority in BiH it is possibility to carry out both a criminal and a disciplinary procedure against a civil servant who has committed a corruption offence.

211. The reviewing experts concluded that BiH has implemented Art. 30(8) UNCAC.

#### **Paragraph 10 of article 30**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

212. BiH confirmed that it has fully implemented this provision of the Convention.

213. BiH cited the following implementation legislation:

#### ***CC-BiH Rehabilitation - Article 117***

(1) Following release from the institution where they had served sentences of imprisonment, long-term imprisonment or juvenile imprisonment or after being pardoned or amnestied, or after the punishment was barred by the statute of limitation, convicted persons shall freely enjoy all rights provided by the constitution, law and other regulations, and may acquire all rights other than those whose exercise is limited as a result of a security measure imposed on them or a legal consequence of the conviction.

(2) The provision of paragraph 1 of this Article also applies to persons on parole, unless their rights are limited by special provisions on release on parole.

#### ***CC of FoBiH***

### ***Article 121 - Rehabilitation***

(1) Following release from the institution where they had served sentences of imprisonment, long-term imprisonment or juvenile imprisonment or after being pardoned or amnestied, or after the punishment was barred by the statute of limitation, convicted persons shall freely enjoy all rights provided by the constitution, law and other regulations, and may gain all rights other than those whose exercise is limited as a result of a security measure imposed on them or a legal consequence incident to conviction.

(2) The provision of paragraph 1 of this Article shall also apply to persons on parole, unless their rights are limited by special provisions on release on parole.

### ***CC-RS***

#### ***Rehabilitation - Article 100***

(1) The conviction shall be deleted and all its legal consequences shall be terminated by rehabilitation and the convicted person shall be considered not convicted.

(2) The accessory punishment that has not been served shall also be terminated by rehabilitation.

(3) Rehabilitation shall take effect either on the basis of the law itself (statutory rehabilitation) or on the basis of court decision issued at the request of the convicted person (judicial rehabilitation).

(4) Rehabilitation shall not impair third persons' rights arising from the conviction.

(5) Upon served, pardoned or barred by the statute of limitations sentences of imprisonment, convicted persons shall freely enjoy all rights provided by the constitution, laws and other regulations, even before the rehabilitation, except those whose exercise is limited as a result of a security measure pronounced against them or as a result of commencement of legal consequence of the conviction. The provision shall also apply to convicted persons on parole.

#### ***Statutory Rehabilitation - Article 101***

(1) Statutory rehabilitation shall occur only with respect to persons who have not been convicted earlier or are considered not convicted by law.

(2) Statutory rehabilitation shall occur when:

1) A sentence of court admonition and a decision releasing a perpetrator from punishment shall be deleted from the criminal record after one year has elapsed from the day when the court decision became final, provided that the convicted person does not perpetrate a new criminal offence within that period.

2) A suspended sentence shall be deleted from the criminal record after one year has elapsed from the day when the probation period expired, provided that the convicted person does not perpetrate a new criminal offence within that period.

3) A sentence of a fine, of an imprisonment for a term not exceeding one year and of juvenile imprisonment shall be deleted from the criminal record after three years have elapsed from the day on which the punishment has been executed, served, pardoned or barred by the statute of limitations, provided the convicted person does not perpetrate a new criminal offence within that period.

4) The sentences of imprisonment for a term not less than one year but not to exceed three years shall be deleted from the criminal record after five years have elapsed from the day on which the punishment has been served, pardoned or barred by the statute of limitations, provided that the convicted person does not perpetrate a new criminal offence within that period.

(3) Sentences may not be deleted from criminal records for as long as security measures are in force.

(4) When the requirements for deletion of sentence referred to in preceding provisions have been met, the sentence shall be considered deleted from criminal record at the moment when the requirements have been met.

#### ***Judicial Rehabilitation - Article 102***

(1) Judicial rehabilitation may be granted to a person sentenced to imprisonment for a term between three and five years, if a period of eight years has elapsed from the day on which the punishment has been served, pardoned or barred by the statute of limitations, provided that the convicted person has not perpetrated a new criminal offence within that period.

(2) In deciding cases under preceding Paragraph, the court may grant rehabilitation if it finds that the convicted person has deserved it with his conduct and that he is reasonably expected not to commit any criminal offence in future.

(3) Judicial rehabilitation shall not be granted for as long as security measures are in force.

(4) Exceptionally, the court may grant rehabilitation to a person who has been convicted several times, if statutory periods of time have expired or other requirements set forth in preceding Paragraphs have been met for each of the sentences he received.

#### ***CC-BD Rehabilitation - Article 121***

(1) Following the served sentences of imprisonment, long-term imprisonment or juvenile imprisonment or after being pardoned, or after the punishment had fallen under the statute of limitations, convicted persons shall freely enjoy all rights provided by the constitution, law and other regulations, and may acquire all rights other than those whose exercise is limited as a result of a security measure imposed on them or a legal consequence of the conviction.

(2) The provision of paragraph 1 of this Article shall also apply to persons on parole, unless their rights are limited by special provisions on release on parole.

#### ***The Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures - consolidated version***

(Official Gazette of BiH, No. 12/10)

#### ***Article 123***

(General Provision on Conditional Release)

In order to encourage personal efforts of prisoners in social reintegration when at liberty, prisoners who are reasonably expected to resettle successfully and not commit criminal offences, may be conditionally released in accordance with a criminal code.

#### ***Article 124 (Support on Release)***

(1) The competent authorities, institutions and other legal persons shall give prisoners on release such support as is necessary to provide for their effective social reintegration when at liberty.

(2) The support referred to in paragraph 1 shall include, but shall not be limited to, finding a temporary accommodation and securing food, essential medical treatment, finding new environment where the convicted person will live, assistance in settling family relations, in finding employment and completing a previously started professional training, as well as providing pecuniary assistance for the most essential needs.

***The Law of FoBiH on Execution of Criminal Sanctions***  
***Article 112***

A convicted person shall be released from the Establishment on the day when his/her sentence expires, or on the day when conditional release starts. If the last day of serving the sentence falls on a non-working day, the convicted person shall be released on the last working day preceding it.

As an exception to the provision referred to in Paragraph 2 of this Article, when a fine has been replaced by a prison sentence, the convicted person shall be released from the Establishment on non-working days as well. The Establishment shall be obliged to inform the Court of the release of each convicted person within eight days.

***Article 113***

A person who is released from the Establishment shall be entitled to transportation costs to the place of his/her immediate family home or former residence, or if s/he is a foreigner, to the border crossing point. The transportation costs shall be borne by the Establishment from which the convicted person is released. If the convicted person to be released has no clothes or footwear, nor any means to buy them, the Establishment shall provide them at no cost. If the convicted person is seriously ill at the time of release from the Establishment and because of this is incapable of travelling, the Establishment shall place him/her into the closest medical institution for treatment. If the convicted person is not able to pay for the costs of medical treatment, the costs for the first month of the treatment shall be borne by the Establishment, and after that by the municipality in which the convicted person had permanent or temporary residence at the time of committal to serve prison sentence.

***Article 114***

A person who is being conditionally released shall, at the time of release from the Establishment, give the address where s/he will reside during the conditional release. The person conditionally released, shall, on arrival report to the authorities referred to in Article 37 of this Law. Should a conditionally released person change their place of residence they shall inform thereof the authorities referred to in Paragraph 1 of this Article.

***Article 115***

Each person who served prison sentence or was conditionally released shall be issued with a certificate of completion of sentence or the conditional release. The certificate referred to in Paragraph 1 shall be issued by the Head of the Establishment. The format and the content of the certificate shall be prescribed by the Federation Minister.

***Article 116***

If a convicted person needs assistance when at liberty, the Establishment shall, in a timely manner, notify accordingly the social welfare authority which is territorially responsible for the place of residence of the convicted person.

### ***Article 117***

The competent social welfare authority shall, within the scope of their capacities, give convicted persons who are released from serving prison sentence assistance in easier social reintegration when at liberty and in developing a sense of responsibility to engage themselves in solving their own problems. Assistance shall particularly include finding a temporary accommodation and securing food, essential medical treatment, finding new environment where the convicted person will live, assistance in settling family relations, in finding employment and completing a previously started professional training, as well as providing pecuniary assistance for the most essential needs.

### ***Article 118***

The Establishment shall enable representatives of the health and social welfare authorities, employment service and other interested organisations to visit convicted persons in order to learn about their personal and family problems and participate in solving them, as well as to organise reception they need on release.

## ***THE LAW OF REPUBLIKA SRPSKA ON THE EXECUTION OF SANCTIONS***

### ***Article 164***

- 1) At the time of release from the Establishment, a person being conditionally released shall State in writing the address at which he/she will reside while on conditional release.
- 2) In case of changed place of temporary or permanent residence, a person on parole shall notify accordingly the relevant police and social welfare authorities.
- 3) If a person is released from the Establishment based on the Amnesty Law, the Establishment shall be obliged to release him/her no later than 24 hours of the receipt of the binding decision on amnesty, unless otherwise stipulated in the Amnesty Law.
- 4) If a person is released from the Establishment based on a decision granting a pardon, the Establishment shall be obliged to release him/her the same day on which the decision granting a pardon has been received.
- 5) A convicted person shall be deemed to be released once he/she leaves the area of the Establishment.
- 6) If a convicted person on release after serving his/her prison sentence needs the community assistance, the Establishment is obliged to notify accordingly the social welfare authority in the place of temporary or permanent residence of the convicted person.

## ***THE LAW OF BDBiH ON THE EXECUTION OF CRIMINAL SANCTIONS, DETENTION AND OTHER MEASURES***

(OFFICIAL GAZETTE OF BDBiH, No. 31/11)

### ***Article 20 (Purpose of Prison Sentence)***

The purpose of a prison sentence is to punish the offender as determined by the Court and to enable prisoners, through a system of modern educational measures, to adopt socially acceptable values with the aim of easier social reintegration when released and to behave as responsible law abiding citizens.

### ***Article 21 (General Provision on Conditional Release)***

In order to encourage personal efforts of prisoners in social reintegration when at liberty, prisoners who are reasonably expected to resettle successfully and not commit criminal offences, may be conditionally released in accordance with a criminal code.

**Article 22. (Support on Release)**

(1) The competent authorities, institutions and other legal persons shall give prisoners on release such support as is necessary to provide for their effective social reintegration when at liberty.

(2) The support referred to in paragraph 1 shall include, but shall not be limited to, finding a temporary accommodation and securing food, essential medical treatment, finding new environment where the convicted person will live, assistance in settling family relations, in finding employment and completing a previously started professional training, as well as providing pecuniary assistance for the most essential needs.

214. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

215. The reviewing experts concluded that BiH has legislatively implemented Art. 30(10) UNCAC.

**Article 31. Freezing, seizure and confiscation**

**Paragraph 1 of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

216. BiH confirmed that it has fully implemented this provision of the Convention.

217. BiH cited the following implementation legislation:

**CC-BiH**  
**Article 1 - Definitions**

...

(26) "proceeds" means any economic advantage, derived, directly or indirectly, from criminal offences and it consists of any property.

(27) "property" includes property of any description, whether corporeal or incorporeal, material or immaterial, movable or immovable, and legal documents or instruments evidencing title to or interest in such property

#### ***Forfeiture - Article 74***

(1) Objects which are used or intended to be used, in any manner, wholly or in part, for perpetration of a criminal offence, or which resulted from the perpetration of a criminal offence, shall be forfeited if they are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article shall be forfeited even if not owned by the perpetrator, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

#### ***The Basis of the Confiscation of Material Gain - - Article 110***

(1) Nobody is allowed to retain proceeds, income, profit or other benefits derived from proceeds acquired by the perpetration of a criminal offence.

(2) The proceeds, income, profit or other benefits derived from proceeds referred to in paragraph 1 of this Article shall be confiscated by the court decision which established the perpetration of a criminal offence, under the terms set forth under this Code.

#### ***Expanded Confiscation of Material Gain Article 110a***

(1) When a criminal proceeding is conducted for criminal offences from Chapters XVII, XVIII, XIX, XXI, XXI A and XXII of this Law, by a decision from Article 110 Paragraph (2), the Court may confiscate the proceeds, income, profit or other benefits derived from proceeds for which the prosecutor provides sufficient evidence for reasonable believe that such proceeds, income, profit or other benefits derived from proceeds was acquired through the perpetration of these criminal offences, but the perpetrator did not provide evidence that the proceeds, income, profit or other benefits derived from proceeds was acquired legally.

(2) In cases when the conditions for the forfeiture of proceeds, income, profit or other benefits from proceeds, laid down by law, are not met in the criminal procedure, the request for the forfeiture may be filed in a civil procedure.

#### ***Confiscating Material Gain from a Legal Person - Article 140***

If a legal person acquires material gain by the perpetration of a criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

#### ***CC - FoBiH***

##### ***Article 78 - Forfeiture***

(1) Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, when there is a danger that those objects will be used again for the perpetration of a criminal offence or when the purpose of protecting the public safety or moral reasons make the forfeiture seem absolutely necessary, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when consideration of public safety or moral reasons so require, but

such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) The law may provide for mandatory forfeiture.

#### ***Article 114 - The Basis of the Confiscation of Material Gain***

(1) Nobody is allowed to retain material gain acquired by the perpetration of a criminal offence.

(2) The gain referred to in paragraph 1 of this Article shall be confiscated by the court decision which established the perpetration of a criminal offence, under the terms set forth under this Code.

#### ***Article 114a. Expanded Confiscation of Material Gain Article***

When criminal proceedings are conducted for the criminal offences under Chapters XXII, XXIX and XXXI of this Code, by the Court decision referred to in Article 114(2), the court may also confiscate the gain in relation to which the prosecutor presents sufficient evidence for a probable cause to believe that the gain derives from these criminal offences and the perpetrator failed to give evidence that the gain was acquired legally.

#### ***Article 144 -Confiscating Material Gain from a Legal Person***

If a legal person acquires material gain by the perpetration of a criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

#### ***CC-RS***

##### ***Forfeiture - Article 62***

(1) Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when consideration of public safety or moral reasons so require, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) The law may provide for mandatory forfeiture.

#### ***The Basis of the Confiscation of Material Gain - 94***

(1) Nobody is allowed to retain material gain acquired by the perpetration of a criminal offence.

(2) The gain referred to in paragraph 1 of this Article shall be confiscated by the court decision which established the perpetration of a criminal offence, under the terms set forth under this Code.

#### ***Confiscating Material Gain from a Legal Person - Article 143***

If a legal person acquires material gain by the perpetration of a criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

***THE LAW ON CONFISCATION OF THE PROCEEDS FROM CRIME (RS) Article 1***

This Law shall govern the requirements, the procedure and the authorities responsible for tracing, seizing/confiscating and managing the proceeds from crime.

***Article 2***

(1) The provisions of this Law shall apply to criminal offences set forth in the Criminal Code of Republika Srpska (Official Gazette of Republika Srpska, No. 49/03, 108/04, 37/06 and 70/06), as follows:

- a) against sexual integrity: Trafficking in Human Beings for the Purpose of Prostitution (Article 198); Abuse of a Child or Juvenile for Pornography (Article 199); Production and Screening Child Pornography (Article 200),
- b) against human health: Unauthorized Production and Sale of Intoxicating Drugs (Article 224),
- c) against economy and financial transactions: Counterfeiting of Securities (Article 275); Counterfeiting of Credit Cards and Other Non-cash Payment Cards (Article 276); Counterfeiting of Representations of Value (Article 277); Money Laundering (Article 280); Illicit Commerce (Article 281); Tax and Contribution Evasion (Article 287),
- d) against official duty: Abuse of Office or Official Authority (Article 347); Embezzlement in Office (Article 348); Fraud in Office (Article 349); Accepting Bribe (Article 351); Offering Bribe (Article 352); Illegal Mediation (Article 353), d) organised crime (Article 383a),
- e) against public peace and order: Manufacturing and Purchasing Weapons and Items for the Purpose of Committing a Criminal Offence (Article 398); Illegal Manufacturing and Trade of Weapons or Explosive Substances (Article 399) and
- f) against humanity and values protected by international law.

(2) The provisions of this Law shall also apply to other criminal offences stipulated in the Criminal Code of Republika Srpska if material gain, that is, value of the objects used in or destined for the perpetration of the criminal offence or resulted from the perpetration of the criminal offence exceeds the amount of 50.000,00 Convertible Marks.

***THE LAW ON CONFISCATION OF THE PROCEEDS FROM CRIME  
Temporary Seizure of Assets - Article 21***

(1) If there is a risk that subsequent seizure of the proceeds from crime could be hindered or precluded, the prosecutor may file a motion for temporary seizure of assets.

(2) The motion referred to under paragraph 1 of this Article shall contain data on the owner, description and legal qualification of a criminal offence, designation of assets to be seized, proof of assets, circumstances establishing reasonable grounds to suspect that assets derive from a criminal offence, and reasons justifying the need for temporary seizure of assets.

(3) The motion specified under paragraph 1 of this Article shall be decided upon by a Court having jurisdiction thereof.

***Permanent Seizure of Assets - Article 28***

(1) Once the indictment has been confirmed and not later than one year following the final conclusion of criminal proceedings the prosecutor shall file a motion for permanent seizure of the proceeds from crime.

(2) The motion under paragraph 1 of this Article shall contain information on the accused, description and legal qualification of the criminal offence concerned, designation of assets to be seized, evidence on assets in possession of the accused and

lawful income thereof, evidence that the assets have been acquired prior to instigation of criminal proceedings, circumstances indicating a manifest disproportion between assets and income, and grounds justifying the need for permanent seizure of assets. The motion against the legal successor shall contain evidence that he/she has inherited the proceeds from crime, and the motion against the third party shall contain evidence that the proceeds from crime were transferred without compensation or with compensation that is not commensurate with an actual value in order to deter seizure.

(3) The motion specified under paragraph 1 of this Article shall be decided upon by a Court having jurisdiction thereof.

#### ***CC -BD***

##### ***Forfeiture - Article 78***

(1) Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, when there is a danger that those objects will be used again for the perpetration of a criminal offence or when the purpose of protecting the public safety or for moral reasons make the forfeiture seem absolutely necessary, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when consideration of public safety and moral reasons require so, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) The law may provide for mandatory forfeiture.

##### ***The Basis of the Confiscation of Material Gain - Article 114***

(1) Nobody is allowed to retain material gain acquired by the perpetration of a criminal offence.

(2) The gain referred to in paragraph 1 of this Article shall be confiscated by the court decision which established the perpetration of a criminal offence, under the terms set forth under this Code.

##### ***Expanded Confiscation of Material Gain Article - 114a***

When criminal proceedings are conducted for the criminal offences under Chapters XVIII, XXII, XXIII, XXIX and XXXI of this Code, by the Court decision referred to in Article 114(2), the court may also confiscate the gain in relation to which the prosecutor presents sufficient evidence for a probable cause to believe that the gain derives from these criminal offences and the perpetrator failed to give evidence that the gain was acquired legally.

##### ***Confiscating Material Gain from a Legal Person - Article 144***

If a legal person acquires material gain by the perpetration of a criminal offence, the material gain acquired by the perpetration of a criminal offence shall be confiscated from the legal person.

#### ***The Law of Bosnia and Herzegovina on the Execution of Criminal Sanctions, Detention and Other Measures - consolidated version (Official Gazette of BiH, No. 12/10)***

##### ***Article 213 (Enforcement of Forfeiture)***

(1) The security measure of forfeiture shall be enforced by the Criminal Division of the Court or the authority that has ruled on the application of this measure.

(2) Based on the nature of forfeited items, it shall be decided as to whether such items shall be sold under the provisions of the executive procedure, or destroyed or surrendered to a State authority or organisation.

***Article 216 (Confiscation pronounced to legal persons)***

Confiscation of material gain from companies or other legal persons that was pronounced in criminal proceedings shall be executed pursuant to the provisions on enforcement of protective measures of confiscation of material gain.

***Article 217 (Take over of Property by other Legal Person)***

If, when a decision on confiscation of the material gain of an enterprise or other legal person becomes final, the enterprise or other legal person terminates its activity or loses the title of a legal person, the procedure of confiscating material gain shall be executed against the legal person that has taken over the property up to the value of the property taken over.

218. BiH provided the following example of case law:

**SECOND INSTANCE VERDICT**

Case number: S1 2 K 006235 12 Kž Date: 21 November 2012

**VERDICT**

The appeals by the Defence Counsels for the accused S. A. and G. G. are hereby granted in part, therefore, the Verdict of the Court of Bosnia and Herzegovina number S1 2 K 006235 11 K of 18 May 2012 is revised in the decision on confiscation of material gain, wherein, pursuant to Articles 110 and 111 of the Criminal Code of Bosnia and Herzegovina, illegally acquired material gain shall be confiscated from the accused S. A. and G. G. and they are obliged to pay to the budget of Bosnia and Herzegovina the amount of 31,965.04 (thirty one thousand nine hundred and sixty five convertible marks and 04/100) each, which amount constitutes illegal material gain acquired in the business dealings with the legal entity "C." d.o.o. B..., PJ I. S., and the accused S. A. is also obliged to pay the amount of KM 5,595.80 (five thousand five hundred and ninety five convertible marks and 80/100), which amount constitutes illegal material gain acquired in the business dealings with the legal entity "D." d.o.o. Sarajevo, and the amount of KM 3,685.50 KM (three thousand six hundred and eighty five convertible marks and 50/100).

In the remaining part, the First Instance Verdict remains unmodified.

**(b) Observations on the implementation of the article**

219. The reviewing experts observed that the domestic legal framework on freezing, seizing and confiscation is dispersed over a number of articles in the four criminal codes and other acts like the CPC, the Law on Enforcement Procedure before the Court of BiH and the Law on the Confiscation of Proceeds of Crime (RS). For instance, Art. 73 CPC-BiH governs temporary seizure of property and arrest in property, Art. 74 CC-BiH forfeiture (confiscation), Art. 110 CC-BiH the basis of the confiscation of material gain and Art. 110a CC-BiH extended confiscation.

220. The reviewing experts concluded that BiH has legislatively implemented Art. 31(1) UNCAC.

## **Paragraph 2 of article 31**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

221. BiH confirmed that it has fully implemented this provision of the Convention.
222. BiH cited the following implementation legislation:

#### ***CPC –BiH Article 73 - Temporary Seizure of Property and Arrest in Property***

(1) At any time during the proceedings, the Court may, upon the motion of the Prosecutor, issue a temporary measure of property seizure under the Criminal Code of Bosnia and Herzegovina, arrest in property or shall take other necessary temporary measures to prevent any use, transfer or disposal of such property.

(2) If there is a risk of delay, an authorized official may temporarily seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the Prosecutor about the measures taken, while the preliminary proceedings judge shall decide about the measures within 72 hours following the undertaking of the measures.

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

#### ***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 offence 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(7) of this Code. The appeal shall not stay execution of the decision.

#### ***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 offence or because he gained property as a result of a criminal offence, the Court in criminal proceedings, upon the petition of an authorized official (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(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.

#### ***Article 386 - Security Measure***

(1) In order to ensure enforcement of a punishment, forfeiture of property or forfeiture of property gain, the Court may order temporary security against a legal person in the criminal proceedings at the proposal of the Prosecutor. In this case, the provisions of Article 202 of this Code shall apply.

(2) If there is a legitimate fear that an offence will be repeated within an indicted legal person and that the legal person will be responsible and if there is a threat that an offence will be committed, the Court may in the same procedure, except for the measures from Paragraph 1 of this Article, impose a time restriction on the legal person to carry out one or more activities.

(3) When the criminal procedure is instituted against the legal person, the Court may, at the proposal of the Prosecutor, or ex officio, forbid status-related changes, the consequence of which would be deletion of the legal person from the Court registry. The decision on this ban is registered in the Court registry.

#### ***Article 395 - Temporary Security Measures***

When the forfeiture of property gain obtained by commission of criminal offence is a possibility, the Court shall ex officio and under the provisions applicable to the judicial enforcement procedure define temporary security measures. In that case, the provisions of Article 202 of this Code shall apply.

#### ***The Law on Enforcement Procedure Before the Court of BiH***

***(Official Gazette of BiH, No. 18/03)***

#### ***Methods and Object of Enforcement and Security –***

#### ***Article 4***

Enforcement and security methods are enforcement actions, or security actions or a system of those actions by which a claim is forcibly collected or secured as stipulated by the Law.

The objects of enforcement and security are any property or any right that can be subject to lawful enforcement in order to satisfy a judgment creditor's claim or its security.

Enforcement actions or security actions may be carried out directly against a judgment debtor, security opponent and other persons pursuant to this Law.

Objects of enforcement cannot be goods that may not be traded or turned over, as well as other

goods prescribed by a separate law, tax and other duty claims, objects, weapons and equipment for defence.

Evaluation if a certain object or right can be subject to an enforcement, or if there is a limitation of enforcement for a certain object or right, will be carried out on the basis of circumstances which existed at the time the motion for enforcement was filed, if not stipulated differently by this Law.

#### ***Enforcement against Property of Foreign Countries - Article 16***

Enforcement or security may not be ordered against property of a foreign country located in Bosnia and Herzegovina without consent of the Ministry of Foreign Affairs, unless the foreign country agrees to enforcement or security.

***Scope of Enforcement on Monetary Claims - Article 62***

Enforcement to satisfy a monetary claim shall be decided and enforced in the amount necessary to settle the claim.

***Article 67***

Enforcement against real property shall be executed through a notice on enforcement entered in the Land Registry, an appraisal of the value of the real property, the sale of the real property and the payment to the judgment creditor out of the proceeds of the sale.

***Article 114***

Jurisdiction over issuance of decisions on motions for enforcement on the movable assets, and for enforcement of those decisions, is on the sole judge of the Administrative Department of the Court.

***Enforcement Actions - Article 116***

Enforcement against movable assets shall be executed by seizure, appraisal, sale and payment to judgment creditors from the proceeds of the sale.

A motion for enforcement may request only seizure and appraisal, but in such case the judgment creditor must file a motion for the sale of objects within three months from the date of making the inventory for seizure or appraisal, otherwise the enforcement shall be dismissed.

***Notice on Seizure - Article 117***

Prior to the beginning of seizure, a Court referee shall serve the decision on enforcement on the judgment debtor and instruct him/her to pay the amount for which the enforcement has been ordered along with interests and costs.

The judgment creditor shall be informed on time and the place of the seizure if he/she asked for that, and the absent party shall be informed that the seizure was performed.

The absence of the judgment creditor shall not prevent the seizure.

***Object of Seizure - Article 118***

The seizure shall be carried out by making an inventory for seizure.

Movable assets in the judgment debtor's possession and movable assets belonging to him/her that are in the judgment creditor's possession may be inventoried.

Property of the judgment debtor that is in the possession of a third party may be inventoried only upon such third party's consent, and if it is not granted, Court shall on the motion of judgment creditor transfer the judgment debtor right for transfer of properties to judgment creditor.

It shall be presumed that judgment debtor owns the movable assets that are on him/her or which are in or on his real property, in the apartment where s/he lives or the rented business premises. Spouses shall be considered as equal co-owners of all movable assets that is found in their house, apartment, business premises or other real property.

### ***Scope of the Seizure Inventory List - Article 119***

As many objects shall be put on an inventory list as necessary to satisfy the judgment creditor's claims and the costs of enforcement.

Objects, for which no objections are made concerning encumbrances that could interfere with the enforcement process and which easily can be liquidated, shall be put on the inventory list first, and the statements of parties and third persons present at the inventory regarding the status of such objects shall be considered.

The Court may, on the motion of the judgment debtor, subsequently decide that enforcement is to be made on another item, not the one that was listed at the request of judgment creditor if there is a significant discrepancy between value of that item and the amount of claim, in which case the provisions of Article 70 of this Law shall apply.

### ***Seizure with Debtor's Consent - Article 163***

The judgment debtor may, by a certified document, consent to the seizure of a part of his/her salary for the purpose of paying a judgment creditor's claim, and to payment directly to the judgment creditor, in which case such document has the legal effect of a decision on enforcement.

The document referred to in Paragraph 1 of this Article shall be sent to the employer by the judgment creditor via registered mail with return receipt.

Notwithstanding Paragraph 1 of this Article, seizure with the judgment debtor's consent shall have no effect on enforcement of garnishment instituted for payment of a claim based on legal support, of compensation of damages due to deteriorated health or reduced or lost ability to work and claims for compensation of damages as a result of the loss of support due to the supporter's death.

### ***Enforcement of Claim on Bank Accounts - Coercive Enforcement - Article 164***

Enforcement of a monetary claim against a gyro account, foreign currency account and other bank accounts belonging to the judgment debtor, shall be effectuated by a decision on enforcement ordering the bank to pay to the judgment creditor the amount under enforcement, once the decision has become binding. This decision has the same effect as a decision on enforcement ordering seizure of a monetary claim and transferring it for the purpose of payment.

The decision on enforcement referred to in Paragraph 1 of this Article shall State the number of the account of the judgment debtor from which the payment will be made, and the account number of the judgment creditor to be credited with the payment.

The Decision on enforcement shall be delivered to the bank before it become enforceable. The Court shall inform the bank ex officio that the decision has become binding.

The provisions of Article 140 of this Law shall apply to enforcement referred to in Paragraph 1 of this Article, as appropriate.

The provisions of Paragraphs 1 through 4 of this Article shall not apply to the claims against saving deposits.

### ***Obligation on Delivery of the Information on Account and the Liability - Article 165***

Upon the Court request, the bank shall be obliged to provide information on the gyro account, foreign currency account or any other bank account of the judgment debtor.

The provisions of Article 162 of this Law shall appropriately apply to the bank if it fails to act in accordance with the decision on enforcement.

### ***Seizure of the Account with Judgment Debtor's Consent - Article 166***

The judgment creditor may, by a certified document, give his/her consent for seizure of his/her certain account in order to pay the judgment creditor's claims, and for the funds deposited on that account to be paid directly to the judgment creditor, in accordance

with his statement contained in such a document. Such document has an effect of a binding decision on enforcement by which the claim against account is seized and transferred to the judgment creditor for payment.

The document referred to in Paragraph 1 of this Article shall be delivered to the bank by the judgment creditor directly in the reception office of the bank or via certified mail with the return receipt.

The provision of Article 163(3) of this Law shall be applied to enforcement under paragraph 1 of this Article, as appropriate.

### ***General Provisions - Enforcement Actions - 167***

The enforcement of the judgment debtor's claim to deliver or hand-out movable or real property shall be executed by seizure of the claim for property, its transfer to the judgment creditor and the sale of the property.

### ***Seizure of Shares - Article 175***

Seizure of shares, for which the document on shares has not been issued, shall be completed by serving the decision on enforcement on the legal person with which the shares have been subscribed. This seizure grants the judgment creditor a lien over the shares.

The legal person referred to in Paragraph 1 of this Article shall be obliged to enter in the Share Registry the seizure of shares issued on the name on the date of serving the decision on enforcement and then it shall inform the Court promptly on the entry or the reasons why the entry was impossible to perform. The legal person has no right to appeal from the decision on enforcement.

The legal person under Paragraph 1 of this Article shall be obliged, without delay, to notify the Court on any change regarding the seized shares, especially of forcible enforcement for the purpose of the payment or of securing some other claim.

A legal person referred to in Paragraphs 1 and 2 of this Article shall be held responsible for any damage the judgment creditor might suffer due to its failing to act in accordance with Paragraphs 2 and 3 of this Article. Persons that hold managerial positions in such legal person shall be jointly and severally liable for any damage as well. Warning on responsibility of the legal person, members of the management and other executives of the joint stock company shall be entered in the decision on enforcement. The judgment creditor may, by the end of the enforcement procedure, move the Court to decide on his/her claim for compensation in the same procedure and, based on the final decision on the damage compensation s/he may require forcible enforcement against the legal person and persons performing managerial duties in it. Upon completion of the enforcement procedure, the judgment creditor may have his/her right to compensation for the damage exercised by filing a civil lawsuit.

The judgment debtor shall be banned from disposing of the seized shares and a notice of this prohibition shall be included in the decision on enforcement.

By its conclusion, the Court may order the joint stock company to enable the Court referee to review the Share Registry and other documents. Punitive measures as stipulated in this Law may be imposed on the joint stock company and its responsible persons who prevent or distract the Court referee from doing his job. The Court shall be obliged to take all necessary measures to secure confidentiality of the obtained data in accordance with the rules for secret keeping.

### ***CPC -FoBiH***

#### ***Article 216 - Temporary Security Measures***

(1) The temporary measures to secure a claim under property law that has accrued because of the perpetration of a criminal offence may be ordered in criminal proceedings according to the provisions that apply to the enforcement procedure.

(2) The decision referred to in Paragraph 1 of this Article shall be issued by the Court. An appeal is allowed against this decision and it shall be ruled on by the panel referred to in Article 25, Paragraph 6 of this Code. The appeal shall not stay execution of the decision.

#### ***Article 218 - Security Measures Against Third Parties***

(1) If an injured party has a claim against a third person because the third person possesses items obtained through a criminal offence or because he gained property as a result of a criminal offence, the court in criminal proceedings, upon the motion of authorized person (Article 208) and according to the provisions that apply to enforcement procedure, may order temporary security measures even toward that third party. The provisions of Article 216, 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.

#### ***Article 407 - Security Measure***

(1) In order to ensure enforcement of a punishment, forfeiture of property or forfeiture of property gain, the court may order temporary security measure against a legal person, at the proposal of the prosecutor. In this case, the provisions of Article 216 of this Code shall apply.

(2) If there is a legitimate fear that an offence will be repeated within an indicted legal person and that the legal person will be responsible and if there is a threat that an offence will be committed, the court may in the same proceedings, beside the measures from Paragraph 1 of this Article, impose a time restriction on the legal person to carry out one or more activities.

(3) When the criminal proceedings are instituted against the legal person, the court may, at the proposal of the prosecutor, or ex officio, forbid status-related changes, the consequence of which would be deletion of the legal person from the court registry. The decision on this ban is registered in the court registry.

#### ***Article 416 - Temporary Security Measures***

When the forfeiture of property gain obtained by commission of criminal offence is a possibility, the court shall ex officio and under the provisions applicable to the enforcement procedure order temporary security measures. In that case, the provisions of Article 216 of this Code shall apply.

#### ***Law on Civil Procedure - Article 269***

(1) A security measure may be imposed if:

- 1) a security proponent makes it possible for claims or rights to exist, and
- 2) there is a risk that, without such a measure, a security opponent could prevent or considerably hinder enforcement of claims, particularly by selling, concealing, encumbering or otherwise disposing of his/her property or changing the current State of affairs or otherwise harmfully affecting the rights of the security proponent.

(2) Unless otherwise stipulated by law, the Court shall only impose a security measure if, within the period of time fixed by the court and in accordance with the provisions of

the Law on Enforcement Procedure, the security proponent offers a guarantee for the damage which the security opponent might incur as a result of imposing and enforcing the security measure. If the security proponent fails to provide a guarantee within a set deadline, the court shall reject the motion for security measure. Upon his/her request, the court may release the security proponent from the obligation to offer a guarantee if the court finds that he/she is not financially capable of providing the guarantee.

(3) Bosnia and Herzegovina, its Entities, Brčko District of BiH, cantons, towns and municipalities shall be exempt from liability under paragraph 2 of this Article.

***Article 278.***

(1) On the proposal of the security proponent, made prominent by a proposal for assignment of security measure, the court may assign temporary security measure without prior notification and hearing of the opponent to the measure if the security proponent proves it possible that the security measure is reasonable and urgent and that if proceeding otherwise, the purpose of the security measure would be lost.

(2) The court immediately delivers the decision referred to in paragraph 1 of this Article to the opponent of the measure. The opponent of the measure may respond within three days and contest the reasons for the assignment of the temporary security measure, and the court shall schedule a hearing within the next three days. The response of the opponent must be elaborated.

(3) After the hearing referred to in paragraph 2 of this Article, the court shall, with a separate decision, abolish the decision on the assignment of the security measure or replace this decision with a new decision on the assignment of the security measure, in accordance with Article 279 of this Law. An appeal against the new decision on the assignment of a security measure is allowed in accordance with Article 282 of this Law.

***(Criminal Procedure Code RS)***

***Interlocutory Orders Article 112.***

(1) Interlocutory orders to secure a property claim arising from the commission of a criminal offense may be issued in criminal proceedings according to the provisions that apply to judicial enforcement procedure.

(2) The decision under Paragraph 1 of this Article shall be issued by the court. An appeal is allowed against this decision, which shall be ruled on by the panel under Article 24 Paragraph 5 of this Code. The appeal shall not stay execution of the decision.

***Article 114.***

(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, upon the petition of eligible or authorized persons from Article 104 of this Law and according to the provisions that apply to judicial enforcement procedure, may issue, in the criminal proceedings, an interlocutory order even against that third party. The provisions of Article 112, Paragraph 2 of this Code shall apply in this case as well.

(2) In a judgment of conviction the court shall either revoke the orders 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 orders shall be revoked unless the civil action is instituted within the period of time fixed by the court.

***Interlocutory Orders Article 375.***

(1) In order to ensure enforcement of a punishment, forfeiture of property or forfeiture of the proceeds of crime, the court may issue an interlocutory order against a legal person in the criminal procedure, at the proposal of the prosecutor. In this case, the provisions of Article 112 of this Code shall apply.

(2) If there is a legitimate fear that an offense will be repeated within an indicted legal person and that the legal person will be responsible or if there is a threat that an offense will be committed, the court may in the same procedure, apart from the orders under paragraph 1 of this Article, impose a time restriction on the legal person to carry out one or more activities.

(3) When the criminal procedure is instituted against a legal person, the court may, at the proposal of the prosecutor or ex officio, prohibit the status-related changes of the legal person, the consequence of which would be the deletion of the legal person from the court registry. The decision on this ban shall be registered in the court registry.

#### ***Temporary Interlocutory Orders Article 389.***

When the forfeiture of the proceeds of crime is a possibility, the court shall ex officio and under the provisions applicable to the judicial enforcement procedure issue an interlocutory order. In that case, the provisions of Article 112, paragraph 2 of this Code shall apply.

#### ***Law on the Management of Confiscated Property of RS, The Official Gazette of RS, no. 12/10 Temporary confiscation of property Article 21***

(1) When there exists danger that delayed confiscation of property from the proceeds of crime may be more difficult or impossible, the prosecutor may submit a request for temporary confiscation of property.

(2) Request referred to in paragraph 1 of this Article contains information on the owner of the property, description and legal name of the criminal offence, notation of the property to be confiscated, evidence on property, circumstances from which reasonable suspicion arises that the property is obtained as the proceeds from crime and reasons that justify the necessity of temporary confiscation of property.

(3) The competent court decides on the request referred to in paragraph 1 of this Article.

#### ***Article 22***

(1) If there exists danger that the owner shall manage property from the proceeds of crime before the court renders a decision on the request referred to in Article 21, paragraph 1 of this Law, the prosecutor may submit a request to the court for the order of a temporary measure in accordance with the Law on Civil Procedure („The Official Gazette of the Republic of Srpska“, no. 58/03, 85/03 i 74/05).

(2) The competent court renders a decision on a temporary measure of confiscation of property ex officio and delivers it to the competent body for register.

(3) Measure referred to in paragraph 1 of this Article is valid until the court delivers the decision on the request of the prosecutor.

(4) The prosecutor delivers the request referred to in paragraph 1 of this Article to the owner, the court and the Agency.

#### ***Article 23***

(1) Prior to the delivery of the decision on the request for temporary confiscation of property, the court shall schedule a hearing with the owner, his or her defence counsel, that is, the authorized legal representative (if he or she has one) and the prosecutor.

(2) The subpoena is delivered to the address, that is, the seat of the person referred to in paragraph 1 of this Article with a warning that the hearing shall be held even in the case of his or her absence.

#### ***Article 24***

(1) The hearing referred to in Article 23, paragraph 1 of this Law shall be held within five days from the day of submitting a request for temporary confiscation of property. The commenced hearing shall be concluded without interruptions.

(2) During the hearing, the prosecutor presents evidence on the property that the owner possesses, circumstances regarding reasonable suspicion that the property is obtained from the proceeds of crime and circumstances that indicate that its delayed confiscation may become more difficult or impossible. The owner and his or her defence counsel, that is, the authorized legal representative present evidence on the groundlessness of the prosecutor's indications or on the legal origin of property.

#### ***Article 25***

(1) Upon the completion of a hearing, the court renders a decision which grants or denies the request for the temporary confiscation of property.

(2) The decision on the temporary confiscation of property from the proceeds of crime contains information on the owner, description and legal name of the criminal offence, information on the property to be confiscated, circumstances from which reasonable suspicion arises that the property is obtained from the proceeds of crime and the time period of the confiscation.

(3) The court shall leave the owner a part of the property in the decision referred to in paragraph 2 of this Article if subsistence of the owner is questioned or of the person whom he or she is obliged to subsist in accordance with the provisions of the Law on Enforcement Procedure („The Official Gazette of the Republic of Srpska“, no. 59/03, 85/03, 64/05 i 118/07).

(4) The court delivers the decision referred to in paragraph 1 of this Article to the owner, his defence counsel, that is, the authorized legal representative, the prosecutor and the Agency.

#### ***Article 26***

(1) An appeal may be submitted against the decision referred to in Article 25, paragraph 1 of this Law within eight days from the day of the delivery of the decision.

(2) The appeal shall not prolong the enforcement of the decision referred to in Article 25, paragraph 2 of this Law.

(3) Extra-procedural council of the competent court shall decide upon the appeal.

### ***Article 27***

(1) The maximum validity of the temporary confiscation of property shall last until the expiry of the deadline provided for the completion of the procedure regarding the request for permanent confiscation of property. The court shall examine the justification of the prolongation of the temporary confiscation of property every three months.

(2) If by the deadline referred to in paragraph 1 of this Article, a decision on the request for permanent confiscation of property is not rendered, the court shall ex officio abolish the decision on the temporary confiscation of property and, in this case, the property is returned to the owner.

### ***Permanent confiscation of property Article 28***

(1) Upon the confirmation of indictment, and at the latest within one year from the day of the completion of the criminal procedure with final force and effect, the prosecutor shall submit a request for permanent confiscation of property from the proceeds of crime.

(2) The request referred to in paragraph 1 of this Article contains: information on the accused, description and legal name of the criminal offence, notation of the property to be confiscated, evidence on the property that the accused possesses and on the legal income, evidence that the property is obtained before the commencement of the criminal procedure, circumstances that indicate the existence of obvious disproportion between the property and income and reasons which justify the necessity for permanent confiscation of property. The request against a legal successor contains evidence that the property succeeded is obtained from the proceeds of crime, and the request against a third person contains the evidence that the property obtained from the proceeds of crime is transferred without a fee or with a fee which does not correspond to the real value with the aim of counteracting the confiscation.

(3) The competent court decides upon the request referred to in paragraph 1 of this Article.

### ***Article 29***

(1) If the request referred to in Article 28, paragraph 1 of this Law is submitted during the first instance procedure, the court invites the owner to state whether he or she shall contest the request at the main hearing. In the case that the owner is absent from the main hearing or does not make a statement, it is considered that he or she does not contest the request.

(2) If the owner states that he or she does not contest the request, the decision on the request is delivered within the judgement. The decision on the request may be disputed in the judgement under appeal.

(3) If the owner states that he or she contests the request, the decision shall be rendered in a separate procedure. This procedure shall be completed within two years from the judgement with full force and effect in which the accused is found guilty or if it is, in the sense of Article 3, point v) of this Law, determined that the he or she is the owner of the property from the proceeds of crime.

(4) If the court rejects the indictment or exonerates the accused, it shall deliver information on the property of the owner for further proceedings to the Tax administration of Republic of Srpska.

### ***Article 30***

(1) If the owner states that he or she contests the request referred to in Article 28, paragraph 1 of this Law, that is, if he or she does not make a statement in accordance with Article 29, paragraph 1 of this Law or if the request is submitted after the completion with full force and effect of the criminal procedure, the court shall schedule a separate hearing for rendering of the decision on the request. The hearing is scheduled within 30 days from the day of the decision with full force and effect referred to in Article 29, paragraph 3 of this Law, that is, from the day of submitting of the request by the prosecutor.

(2) The court shall subpoena the owner, the authorized legal representative (if he or she has one), prosecutor and other persons whose presence is necessary for the hearing referred to in paragraph 1 of this Article. The subpoena is delivered to a known address, that is, the seat of the subpoenaed person with a warning that the hearing shall be held even in the case of his or her absence.

(3) The subpoena is delivered to the owner so that there is at least 15 days between the day of the delivery of the subpoena and the day of the hearing.

(4) If the owner with no authorized legal representative does not attend the hearing, the court shall ex officio appoint him or her an authorized legal representative.

(5) If the prosecutor does not attend the hearing, the hearing is postponed. The court shall notify the competent prosecutor on this.

### ***Article 31***

(1) The hearing commences with the presentation of the content of the prosecutor's request. The commenced hearing shall be completed without interruptions, if possible.

(2) If the request is directed toward the property of the convicted person, the prosecutor presents evidence on the property which the convicted person possesses, on legal income, evidence that the property is obtained before the commencement of the criminal procedure and the circumstances which indicate the existence of obvious disproportion between the property and income of the accused. The convicted person and his or her authorized legal representative present evidence on the groundlessness of the prosecutor's request or on the legal origin of property.

(3) If the request is directed toward the property of a legal successor or a third person, the prosecutor shall present evidence that the legal successor inherited the property from the proceeds of crime, that is, that it was transferred to a third person without a fee or with a fee which obviously does not correspond to the real value with the aim of counteracting the confiscation of property. The legal successor or a third person and his or her authorized legal representative present evidence on the groundlessness of the prosecutor's statements or on the legal origin of property of the predecessor.

### ***Article 32***

(1) Upon the completion of the hearing, the court renders a decision which grants or denies the request for permanent confiscation of property.

(2) The decision on permanent confiscation of property contains: information on the owner, description and legal name of the criminal offence, information on the confiscated property, that is, on the value which is confiscated from the owner if he or she managed property from the proceeds of crime with the aim of counteracting property confiscation and the decision on the costs of management of temporarily confiscated property.

(3) The court shall leave a part of the property to the owner in the decision referred to in paragraph 1 of this Article if the sustenance of the owner is questioned or of the person

whom he or she is obliged to subsist in accordance with the provisions of the Law on Enforcement of Procedure.

(4) The court shall deliver the decision referred to in paragraph 1 of this Article to the owner, his or her authorized legal representative, the prosecutor and the Agency.

(5) Upon the receipt of the decision referred to in paragraph 2 of this Article, the Agency shall immediately take measures of safekeeping and maintenance of confiscated property. The Agency shall manage confiscated property until the completion of the procedure with full force and effect regarding the property confiscation.

### ***Article 33***

(1) Authorized persons may submit an appeal against the decision referred to in Article 32, paragraph 1 within eight days from the day of the delivery of the decision, to the immediate higher court.

(2) The appeal does not prevent the Agency from proceeding in accordance with Article 32, paragraph 5 of this Law.

### ***Article 34***

(1) When deciding upon the appeal, the court may reject the appeal as untimely or disallowed, deny the appeal as ungrounded or accept the appeal and modify the decision or abolish it and refer the matter to decision making once again.

(2) The decision is in full force and effect if it cannot be contested with an appeal or when an appeal is not allowed.

### ***(Law on Criminal Procedure of BD BiH) Article 202. Temporary Security Measures***

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

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

### ***Article 204. Security Measures Against Third Parties***

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

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

### ***Article 386. Security Measure***

(1) At the proposal of the Prosecutor, the Court may order temporary security against a legal person in order to ensure enforcement of a punishment, confiscation of property or confiscation of property gain. In this case, the provisions of Article 202 of this Law shall apply accordingly.

(2) If there is a legitimate fear that an offense will be repeated within an indicted legal person and that the legal person will be responsible, or if there is a threat that an offense will be committed, in the same procedure the Court may, except for the measures from Paragraph 1 of this Article, impose a time restriction on the legal person for carrying out one or more activities.

(3) When a criminal proceeding was instituted against a legal person, the Court may, at the proposal of the Prosecutor or ex officio, forbid status-related changes of the legal person that would result in the deletion of the legal person from the court registry. The decision on this ban is registered in the court registry.

### ***Article 395. Temporary Security Measures***

When the forfeiture of property gain obtained by commission of criminal offense is an option, the Court shall ex officio and under the provisions applicable to the enforcement procedure define temporary security measures. In that case, the provisions of Article 202 of this Law shall apply accordingly.

## ***LAW ON ENFORCEMENT PROCEDURE***

### ***(Official Gazette BDBiH" 8/00) Prerequisites for Ordering a Previous Measure***

#### ***Article 233.***

(1) A previous measure shall be ordered for the purpose of securing monetary claims based on the following:

1. decision of the Court or an administrative authority, which has not become enforceable,
2. settlement agreed upon before the Court or an administrative authority, if the claims set forth therein are still not due.

(2) Pursuant to the documents referred to in Paragraph 1 of this Article, the Court shall order a previous measure if the person making the claims security motion proves probable the danger that without that security the liquidation of claims would be prevented or made considerably more difficult.

#### ***Types of Previous Measures Article 236.***

(1) The Court may order the following as previous measures:

1. previous note on lien on the real property belonging to the person opposing the claims security motion, or on a right registered on real property,
2. a claims security measure referred to in Article 225, Items 2 through 10 of this Law,
3. a prohibition for the bank to pay a certain amount of money to the person opposing the motion or a third person, at the request of the person opposing the motion, from his own account against which a previous measure has been imposed.

(2) At the request of the person making the claims security motion, the Court may order, given the circumstances of the case, two or more previous measures if necessary, and it may also, provided conditions have been met as provided for in the law, order a provisional measure together with the previous measure.

(3) By carrying out a previous measure, the person making the claims security motion has acquired lien on the security object.

(4) The amount of money of the person opposing the motion with the bank, that has been subject to a payment ban, cannot be transferred from that account until the ban is in effect, except for the settlement of the secured claims.

223. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

224. The reviewing experts concluded that BiH has legislatively implemented Art. 31(2) UNCAC.

**Paragraph 3 of article 31**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

225. BiH confirmed that it has fully implemented this provision of the Convention.

226. BiH cited the following implementation legislation:

**RS**

***LAW ON CONFISCATION OF PROPERTY FROM THE PROCEEDS OF CRIME***

***Article 5***

(1) Bodies competent for disclosure, confiscation and management of property from the proceeds of crime are: the prosecution, the court, Republic of Srpska Ministry of Interior (hereinafter: Ministry of Interior) and the Agency for management of confiscated property (hereinafter: the Agency).

(2) The competence of the prosecutor and the court in the procedure referred to in paragraph 1 of this Article is determined according to the competence of the court for the criminal offence through which the property is obtained.

***Article 9***

1) The Agency:

- a. Manages confiscated property from the proceeds of crime, legal matters of criminal offence referred to in Article 62 of the Criminal Code of Republic of Srpska, property from the proceeds of crime referred to in Article 94-96 and the property given as a guarantee in the criminal procedure.
- b. Conducts a professional assessment of confiscated property from the proceeds of crime,
- c. Stores, safe keeps and sells confiscated property from the proceeds of crime and manages the obtained funds,
- d. Keeps records on the property it manages in accordance with point a. of this paragraph and on the court proceedings in which the decision upon this property is rendered, d. Participates in the provision of legal aid,
- e. Participates in the training of public officials regarding the confiscation of property from the proceeds of crime, and
- f. Performs other activities in accordance with this Law.

2) The Agency conducts activities referred to in paragraph 1 of this Article also in connection with the property from the proceeds of minor offences.

***CPC-BiH***

***Article 70. Safekeeping of the Seized Objects and Documentation***

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

***CPC-FoBiH***

***Article 84. Safekeeping of Seized Objects and Documentation***

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

**LAW ON FORFEITURE OF PROCEEDS OF CRIMINAL OFFENCES**

**Article 31**

- 1) While enforcing its competences, the Agency shall perform the following tasks:
  - a) Store, safeguard, sell and lease the assets forfeited in accordance with the Law. In case of a justified need, the Agency may entrust assets to other institutions for the purpose of safeguarding, which would be regulated under a special agreement.

***CPC-BD***

***Article 70. Safekeeping of Temporarily Seized Objects and Documentation***

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

227. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

228. The reviewing experts observed that according to the codes of BiH, FoBiH and BD, the court is responsible for the safekeeping of seized property, while in RS there is an Agency, especially set up for asset management purposes. During the country visit, the review team was told that the draft amendment to the CPC-FoBiH contains provisions on an Agency for the management of confiscated assets.

229. All BiH counterparts agreed that an Asset Management Agency would make life easier for them, although the number of cases involving frozen assets are relatively small.

230. The reviewing experts concluded that BiH has implemented Art. 31(3) UNCAC.

**(c) Challenges and recommendations**

231. The reviewing experts suggested that BiH, FoBiH and BD tackle the issue of managing confiscated assets and, in doing so, consider the establishment of dedicated asset management agencies.

**Paragraphs 4, 5 and 6 of article 31**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

**(a) Summary of information relevant to reviewing the implementation of the article**

232. BiH confirmed that it has fully implemented these provisions of the Convention.

233. BiH cited the following implementation legislation:

***CC-BiH***

***Ways of Confiscating Material Gain acquired by perpetration of a criminal offence  
Article 111.***

(1) All the money, valuable objects and every other material gain acquired by the perpetration of a criminal offence shall be confiscated from the perpetrator, and in case the confiscation is not feasible - the perpetrator shall be obliged to pay an amount of the acquired material gain. Material gain acquired by perpetration of a criminal offence shall be confiscated from persons to whom it has been transferred without compensation or with a compensation which does not correspond to the real value, if the persons knew or should have known that the material gain had been acquired by the perpetration of a criminal offence.

(2) If proceeds of a criminal offence have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation not exceeding the assessed value of the intermingled proceeds.

(3) Income or other benefits derived from the proceeds of a criminal offence, from property into which proceeds of criminal offence have been converted, or from property with which proceeds of criminal offence have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and extent as the proceeds of the criminal offence.

***CC-FoBiH***

***Article 115. Ways of Confiscating Material Gain***

(1) All the money, valuable objects and every other material gain acquired by the perpetration of a criminal offence shall be confiscated from the perpetrator, and in case the confiscation is not feasible - the perpetrator shall be obligated to pay an amount of money which corresponds to the acquired material gain. Material gain acquired by perpetration of a criminal offence may be confiscated from a person to whom it has been transferred without compensation or with a compensation which does not correspond to the real value, if the person knew or should have known that the material gain had been acquired by the perpetration of a criminal offence.

(2) If a material gain acquired through the perpetration of criminal offence has been intermingled with property acquired in a legal way, such property may be liable to confiscation not exceeding the assessed value of the intermingled proceeds of criminal offence.

(3) Income or other benefits derived from the material gain acquired through the perpetration of criminal offence or from the property into which proceeds of criminal offence have been converted or from property with which proceeds of criminal offence have been intermingled, shall also be liable to the measures referred to in this Article, in the same manner and extent as the proceeds of the criminal offence.

***CC-RS***

***Ways of Confiscating Material Gain***

***Article 95.***

(1) The money, valuable items and every other type of material gain obtained by commission of criminal shall be forfeited from the perpetrator, and in case the forfeiture is not feasible - the perpetrator shall be obligated to pay an amount of money which corresponds to the obtained material gain.

(2) Material gain obtained by commission of criminal offense may be forfeited from persons to whom that material gain has been transferred without compensation or with a compensation which does not correspond to the real value, if the persons in question knew or should have known that the material gain was obtained by commission of a criminal offense.

***CC-BD***

***Ways of Confiscating Material Gain Acquired Through Perpetration of a Criminal Offence***

***Article 115.***

(1) All the money, valuable objects and every other material gain acquired by the perpetration of a criminal offence shall be confiscated from the perpetrator, and in case the confiscation is not feasible - the perpetrator shall be obliged to pay an amount of money which

corresponds to the acquired material gain. Material gain acquired by perpetration of a criminal offence may be confiscated from persons to whom it has been transferred

without compensation or with a compensation which does not correspond to the real value, if the persons knew or could have known that the material gain had been acquired by the perpetration of a criminal offence.

(2) If proceeds of a criminal offence have been intermingled with property acquired from legitimate sources, such property shall be liable to confiscation not exceeding the assessed value of the material gain acquired through perpetration of a criminal offence.

(3) Income or other benefits derived from the proceeds of a criminal offence, from property into which proceeds of criminal offence have been converted, or from property with which proceeds of criminal offence have been intermingled shall also be subject to the measures referred to in this Article, in the same manner and extent as the proceeds of the criminal offence.

234. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

235. The confiscation system in value based, Art. 111 CC-BiH; Art. 115 CC-FoBiH; Art. 95 CC-RS and Art. 115 CC-BD.

236. The reviewers inquired, relating to the CC-RS, if there is a possibility to confiscate property deriving from criminal offences if such proceeds of crime have been intermingled with property acquired from legitimate sources. The BiH counterparts stated that, in practice, this was not a problem. Expert witnesses would testify on the value of the assets.

237. The reviewing experts concluded that BiH has legislatively implemented Art. 31(4), (5) and (6) UNCAC since the confiscation system is value-based.

**Paragraph 7 of article 31**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

238. BiH confirmed that it has fully implemented this provision of the Convention.

239. BiH cited the following implementation legislation:

***CPC-BiH***  
***Article 72. Order Issued to a Bank or to Another Legal Person***

(1) If there are grounds for suspicion that a person has committed a criminal offense related

to acquisition of material gain, the preliminary proceedings judge may at the motion of the Prosecutor issue an order to a bank or another legal person performing financial operations to turn over information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The preliminary proceedings judge may, on the motion of the Prosecutor, order that other necessary measures referred to in Article 116 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence thereupon.

(3) In case of an emergency, any of the above mentioned measures may be ordered by the Prosecutor on the basis of an order. The Prosecutor shall immediately inform the preliminary proceedings judge who shall issue a court warrant within 72 hours. In case the preliminary proceedings judge fails to issue the said order, the Prosecutor shall be bound to return such information without accessing it

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

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

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

#### ***CPC-FoBiH)***

#### ***Article 86. Order Issued to a Bank or to Another Legal Person***

(1) If there are grounds for suspicion that a person has committed a criminal offense related to the acquisition of material gain, the court may, at the motion of the prosecutor, issue an order to a bank or another legal person performing financial operations to turn over information concerning the bank accounts and other financial transactions of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The preliminary proceedings judge may, on the motion of the prosecutor, order that other necessary measures referred to in Article 130 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence about it.

(3) In case of an emergency, any of the measures under Paragraph 1 of this Article may be ordered by the prosecutor on the basis of an order. The prosecutor shall immediately inform the preliminary proceedings judge who shall issue a court warrant within 72 hours. The prosecutor shall seal the obtained information until the issuance of the court order. In case the preliminary proceedings judge fails to issue the said order, the prosecutor shall be bound to return such data without opening them.

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

(5) The decision referred to in Paragraph 4 of this Article shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts of domestic or foreign currency be seized pursuant to Article 79 Paragraph 1 of this Code and be deposited in a special account and kept until the end of the proceedings or until the conditions for their return are met.

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

### ***CPC-RS***

#### ***Order Issued to a Bank or to Another Legal Person Article 136.***

(1) If there are grounds for suspicion that a person has committed a criminal offense related to acquisition of material gain, the preliminary proceedings judge may at the motion of the prosecutor issue an order to a bank or another legal person performing financial operations to disclose information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The preliminary proceedings judge may, on the motion of the prosecutor, order that other necessary measures referred to in Article 234 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence thereupon.

(3) In case of an emergency, measures from Paragraph 1 of this Article may be ordered by the prosecutor on the basis of an order. The prosecutor shall immediately inform the preliminary proceedings judge who shall issue a court warrant within 72 hours. The prosecutor shall seal the obtained information until the issuance of the court warrant. In case the preliminary proceedings judge fails to issue the said warrant, the prosecutor shall be bound to return such information without having an access to it.

(4) The court may issue a decision ordering a legal or physical person to temporarily suspend a financial transaction that is suspected to be a criminal offense or intended for the commission of the criminal offense, or suspected to serve to conceal a criminal offense or conceal the proceeds of a crime.

(5) By the decision from Paragraph 4 of this Article, the Court shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts of domestic or foreign currency be temporarily seized pursuant to Article 129 Paragraph 1 of this Code and be deposited in a special account and kept until the end of the proceedings or until the conditions for their return are met.

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

### ***CPC-BD***

#### ***Article 72. Order Issued to a Bank or Another Legal Person***

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

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

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

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

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

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

240. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

241. The reviewing experts observed that a judge can order a bank to provide information of financial nature. In some cases, a prosecutor may order this as well, but within 72 hours a court warrant must be obtained. An order is also available for a temporary suspension of a transaction (temporary seizure). The experts enquired about the consequences if the bank or other financial entity fails to provide the information, or fails to provide it on time (as timing can be crucial regarding asset recovery issues). According to a representative from BD, in practice this does not pose any problems since banks usually comply with these requests.

242. There is no register of bank accounts for individuals in BiH, although there is one for legal persons. Currently, there are about 50 banks that operate in the country. In practice, prosecutors send letters to all banks, and once they know if the individual concerned has an account at a specific bank, they ask for a court order.

243. The reviewing experts concluded that BiH has largely implemented Art. 31(7) UNCAC. However, they recommend that the Bosnian authorities consider the introduction of a central register of bank accounts also for natural persons.

**(c) Challenges and recommendations**

244. The reviewing experts recommend that the Bosnian authorities consider the introduction of a central register of all bank accounts.

### **Paragraph 8 of article 31**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

245. BiH confirmed that it has fully implemented this provision of the Convention.

246. BiH cited the following implementation legislation:

##### ***CC-BiH***

***Extended confiscation of material gain acquired through perpetration of a criminal offence***

***Article 110a.***

(see above Art. 31(1))

##### ***CC-FoBiH***

***Article 114a.***

Extended confiscation of material gain acquired through perpetration of a criminal offence When a criminal proceeding is conducted for criminal offences from Chapters XXII, XXIX and XXXI of this Law, by a decision from Article 114. Paragraph (2), the Court may confiscate the material gain for which the prosecutor provides sufficient evidence for reasonable believe that such material gain was acquired through the perpetration of these criminal offences, but the perpetrator did not provide evidence that the material gain was acquired legally.

***LAW ON CONFISCATION OF PROPERTY FROM THE PROCEEDS OF CRIME (RS) Permanent confiscation of property Article***

***28***

(1) Upon the confirmation of indictment, and at the latest within one year from the day of the completion of the criminal procedure with final force and effect, the prosecutor shall submit a request for permanent confiscation of property from the proceeds of crime.

(2) The request referred to in paragraph 1 of this Article contains: information on the accused, description and legal name of the criminal offence, notation of the property to be confiscated, evidence on the property that the accused possesses and on the legal income, evidence that the property is obtained before the commencement of the criminal procedure, circumstances that indicate the existence of obvious disproportion between the property and income and reasons which justify the necessity for permanent

confiscation of property. The request against a legal successor contains evidence that the property succeeded is from the proceeds of crime, and the request against a third person contains the evidence that the property obtained from the proceeds of crime is transferred without a fee or with a fee which does not correspond to the real value with the aim of counteracting the confiscation.

(3) The competent court decides upon the request referred to in paragraph 1 of this Article.

### ***Article 29***

(1) If the request referred to in Article 28, paragraph 1 of this Law is submitted during the first instance procedure, the court invites the owner to state whether he or she shall contest the request at the main hearing. In the case that the owner is absent from the main hearing or does not make a statement, it is considered that he or she does not contest the request.

(2) If the owner states that he or she does not contest the request, the decision on the request is delivered within the judgement. The decision on the request may be disputed in the judgement under appeal.

(3) If the owner states that he or she contests the request, the decision shall be rendered in a separate procedure. This procedure shall be completed within two years from the judgement with full force and effect in which the accused is found guilty or if it is, in the sense of Article 3, point v) of this Law, determined that the he or she is the owner of the property from the proceeds of crime.

(4) If the court rejects the indictment or exonerates the accused, it shall deliver information on the property of the owner for further proceedings to the Tax administration of Republic of Srpska.

### ***Article 30***

If the owner states that he or she contests the request referred to in Article 28, paragraph 1 of this Law, that is, if he or she does not make a statement in accordance with Article 29, paragraph 1 of this Law or if the request is submitted after the completion with full force and effect of the criminal procedure, the court shall schedule a separate hearing for rendering of the decision on the request. The hearing is scheduled within 30 days from the day of the decision with full force and effect referred to in Article 29, paragraph 3 of this Law, that is, from the day of submitting of the request by the prosecutor.

The court shall subpoena the owner, the authorized legal representative (if he or she has one), prosecutor and other persons whose presence is necessary for the hearing referred to in paragraph 1 of this Article. The subpoena is delivered to a known address, that is, the seat of the subpoenaed person with a warning that the hearing shall be held even in the case of his or her absence.

The subpoena is delivered to the owner so that there is at least 15 days between the day of the delivery of the subpoena and the day of the hearing.

If the owner with no authorized legal representative does not attend the hearing, the court shall ex officio appoint him or her an authorized legal representative.

If the prosecutor does not attend the hearing, the hearing is postponed. The court shall notify the competent prosecutor on this.

### ***Article 31***

(1) The hearing commences with the presentation of the content of the prosecutor's request. The commenced hearing shall be completed without interruptions, if possible.

(2) If the request is directed toward the property of the convicted person, the prosecutor presents evidence on the property which the convicted person possesses, on legal income, evidence that the property is obtained before the commencement of the criminal procedure and the circumstances which indicate the existence of obvious disproportion between the property and income of the accused. The convicted person and his or her authorized legal representative present evidence on the groundlessness of the prosecutor's request or on the legal origin of property.

(3) If the request is directed toward the property of a legal successor or a third person, the prosecutor shall present evidence that the legal successor inherited the property from the proceeds of crime, that is, that it was transferred to a third person without a fee or with a fee which obviously does not correspond to the real value with the aim of counteracting the confiscation of property. The legal successor or a third person and his or her authorized legal representative present evidence on the groundlessness of the prosecutor's statements or on the legal origin of property of the predecessor.

**CC-BD**

***Extended confiscation of material gain acquired through perpetration of a criminal offence***

***Article 114a.***

When a criminal proceeding is conducted for criminal offences from Chapters XVIII, XXII, XXIII, XXIX and XXXI of this Law, by a decision from Article 114. Paragraph (2), the Court may confiscate the material gain for which the prosecutor provides sufficient evidence for reasonable believe that such material gain was acquired through the perpetration of these criminal offences, but the perpetrator did not provide evidence that the material gain was acquired legally.

247. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

248. The reviewing experts took note of the provision on extended confiscation which contain not a full reversal of the burden of proof but a different standard of proof (sufficient evidence for reasonable belief). However, they were told that no judgments based on this provision have been rendered yet. This was possibly due to the fact that the amendment was only made in 2010, therefore cases may not have reached the courts yet.

249. It was added that the court can make the decision on confiscation ex officio but the prosecutor has to provide evidence.

250. The reviewing experts concluded that BiH has legislatively implemented Art. 31(8) UNCAC.

**(c) Potential good practices**

251. The reviewing experts noted that the provisions on extended confiscation had the potential to constitute a good practice. However, at the same time, they noted that this law has not been applied yet. Therefore, they encouraged BiH to make use of these provisions in practice.

## Paragraph 9 of article 31

9. *The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

### (a) Summary of information relevant to reviewing the implementation of the article

252. BiH confirmed that it has fully implemented this provision of the Convention.

253. BiH cited the following implementation legislation:

#### ***CC-BiH Forfeiture Article 74.***

(1) Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, when there is a danger that those objects will be used again for the perpetration of a criminal offence or when the purpose of protecting the public safety or moral reasons make the forfeiture seem absolutely necessary, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when consideration of public safety or moral reasons so require, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) The law may provide for mandatory forfeiture.

#### ***Ways of Confiscating Material Gain Article 111.***

(see above)

#### ***CC-FoBiH Article 78. Forfeiture of objects***

(1) Objects used or destined for use in the perpetration of a criminal offence, or those that resulted from the perpetration of a criminal offence, shall be forfeited, if there is a danger that they will be used again for the perpetration of a criminal offence, or if the purpose of protecting the public safety or moral reasons make the forfeiture absolutely necessary, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator, if consideration of public safety or moral reasons so require, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) the law may prescribe mandatory forfeiture of objects.

#### ***Article 115. Ways of Confiscating Material Gain acquired through a criminal offence***

(see above)

**CC-RS**

***Forfeiture of Items Article 62.***

(1) Items used or destined for use in the perpetration of a criminal offence, or those items resulted from the perpetration of a criminal offence may be forfeited, if those items are owned by the perpetrator.

(2) Items referred to in Paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when interest of public safety or moral reasons so require, but such forfeiture does not affect the rights of third parties to obtain damage compensation.

(3) The law may provide for mandatory forfeiture of items.

***Ways of Confiscating Material Gain Article 95.***

(1) The money, valuable items and every other type of material gain obtained by commission of criminal offense shall be forfeited from the perpetrator, and in case the forfeiture is not feasible - the perpetrator shall be obligated to pay an amount of money which corresponds to the obtained material gain.

(2) material gain obtained by commission of criminal offense may be forfeited from persons to whom that property gain has been transferred without compensation or with a compensation which does not correspond to the real value, if the persons in question knew or should have known that the material gain was obtained through perpetration of a criminal offense.

**CC-BD**

***Forfeiture Article 78.***

(1) Forfeiture shall be ordered with regard to objects used or destined for use in the perpetration of a criminal offence, or to those that resulted from the perpetration of a criminal offence, when there is a danger that those objects will be used again for the perpetration of a criminal offence or when the purpose of protecting the public safety or for moral reasons make the forfeiture seem absolutely necessary, if those objects are owned by the perpetrator.

(2) Objects referred to in paragraph 1 of this Article may be forfeited even if not owned by the perpetrator when consideration of public safety and moral reasons require so, but such forfeiture does not affect the rights of third parties to obtain damage compensation from the perpetrator.

(3) The law may provide for mandatory forfeiture.

***Ways of Confiscating Material Gain Acquired Through Perpetration of a Criminal Offence Article 115.***

(see above)

254. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

255. The reviewing experts concluded that BiH has legislatively implemented Art. 31(9) UNCAC.

**(c) Technical assistance needs**

256. BiH asked for legal advice and model legislation on confiscation. Such assistance has been partly provided through the IPA Project 2010 - EU Support to Law Enforcement.

**Article 32. Protection of witnesses, experts and victims**

**Paragraph 1 of article 32**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

**(a) Summary of information relevant to reviewing the implementation of the article**

257. BiH confirmed that it has fully implemented this provision of the Convention.

258. BiH cited the following implementation legislation:

“Official Gazette of Bosnia and Herzegovina”, no. 36/14 of 12 May 2014

**LAW  
ON THE WITNESS PROTECTION PROGRAM  
IN BOSNIA AND HERZEGOVINA**

**Article 1  
Purpose of the Law**

The purpose of this Law shall be to provide for efficient protection of witnesses before, during and after criminal proceedings, in order to enable the witnesses to testify freely and openly in criminal proceedings before the Court of Bosnia and Herzegovina (hereinafter: the Court of BiH).

**Article 2  
Definition of terms**

(1) For the purposes of this Law the following terms shall mean:

- a) “Witness” shall denote a person without whose testimony there shall be no likelihood of examining and establishing the facts or establishing the residence of the suspect person in the criminal proceedings or without whose testimony this would be significantly hampered;

- b) “Close person” includes the family members and other persons in a close relationship to the witnesses;
- c) “Protection measures” shall denote all individual non-procedural measures aimed at protecting the witness and close persons from intimidation, assault or any dangerous consequences due to his/her decision to testify, i.e. cooperate with justice authorities;
- d) “The Witness Protection Program” (hereinafter: the Witness Protection Program) shall denote a set of individual protection measures stipulated in this Law, that the Witness Protection Department of the State Investigation and Protection Agency (hereinafter: the Witness Protection Department) undertakes to protect the lives, health, freedom, physical integrity or property of the persons included in the program;
- e) “The Witness Protection Program Implementation Committee” shall denote a body prescribed by this Law, authorized to make decisions on the inclusion, discontinuation, extension and completion of the Witness Protection Program as well as to undertake other activities as prescribed by this Law;
- f) “Urgent measures” shall denote any temporary protection and support measures defined by this Law, which are undertaken by the Witness Protection Department until such time as a decision on implementation of the Witness Protection Program has been made, i.e. until an agreement on the Witness Protection Program has been concluded;
- g) “The Witness Protection Department” shall be an independent specialised organizational unit within the State Investigation and Protection Agency (hereinafter: SIPA).

### *Article 3*

#### *(Scope of implementation)*

- (1) The Witness Protection Program may be implemented once one of the following criminal offences is being proved:
  - a) Crimes against the integrity of Bosnia and Herzegovina;
  - b) Crimes against humanity and values protected by international law;
  - c) Crimes of terrorism;
  - d) Crimes perpetrated in an organized manner (organized crimes);
  - e) Crimes for which a punishment of imprisonment for a term of five years or a more severe punishment can be imposed by law.
- (2) A witness may be provided with the protection with his/her consent, in accordance with this Law, insofar as he/she or his/her family member or close person faces a serious danger to life, health, freedom or property because of his/her willingness to testify;
- (3) A witness may also be provided with the protection under the provisions of this Law insofar as the danger is detected after the completion of criminal proceedings and if the danger is a consequence of the fact that that person had testified during the proceedings.
- (4) In accordance with this Law, the protection measures may be cancelled insofar as one of the conditions referred to in paragraphs 2 and 3 was not met at the time when the protection was being granted or it has subsequently ceased to apply. The stay of the criminal proceedings shall not automatically result in the cancellation of the witness protection measures if the danger continues to exist.

### ***CPC-BiH***

#### ***Article 91. Protected Witness***

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

***The Law on Protection of Witnesses under Threat and Vulnerable Witnesses (BiH Official Gazette, Nr. 3/03, 21(03, 61/04 and 55/05).***

***Article 2 Area of application***

(1) In the sense of this Law, the term witness refers to a person without whose testimony in the criminal procedure there is no possibility of investigating and determining the facts or the residence of a suspect, or without whose testimony this would be considerably more difficult.

(2) The witness may be provided with protection with his consent and in accordance with this Law if he or she, or his or her family member, in the sense of paragraph 1 of Article 83 of the Criminal Code of Bosnia and Herzegovina (hereinafter: BiHCC; the "Official Gazette of BiH", No. 3/03) is facing a life endangering threat, threat to health or freedom due to his or her intention to testify, and if he or she is suitable for being under witness protection measures. The witness may also be provided with protection in accordance with the provisions of this Law if the danger is determined after the completion of a criminal procedure, and if the danger is a consequence of the fact that this person testified during the proceedings.

(3) A person may be, with his or her consent, provided with protection in accordance with this Law if that person is, in the sense of paragraph 1 of Article 83 of BiHCC, a family member of the witness, or if this person is in any other way close to the witness, and if his or her life, health or freedom are threatened due to the witness's intention to testify, and if he or she is suitable for being under witness protection measures.

(4) In accordance with this Law, the protection measures may be terminated if, during the period of protection approval, conditions referred to in paragraph 2 and 3 are not fulfilled or have subsequently ceased to be valid. Termination of the criminal procedure does not automatically imply the termination of witness protection measures if the threat still exists.

***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.

***Law on the witness protection program in Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina", no. 36/14 of 12 May 2014)***

***CPC-FoBiH***

***Article 105. Protected Witness***

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

***CPC-RS***

***Protected Witness Article 156.***

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

**CPC-BD**

**Article 91. Protected Witness**

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

**Article 90. Audio and Video Recording of the Witness' Examination**

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

**FoBiH Law on Protection of Witnesses under Threat and Vulnerable Witnesses**

**Article 1. Subject of the Law**

This Law stipulates measures providing protection of witnesses under threat and vulnerable witnesses in criminal procedures conducted by municipality courts, cantonal courts and the Supreme Court of F BiH (hereinafter: court) or cantonal prosecutors or federal prosecutors (hereinafter: prosecutor) for criminal offences within the competence of the court.

**Article 3. Witnesses under threat and vulnerable witnesses**

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.

The family of the person from Paragraph 1 of this Article are persons who may refuse to testify under the CPC FoBiH.

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.

A protected witness is a witness heard according to the provisions of the Article from 15 through 24 of this Law.

**RS LAW ON PROTECTION OF WITNESSES IN CRIMINAL PROCEDURE**

**Article 3.**

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) The family of the person from Paragraph 1 of this Article are persons who may refuse to testify under the Criminal Procedure Act.

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 Article 14.-23. of this Law.

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

("Official Gazette BDBiH" 10/03, 8/07, 19/07)

**Article 1. Purpose of the Law**

This Law stipulates measures providing protection of witnesses under threat and vulnerable witnesses in criminal procedures conducted by the Basic Court and the Court of Appeal of the Brčko District BiH (hereinafter: Prosecutor).

**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) 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.

(3) A protected witness is a witness heard according to the provisions of Article 14. through 23 of this Law.

259. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

260. During the country visit, the reviewing experts were told that just before the visit, a new Law on the witness protection programme in Bosnia and Herzegovina had come into force (published on 12 May 2014). The purpose of this law was to provide for efficient protection of witnesses before, during and after criminal proceedings, in order to enable the witnesses to testify freely and openly in criminal proceedings before the Court of Bosnia and Herzegovina. However, this limitation to witnesses testifying in the Court of BiH seriously reduces the application of the law. Moreover, the scope of the law is limited to certain crimes. With regard to corruption offences, only organized crimes and crimes for which a punishment of imprisonment for a term of five years or a more severe punishment can be imposed by law could come into the ambit of the law. Therefore, the reviewing experts recommended to enlarge the scope of application of the law to cover a broader range of witnesses, as well as all corruption offences.

261. At the entity level, there are no witness protection programmes and the reviewers were told that it would not be feasible to have witness protection programmes at that level. Indeed, a simple change of identity without relocation was often not enough because BiH is a small country. Relocation to other countries, however, required international cooperation and only the State level has a mandate for such cooperation. If a case were tried at local level, there would thus be no witness protection programme.

262. Currently, witnesses testifying at the State level are protected by the Witness Protection Department of the State Investigation and Protection Agency (SIPA). This

Department has provided protection to 928 persons. At entity level, witness protection falls within the responsibilities of law enforcement authorities.

263. The reviewing experts concluded that BiH has partially implemented Art. 32(1) UNCAC.

**(c) Challenges and recommendations**

The reviewing experts recommend to enlarge the scope of personal application of the law on the witness protection program in Bosnia and Herzegovina to cover all witnesses, irrespective of the place they are testifying. Moreover, the law should also explicitly cover all corruption offences.

**Paragraph 2 of article 32**

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

**(a) Summary of information relevant to reviewing the implementation of the article**

264. BiH confirmed that it has fully implemented this provision of the Convention.

265. BiH cited the following implementation legislation:

***Law on Protection of witnesses under threat and vulnerable witnesses***

*(“Official Gazette BiH”, No.3/03, 21(03, 61/04 and 55/05)*

***Article 6. Access to psychological and social assistance and professional help***

During the investigation, the Prosecutor, and after the indictment has been issued, under the condition that the witness consents and that no personal information about the witness are made public, 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 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 defence 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 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 defence 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 defence 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 defence 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 defence 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 defence 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 bear in mind in all phases of the proceeding 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 defence 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 defence 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 defence 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 defence 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.

***Criminal Procedure Code BiH***

***Article 90. Recording of the Examination of Witnesses***

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

***Article 91. Protected Witness***

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

***Criminal Procedure Code FoBiH***

***Article 104. Recording of the Examination of Witnesses***

The examination of witnesses may be recorded using audio-visual equipment at all stages in the proceedings. It must be recorded in case of minors under sixteen years of age who were injured by the offense, and if there are grounds to fear that the witness cannot be examined at the main trial.

***Article 105. Protected Witness***

With respect to protected witnesses in proceedings before the court, the provisions of the special law shall be applied Law on the Protection of Witnesses under Threat and Vulnerable Witnesses FoBiH. (Article 1 and 3 of the stated Law)

***Law on the protection of witnesses under threat and vulnerable witnesses***

***Article 1. Subject of the Law***

This Law stipulates measures providing protection of witnesses under threat and vulnerable witnesses in criminal procedures conducted by municipality courts, cantonal courts and the Supreme Court of F BiH (hereinafter: court) or cantonal prosecutors or federal prosecutors (hereinafter: prosecutor) for criminal offences within the competence of the court.

***Article 3. Witnesses under threat and vulnerable witnesses***

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.

The family of the person from Paragraph 1 of this Article are persons who may refuse to testify under the CPC FoBiH.

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.

A protected witness is a witness heard according to the provisions of the Article from 15 through 24 of this Law.

***Article 10. 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 defence 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 12. 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.

***CPC-RS***

***Criminal Procedure Code RS***

***Recording of the Examination of Witnesses Article 155.***

The examination of witnesses may be recorded on audio-visual equipment at all stages in the proceedings. It shall be recorded in case of minors under sixteen years of age who were injured parties, and if there are grounds for fearing that the witness cannot be examined at the main trial.

***LAW ON PROTECTION OF WITNESSES IN CRIMINAL PROCEDURE RS***

Official Gazette of Republika Srpska" number 48, from 24 June 2003

***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) The family of the person from Paragraph 1 of this Article are persons who may refuse to testify under the Criminal Procedure Act.

(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 Article 14.-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.***

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 Criminal Procedure Act of Republika Srpska.

***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 defence attorney, hear a vulnerable witness by posing questions directly to the witness on behalf of the parties and the defence attorney.

***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 defence attorney, and after hearing the other party and the defence attorney, order that the accused be removed from the courtroom.

(2) In the case from Paragraph 1 of this Article 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 afterwards.

(3) In the case from Paragraph 1 and 2 of this Article, the defence attorney shall be present at the hearing. After the testimony has been presented to the accused but before the witness is released, the defence 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 defence attorney. The Council from Article 24 Paragraph 5 of the Criminal Procedure Code 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 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 defence 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 defence 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 defence attorney.

***Article 14. Witness protection hearing***

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.

***CPC-BD***

***Article 91. Protected Witness***

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

***LAW ON PROTECTION OF WITNESSES UNDER THREAT AND VULNERABLE WITNESSES OF BRČKO DISTRICT OF BOSNIA AND HERZEGOVINA***

***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 defence 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 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.

***Recording of the Examination of Witnesses Article 155.***

The examination of witnesses may be recorded on audio-visual equipment at all stages in the proceedings. It shall be recorded in case of minors under sixteen (16) years of age who were injured parties, and if there are grounds for fearing that the witness cannot be examined at the main trial.

***Protected Witness Article 156.***

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

266. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

267. The reviewing experts concluded that BiH has partially implemented Art. 32(2) UNCAC.

**Paragraph 3 of article 32**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

268. BiH confirmed that it has fully implemented this provision of the Convention.

269. BiH cited the following implementation legislation:

Cooperation in the field of witness protection, which also implies the relocation of persons involved in the witness protection program, made possible by the police

cooperation agreements Bosnia and Herzegovina is a part of, with the following countries:

1. Republic of Hungary
2. Republic of Italy
3. Russian Federation
4. Republic of Austria
5. Arab Republic of Egypt
6. Republic of Slovenia
7. Republic of Croatia
8. Republic of Serbia
9. Republic of Montenegro
10. Republic of Bulgaria
11. Swiss Confederation
12. Republic of Greece
13. Islamic Republic of Iran
14. Republic of Slovakia
15. Republic of Turkey
16. Republic of Albania
17. Republic of France
18. Qatar
19. Hashemite Kingdom Jordan
20. Kingdom of Spain
21. Sweden
22. Strategic Cooperation Agreement between BiH and EUROPOL
23. Konvencija o policijskoj suradnji za jugoistočnu Europu

The stated agreements enable operative actions in the field of witness protection, and the actual relocation of witnesses is conducted based on bilateral agreements signed by SIPA's Witness Protection Department with a specific witness protection unit of another country with which Bosnia and Herzegovina signed an agreement on police cooperation.

**(b) Observations on the implementation of the article**

270. The reviewing experts concluded that BiH has implemented Art. 32(3) UNCAC.

**Paragraph 4 of article 32**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

271. BiH confirmed that it has fully implemented this provision of the Convention.
272. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

273. During the country visit, it was confirmed that the provisions also apply to victims as far as they are witnesses.

274. The reviewing experts concluded that BiH has partially implemented Art. 32(4) UNCAC.

### **Paragraph 5 of article 32**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

275. BiH confirmed that it has fully implemented this provision of the Convention.

276. BiH cited the following implementation legislation:

#### ***Criminal Procedure Code BiH***

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

(1) The witness may be examined by the party, i.e. the defence attorney who called the witness (direct examination), and by the opposite party, i.e. the defence attorney (cross-examination) and another examination by the party, i.e. the defence attorney who called the witness. The party who called a witness shall directly examine the witness in question, but the judge or the presiding judge and members of the Panel may at any stage of the examination ask the witness appropriate questions. Questions on cross-examination shall be limited and shall relate to the questions asked during direct examination. Questions on redirect examination shall be limited and shall relate to questions asked during cross-examination. After examination of the witness, the judge or the presiding judge and members of the Panel may question the witness.

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

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

(4) During the presentation of evidence from Article 261. Paragraph 2, Item e of this Code, the Court shall question the witness and then allow the parties and the defence attorney to pose questions to the witness.

#### ***Criminal Procedure Code FoBiH***

##### ***Article 6. Rights of a Suspect or Accused***

(1) The suspect, on his first questioning, must be informed about the offense that he is charged with and grounds for suspicion against him and that his statement may be used as evidence in further proceedings.

(2) The suspect or accused must be provided with an opportunity to make a statement regarding all the facts and evidence incriminating him and to present all facts and evidence in his favour.

(3) The suspect or accused shall not be bound to present his defence or to answer questions posed to him.

### ***Criminal Procedure Code RS***

#### ***Direct and cross-examination of witnesses Article 277.***

(1) The witness may be examined by the party, i.e. the defence attorney who called the witness (direct examination), and by the opposite party, i.e. the defence attorney (cross-examination) and another examination by the party, i.e. the defence attorney who called the witness. The party who called a witness shall directly examine the witness in question, but the judge or the presiding judge and members of the Panel may at any stage of the examination ask the witness appropriate questions. Questions on cross-examination shall be limited and shall relate to the questions asked during direct examination. Questions on redirect examination shall be limited and shall relate to questions asked during cross-examination. After examination of the witness, the judge or the presiding judge and members of the Panel may question the witness.

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

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

(4) During the presentation of evidence from Article 276 Paragraph 2 Item d) of this Code, the Court shall question the witness and then allow the parties and the defence attorney to pose questions to the witness.

### ***Criminal Procedure Code BD***

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

The witness may be examined by the party, i.e. the defence attorney who called the witness (direct examination), and by the opposite party, i.e. the defence attorney (cross-examination) and another examination by the party, i.e. the defence attorney who called the witness. The party who called a witness shall directly examine the witness in question, but the judge or the presiding judge and members of the Panel may at any stage of the examination ask the witness appropriate questions. Questions on cross-examination shall be limited and shall relate to the questions asked during direct examination. Questions on redirect examination shall be limited and shall relate to questions asked during cross-examination. After examination of the witness, the judge or the presiding judge and members of the Panel may question the witness.

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

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

(4) During the presentation of evidence from Article 261. Paragraph 2, Item e of this Code, the Court shall question the witness and then allow the parties and the defence attorney to pose questions to the witness.

277. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

278. The reviewing experts concluded that BiH has partially implemented Art. 32(5) UNCAC.

**Article 33. Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

279. BiH stated that it has not implemented this provision of the Convention.

**(b) Observations on the implementation of the article**

280. During the country visit, the reviewers were told that on 1 January 2014, the Law on the protection of whistleblowers in the institutions of BiH came into effect. However, the law only covers the State level. Therefore, currently protected persons are only persons working in public institutions at the State level. The Law does not have retroactive application. A similar bill is before the FoBiH parliament and RS will also soon develop a bill, which was mentioned in its anti-corruption strategy.

281. The central responsibility for whistleblower protection rests with the Agency for the prevention of corruption and the coordination of the fight against corruption (APIK). APIK's responsibilities are defined by the Law on Whistleblower Protection in the BiH Institutions, and thus are limited only to the institutions of Bosnia and Herzegovina. APIK has received requests for protection of whistleblowers during the first 6 months of its operation and has developed implementation legislation (the Instruction for Enforcing the Law on Whistleblower Protection in the Institutions of Bosnia-Herzegovina; and the Book of Rules on Internal Disclosure of Acts of Corruption and Protection of Persons who Report Acts of Corruption within the Institutions of BiH. Both are contained in the

Handbook on whistleblower protection). Whistleblowers can request protection directly at APIK. All authorities have to develop internal reporting rulebook.

282. APIK carries out an analysis of all documents and decides on granting protection. So far, out of 5 requests, 2 were granted and 3 were refused. Reporting can be done online on a website or in writing. A Hotline is not available yet. APIK can receive anonymous reports. The status of protected whistleblower means there can be no retaliation or negative consequence. A supervisor does not even have to be aware of this status.
283. As regards the private sector, the authorities reported that there are no concrete plans for legislation yet.
284. The BiH authorities reported that limited resources for the implementation of the Law were a problem.
285. The reviewing experts concluded that BiH has partially implemented this non-mandatory provision of UNCAC.

**(c) Challenges and recommendations**

286. The reviewing experts recommended that Laws for the protection of whistleblowers should be adopted at the entity level as soon as possible. The also recommended to provide for the protection of whistleblowers in the private sector.

**(d) Technical assistance needs**

287. BiH requested a summary of good practices/lessons learned; legal advice; model legislation and on-site assistance by a relevant expert.

**Article 34. Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

288. BiH confirmed that it has fully implemented this provision of the Convention.
289. BiH cited the following implementation legislation:

***Criminal Procedure Code BiH***  
***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.

***Criminal Procedure Code FoBiH***  
***Article 214. 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.

***Criminal Procedure Code RS***  
***Decisions to Annul Certain Legal Transaction Article 110.***

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.

***Criminal Procedure Code BD***  
***Article 200. Decisions to Annul Certain Legal Transaction***

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.

290. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

291. The BiH legal system offers possibilities to annul or rescind an agreement or a decision adopted by the public administration, which have been affected by acts of corruption. Art. 200 CPC-BiH gives the court the power to annul certain legal transactions. The CPC-RS also foresees that the courts may annul certain legal transactions if a claim under property law is filed.

292. The reviewing experts concluded that BiH has implemented Art. 34 UNCAC.

**Article 35. Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an*

*act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

293. BiH confirmed that it has fully implemented this provision of the Convention.

294. BiH cited the following implementation legislation:

***Criminal Procedure Code BiH***

***Article 195. Procedure for Satisfaction of a Claim under Property Law***

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

(2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court.

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

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

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

***CPC-FoBiH***

***Article 209. Procedure for Satisfaction of a Claim under Property Law***

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

(2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court.

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

(4) If the authorized person has not filed the petition to pursue his claim under property law in criminal proceedings before the indictment is confirmed, he shall be informed that he may file that petition by the end of the main trial or sentencing hearing. If a criminal offense has caused damage to the property of the State of Bosnia and Herzegovina, and no petition has been filed, the Court shall so inform the body referred to in Article 208, Paragraph 2 of this Code.

(5) If the authorized person does not file the claim under property law until the end of the main trial or if he requests a transfer to civil action, and the data concerning the

criminal proceedings provide a reliable grounds for a complete or partial resolution of the claim under property law, the Court shall decide in the convicting verdict to pronounce on the accused the measure of forfeiture of property gain.

***Criminal Procedure Code RS***

***Procedure for Satisfaction of a Claim under Property Law Article 104.***

(1) A property claim to be adjudicated in the criminal proceedings shall be filed only by the person eligible or authorized to pursue that claim in a civil action.

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

***Criminal Procedure Code BD***

***Article 195. Procedure for Satisfaction of a Claim under Property Law***

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

(2) The petition may be submitted no later than the end of the main trial or sentencing hearing before the Court.

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

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

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

BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

295. The reviewing experts concluded that BiH has implemented Art. 35 UNCAC.

**Article 36. Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to*

*carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

296. BiH confirmed that it has fully implemented this provision of the Convention.

**State level:**

Department II of the Court of BiH the Prosecutor's Office BiH - for organised crime, economic crime and corruption

SIPA - Department for the fight against economic crime and corruption

Agency for the Prevention of Corruption and Coordination of the Fight against Corruption – APIK ("Official Gazette BiH", 103/09)

**Federation of BiH:**

Federal Police Administration - Department for economic crime and corruption;  
Ministries of Internal Affairs of the Cantons

(Bill on Combating Organised Crime and Corruption - ZASKOK)

**Republika Srpska:**

Special Prosecutor's Office RS

Ministry of Internal Affairs of Republika Srpska - Unit for Combating Organised Crime and Corruption

**Brčko District BiH:**

Prosecutor's Office of the Brčko District BiH - Department for Economic, Financial and Organised crime

Police of BDBiH: Department for Combating Economic Crime and Corruption

297. Officials of Law enforcement agencies are selected through public tenders, with everyone passing through necessary security checks.

298. Officials of judicial bodies/persons with judicial functions are selected by the High Judicial and Prosecutorial Council (Law on the High Judicial and Prosecutorial Council, law on police officers). Persons with judicial functions in BiH (on all levels) undergo regular trainings organised by education centres for judges and prosecutors FoBiH and RS.

299. Representatives of law enforcement agencies undergo regular trainings organised by domestic agencies, as well as international bodies and organisations (IPA, TAIEX, ICITAP etc.)

**(b) Observations on the implementation of the article**

300. Due to the highly federalised structure of BiH, there is no agency that has the powers to investigate or prosecute acts of corruption on all levels. Likewise, there is no judicial institution with the authority to resolve competence conflicts within the whole territory of BiH. The Agency for the prevention of corruption and the coordination of the fight

against corruption (APIK) only has a preventive mandate, so strictly speaking it is not an Art. 36 body. APIK also has a mandate to develop a methodology for asset declaration.

301. APIK was established in 2009. However, its first budget was only approved in 2012. In 2013, the first civil servants, experts and managers, were employed and the agency became operational in 2014.
302. The agency is an independent administrative body reporting to the parliamentary assembly. It only has a preventive mandate, so strictly speaking it is not an Art. 36 body. The responsibilities of APIK are laid down in Art. 10 of its establishment Act. However, according to Art. 10(h), APIK takes “action upon receiving the submissions that contain indications of a corruptive conduct pursuant to the applicable regulations”. Moreover, there is an obligation on other authorities to cooperate.
303. The APIK Act also includes a very broad definition of public servant in Art. 3(a). However, this definition only applies to the APIK Act and not to the CC.
304. APIK also has a mandate to develop a methodology for asset declaration. On the basis of a comparative study, it will create a new mechanism for collecting disclosure forms for civil servants. Conflicts of interest will also be dealt with by APIK and employees will be transferred from the election agency to APIK.
305. APIK has assisted in the elaboration of 65 action plans for the prevention of corruption of different authorities on the State level and given its opinion on 51 action plans. It has organized more than 10 trainings for State institutions on the development of integrity plans and monitored the adoption of 9 such plans.
306. In direct cooperation with the delegation of the European Union in BiH and CSOs, a project for the „Strengthening of institutional anti-corruption capacities“ and the involvement of CSO networks in the area was introduced. After a selection procedure, a number of projects were selected for implementation over the next two years.
307. Shortly before the country visit, the Government of FoBiH adopted a bill on the establishment of a specialized anti-corruption body. FoBiH will also create an asset management office. The Law on Suppression of Corruption and Organized Crime in the Federation of BiH (published in the FoBiH Official Gazette no 59/14 ), sets out establishing of a Special Department of the Federal Prosecutor’s Office in the FoBiH and Special Department of the Supreme Court of the FoBiH for the suppression of corruption, organized crime and international crime. The formation of the aforementioned organizational structure within the judiciary institutions of the FoBiH is currently being done.
308. The State Investigation and Protection Agency (SIPA) is an operatively independent administrative organization within the Ministry of Security of BiH, whose competencies include prevention, detection and investigation of criminal offences falling within jurisdiction of the Court of BiH. SIPA has over 850 employees working in 11 organizational units. It has a Department for the fight against economic crime and corruption.

309. Judges and prosecutors are appointed by the High Judicial and Prosecutorial Council. In the Court of BiH there are specialized chambers (3 panels with 3 judges each) for organized crime, corruption, and white collar crime.
310. In the Federation of BiH, the Law on Prevention of Corruption and Organized Crime entered into force, which establishes a Special Department of the Federal Prosecutor's Office in the FoBiH and Special Department of the Supreme Court of the FoBiH for the prevention of corruption, organized crime and international crime. The aforementioned organizational structures within the judiciary institutions of the FoBiH are currently being set up. However, there appear to be serious weaknesses in the implementation context (unclear division of competences may lead to transfers up and down; insufficient resources for the department and court, staffing). The reviewers recommended to address these shortcomings.
311. In RS, in 2006 the Law on Combating Organised and the Most Severe Forms of Economic Crime was adopted. It provides that matters of detection and criminal prosecution of offenders in the field of corruption and offences against official duties are under the competence of the Special Prosecutor's Office of Republika Srpska and the Special Department of the Court for Organised and Most Severe Forms of Economic Crime. The Special Prosecutor's Office is autonomous and independent as determined by this Law, and is responsible for its work to the Main Republican Prosecutor of Republika Srpska. Both of the mentioned bodies have authority on entire territory of Republika Srpska. Pursuant to the Law on Combating Organized Crime and Most Serious Forms of Commercial Crime in the RS, the following specialization has been established:
- Special Prosecutor's Office for Prevention of Organized and Most Serious Forms of Commercial Crime (within the District Prosecutor's Office of Banja Luka, with competences over the entire territory of the RS),
  - Special Department of the District Court of Banja Luka, for organized and the most severe forms of business crimes with competences in the entire territory of the RS, as well as
  - Special Council of the RS Supreme Court for organized and the most serious forms of commercial crimes.
312. According to information available, activities in the Republic of Srpska are being done on the preparation of changes and amendments of the Law on Prevention of Organized and Most Severe Types of Crime. The position of the High Judicial and Prosecutorial Council is that competencies of the authorities set out by this law should be more precisely set out.
313. Training for the judiciary is provided by the centre for the training of judges and prosecutors. There are 3 mandatory days of training per year. Every year corruption issues are included in the curriculum.

314. The independence of the judiciary was safeguarded by a 2002 law that was imposed by the High Representative. However, representatives of the judiciary complained that both judges and prosecutors lost part of their independence after the High Representative left. For instance, the reform of judges' and prosecutor's salaries in 2005, that is the adoption of harmonized laws at different levels in BiH, established a unitary system of salaries and compensations for all the judges and prosecutors in BiH. However, in the period from 2010 to today, several changes and amendments of the Law on Salaries and Remunerations of Judges and Prosecutors have been done, thus violating the harmonized system of salaries and remunerations.
315. As a consequence, the salary of prosecutors was reduced. Therefore, all good prosecutors tried to become judges. This meant that mainly beginners are nowadays working in the prosecutor's offices. Moreover, while prosecutors are independent from orders, they are dependent on resources and funds. Also, performance assessment is based on the quota of cases dealt with. Since organized crime and corruption cases take a lot of time, there is a disincentive to tackle these cases.
316. The existence of a High Judicial Council for appointing judges and prosecutors was identified as a good practice. BiH is one of the few countries in the region which has this system that is independent from the government and the executive branch. However, the HJC does not have its own budget which undermines its independence.
317. During the country visit, the reviewing experts were informed about the lack of institutional mechanisms to resolve conflicts of competence (prosecutorial/judicial) at the State and entities levels.
318. The reviewing experts concluded that BiH has partially implemented Art. 36 UNCAC.

**(c) Good practices**

319. The reviewing experts identified the existence of a High Judicial Council for the appointment of judges and prosecutors as a good practice.

**(d) Challenges and recommendations**

320. The reviewing experts recommended:
- The legislation should provide for a clear division of competences, mechanisms to resolve competence conflicts and sufficient resources for the institutions;
  - ensuring equal pay for prosecutors and judges by returning to a harmonized system of laws on salaries;
  - the allocation of sufficient resources to the judiciary to allow them to effectively carry out their mandate;

- ensuring that performance assessment sufficiently takes into account the nature and complexity of the cases;
- preserve the independence of the High Judicial and Prosecutorial Council of BiH and strengthen its role in the process of the preparation and adoption of its budget, as well as the budgets of the courts and prosecutors' offices;
- considering broadening the mandate of APIK and strengthening its capacities.

**(d) Technical assistance needs**

321. BiH requested further focused training for judicial and law enforcement personnel. However, an analysis of the completed training of judges and prosecutors on the topic of corruption should be carried out first to establish in which way the implemented training has increased the quality of their work in corruption cases. Only then, on the basis of this analysis, an assessment of the needs for further training should be made.

**Article 37. Cooperation with law enforcement authorities**

**Paragraphs 1, 2 and 3 of article 37**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

*3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

322. BiH confirmed that it has fully implemented this provision of the Convention.

323. BiH cited the following implementation legislation:

***CC-BiH  
Giving Gifts and Other Forms of Benefits Article 218.***

(3) The perpetrator of the criminal offence referred to in paragraph 1 and 2 of this Article who had given a bribe on request of the official or responsible person in the institutions of Bosnia and Herzegovina including also a foreign official person or an

international official, but reported the deed before it being discovered or before knowing that the deed has been discovered, may be released from punishment.

***Criminal Procedure Code BiH***  
***Article 231. Plea bargaining***

(1) The suspect or the accused and the defence attorney, may, until the end of the main trial i.e. the trial before the Appellate Panel, negotiate with the Prosecutor on the conditions of admitting guilt for the criminal offense with which the accused is charged.

(2) An Agreement on the admission of guilt may not be signed if the accused plead guilty at the preliminary hearing.

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

(4) The Agreement on the admission of guilt shall be made in writing and delivered to the preliminary judge, the judge i.e. the Panel along with the indictment. After the indictment is confirmed, the Agreement on the admission of guilt is considered and the preliminary judge pronounces a criminal sanction stipulated in the agreement, after which the case is presented to the judge, i.e. the panel in order to schedule the main trial. After the case has been presented in order to schedule the main trial, the judge, i.e. the panel shall decide on the agreement.

(5) The preliminary judge, the judge i.e. the Panel may sustain or reject the agreement.

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

- a) that the agreement of guilt was entered voluntarily, consciously and with understanding, and that the accused is informed of the possible consequences, including the satisfaction of the claims under property law and reimbursement of the expenses of the criminal proceedings,
- b) that there is enough evidence proving the guilt of the suspect or the accused,
- c) that the accused understands that by agreement on the admission of guilt he waives his right to trial and that he may not file an appeal against the pronounced criminal sanction,
- d) that the criminal sanction was pronounced in accordance with Paragraph (3) of this Article,
- e) that the damaged party was given the opportunity to comment on the property claim before the prosecutor.

(7) If the Court accepts the agreement on the admission of guilt, the statement of the accused shall be entered in the record and the trial for pronouncing a criminal sanction stipulated in the contract shall be continued.

(8) If the Court rejects the agreement on the admission of guilt, the Court shall inform the parties to the proceeding and the defence attorney about the rejection and State this in the record. The date of the main trial shall also be set. The main trial shall be scheduled within 30 days. The confession from this agreement may not be used as evidence in the criminal procedure.

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

***CC-FoBiH***  
***Article 381. Giving Gifts and Other Forms of Benefits***

(3) The perpetrator of criminal offence referred to in paragraphs 1 and 2 of this Article, who gives the bribe on the request of an official or responsible person in the Federation,

including also a foreign official person, and reports the criminal offence before it is discovered or before he realises that the offence has been discovered, may be released from punishment.

***Criminal Procedure Code FoBiH***  
***Article 246. Negotiation on guilt***

(1) The suspect or the accused and the defence attorney may negotiate with the prosecutor on the conditions of admitting guilt for the criminal offense with which the suspect or the accused is charged.

(2) In plea bargaining with the suspect or the accused and his defence attorney on the admission of guilt pursuant to Paragraph 1 of this Article, the prosecutor may propose an agreed sentence of less than the minimum prescribed by the law or a milder penalty against the suspect or the accused.

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

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

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

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

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

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

***CC-RS***  
***Offering Bribe Article 352.***

(3) The perpetrator of the offence referred to in Paragraphs 1 and 2 of this Article who gave a bribe at the request of an official or responsible person, and reported the offence before it was been discovered or before knowing that the offence was discovered, may be released from punishment.

***CPC-RS***  
***Plea bargaining Article 246.***

(1) The suspect or the accused and the defence attorney, may, until the end of the main trial i.e. the trial before the Appellate Panel, negotiate with the Prosecutor on the conditions of admitting guilt for the criminal offense with which the accused is charged.

(2) An Agreement on the admission of guilt may not be signed if the accused plead guilty at the preliminary hearing.

(3) In plea bargaining with the suspect or the accused and his defence attorney on the admission of guilt pursuant to Paragraph 1 of this Article, the Prosecutor may propose an agreed sentence of less than the minimum prescribed by the Law for the criminal offense(s) or a lesser penalty against the suspect or the accused in accordance with the Criminal Law.

(4) The Agreement on the admission of guilt shall be made in writing and delivered to the preliminary judge, the judge i.e. the Panel along with the indictment. After the indictment is confirmed, the Agreement on the admission of guilt is considered and the preliminary judge pronounces a criminal sanction stipulated in the agreement, after which the case is presented to the judge, i.e. the panel in order to schedule the main trial. After the case is delivered to schedule the main trial, the judge, i.e. the Panel shall decide on the agreement.

***CC-BD***  
***Giving Gifts and other Benefits Article 375.***

(3) The perpetrator of the offence referred to in Paragraphs 1 and 2 of this Article who has given a bribe upon the request of an official or responsible person in Brčko District of Bosnia and Herzegovina, including a foreign official, and reported the act prior to the discovery of such act, or prior to knowledge that the act has been discovered, may be released from punishment.

***CPC-BD***  
***Article 231.***

(1) The suspect or the accused and the defence attorney, may, until the end of the main trial i.e. the trial before the Appellate Panel, negotiate with the Prosecutor on the conditions of admitting guilt for the criminal offense with which the accused is charged.

(2) An Agreement on the admission of guilt may not be signed if the accused plead guilty at the preliminary hearing.

(3) In plea bargaining with the suspect or the accused and his defence attorney on the admission of guilt pursuant to Paragraph 1 of this Article, the Prosecutor may propose an agreed sentence of less than the minimum prescribed by the Law for the criminal offense(s) or a lesser penalty against the suspect or the accused in accordance with the Criminal Law.

(4) The Agreement on the admission of guilt shall be made in writing and delivered to the preliminary judge, the judge i.e. the Panel along with the indictment. After the indictment is confirmed, the Agreement on the admission of guilt is considered and the preliminary judge pronounces a criminal sanction stipulated in the agreement, after which the case is presented to the judge, i.e. the panel in order to schedule the main trial. After the case is delivered to schedule the main trial, the judge, i.e. the Panel shall decide on the agreement.

(5) The preliminary judge, the judge i.e. the Panel may sustain or reject the agreement.

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

- a) that the agreement of guilt was entered voluntarily, consciously and with understanding, and that the accused is informed of the possible consequences, including the consequences concerning the property claim, confiscation of illegally obtained property and expenses of the criminal proceedings;
- b) that there is enough evidence proving the guilt of the accused;

- c) that the accused understands that by agreement on the admission of guilt he waives his right to trial and that he may not file an appeal against the pronounced criminal sanction;
- d) that the criminal sanction was pronounced in accordance with Paragraph (3) of this Article;
- e) that the damaged party was given the opportunity to comment on the property claim before the prosecutor.

(7) If the Court accepts the agreement on the admission of guilt, the statement of the accused shall be entered in the record and the trial for pronouncing a criminal sanction stipulated in the contract shall be continued.

(8) If the Court rejects the agreement on the admission of guilt, the Court shall inform the parties to the proceeding and the defence attorney about the rejection and State this in the record. The date of the main trial shall also be set. The main trial shall be scheduled within 30 days. The confession from this agreement may not be used as evidence in the criminal procedure

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

324. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

325. During the country visit, the reviewing experts were told that plea bargaining was introduced 11 years ago to accelerate cases, shorten the time and costs of proceedings and catch the “big fish”. Since then, plea bargaining has been widely used at the Court of BiH. In the FoBiH it is also widely used in practice. Indeed, it was stated that there was not a single organised crime case without a plea bargain agreement. Usually, there is a crown witness who testifies against other members of the organised crime group. RS also applies plea bargaining and has used it in a number of corruption cases.

326. Plea bargaining does not represent an exception to the principle of mandatory prosecution. It only concerns the sentencing.

327. The reviewing experts concluded that BiH has adequately implemented Art. 37(1), (2) and (3) UNCAC.

**Paragraph 4 of article 37**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

328. BiH confirmed that it has fully implemented this provision of the Convention.

329. BiH cited the same implementation legislation as for the previous article

330. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

331. During the country visit, the BiH authorities confirmed that cooperating offenders could be protected as provided for in Art. 32 UNCAC.

332. The reviewing experts concluded that BiH has implemented Art. 37(4) UNCAC.

**Paragraph 5 of article 37**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

333. BiH confirmed that it has fully implemented this provision of the Convention.

334. BiH cited the following implementation legislation:

*Law on Mutual Legal Assistance in Criminal Matters*

335. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

336. During the country visit, the BiH authorities confirmed that they were considering entering into cooperation agreements.

337. The reviewing experts concluded that BiH has implemented Art. 37(5) UNCAC.

**Article 38. Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its*

public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information.

**(a) Summary of information relevant to reviewing the implementation of the article**

338. BiH confirmed that it has fully implemented this provision of the Convention.

339. BiH cited the following implementation legislation:

***Criminal Procedure Code BiH***

***Article 213. Obligation to Report a Criminal Offense***

(1) Official and responsible persons in all the governmental bodies in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

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

***CPC-FoBiH***

***Article 228. Obligation to Report a Criminal Offense***

(1) Official and responsible persons in all the governmental bodies in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

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

***CPC-RS***

***Obligation to Report a Criminal Offense Article 221.***

(1) Official and responsible persons in all the governmental bodies in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or

learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

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

***CPC-BD***

***Article 213. Obligation to Report a Criminal Offense***

(1) Official and responsible persons in all the governmental bodies of Brčko District in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

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

340. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

341. During the country visit, the reviewers were told that in practice, there is cooperation between the entities. However, the marked absence of Republika Srpska from the country visit, despite the fact that it had been invited to all the meetings well in advance, somehow called into question this statement.

342. Art. 24 of the APIK Act stipulates that the BiH institutions and agencies at all levels, public services and other bodies with public authorizations shall have the obligation to cooperate with the Agency, and furnish all required data and information at the request of the Agency. APIK also signed an MoU with the Ministry of Security, certain NGOs (the Account Network, TI) and the Austria Ministry of the Interior.

343. So far, it appears that the prosecution services have never received reports of corruption that were reported to APIK. All reports so far have come from the police.

344. Within the judiciary, cases can be referred down to the entity and up to the State level. However, in practice problems arise quite frequently from the fact that there is no judicial institution with the authority to solve competence conflicts within the whole territory of BiH (see also under article 36). Such institutions only exist at the entity

level. But even there, apparently, the canton of Sarajevo has a problem because the law does not deal with conflicts between the State level and the cantonal level (cantons have first level competence and entities have appellate competence in criminal cases). Moreover, cases can also be transferred horizontally between entities but again there is no arbiter for competence conflicts. There should be a prosecution service to. The reviewers thus recommend that there should be a State level institution to solve competence conflicts.

345. The reviewing experts concluded that BiH has partially implemented Art. 38 UNCAC.

**(c) Challenges and recommendations**

346. The reviewing experts recommend the creation of a judicial institution with the authority to resolve competence conflicts within the whole territory of BiH.

**Article 39. Cooperation between national authorities and the private sector**

**Paragraph 1 of article 39**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

347. BiH confirmed that it has fully implemented this provision of the Convention.

348. BiH cited the following implementation legislation:

***Law on the Agency for Prevention of Corruption  
Article 9. (Scope of the Agency)***

The Agency is responsible for the prevention of corruption and coordination of the fight against corruption in institutions of the public and private sector in:

- a) Office holders in the legislative, executive and judicial authorities on all levels;
- b) Public officials, employees and police officers in government institutions on all levels;
- c) Board members, authorized and other persons in commercial companies, public companies, public institutions and private companies;
- d) Members of bodies and other authorized persons in political parties;
- e) Authorized persons in cultural and sports institutions, foundations, associations and NGOs.

***CPC-BiH***

***Article 72. Order Issued to a Bank or another Legal Person***

(1) If there are grounds for suspicion that a person has committed a criminal offense related to acquisition of material gain, the preliminary proceedings judge may at the motion of the Prosecutor issue an order to a bank or another legal person performing financial operations to turn over information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The judge may, on the motion of the Prosecutor, order that other necessary measures referred to in Article 116 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence thereupon.

(3) In case of an emergency, any of the above mentioned measures may be ordered by the Prosecutor on the basis of an order. The Prosecutor shall immediately inform the Court who shall issue a court warrant within 72 hours. The Prosecutor shall seal the obtained information until the issuance of the court order.

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

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

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

***Article 72.a Order to the telecommunications operator***

(1) If there are grounds for suspicion that a person has committed a criminal offence, on the basis of motion of the Prosecutor or officials authorized by the Prosecutor, the Court may issue an order to a telecommunication operator or another legal person performing telecommunication services to turn over information concerning the use of telecommunication services by that person, if such information could be used as evidence in the criminal proceedings or be useful in collection of information that could be useful to the criminal proceedings.

(2) In cases of emergency, any of the measures under paragraph (1) of this Article may be ordered by the Prosecutor and received information shall be sealed until the issuance of the court order. The Prosecutor shall immediately inform the preliminary proceedings judge who may issue a warrant within 72 hours. In case the preliminary proceedings judge fails to issue the said order, the Prosecutor shall be obliged to return such information without accessing it.

(3) Measures under paragraph (1) of this Article may also be ordered against a person against whom there are grounds for suspicion that he or she will deliver to the perpetrator or will receive from the perpetrator information in relation to the offence, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to this person.

(4) Telecommunication operators or other legal person who provides telecommunication services shall be obliged to enable enforcement of the measures by the Prosecutor and police bodies under paragraph (1).

***Law on the Agency for Prevention of Corruption  
Article 9 - missing***

***Criminal Procedure Code RS  
Order Issued to a Bank or another Legal Person Article 136.***

(1) If there are grounds for suspicion that a person has committed a criminal offense related to acquisition of material gain, the preliminary proceedings judge may at the motion of the Prosecutor issue an order to a bank or another legal person performing financial operations to turn over information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The preliminary proceedings judge may, on the motion of the prosecutor, order that other necessary measures referred to in Article 234 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence thereupon.

(3) In case of an emergency, any of the above mentioned measures may be ordered by the prosecutor on the basis of an order. The prosecutor shall immediately inform the preliminary proceedings judge who shall issue a court warrant within 72 hours. The prosecutor shall seal the obtained information until the issuance of the court warrant. In case the preliminary proceedings judge fails to issue the said warrant, the prosecutor shall be bound to return such information without having an access to it.

(4) The court may issue a decision ordering a legal or physical person to temporarily suspend a financial transaction that is suspected to be a criminal offense or intended for the commission of the criminal offense, or suspected to serve to conceal a criminal offense or conceal the proceeds of crime.

(5) The decision referred to in the previous Paragraph shall order that the financial resources designated for the transaction referred to in Paragraph 4 of this Article and cash amounts of domestic or foreign currency be temporarily seized pursuant to Article 129 Paragraph 1 of this Code and be deposited in a special account and kept until the end of the proceedings or until the conditions for their return are met.

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

***Order to the telecommunications operator Article 137.***

(1) If there are grounds for suspicion that a person has committed a criminal offence, on the basis of motion of the Prosecutor or officials authorized by the Prosecutor, the Court may issue an order to a telecommunication operator or another legal person performing telecommunication services to turn over information concerning the use of telecommunication services by that person, if such information could be used as evidence in the criminal proceedings or be useful in collection of information that could be useful to the criminal proceedings.

(2) U In cases of emergency, any of the measures under paragraph (1) of this Article may be ordered by the Prosecutor and received information shall be sealed until the issuance of the court order. The Prosecutor shall immediately inform the preliminary proceedings judge who may issue a warrant within 72 hours. In case the preliminary proceedings judge fails to issue the said order, the Prosecutor shall be obliged to return such information without accessing it.

(3) Measures under paragraph (1) of this Article may also be ordered against a person against whom there are grounds for suspicion that he or she will deliver to the perpetrator or will receive from the perpetrator information in relation to the offence, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to this person.

(4) Telecommunication operators or other legal person who provides telecommunication services shall be obliged to enable enforcement of the measures by the Prosecutor and police bodies under paragraph (1).

### ***Criminal Procedure Code BD***

#### ***Article 72. Order Issued to a Bank or another Legal Person***

(1) If there are grounds for suspicion that a person has committed a criminal offense related to acquisition of material gain, the preliminary proceedings judge may at the motion of the Prosecutor issue an order to a bank or another legal person performing financial operations to turn over information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, if such information could be used as evidence in the criminal proceedings.

(2) The court may, on the motion of the Prosecutor, order that other necessary measures referred to in Article 116 of this Code be taken in order to enable the detection and finding of the illicitly gained property and collection of evidence thereupon.

(3) In case of an emergency, any of the above mentioned measures may be ordered by the Prosecutor on the basis of an order. The Prosecutor shall immediately inform the Court who shall issue a court warrant within 72 hours. The Prosecutor shall seal the obtained information until the issuance of the court order. Should the court not issue a court warrant, the Prosecutor shall return the information without having opened it.

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

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

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

#### ***Article 72a. Order to the telecommunications operator***

(1) If there are grounds for suspicion that a person has committed a criminal offence, on the basis of motion of the Prosecutor or officials authorized by the Prosecutor, the Court may issue an order to a telecommunication operator or another legal person performing telecommunication services to turn over information concerning the use of telecommunication services by that person, if such information could be used as

evidence in the criminal proceedings or be useful in collection of information that could be useful to the criminal proceedings.

(2) In cases of emergency, any of the measures under paragraph (1) of this Article may be ordered by the Prosecutor and received information shall be sealed until the issuance of the court order. The Prosecutor shall immediately inform the preliminary proceedings judge who may issue a warrant within 72 hours. In case the preliminary proceedings judge fails to issue the said order, the Prosecutor shall be obliged to return such information without accessing it.

Measures under paragraph (1) of this Article may also be ordered against a person against whom there are grounds for suspicion that he or she will deliver to the perpetrator or will receive from the perpetrator information in relation to the offence, or grounds for suspicion that the perpetrator uses a telecommunication device belonging to this person.

(4) Telecommunication operators or other legal person who provides telecommunication services shall be obliged to enable enforcement of the measures by the Prosecutor and police bodies under paragraph (1).

349. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

350. During the country visit, the reviewing experts were told that the BiH FIU is a police type FIU. It receives about 30 requests per year from the prosecution authority. Most are general requests concerning investigations of money laundering. The FIU has MoUs with about 30 FIUs but not with Western European countries. The FIU has the power to freeze suspicious transactions for 5 working days.

351. The FIU receives 150-200 STRs per year. Most STRs are related to tax evasion, bribery related to public procurement. The reviewers were told that the FIU is working on improving the quality and quantity of STRs and is not yet fully satisfied with the cooperation of obliged entities. Domestic and international PEPs are now defined in a law that entered into force in June 2014.

352. The reviewing experts observed that Moneyval had issued a Public Statement under Step 3 of MONEYVAL's Compliance Enhancing Procedures in respect of Bosnia and Herzegovina on 1 June 2014, which was prompted by concerns about deficiencies in the anti-money laundering/combating the financing of terrorism (AML/CFT) regime in BiH. In response, they were told that a new law on money laundering and amendments of the CC that were asked for by Moneyval were rejected by Parliament. Now a new AML/CFT law has been passed that contains about 70% of the Moneyval recommendations. But the CC has not yet been amended.

353. The reviewing experts concluded that BiH has partially implemented Art. 39(1) UNCAC.

**(c) Challenges and recommendations**

354. The reviewing experts recommend to take steps in order to improve the cooperation between banks and the FIU.

### **Paragraph 2 of article 39**

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

355. BiH confirmed that it has fully implemented this provision of the Convention.

356. BiH cited the following implementation legislation:

#### ***Criminal Procedure Code BiH Article 213. Obligation to Report a Criminal Offense***

(1) Official and responsible persons in all the governmental bodies in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

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

#### ***CC-BiH Failure to Inform of a Criminal Offence or a Perpetrator Article 230.***

(1) Whoever, having knowledge of the identity of the perpetrator of a criminal offence for which a punishment of long-term imprisonment can be imposed under the law of Bosnia and Herzegovina, or whoever having merely knowledge of the perpetration of such an offence, fails to report the fact, although the timely discovery of the perpetrator of the offence depends on such report shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person who fails to inform of a criminal offence he has discovered while performing his duties, if for the offence a punishment of imprisonment for a term of five years or a more severe punishment can be imposed under the law of Bosnia and Herzegovina.

(3) No punishment for failure to inform of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be imposed on a person who is the spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or

their spouse or cohabiting partner, or defence lawyer, medical doctor or confessional priest of the perpetrator.

***CPC-FoBiH***

***Article 228. Obligation to Report a Criminal Offense***

(1) Official and responsible persons in all the governmental bodies in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

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

***CC-FoBiH***

***Article 345. Failure to Inform of a Criminal Offense or a Perpetrator***

(1) Whoever, having knowledge of the identity of the perpetrator of a criminal offence for which a punishment of long-term imprisonment can be imposed under the law of Bosnia and Herzegovina, or whoever having merely knowledge of the perpetration of such an offence, fails to report the fact, although the timely discovery of the perpetrator of the offence depends on such report shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person who fails to inform of a criminal offence he has discovered while performing his duties, if for the offence a punishment of imprisonment for a term of five years or a more severe punishment can be imposed under the law of Bosnia and Herzegovina.

(3) No punishment for failure to inform of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be imposed on a person who is the spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, medical doctor or confessional priest of the perpetrator.

(4) A physician, dentist, midwife or medical worker, psychologist, notary public and social welfare worker shall be punished for the criminal offences referred to in paragraphs 1 and 2 of this Article, if the criminal offence is perpetrated against a child or juvenile.

***CPC-RS***

***Obligation to Report a Criminal Offense Article 221.***

(1) Official and responsible persons in all the governmental bodies in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

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

#### ***CC-RS***

##### ***Failure to Report the Preparation of Criminal Offence Article 361.***

(1) Whoever, knowing of preparations to commit a criminal offence punishable by imprisonment for a term of five years or more, fails to report the same at the time when the commission of the offence may have been prevented, and the offence is committed or attempted, shall be punished by a fine or imprisonment for a term not exceeding one year.

(2) Whoever fails to report any preparation to commit a criminal offence punishable by long-term imprisonment, shall be punished by imprisonment for a term between three months and three years.

(3) There shall be no criminal offence referred to in Paragraph 1 of this Article if the person who failed to report the preparation of the offence was perpetrator's spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner.

(4) A less severe punishment may be pronounced against the perpetrator of the offence referred to in Paragraph 2 of this Article who is in some kind of relation referred to in Paragraph 3 of this Article with the person preparing to commit the offence..

##### ***Failure to Report a Criminal Offence or a Perpetrator Article 362.***

(1) Whoever, knowing the identity of someone who committed a criminal offence punishable by imprisonment for a term of up to twenty years or long term imprisonment, or whoever knowing of the commission of such an offence, fails to report the same before the perpetrator or the offence was detected shall be punished by a fine or imprisonment for a term not exceeding three years,.

(2) An official person who intentionally fails to report a criminal offence he found about in the course of his duty, and the offence is punishable by imprisonment for a term of five years or more and prosecuted ex officio, shall be punished by imprisonment for a term not exceeding three years.

(3) There shall be no criminal offence referred to in Paragraph 1 of this Article if the person who failed to report the offence was perpetrator's spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, doctor or clergy confessor.

#### ***CPC-BD***

##### ***Article 213. Obligation to Report a Criminal Offense***

(1) Official and responsible persons in all the governmental bodies of Brčko District in Bosnia and Herzegovina, public companies and public institutions shall be bound to report criminal offenses of which they have knowledge, through information provided to them or learned by them in some other manner. Under such circumstances, the official and responsible person shall take steps to preserve traces of the criminal offense, objects upon which or with which the criminal offense was committed, and other evidence, and shall notify an authorized official or the Prosecutor's Office without delay.

(2) Medical workers, teachers, pedagogues, parents, foster parents, adoptive parents and other persons authorized or obligated to provide protection and assistance to minors, to

supervise, educate and raise the minors, are obligated to immediately inform the authorized official or the Prosecutor about their suspicion that the minor is the victim of sexual, physical or any other form of abuse.

**CC-BD**

***Failure to Inform of a Criminal Offence or a Perpetrator Article 339.***

(1) Whoever, having knowledge of the identity of the perpetrator of a criminal offence for which a punishment of long-term imprisonment can be imposed under the law of Bosnia and Herzegovina, or whoever having merely knowledge of the perpetration of such an offence, fails to report the fact, although the timely discovery of the perpetrator of the offence depends on such report shall be punished by a fine or imprisonment for a term not exceeding three years.

(2) The punishment referred to in paragraph 1 of this Article shall be imposed on an official or responsible person who fails to inform of a criminal offence he has discovered while performing his duties, if for the offence a punishment of imprisonment for a term of five years or a more severe punishment can be imposed.

(3) No punishment for failure to inform of the criminal offence referred to in paragraphs 1 and 2 of this Article shall be imposed on a person who is the spouse, cohabiting partner, first-line blood relative, brother or sister, adoptive parent or adopted child or their spouse or cohabiting partner, or defence lawyer, medical doctor or confessional priest of the perpetrator.

(4) A physician, dentist, midwife or medical worker, psychologist, notary public and social welfare worker shall be punished for the criminal offences referred to in paragraphs 1 and 2 of this Article, if the criminal offence is perpetrated against a child or juvenile.

357. BiH provided the following examples of implementation.

- Strategies/Action Plans for the fight against corruption exist on all levels (Appendix)
- Draft Bills on the protection of whistleblowers (State level, Federation of BiH)
- Established mechanisms for online reporting corruption:
  - Hotline - reporting corruption
  - SIPA - crime stoppers - free telephone line FMUP - crime stoppers
  - MUPRS - crime stoppers
  - Police of BDBiH - open telephone line for reporting corruption PBDBiH crime stoppers

**(b) Observations on the implementation of the article**

358. The reviewing experts concluded that BiH has implemented Art. 39(2) UNCAC.

**Article 40. Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the**

## **article**

359. BiH confirmed that it has fully implemented this provision of the Convention.

360. BiH cited the same implementation legislation as for Art. 31(7) (see above).

361. BiH did not provide any example of implementation or statistics.

### **(b) Observations on the implementation of the article**

362. The reviewing experts made the same remarks as with regard to Art. 31(7) UNCAC.

363. They concluded that BiH has largely implemented Art. 40 UNCAC. However, they recommend to consider the introduction of a central register of bank accounts also for natural persons.

### **(c) Challenges and recommendations**

364. The reviewing experts recommend the consideration of introducing a central register of all bank accounts.

## **Article 41. Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

365. BiH confirmed that it has fully implemented this provision of the Convention.

366. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters BiH***  
***Article 30. (Criminal record for BiH citizens convicted abroad)***

(1) Bodies responsible for keeping criminal records in Bosnia and Herzegovina shall keep criminal records for citizens of Bosnia and Herzegovina convicted abroad, including citizens of BiH born abroad.

(2) Having received the data from another country, the Ministry of Justice of BiH shall forward data on BiH citizens convicted abroad who were not born in BiH, to the Ministry of Security BiH, which shall keep a central register of these data and immediately forward them to the body responsible for keeping criminal records.

(3) If the data for BiH citizens convicted abroad are not translated into one of the official languages in Bosnia and Herzegovina, the Ministry of Security of BiH shall provide a translation.

367. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

368. The reviewing experts observed that the law is limited to BiH citizens living abroad.

369. They concluded that BiH has partially implemented this non-mandatory provision.

**Article 42. Jurisdiction**

**Subparagraph 1 (a) of article 42**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

370. BiH confirmed that it has fully implemented this provision of the Convention.

371. BiH cited the following implementation legislation:

***Criminal Code BiH  
Applicability of Criminal Legislation of Bosnia and Herzegovina to Those Perpetrating a Criminal offence within the Territory of Bosnia and Herzegovina***

***Article 8.***

(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offence within its territory.

(2) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the offence.

(3) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who perpetrates a criminal offence aboard a domestic civil aircraft while in flight, or aboard a domestic military aircraft, regardless of its location at the time of perpetration of the offence.

***Applicability of Criminal Legislation of Bosnia and Herzegovina to Legal Persons  
Article 11.***

The criminal legislation of Bosnia and Herzegovina shall be applied to legal persons pursuant to Chapter XIV (Liability of Legal Persons for Criminal Offences) of this Code and other laws of Bosnia and Herzegovina..

***Territorial Applicability of this Code regarding Criminal Liability of Legal Person  
Article 123.***

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offences perpetrated within the territory of Bosnia and Herzegovina.

(2) Domestic and foreign legal persons shall, pursuant to this Code, also be liable for a criminal offence perpetrated outside the territory of Bosnia and Herzegovina if the legal person has its seat in the territory of Bosnia and Herzegovina or if it carries out its activities in the territory of Bosnia and Herzegovina, if the offence was perpetrated against the State of Bosnia and Herzegovina, its citizens or domestic legal persons.

(3) Pursuant to this Code a domestic legal person shall also be liable for a criminal offence perpetrated outside the territory of Bosnia and Herzegovina against a foreign State, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 9 (Applicability of Criminal Legislation of Bosnia and Herzegovina for Offences Perpetrated Outside the Territory of Bosnia and Herzegovina) of this Code.

***Criminal Code FoBiH  
Article 11. Applicability of Criminal Legislation in the Federation to Legal Persons***

The criminal legislation in the Federation shall be applied to legal persons pursuant to Chapter XIV (Liability of Legal Persons for Criminal Offences) of this Code and other laws in the Federation.

***Article 12. Applicability of Criminal Legislation in the Federation to Those Perpetrating a Criminal Offence within the Territory of the Federation***

(1) The criminal legislation in the Federation shall apply to anyone who perpetrates a criminal offence within the territory of the Federation.

(2) The criminal legislation in the Federation shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the criminal offence.

(3) The criminal legislation in the Federation shall apply to anyone who perpetrates a criminal offence aboard a domestic civil aircraft while in flight, or aboard a domestic military aircraft regardless of its location at the time of perpetration of the criminal offence.

***Article 127. Territorial Applicability of this Code regarding Criminal Liability of Legal Persons***

(1) A domestic and foreign legal person shall be, in accordance with this Code, liable for criminal offences perpetrated within the territory of the Federation.

(2) A domestic and foreign legal person who have their seat or carry out their activities in the territory of the Federation shall, in accordance with this Code, also be liable for a criminal offence perpetrated outside the territory of the Federation, if the criminal offence was perpetrated against Bosnia and Herzegovina, the Federation, its citizens or domestic legal persons.

(3) A domestic legal person shall, in accordance with this Code, also be liable for a criminal offence perpetrated outside the territory of the Federation against a foreign

State, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 13 (Applicability of Criminal Legislation of the Federation for Offences Perpetrated within the Territory of Bosnia and Herzegovina) of this Code.

***Criminal Code RS***

***Application of the Criminal Legislation of Republika Srpska to Anyone who commits a Criminal Offence on the Territory of Republika Srpska***

***Article 119.***

(1) The criminal legislation of Republika Srpska shall apply to anyone who commits a criminal offence on the territory of Republika Srpska.

(2) The criminal legislation of Republika Srpska shall also apply to anyone who commits a criminal offence aboard a national vessel, regardless of the whereabouts of the vessel at the time of commission.

(3) The criminal legislation of Republika Srpska shall also apply to anyone who commits a criminal offence aboard national civilian or military aircraft while in the air, regardless of the whereabouts of the aircraft at the time of commission.

***Applicability of this Code with Respect to the Territory of Perpetration of Criminal Offense Regarding Criminal Liability of Legal Person***

***Article 126.***

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offences perpetrated on the territory of Republika Srpska.

(2) Domestic and foreign legal persons who have their seats in the territory of Republika Srpska or perform their activities in the territory of Republika Srpska, shall, pursuant to this Code, be liable for a criminal offence perpetrated outside the territory of the Republika Srpska if the offence was perpetrated against Republika Srpska, its citizens or domestic legal persons.

***Criminal Code BD***

***Application of Criminal Legislation to Legal Persons in the Brčko District***

***Article 11.***

Criminal legislation in the Brčko District shall be applied to legal persons pursuant to Chapter XIV (Liability of Legal Persons for Criminal Offences) of this Code and other laws of the Brčko District.

***Application of Criminal Legislation of the Brčko District to Anyone Perpetrating a Criminal Offence in Brčko District***

***Article 12.***

(1) Criminal legislation of the Brčko District shall apply to anyone who perpetrates a criminal offence within its territory.

(2) Criminal legislation of the Brčko District shall apply to anyone who perpetrates a criminal offence aboard a domestic vessel, regardless of its location at the time of perpetration of the offence.

(3) Criminal legislation of the Brčko District shall apply to anyone who perpetrates a criminal offence aboard a domestic aircraft while in flight, regardless of its location at the time of perpetration of the offence.

***Territorial Applicability of this Code in relation to Criminal Liability of Legal Person***

**Article 127.**

(1) Domestic and foreign legal persons shall, pursuant to this Code, be liable for criminal offences perpetrated within the territory of the Brčko District..

(2) Domestic and foreign legal persons shall, pursuant to this Code, also be liable for a criminal offence perpetrated outside the territory of the Brčko District if the legal person has its seat in the territory of the Brčko District or if it carries out its activities in the territory of the Brčko District, if the offence was perpetrated against the Brčko District, its citizens or domestic legal persons.

(3) Pursuant to this Code a domestic legal person shall also be liable for a criminal offence perpetrated outside the territory of the Brčko District against a foreign State, foreign citizens or foreign legal persons, subject to the conditions referred to in Article 11.

372. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

373. The reviewing experts concluded that BiH has implemented Art. 42(1)(a) UNCAC.

**Subparagraph 1 (b) of article 42**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

...

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

**(a) Summary of information relevant to reviewing the implementation of the article**

374. BiH confirmed that it has fully implemented this provision of the Convention.

375. BiH cited the same implementation legislation as for subpara. 1(a).

376. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

377. The reviewing experts concluded that BiH has implemented Art. 42(1)(b) UNCAC.

## **Subparagraph 2 (a) of article 42**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

### **(a) Summary of information relevant to reviewing the implementation of the article**

378. BiH confirmed that it has fully implemented this provision of the Convention.

379. BiH cited the following implementation legislation:

#### ***Criminal Code BiH***

#### ***Applicability of the Criminal Legislation of Bosnia and Herzegovina to Offences Perpetrated outside the Territory of Bosnia and Herzegovina Article 9.***

(1) The criminal legislation of Bosnia and Herzegovina shall apply to anyone who, outside of its territory perpetrates:

Any criminal offence against the integrity of Bosnia and Herzegovina prescribed in Chapter Sixteen (Criminal Offences against The Integrity of Bosnia and Herzegovina) of this Code;

The criminal offence of counterfeiting of money or of counterfeiting of securities of Bosnia and Herzegovina, the criminal offence of counterfeiting of instruments of value or of forgery of trademarks, measures and weights issued on the basis of regulations made by the institutions of Bosnia and Herzegovina, as defined in Articles 205 through 208 of this Code;

A criminal offence which Bosnia and Herzegovina is bound to punish according to the provisions of international law and international treaties or intergovernmental agreements;

A criminal offence against an official or responsible person in the institutions of Bosnia and Herzegovina, related to his duty.

(2) The criminal legislation of Bosnia and Herzegovina shall be applied to a citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates any crime.

(3) The criminal legislation of Bosnia and Herzegovina shall be applied to a non-citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates a criminal offence against Bosnia and Herzegovina or its citizen which is not specified in paragraph 1 of this Article.

(5) In the cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation of Bosnia and Herzegovina shall be applied only if the perpetrator of the criminal offence is found within the territory of Bosnia and Herzegovina, or has been extradited to it, while in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of Bosnia and Herzegovina and is not extradited to another State.

#### ***Criminal Code FoBiH***

#### ***Article 13. Applicability of the Criminal Legislation in the Federation for Criminal Offences Perpetrated within the Territory of Bosnia and Herzegovina***

(1) The criminal legislation in the Federation shall apply to anyone who, within the territory of Bosnia and Herzegovina, perpetrates:

a) Any criminal offence against the constitutional order of the Federation prescribed in Chapter XV; (Criminal Offences against The Constitutional Order of the Federation) of this Code;

b) A criminal offence against an official or responsible person, related to his duty.

(2) The criminal legislation in the Federation shall be applied to a citizen of Bosnia and Herzegovina who, outside the territory of the Federation perpetrates a criminal offence other than those specified in paragraph 1 of this Article.

(3) The criminal legislation in the Federation shall be applied to an alien who, outside the territory of the Federation, perpetrates against Bosnia and Herzegovina, citizen of Bosnia and Herzegovina or against the Federation or a citizen of the Federation any criminal offence which is not specified in paragraph 1 of this Article.

(4) The criminal legislation in the Federation shall be applied to an alien who, outside the territory of the Federation, perpetrates against a foreign State or an alien a criminal offence for which, under the law in force in the place of perpetration of a criminal offence, a punishment of imprisonment for a term of five years or a more severe punishment may be imposed. Unless otherwise prescribed by law, a court may not in such a case impose harsher punishment than the punishment prescribed by the law of the country in which the criminal offence was perpetrated.

(5) In the cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation in the Federation shall be applied only if the perpetrator of the criminal offence is found within the territory of the Federation or has been extradited to the Federation, while in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Federation and is not extradited to another State.

***Criminal Code RS***

***Application of the Criminal Legislation of Republika Srpska to Particular Criminal Offences Committed Abroad***

***Article 120.***

The criminal legislation of Republika Srpska shall apply to anyone who commits a criminal offence referred to in Articles 293 through 311 outside the territory of Republika Srpska or abroad.

***Application of the Criminal Legislation of Republika Srpska to Citizens of Republika Srpska Who Had Committed a Criminal Offence Abroad***

***Article 121.***

The criminal legislation of Republika Srpska shall apply to citizens of Republika Srpska who commit any criminal offence abroad other than those referred to in Article 120 if he happens to be found in the territory of Republika Srpska or if he is extradited to Republika Srpska.

***Application of the Criminal Legislation of Republika Srpska to Aliens Who Had Committed a Criminal Offence Abroad***

***Article 122.***

(1) The criminal legislation of Republika Srpska shall also apply to any alien who commits any criminal offence outside the territory of Republika Srpska against Republika Srpska or its citizen and not only the offenses referred to in Article 120 of this Code if he happens to be found in the territory of Republika Srpska or if he is extradited to Republika Srpska..

(2) The criminal legislation of Republika Srpska shall also apply to any alien who commits any criminal offence abroad against a foreign country or an alien, which is punishable by five or more years of imprisonment pursuant to the legislation of the country where the offense was committed, if he happens to be found in the territory of Republika Srpska and he is not extradited to the foreign country. Unless otherwise provided by this Code, in this case the court shall not pronounce a sentence that is more severe than the one provided for in the legislation of the country where the criminal offence was committed.

***Criminal Code BD***

***Application of Criminal Legislation of the Brčko District to a Brčko District Citizen who Perpetrates a Criminal Offence Abroad and a Foreign Citizen who Perpetrates a Criminal Offence Abroad***

***Article 13.***

(1) Criminal legislation of the Brčko District shall apply to citizens of Brčko District when committing a criminal offence abroad, if he finds himself on the territory of BD or has been extradited.

(2) Criminal legislation of the Brčko District shall apply to an alien who commits a criminal offence outside the territory of BD against the District or against one of its citizens, if he finds himself on the territory of the District or has been extradited.

(3) Criminal legislation of the Brčko District shall be applied to a foreign citizen who, while being abroad, perpetrates a criminal offence against a foreign State or a foreign citizen for which, under the law in force in the State of perpetration of the criminal offence, a sentence of imprisonment for a term of five years or a more severe penalty may be imposed, if he is found in the Brčko District territory. In such cases, unless otherwise stipulated by this Code, the court may not pronounce a sentence more severe than the sentence prescribed by the law of the State in which the criminal offence was perpetrated.

(4) If a criminal proceeding in the cases referred to in Article 12 of this Code has been initiated in another State and has not been terminated, the Public Prosecutor of the Brčko District shall decide whether to institute prosecution.

(5) In the cases referred to in Article 13 of this Code, prosecution shall be instituted only if the perpetrated criminal offence is also punishable under the laws of the State in which the criminal offence was perpetrated. The prosecution shall not be instituted even in this case if, under the law of the respective State, the prosecution is to be instituted at the request of the injured party, and such a request has not been filed.

(6) The prosecutor may institute prosecution referred to in Article 13, Paragraph 3 of this Code, irrespective of the law of the State in which the criminal offence was perpetrated, if the criminal offence in question was, at the time of perpetration, defined as a criminal offence under the international law.

(7) In the cases referred to in Article 12 of this Code, prosecution of a foreign citizen may be ceded to the foreign State under reciprocity conditions.

380. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

381. The reviewing experts concluded that BiH has implemented Art. 42(2)(a) UNCAC.

### **Subparagraph 2 (b) of article 42**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

#### **(a) Summary of information relevant to reviewing the implementation of the article**

382. BiH confirmed that it has fully implemented this provision of the Convention.

383. BiH cited the same implementation legislation as for subpara. 2(a).

*Criminal Code BiH  
Applicability of the Criminal Legislation of Bosnia and Herzegovina to Offences Perpetrated outside the Territory of Bosnia and Herzegovina  
Article 9.*

(2) The criminal legislation of Bosnia and Herzegovina shall be applied to a citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates any crime.

384. BiH did not provide any example of implementation or statistics.

#### **(b) Observations on the implementation of the article**

385. The reviewing experts concluded that BiH has implemented Art. 42(2)(b) UNCAC.

### **Subparagraph 2 (c) of article 42**

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

...

(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or

#### **(a) Summary of information relevant to reviewing the implementation of the article**

386. BiH confirmed that it has fully implemented this provision of the Convention.

387. BiH cited the same implementation legislation as for subpara. 2(a).

388. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

389. The reviewing experts concluded that BiH has implemented Art. 42(2)(c) UNCAC.

**Subparagraph 2 (d) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

...

*(d) The offence is committed against the State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

390. BiH confirmed that it has fully implemented this provision of the Convention.

391. BiH cited the same implementation legislation as for subpara. 2(a).

392. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

393. The reviewing experts concluded that BiH has implemented Art. 42(2)(d) UNCAC.

**Paragraph 3 of article 42**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

**(a) Summary of information relevant to reviewing the implementation of the article**

394. BiH confirmed that it has fully implemented this provision of the Convention.

395. BiH cited the same implementation legislation as for subpara. 2(a).

***Criminal Code BiH***

***Applicability of the Criminal Legislation of Bosnia and Herzegovina to Offences Perpetrated outside the Territory of Bosnia and Herzegovina  
Article 9.***

(2) The criminal legislation of Bosnia and Herzegovina shall be applied to a citizen of Bosnia and Herzegovina who, outside the territory of Bosnia and Herzegovina, perpetrates any crime.

396. BiH provide the following examples of implementation:

Law on Mutual Legal Assistance in Criminal Matters Chapter IX. Assignment and assumption of prosecution

Signed Agreements on Extradition with the Republic of Croatia, Macedonia and Montenegro, which enables the extradition of their own citizens for crimes of corruption, organised crime and money laundering.

**(b) Observations on the implementation of the article**

397. The reviewing experts concluded that BiH has implemented Art. 42(3) UNCAC.

**Paragraph 4 of article 42**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

**(a) Summary of information relevant to reviewing the implementation of the article**

398. BiH confirmed that it has fully implemented this provision of the Convention.

399. BiH cited the same implementation legislation as for subpara. 2(a).

***Criminal Code FoBiH***

***Article 13. Applicability of the Criminal Legislation in the Federation for Criminal Offences Perpetrated within the Territory of Bosnia and Herzegovina***

(2) The criminal legislation in the Federation shall be applied to a citizen of Bosnia and Herzegovina who, outside the territory of the Federation perpetrates a criminal offence other than those specified in paragraph 1 of this Article.

(3) The criminal legislation in the Federation shall be applied to an alien who, outside the territory of the Federation, perpetrates against Bosnia and Herzegovina, citizen of Bosnia and Herzegovina or against the Federation or a citizen of the Federation any criminal offence which is not specified in paragraph 1 of this Article.

(4) The criminal legislation in the Federation shall be applied to an alien who, outside the territory of the Federation, perpetrates against a foreign State or an alien a criminal offence for which, under the law in force in the place of perpetration of a criminal offence, a punishment of imprisonment for a term of five years or a more severe punishment may be imposed. Unless otherwise prescribed by law, a court may not in

such a case impose harsher punishment than the punishment prescribed by the law of the country in which the criminal offence was perpetrated.

(5) In the cases referred to in paragraphs 2 and 3 of this Article, the criminal legislation in the Federation shall be applied only if the perpetrator of the criminal offence is found within the territory of the Federation or has been extradited to the Federation, while in the case referred to in paragraph 4 of this Article, only if the perpetrator is found within the territory of the Federation and is not extradited to another State.

400. BiH did not provide any example of implementation or statistics.

**(b) Observations on the implementation of the article**

401. The reviewing experts concluded that BiH has implemented Art. 42(4) UNCAC.

**Paragraph 5 of article 42**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

402. BiH confirmed that it has fully implemented this provision of the Convention.

403. BiH cited the following implementation legislation:

- Convention on Police Cooperation for Countries of South-East Europe
- Memorandum between the Ministry of Internal Affairs of Republika Srpska and the Ministry of Internal Affairs of the Republic of Serbia on Strengthening Police Cooperation (from 26 September 2011);

**(b) Observations on the implementation of the article**

404. The reviewing experts concluded that BiH has implemented Art. 42(5) UNCAC.

UNODC

## IV. International cooperation

405. As a general point, the review team consistently raised the issue of the lack of practical examples of implementation and statistics. During the country visit, explanations were provided by the competent national authorities, which enabled the reviewers to gain a better picture of how the legal framework is implemented in practice. Moreover, it was reported that as far as the courts are concerned, a sophisticated information system has been introduced, so that it is now possible to obtain more detailed statistical information about all the court cases, including extradition cases. However, the reviewing experts recommended that more efforts be devoted to put in place a case management system with a database containing statistics and practical examples/cases on extradition and MLA matters.

### **Article 44. Extradition**

#### **Paragraph 1 of article 44**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

406. BiH confirmed that it has fully implemented this provision of the Convention.

407. BiH cited the following implementation legislation:

#### ***Law on Mutual Legal Assistance in Criminal Matters***

##### ***Article 33. (Extradition Allowed)***

(1) The extradition of aliens to another State is allowed for the purpose of criminal prosecution or enforcement of a prison sentence pronounced in a final judgement.

(2) The extradition referred to in paragraph 1 of this Article shall be allowed only for the criminal offences punishable pursuant to the legislation of Bosnia and Herzegovina and the legislation of the requesting State.

##### ***Article 32. (Extradition Regulations)***

(1) The extradition of suspects, accused or sentenced foreign nationals from Bosnia and Herzegovina to another State shall be carried out in compliance with this law, unless provided otherwise by an international treaty.

408. BiH cited the following examples of implementation:

Example for the implementation of this Item of Article 44 in practice in Bosnia and Herzegovina is the extradition of persons from Bosnia and Herzegovina into the Slovak Republic for the crime of corruption in case number: 5969/12. The person was extradited in 2012 on “corruption” in case number: 5969/12. The person was extradited in 2012 through simplified method.

**(b) Observations on the implementation of the article**

409. The reviewing experts noted that extradition is domestically regulated through the provisions (Chapter III) of the Law on Mutual Legal Assistance in Criminal Matters (“LMLACM”) of 2009, as amended in July 2013. As further noted during the country visit, Article 32 of the Law stipulates that the extradition of accused or sentenced persons from Bosnia and Herzegovina to a foreign State is carried out in accordance with that law unless otherwise provided in an international agreement.

410. The reviewing experts concluded that BiH has implemented Art. 44(1) UNCAC.

**Paragraph 2 of article 44**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

411. BiH confirmed that it has fully implemented this provision of the Convention.

412. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

***Article 32  
Legislation Governing Extradition***

(1) Extradition of foreign suspects, indictees and sentenced persons from Bosnia and Herzegovina to a foreign State shall be carried out under the provisions of this Law, unless otherwise stipulated in an international agreement.

- (2) The procedure of surrender of suspects and indictees who are tried before international criminal tribunals shall be defined in a separate law.

**Article 33**  
**Extraditable Offences**

- (1) Extradition of a foreigner to a foreign State is permissible for prosecution or execution of a final decision on prison sentence.
- (2) Extradition in terms of paragraph 1 above shall be granted in respect of offences punishable under the laws of both Bosnia and Herzegovina and the requesting State.
- (3) Extradition for prosecution is permissible only for offences punishable with imprisonment for a minimum period of at least one year under the laws of both Bosnia and Herzegovina and the requesting State.
- (4) Extradition for execution of a final decision on prison sentence is permissible only if the prison term or the remaining term of the prison sentence is at least four months.

**Article 34**  
**Requirements for Extradition**

- (1) The requirements for extradition shall be as follows:
- a) that a person sought is not a national of Bosnia and Herzegovina;
  - b) that a person sought has not been granted an asylum in Bosnia and Herzegovina, or that the person is not in the process of seeking asylum in Bosnia and Herzegovina at the time of the extradition request;
  - c) that the offence in respect of which the extradition is requested was not committed in the territory of Bosnia and Herzegovina, against it or its nationals;
  - d) that the offense in respect of which the extradition is regarded as a criminal offence under the national legislation as well as under the legislation of the state in which it was committed;
  - e) that the offence in respect of which the extradition is requested is not a political or military criminal offence;
  - f) that the statute of limitation does not apply with respect to criminal prosecution or execution of the sentence under the national legislation before the foreigner is taken into custody or examined as a suspect or indictee, that the foreigner sought has not been convicted for the same offence by a national Court or that he has not been validly released by the national Court with regard to the same offence, unless conditions have been met for new criminal proceedings to be conducted, or that no criminal proceedings were instituted in Bosnia and Herzegovina against the foreigner for the same criminal offense, and if the proceedings were instituted for an offense committed against a national of Bosnia and Herzegovina it is required that a surety bond is deposited to secure the damages claim of the injured party;
  - g) that the identity of the person sought is verified;
  - h) that there is sufficient evidence for a suspicion that the sought foreigner committed a criminal offence or that there is a valid verdict;
  - i) that the extradition of a foreigner is not requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin,

religious belief or political views and that his extradition is not requested on the grounds of a criminal offence that carries a death sentence under the legislation of the requesting State unless the requesting State has provide guarantees that no death sentence shall be imposed or executed.

**(b) Observations on the implementation of the article**

413. The reviewing experts noted that dual criminality is foreseen as an absolute requirement for granting an extradition request (article 33, paragraph 2, and article 34, paragraph 1(d) LMLACM). This, as noted, may pose a problem if a request for extradition refers to illicit enrichment, which is not domestically criminalized. Therefore the reviewing experts recommended that the Bosnian authorities explore the possibility of relaxing the strict application of the double criminality requirement, in line with Art. 44(2) of the Convention.
414. The reviewing experts concluded that BiH has not implemented the – optional in any case- provision of Art. 44(2) UNCAC.

**(c) Challenges and recommendations**

415. The reviewing experts recommended that the Bosnian authorities explore the possibility of relaxing the strict application of the double criminality requirement, in line with Art. 44(2) of the Convention.

**Paragraph 3 of article 44**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

416. BiH confirmed that it has fully implemented this provision of the Convention.
417. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

**Article 32. (Extradition Regulations)**

(1) The extradition of suspects, accused or sentenced foreign nationals from Bosnia and Herzegovina to another State shall be carried out in compliance with this law, unless provided otherwise by an international treaty.

418. BiH provided the following example of implementation: Agreement on Extradition with the Republic of China

**(b) Observations on the implementation of the article**

419. The reviewing experts noted that no specific information or provision of the domestic legislation was provided by the Bosnian authorities on the implementation of this provision.

420. The reviewing experts concluded that they were not in a position to judge whether BiH has implemented the – optional in any case- provision of Art. 44(3) UNCAC.

**Paragraph 4 of article 44**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

421. BiH confirmed that it has fully implemented this provision of the Convention.

422. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 34  
Requirements for Extradition***

(1) The requirements for extradition shall be as follows:

- a) that a person sought is not a national of Bosnia and Herzegovina;
- b) that a person sought has not been granted an asylum in Bosnia and Herzegovina, or that the person is not in the process of seeking asylum in Bosnia and Herzegovina at the time of the extradition request;
- c) that the offence in respect of which the extradition is requested was not committed in the territory of Bosnia and Herzegovina, against it or its nationals;

- d) that the offense in respect of which the extradition is regarded as a criminal offence under the national legislation as well as under the legislation of the state in which it was committed;
- e) **that the offence in respect of which the extradition is requested is not a political or military criminal offence;**
- f) that the statute of limitation does not apply with respect to criminal prosecution or execution of the sentence under the national legislation before the foreigner is taken into custody or examined as a suspect or indictee, that the foreigner sought has not been convicted for the same offence by a national Court or that he has not been validly released by the national Court with regard to the same offence, unless conditions have been met for new criminal proceedings to be conducted, or that no criminal proceedings were instituted in Bosnia and Herzegovina against the foreigner for the same criminal offense, and if the proceedings were instituted for an offense committed against a national of Bosnia and Herzegovina it is required that a surety bond is deposited to secure the damages claim of the injured party;
- g) that the identity of the person sought is verified;
- h) that there is sufficient evidence for a suspicion that the sought foreigner committed a criminal offence or that there is a valid verdict;
- i) that the extradition of a foreigner is not requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin, religious belief or political views and that his extradition is not requested on the grounds of a criminal offence that carries a death sentence under the legislation of the requesting State unless the requesting State has provide guarantees that no death sentence shall be imposed or executed.

**(b) Observations on the implementation of the article**

423. The reviewing experts noted that Article 34 LMLACM provides for the requirements for extradition, including grounds for refusal of an extradition request such as the nationality of the offender, the political or military nature of the offence, the granting of asylum, death penalty and anticipated discriminatory treatment in the requesting State on the grounds of race, sex, national or ethnic origin, religious belief or political views. The Bosnian authorities confirmed that all corruption offences are not considered as political offences.

424. The reviewing experts concluded that BiH has implemented Art. 44(4) UNCAC.

**Paragraph 5 of article 44**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

425. BiH confirmed that it has fully implemented this provision of the Convention.

426. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

***Article 32. (Extradition Regulations)***

(1) The extradition of suspects, accused or sentenced foreign nationals from Bosnia and Herzegovina to another State shall be carried out in compliance with this law, unless provided otherwise by an international treaty.

**(b) Observations on the implementation of the article**

427. The reviewing experts noted that, as confirmed during the country visit, Bosnia and Herzegovina does not make extradition conditional on the existence of a treaty. Despite the treaty-non-prerequisite extradition system, a number of bilateral agreements have been concluded. It was also reported that the UNCAC can be used as a legal basis for extradition on the condition of reciprocity. However, no requests based on the Convention have been received so far.

428. Bearing in mind that BiH does not make extradition conditional on the existence of a treaty, the reviewing experts concluded that Art. 44(5) UNCAC is of no relevance in terms of domestic implementation. However, they noted that the UNCAC can be used as a legal basis for extradition on the condition of reciprocity.

**Paragraph 6 of article 44**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

429. BiH confirmed that it does not make extradition conditional on the existence of a treaty. Despite the treaty-non-prerequisite extradition system, a number of bilateral agreements have been concluded.

**(b) Observations on the implementation of the article**

430. The reviewing experts noted that, as confirmed during the country visit, Bosnia and Herzegovina does not make extradition conditional on the existence of a treaty. Despite the treaty-non-prerequisite extradition system, a number of bilateral agreements have been concluded. It was also reported that the UNCAC can be used as a legal basis for extradition on the condition of reciprocity. However, no requests based on the Convention have been received so far.

431. Bearing in mind that BiH does not make extradition conditional on the existence of a treaty, the reviewing experts concluded that Art. 44(6) UNCAC is of no relevance in terms of domestic implementation. However, and given that the UNCAC can be used as a legal basis for extradition on the condition of reciprocity, the reviewing experts invited the Bosnian authorities to submit a relevant notification to the Secretary-General of the United Nations.

**(c) Recommendations**

432. The reviewing experts invited the Bosnian authorities to notify the Secretary-General of the United Nations that the UNCAC can be used as a legal basis for extradition on the condition of reciprocity.

**Paragraph 7 of article 44**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

**(a) Summary of information relevant to reviewing the implementation of the article**

433. BiH confirmed that it has fully implemented this provision of the Convention.

434. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***  
***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

**Article 32. (Extradition Regulations)**

(1) The extradition of suspects, accused or sentenced foreign nationals from Bosnia and Herzegovina to another State shall be carried out in compliance with this law, unless provided otherwise by an international treaty.

**Article 33**

**Extraditable Offences**

- (1) Extradition of a foreigner to a foreign State is permissible for prosecution or execution of a final decision on prison sentence.
- (2) Extradition in terms of paragraph 1 above shall be granted in respect of offences punishable under the laws of both Bosnia and Herzegovina and the requesting State.
- (3) Extradition for prosecution is permissible only for offences punishable with imprisonment for a minimum period of at least one year under the laws of both Bosnia and Herzegovina and the requesting State.
- (4) Extradition for execution of a final decision on prison sentence is permissible only if the prison term or the remaining term of the prison sentence is at least four months.

**(b) Observations on the implementation of the article**

435. The reviewing experts noted that, as confirmed during the country visit, Bosnia and Herzegovina does not make extradition conditional on the existence of a treaty. Article 33 LMLACM sets the threshold for the identification of extraditable offences (imprisonment of at least one year if extradition is requested for purposes of prosecution and remainder of four months of prison sentence if extradition is requested for the enforcement of a sentence)

436. The reviewing experts concluded that BiH has implemented Art. 44(7) UNCAC.

**Paragraph 8 of article 44**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

437. BiH confirmed that it has fully implemented this provision of the Convention.

438. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

**Article 33. (Extradition Allowed)**

(1) The extradition of aliens to another State is allowed for the purpose of criminal prosecution or enforcement of a prison sentence pronounced in a final judgement.

(2) The extradition referred to in paragraph 1 of this Article shall be allowed only for the criminal offences punishable pursuant to the legislation of Bosnia and Herzegovina and the legislation of the requesting State.

**Article 34**

**Requirements for Extradition**

(1) The requirements for extradition shall be as follows:

- a) that a person sought is not a national of Bosnia and Herzegovina;
- b) that a person sought has not been granted an asylum in Bosnia and Herzegovina, or that the person is not in the process of seeking asylum in Bosnia and Herzegovina at the time of the extradition request;
- c) that the offence in respect of which the extradition is requested was not committed in the territory of Bosnia and Herzegovina, against it or its nationals;
- d) that the offense in respect of which the extradition is regarded as a criminal offence under the national legislation as well as under the legislation of the state in which it was committed;
- e) that the offence in respect of which the extradition is requested is not a political or military criminal offence;
- f) that the statute of limitation does not apply with respect to criminal prosecution or execution of the sentence under the national legislation before the foreigner is taken into custody or examined as a suspect or indictee, that the foreigner sought has not been convicted for the same offence by a national Court or that he has not been validly released by the national Court with regard to the same offence, unless conditions have been met for new criminal proceedings to be conducted, or that no criminal proceedings were instituted in Bosnia and Herzegovina against the foreigner for the same criminal offense, and if the proceedings were instituted for an offense committed against a national of Bosnia and Herzegovina it is required that a surety bond is deposited to secure the damages claim of the injured party;
- g) that the identity of the person sought is verified;
- h) that there is sufficient evidence for a suspicion that the sought foreigner committed a criminal offence or that there is a valid verdict;
- i) that the extradition of a foreigner is not requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin, religious belief or political views and that his extradition is not requested on the grounds of a criminal offence that carries a death sentence under the legislation of the requesting State unless the requesting State has provide guarantees that no death sentence shall be imposed or executed.

**(b) Observations on the implementation of the article**

439. The reviewing experts noted that Article 33 LMLACM sets the threshold for the identification of extraditable offences (imprisonment of at least one year if extradition is

requested for purposes of prosecution and remainder of four months of prison sentence if extradition is requested for the enforcement of a sentence). Article 34 provides for the requirements for extradition, including grounds for refusal of an extradition request such as the nationality of the offender, the political or military nature of the offence, the granting of asylum, death penalty and anticipated discriminatory treatment in the requesting State on the grounds of race, sex, national or ethnic origin, religious belief or political views.

440. The reviewing experts concluded that BiH has implemented Art. 44(8) UNCAC.

#### **Paragraph 9 of article 44**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

441. BiH confirmed that it has fully implemented this provision of the Convention.

442. BiH cited the following implementation legislation:

#### ***Law on Mutual Legal Assistance in Criminal Matters Article 52. (Simplified Extradition)***

- (1) The person whose extradition is requested may give consent to be transferred to the requesting State in a simplified manner without extradition procedure, as well as waive his/her right to the rule of specialty.
- (2) During the hearing, the preliminary proceedings judge shall inform the person whose extradition is requested about the possibility of the simplified transfer and its consequences in compliance with paragraph (1) of this Article.
- (3) The consent and waiver referred to in paragraph (1) of this Article shall be entered into the records of the Court of Bosnia and Herzegovina.
- (4) The consent and waiver referred to in paragraph (1) of this Article are irrevocable.
- (5) The relevant court shall immediately notify the Ministry of Justice of Bosnia and Herzegovina on the consent to have a simplified extradition, while the Ministry of Justice shall inform the requesting State thereof without delay. In that case, the requesting State is not required to submit the extradition request.
- (6) Simplified extradition has the same effects as the extradition procedure and is subject to the same conditions, of which the requesting State shall be duly advised.

#### ***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013) Article 26***

In Article 52, paragraph (3), a full stop shall be replaced with a coma and the following words shall be added to read: “in which it shall also be stated that the person is not a national of Bosnia and Herzegovina and the Minutes shall also be signed by an alien whose extradition is requested.”

Paragraph (5) shall be modified to read as follows:

“(5) The Court shall without delay deliver the Minutes which includes consent to the simplified extradition to the Ministry of Justice of Bosnia and Herzegovina and, based on these Minutes, the Minister of Justice of Bosnia and Herzegovina shall render a decision on the extradition of an alien. In this case the requesting State shall not be obliged to submit a request for extradition.”

After paragraph (5), new paragraph (6) shall be added to reads as follows:

“(6) After the person whose extradition is requested has given his consent to the simplified extradition to the requesting State, the provisions of this Law pertaining to extradition custody shall apply to the requested person with regard to further custody.”

Current paragraph (6) shall become paragraph (7).

### ***Law on Mutual Legal Assistance in Criminal Matters***

#### ***Article 33. (Extradition Allowed)***

(1) The extradition of aliens to another State is allowed for the purpose of criminal prosecution or enforcement of a prison sentence pronounced in a final judgement.

(2) The extradition referred to in paragraph 1 of this Article shall be allowed only for the criminal offences punishable pursuant to the legislation of Bosnia and Herzegovina and the legislation of the requesting State.

#### ***Article 34***

##### ***Requirements for Extradition***

(1)The requirements for extradition shall be as follows:

- a) that a person sought is not a national of Bosnia and Herzegovina;
- b) that a person sought has not been granted an asylum in Bosnia and Herzegovina, or that the person is not in the process of seeking asylum in Bosnia and Herzegovina at the time of the extradition request;
- c) that the offence in respect of which the extradition is requested was not committed in the territory of Bosnia and Herzegovina, against it or its nationals;
- d) that the offense in respect of which the extradition is regarded as a criminal offence under the national legislation as well as under the legislation of the state in which it was committed;
- e) that the offence in respect of which the extradition is requested is not a political or military criminal offence;
- f) that the statute of limitation does not apply with respect to criminal prosecution or execution of the sentence under the national legislation before the foreigner is taken into custody or examined as a suspect or indictee, that the foreigner sought has not been convicted for the same offence by a national Court or that he has not been validly released by the national Court with regard to the same offence, unless conditions have been met for new criminal proceedings to be conducted, or that no criminal proceedings were instituted in Bosnia and Herzegovina against the foreigner for the same criminal offense, and if the proceedings were instituted for an offense committed against a national of Bosnia and Herzegovina it is required that a surety bond is deposited to secure the damages claim of the injured party;

- g) that the identity of the person sought is verified;
- h) that there is sufficient evidence for a suspicion that the sought foreigner committed a criminal offence or that there is a valid verdict;**
- i) that the extradition of a foreigner is not requested for the following purposes: criminal prosecution or punishment on the grounds of his race, sex, national or ethnic origin, religious belief or political views and that his extradition is not requested on the grounds of a criminal offence that carries a death sentence under the legislation of the requesting State unless the requesting State has provide guarantees that no death sentence shall be imposed or executed.

443. BiH cited the following examples of implementation:

Example for the implementation of this Item of Article 44 in practice in Bosnia and Herzegovina is the extradition of persons from Bosnia and Herzegovina into the Slovak Republic for the crime of corruption in case number: 5969/12. The person was extradited in 2012 on “corruption” in case number: 5969/12. The person was extradited in 2012 through simplified method.

444. After the country visit, BiH provided the following statistical data on the duration of extradition proceedings:

The duration of the extradition procedure by years:

2011: 60 cases, the average duration was 62 days;

2012: 53 cases; the average duration was 45 days;

2013: 57 cases, the average duration was 43 days;

01.01.2014.-30.06.2014. 24 cases, the average duration was 16 days.

**(b) Observations on the implementation of the article**

445. The reviewing experts noted that, as confirmed by the Bosnian authorities, despite the 6-month maximum length of extradition proceedings, approximately 50 per cent of extradition cases are completed within 18 days, especially with neighbouring countries. Article 52 LMLACM provides for a simplified extradition process. The Bosnian authorities reported that, if no translation is involved, the simplified extradition process is completed within 24 hours.

446. The reviewing experts also noted that regarding the applicable evidentiary requirements in extradition proceedings, article 34, paragraph 1(h) LMLACM identifies as one of the extradition requirements the fact that “there is sufficient evidence for a suspicion that the sought foreigner committed a criminal offence or that there is a valid verdict”. The review team noted that this provision introduced a “prima facie evidence of guilt” for allowing extradition. However, it was explained that this high evidentiary threshold only applies where extradition is granted in the absence of a bilateral or multilateral treaty, on the basis of reciprocity.

447. The reviewing experts concluded that BiH has implemented Art. 44(9) UNCAC.

## **Paragraph 10 of article 44**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

448. BiH confirmed that it has fully implemented this provision of the Convention.

449. BiH cited the following implementation legislation:

*Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)*

#### **Article 16**

Article 37 shall be modified to read as follows:

“Article 37

(Arresting a Person whose Extradition is Requested)

A person whose extradition is requested shall be deprived of liberty by a relevant police authority in Bosnia and Herzegovina, based on an international arrest warrant indicating the request of the requesting State for ordering that person into custody and such person shall be brought before a preliminary proceedings judge of the Court of Bosnia and Herzegovina, with the aim of deciding on the motion of the requesting State for ordering temporary custody if there is a risk that an alien whose extradition is requested will flee or hide himself”.

#### **Article 17**

Article 38 shall be modified to read as follows:

“Article 38

(Proceedings before the Preliminary Proceedings Judge and a Temporary Custody)

(1) After the person deprived of liberty, whose extradition is requested, is brought before the preliminary proceedings judge based on the international arrest warrant upon request of the requesting State or upon request of a foreign State, that person, after his identity has been established, shall be informed without delay about the reasons why his extradition is requested, and based on which evidence, and he shall be called on to present his defence.

(2) The preliminary proceedings judge shall inform the person whose extradition is requested that he is entitled to hire a defence counsel of his choosing who may be present during his hearing and that, in case he does not do so, the court shall appoint to him a defence counsel ex officio in case of a criminal offence for which the criminal legislation of Bosnia and Herzegovina prescribes mandatory defence.

(3) Minutes on the hearing and defence shall be taken.

(4) The preliminary proceedings judge shall order a temporary custody which may last no longer than 18 days. A decision on ordering custody shall be forwarded to the Prosecutor’s Office of Bosnia

and Herzegovina and the Ministry of Justice of Bosnia and Herzegovina to seek a request from the foreign State which issued the arrest warrant.

(5) The deadline under paragraph (4) of this Article may be extended, however, it may not be longer than 40 days.

(6) If the requested State fails to submit a request for extradition and the documents within the deadlines set forth, the Court of Bosnia and Herzegovina shall render a decision on termination of a temporary custody of a person whose extradition is requested, which decision shall be forwarded to the Ministry of Justice of Bosnia and Herzegovina. The person's release shall not preclude a repeated deprivation of liberty and extradition if the request for extradition is received following expiry of deadlines as referred to in paragraphs (4) and (5) of this Article.

(7) If a person whose extradition is requested has already been placed into custody on some other grounds, the deadline under paragraph (5) of this Article shall run from the date of rendering a decision to order the person into temporary custody based on a motion for ordering a temporary custody.

(8) If a person whose extradition is requested is released from custody due to the expired deadline referred to in paragraph (5) of this Article, temporary custody cannot be ordered again, instead, extradition custody may be ordered based on the submitted request for extradition.”

### **Article 18**

Article 39 shall be modified to read as follows:

“Article 39

(Ordering Extradition custody)

(1) Upon receipt of a request for extradition and based on the Prosecutor's motion referred to in Article 36, paragraph (3) of this Law, the preliminary proceedings judge of the Court of Bosnia and Herzegovina shall render a decision to order extradition custody if:

a) there is a risk that a person whose extradition is requested shall avoid the extradition procedure or enforcement of the extradition;

b) there exist the circumstances indicating that a person whose extradition is requested would destroy, conceal, alter or falsify traces of the criminal offence or other evidence;

c) there exist special circumstances indicating that the person whose extradition is sought would hinder the criminal proceedings or the extradition procedure by influencing the witnesses, accomplices or accessories.

(2) If there exists any of the reasons referred to in paragraph (1), subparagraphs a), b) and c) of this Article, upon receipt of the request in terms of Article 36, paragraph (3) of this Law, the preliminary proceedings judge shall render a decision to terminate temporary custody of the person ordered into temporary custody under Article 38, paragraph

(5) of this Law, and to order the person into extradition custody.

(3) Custody referred to in paragraphs (1) and (2) of this Article may last up until the enforcement of the decision on extradition, but no longer than six months from the day of placing the person into custody.

(4) Custody shall not be ordered if it is clear from the extradition request that the extradition is not warranted.

(5) If special reasons so warrant, the court having jurisdiction may undertake other measures for securing the alien's presence instead of custody.

(6) When extradition custody is ordered pursuant to paragraphs (1) and (2) of this Article, the preliminary proceedings judge shall inform the Ministry of Justice of Bosnia and Herzegovina of custody, so that the foreign State be informed accordingly.

(7) The preliminary proceedings judge shall release the alien when grounds for extradition custody cease to exist.”

450. BiH cited the following examples of implementation:

Example for the implementation of this item of Article 44 in practice in Bosnia and Herzegovina is that the requested person in the stated case 5969/12 was detained based on an international warrant, and provisional extradition custody was determined, i.e. custody

until his handover to the Slovak Republic.

**(b) Observations on the implementation of the article**

451. The reviewing experts noted that the extradition procedure is regulated by articles 35-53 LMLACM. The detention of the person sought in extradition proceedings may last “up until the enforcement of the decision on extradition, but no longer than six months from the day of placing the person into custody” (article 39, paragraph 2 LMLACM, as amended in July 2013).

452. The reviewing experts concluded that BiH has implemented Art. 44(10) UNCAC.

**Paragraph 11 of article 44**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

453. BiH confirmed that it has fully implemented this provision of the Convention.

454. BiH cited the following implementation legislation:

*Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)*

*Article 19*

Article 40 shall be modified to read as follows:

“Article 40

(Procedure with Nationals of Bosnia and Herzegovina)

(1) If the relevant authority of Bosnia and Herzegovina for cooperation with Interpol, upon an international arrest warrant issued by a foreign state, determines through an inspection of the existing citizens database or determines otherwise that the person concerned is a national of Bosnia and Herzegovina, it shall inform the Interpol of the requesting State that issued the international arrest warrant and the Interpol headquarters that **it may not extradite its nationals, unless otherwise stipulated in an international treaty allowing extradition of own nationals, and that it may not issue a warrant in the territory of Bosnia and Herzegovina for a national of Bosnia and Herzegovina for the purpose of extraditing him/her to another state.**

(2) If the international treaty envisages extradition of nationals of Bosnia and Herzegovina, the procedure for their extradition shall be conducted in compliance with the provisions of this Law pertaining to extradition of aliens.

(3) Along with the notification referred to in paragraph (1) of this Article, the relevant authority of Bosnia and Herzegovina for cooperation with Interpol shall inform the foreign State that the relevant judicial authorities of that State may forward a Letter Rogatory to the relevant judicial authority of Bosnia and Herzegovina **for transfer of prosecution**.

(4) The relevant authority of Bosnia and Herzegovina for cooperation with Interpol shall inform the Ministry of Justice of Bosnia and Herzegovina about the international arrest warrant issued for a national of Bosnia and Herzegovina and the measures undertaken.

(5) If the relevant authority of Bosnia and Herzegovina for cooperation with Interpol was unable to determine whether the person sought by a foreign state is a national of Bosnia and Herzegovina, and if the Court of Bosnia and Herzegovina subsequently determines that the person ordered into custody for the purpose of being extradited to another state is a national of Bosnia and Herzegovina, such person shall be immediately released from custody, if the requirements for taking over the criminal prosecution by the relevant authorities of Bosnia and Herzegovina have not been met or other requirements which would justify the handover of such person to another relevant authority for criminal prosecution over which the authorities of Bosnia and Herzegovina have jurisdiction."

#### *Law on Mutual Legal Assistance in Criminal Matters*

##### *Article 86. ((Taking over criminal prosecution upon Letter Rogatory of a foreign country))*

(1) Upon a Letter Rogatory of the judicial authorities of the requesting State, the relevant judicial authority in Bosnia and Herzegovina may take over criminal prosecution in cases stipulated by law and international treaty.

#### *Criminal Procedure Code FoBiH*

##### *Article 434. Taking Charge of the Criminal Prosecution by a Foreign State*

(1) The Federal Ministry of Justice shall communicate to the competent prosecutor the files and the request of a foreign state to institute prosecution of a citizen of Bosnia and Herzegovina or any person whose place of permanent residence is in the territory of Bosnia and Herzegovina for criminal offenses that fall in the jurisdiction of the Federation and which was committed abroad.

(2) If a property claim has been submitted to the competent authority of a foreign state, the same procedure shall apply as if the claim had been submitted to the court.

(3) The foreign state that submitted the request shall be informed of any decision refusing to undertake criminal prosecution as well as of any legally binding decision rendered in criminal proceedings.

##### *(Criminal Procedure Code RS) Article 407. (Taking Charge of the Criminal Prosecution)*

(1) The competent prosecutor, on whose territory that person is permanently residing, receives the files and the request of a foreign state to institute prosecution of a citizen of Republika Srpska, i.e. Bosnia and Herzegovina or any person whose place of permanent residence is in the territory of Republika Srpska for a criminal offence committed abroad

(2) If a property claim has been submitted to the competent authority of a foreign state, the same procedure shall apply as if the claim had been submitted to the court.

(3) The foreign state that submitted the request shall be informed of any decision refusing to undertake criminal prosecution as well as of any legally binding decision rendered in criminal proceedings.

#### **CRIMINAL PROCEDURE CODE OF BRČKO DISTRICT BIH**

##### *Article 413. Takeover of Criminal Prosecution from a Foreign State*

- (1) The Judicial Commission of Brčko District of BiH shall forward to the Prosecutor a request and files from a foreign state to institute criminal prosecution of a citizen of Bosnia and Herzegovina, or of a person with permanent place of residence in Bosnia and Herzegovina for a criminal offense falling under the jurisdiction of the Court, committed abroad.
- (2) If a claim under property law has been submitted to the competent authority of a foreign state, the procedure shall apply as if the claim had been submitted to the Court.
- (3) The foreign state that submitted the request shall be informed of any decision rejecting the launching of criminal prosecution as well as of any final and binding decision rendered in a criminal proceeding.

**(b) Observations on the implementation of the article**

455. The reviewing experts noted that in relation to the extradition of nationals, in particular, the LMLACM provides elsewhere (article 40, paragraph 2, as amended in July 2013) for flexibility by making such extradition subject to the provisions of international treaties concluded by Bosnia and Herzegovina. If an applicable treaty envisages the extradition of nationals, then the procedure for their extradition shall be conducted in compliance with the LMLACM. If the extradition of nationals is not possible, the relevant authorities of the requesting State shall be informed to forward a letter rogatory for transfer of prosecution to Bosnia and Herzegovina (article 40, paragraph 3, as amended in July 2013).
456. The reviewing experts concluded that BiH has implemented Art. 44(11) UNCAC.

**Paragraph 12 of article 44**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

457. BiH confirmed that it has fully implemented this provision of the Convention.
458. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 32. (Extradition Regulations)***

((1) The extradition of suspects, accused or sentenced foreign nationals from Bosnia and Herzegovina to another State shall be carried out in compliance with this law, unless provided otherwise by an international treaty.

**(b) Observations on the implementation of the article**

459. As confirmed during the country visit, the temporary surrender of nationals for purposes of prosecution on the condition of return to serve the sentence is not followed as a practice. Conversely, the Bosnian authorities reported that there were three cases of Dutch citizens who had been temporarily surrendered to Bosnia and Herzegovina, in which an undertaking of reciprocity was provided.
460. The reviewing experts concluded that so far BiH has not implemented Art. 44(12) UNCAC, as such practice is not foreseen in the domestic law. However, resorting in future to the option of the conditional surrender may be possible in the reported cases of the Dutch citizens under the condition of reciprocity.

**Paragraph 13 of article 44**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

**(a) Summary of information relevant to reviewing the implementation of the article**

461. BiH confirmed that it has fully implemented this provision of the Convention.
462. BiH cited the following implementation legislation:

*Law on Mutual Legal Assistance in Criminal Matters*

**CHAPTER VI  
ENFORCEMENT OF FOREIGN CRIMINAL JUDGMENTS**

**Article 62  
General provisions**

- (1) A national court shall comply with a request of the sentencing State for enforcement of a criminal judgment only if it is provided for in an international agreement and shall enforce a final judgment concerning a criminal sentence imposed by a foreign court in the manner that it shall render a judgment imposing a sentence in accordance with the criminal legislation of Bosnia and Herzegovina.
- (2) A foreign criminal judgment may be enforced against a national of Bosnia and Herzegovina and persons who are permanent resident in **Bosnia and Herzegovina** territory.
- (3) A foreign criminal judgment imposing a custodial penalty may be enforced:
  - a) At the requested of a sentencing State when the sentenced person is not accessible in the State and he is a national of Bosnia and Herzegovina and a permanent resident in **Bosnia and Herzegovina** territory or he is only a permanent resident in **Bosnia and Herzegovina** territory and

- b) At the request of a national of Bosnia and Herzegovina who is serving a custodial penalty the sentencing State for transfer to Bosnia and Herzegovina to serve the remaining term of sentence imposed on him in the sentencing State.

**(b) Observations on the implementation of the article**

463. The reviewing experts noted that the execution of foreign criminal judgments against a national of Bosnia and Herzegovina in lieu of extradition is possible through application of chapter VI of LMLACM, in particular article 62, paragraph 2.
464. The reviewing experts concluded that BiH has implemented Art. 44(13) UNCAC.

**Paragraph 14 of article 44**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

465. BiH confirmed that it has fully implemented this provision of the Convention.
466. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***  
***Article 17. (Protection of the Accused)***

(1) The person summonsed to appear before national judicial authorities to be criminally prosecuted for the offence charged against that person shall not, regardless of his/her citizenship, be prosecuted or ordered into custody, or be subjected to deprivation or restriction upon liberty due to offences or convictions not stated in the summons, which date back from the period anterior to the person's leaving Bosnia and Herzegovina.

(2) Criminal prosecution, deprivation of liberty or any other restrictions upon personal liberty shall be allowed if the person summonsed stayed in the state territory of Bosnia and Herzegovina longer than 15 days after the Court declares that his/her presence is no longer required, even though the person had an opportunity to leave, or if the person, after leaving the state territory of Bosnia and Herzegovina, voluntarily returns to its territory.

***Article 59. (Guarantees regarding the extradited person)***

- (1) If the person whose extradition is requested is extradited to Bosnia and Herzegovina, that person may only be criminally prosecuted or convicted for an extraditable criminal offence, unless he waives that right and if the country that extradited him did not make that conditional.
- (2) If the extradition of a person requested by Bosnia and Herzegovina is granted under specific terms with regard to the type or the length of sentence that may be imposed or executed, and if

extradition under those terms is accepted by the authority requesting the extradition, the relevant judicial authority in Bosnia and Herzegovina shall be bound by these conditions in imposing a sentence. If the case concerns the enforcement of an already imposed sentence, the court adjudicating the case in the last instance shall revise the verdict to harmonise the imposed sentence and terms of extradition.

(3) If the extradition of a person requested by Bosnia and Herzegovina is granted under specific terms with regard to the type of the facility in which that person is supposed to serve the sentence, and if the extradition under those terms is accepted by the authority requesting the extradition, the relevant authority committing the sentenced person to serve the sentence of imprisonment shall take due care of the terms under which the person was extradited, which pertain to the type of the facility in which that person is supposed to serve his sentence.

(4) If the extradited person had been taken into custody in a foreign country for a criminal offence in respect of which he was extradited, the time spent in custody shall be credited toward the sentence.

***(Criminal Procedure Code FoBiH) Article 433. Relinquishing Criminal Prosecution to a Foreign State***

(1) If a criminal offense was committed in the territory of the Federation by an alien who has his permanent place of residence in a foreign state, it is possible to cede all criminal files for the purpose of criminal prosecution and trial to such country beyond any requirements provided for in the Criminal Code of Bosnia and Herzegovina, if such state is not opposed thereto.

(2) Relinquishment of criminal prosecution and trial shall not be allowed if in that case the alien might be subjected to unfair trial, inhuman and humiliating treatment or punishment.

(3) The prosecutor shall take a decision on relinquishment before the indictment has been issued. After the issuance of the indictment until the case is referred to the judge or to the panel for the purpose of the scheduling the main trial, such decision shall be taken by the preliminary hearing judge at the proposal of the prosecutor.

(4) Relinquishment may be authorized with respect to criminal offenses that carry the sentence of imprisonment of up to ten (10) years and criminal offenses of jeopardizing public traffic.

(5) If the injured party in question is a citizen of Bosnia and Herzegovina, such relinquishment shall not be allowed if the said citizen is opposed thereto, unless security was deposited for the injured party's claim under property law.

***(Criminal Procedure Code RS) Relinquishing Criminal Prosecution to a Foreign State Article 406.***

(1) If a criminal offense was committed in the territory of Republika Srpska by an alien who has his permanent place of residence in a foreign state, it is possible to cede all criminal files for the purpose of criminal prosecution and trial to such country beyond any requirements provided for in the Criminal Code if such state is not opposed thereto.

(2) Relinquishment of criminal prosecution and trial shall not be allowed if in that case the alien might be subjected to unfair trial, inhuman and humiliating treatment or punishment.

(3) The prosecutor shall take a decision on relinquishment before the indictment has been issued. After the issuance of the indictment until the case is referred to the judge or to the panel for the purpose of the scheduling the main trial, such decision shall be taken by the preliminary hearing judge at the proposal of the prosecutor.

(4) If the injured party in question is a citizen of Republika Srpska, i.e. Bosnia Hercegovina, such relinquishment shall not be allowed if the said citizen is opposed thereto, unless security was deposited for the injured party's claim under property law.

CRIMINAL PROCEDURE CODE OF BRČKO DISTRICT BIH Article 412. Relinquishing Criminal Prosecution to a Foreign State

(1) If a criminal offense was committed in the territory of Brčko district of Bosnia and Herzegovina by an alien who has his permanent place of residence in a foreign state, it is possible to cede all criminal files for the purpose of criminal prosecution and trial to such country beyond any requirements provided for in the Criminal Code of Bosnia and Herzegovina, if such state is not opposed thereto.

(2) Relinquishment of criminal prosecution and trial shall not be allowed if in that case the alien might be subjected to unfair trial, inhuman and humiliating treatment or punishment.

(3) The prosecutor shall take a decision on relinquishment before the indictment has been issued. After the issuance of the indictment until the case is referred to the judge or to the panel for the purpose of the scheduling the main trial, such decision shall be taken by the preliminary hearing judge at the proposal of the prosecutor.

(4) If the injured party in question is a citizen of Bosnia and Herzegovina, such relinquishment shall not be allowed if the said citizen is opposed thereto, unless security was deposited for the injured party's claim under property law.

**(b) Observations on the implementation of the article**

467. The reviewing experts concluded that BiH has implemented Art. 44(14) UNCAC.

**Paragraph 15 of article 44**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

468. BiH confirmed that it has fully implemented this provision of the Convention.

469. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters  
Article 34. (Preconditions for Extradition)***

Preconditions for extradition are as follows:

i) the extradition of the alien is not requested for the following purposes: criminal prosecution or punishment on the grounds of the person's race, gender, national or ethnic origin, religious or political belief, as well as that the extradition is not requested for a criminal offence which carries the death penalty pursuant to the law of the requesting State, unless the requesting State provides guarantees that the death penalty would not be imposed or carried out.

**(b) Observations on the implementation of the article**

470. The reviewing experts concluded that BiH has implemented Art. 44(15) UNCAC.

#### **Paragraph 16 of article 44**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

471. BiH confirmed that it has fully implemented this provision of the Convention.

472. BiH cited the following implementation legislation:

*Law on Mutual Legal Assistance in Criminal Matters  
Article 9. (Refusal of assistance)*

(3) No request for mutual legal assistance shall be denied solely because it concerns an offense which is considered to be a fiscal offense pursuant to national law.

##### **(b) Observations on the implementation of the article**

473. The reviewing experts concluded that BiH has implemented Art. 44(16) UNCAC.

#### **Paragraph 17 of article 44**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

474. BiH confirmed that it has fully implemented this provision of the Convention.

475. BiH cited the following implementation legislation:

*Law on Mutual Legal Assistance in Criminal Matters  
Article 4. (Channels of Communication)*

(1) Letters Rogatory requesting mutual legal assistance of the national judicial authorities shall be transmitted to foreign judicial authorities through the Ministry of Justice of Bosnia and

Herzegovina. Requests for mutual assistance of foreign judicial authorities shall be transmitted to the national judicial authorities through the same channel.

(2) As an exception to Paragraph (1) of this Article, national judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when such a communication is envisaged by an international treaty.

(3) In urgent cases, when such a communication is envisaged by an international treaty, requests for mutual legal assistance may be transmitted and received through Interpol.

(4) In cases of communication referred to in Paragraphs (2) and (3) of this Article, the national judicial authority shall communicate a copy of the request for mutual legal assistance to the Ministry of Justice of Bosnia and Herzegovina.

(5) The Ministry of Justice of Bosnia and Herzegovina shall transmit and receive through the Ministry of Foreign Affairs of Bosnia and Herzegovina the requests for mutual legal assistance to/from a foreign State that has no international treaty in force with Bosnia and Herzegovina, as well as in cases when an international treaty explicitly envisages use of diplomatic channels of communication.

(6) Requests for mutual legal assistance may also be received if transmitted via electronic or some other means of telecommunication with a written record, and if the foreign relevant judicial authority is willing, upon request, to deliver a written evidence on the manner of delivery and the original request, provided that this manner of delivery is regulated by international treaty.

**(b) Observations on the implementation of the article**

476. The reviewing experts noted that the reported provision of the domestic legislation focused on MLA, instead of extradition proceedings. However, during the country visit the practice of consultations before refusing extradition requests was confirmed.

477. The reviewing experts concluded that BiH has implemented Art. 44(17) UNCAC.

**Paragraph 18 of article 44**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

478. BiH confirmed that it has fully implemented this provision of the Convention.

479. BiH cited the following implementation legislation:

Law on the Conclusion and Implementation Procedure of International Agreements (OG BiH, Number 29\_00)

**(b) Observations on the implementation of the article**

480. The reviewing experts noted that, as confirmed during the country visit, Bosnia and Herzegovina does not make extradition conditional on the existence of a treaty. Despite the treaty-non-prerequisite extradition system, a number of bilateral agreements have been concluded. Those agreements, as well as regional extradition treaties/protocols to

which Bosnia and Herzegovina is a party, are mentioned under article 48(1f) of the Convention, together with agreements on law enforcement cooperation. During the country visit, hard copies of lists of bilateral treaties were provided to the review team.

481. The reviewing experts concluded that BiH has implemented Art. 44(18) UNCAC.

## **Article 45. Transfer of sentenced persons**

### **Article 45**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

482. BiH confirmed that it has fully implemented this provision of the Convention.

483. BiH cited the following implementation legislation:

#### ***Law on Mutual Legal Assistance in Criminal Matters***

#### ***CHAPTER VII TRANSFER OF SENTENCED PERSONS FROM A FOREIGN STATE TO BOSNIA AND HERZEGOVINA***

#### ***Article 77 General provisions***

- (1) A Bosnia and Herzegovina national serving his prison sentence in a foreign State may be transferred to Bosnia and Herzegovina, at his personal request, in order to serve the remaining term of sentence imposed on him in the foreign State.
- (2) Transfer of a sentenced person, a Bosnia and Herzegovina national, shall be carried on only with approval of the sentencing State, provided that the sentenced Bosnia and Herzegovina national has given consent and that he still has at least six months of the sentence to serve.

#### ***Article 78 Procedure of deciding requests of Bosnia and Herzegovina sentenced nationals for transfer to Bosnia and Herzegovina in order to serve the remaining term of sentence imposed on them in the Sentencing State***

- (1) With regard to the manner and procedure of issuing a decision on a request of a Bosnia and Herzegovina national for transfer to Bosnia and Herzegovina in order to serve the remaining term

of sentence imposed on him in the sentencing State, Articles **66, 67, 68 and 69** above shall apply analogously.

- (2) After a national court has issued a decision to recognize a foreign court judgment in criminal matters, it shall be sent to the sentenced person in the sentencing State and the competent authorities of the sentencing State.
- (3) After the sentenced person has signed the proof of service, the proof of service shall be returned to the issuing Court.
- (4) After the decision has become final and the competent authorities of the sentencing State has approved it, the transfer from sentencing State to Bosnia and Herzegovina shall be carried on.

**CHAPTER VIII**  
**TRANSFER OF SENTENCED PERSONS FROM BOSNIA AND HERZEGOVINA TO A FOREIGN STATE**

**Article 79**

**Procedure of deciding requests of foreigners for transfer to the State whose nationals they are in order to serve the remaining term of sentence imposed on them in Bosnia and Herzegovina**

- (1) A foreign national serving his prison sentence in Bosnia and Herzegovina in accordance with a national court's decision, may file a request to serve the sentence imposed on him in the foreign State whose national he is.
- (2) The correctional institution where a sentenced foreign national is serving his prison sentence shall inform the person about the possibility to serve the sentence imposed on him in the foreign State whose national he is.
- (3) The request under paragraph 1 above shall be filed with the correctional institution where a sentenced foreign national is serving his prison sentence.
- (4) The correctional institution shall complete the documentation to accompany the request in pursuance of an international agreement obligatory for Bosnia and Herzegovina and the administering State, that is in pursuance of Article 64 above and send the completed documentation to the Ministry of Justice of Bosnia and Herzegovina.
- (5) With regard to the persons sentenced by Entity or Brčko District courts, the request under paragraph 1 shall be filed through the Entity Ministries of Justice and the Judicial Commission of Brčko District respectively.
- (6) The Ministry of Justice of Bosnia and Herzegovina shall send the request to the State where the sentenced person wants to serve the sentence or continue serving the sentence, whose national he is.

**Article 80**  
**Issuing a decision on transfer of a foreigner**

If the State whose national is a sentenced person approves his transfer, the final decision on transfer shall be issued by the Minister of Justice of Bosnia and Herzegovina with prior approval by the Entity Ministries of Justice and the Judicial Commission of Brčko District for judgments issued by Entity and Brčko District courts respectively, whereas in the case of the Court of Bosnia and Herzegovina judgments, the Minister of Justice of Bosnia and Herzegovina shall issue a decision solely on the grounds of the judgment of this Court.

**Article 81**  
**Place, time and manner of surrender**

The time, place and date of taking the sentenced person from Bosnia and Herzegovina in charge of the administering State or from the sentencing State in charge of Bosnia and Herzegovina and the manner of his transport shall be agreed between INTERPOL Sarajevo and INTERPOL of that State; while the transfer shall be carried on by the Border Police of Bosnia and Herzegovina with assistance of INTERPOL Sarajevo.

**Article 82**  
**Expenses of transfer**

- (1) Any expenses incurred in the transfer of sentenced persons shall be borne by the administering State, except expenses incurred exclusively in the territory of the sentencing State.
- (2) Any costs incurred in the bringing of the person whose transfer is granted in Bosnia and Herzegovina shall be borne from the budget funding the Court that issued the decision enabling the transfer of the sentenced person and the expenses will be planned and paid by the Ministry of Justice funded from the budget and in the case of Brčko District it shall be the Judicial Commission of Brčko District.
- (3) In the event of the agreed transfer from the sentencing State to Bosnia and Herzegovina not being carried out for any reason, any expenses incurred shall be borne by a budgetary beneficiary in pursuance of paragraph 2 above.

**(b) Observations on the implementation of the article**

484. The reviewing experts noted that Bosnia and Herzegovina is a party to the Convention on the Transfer of Sentenced Persons (1983). Chapters VII and VIII of the LMLACM regulate the transfer of prisoners from a foreign State to Bosnia and Herzegovina and vice versa.

485. The reviewing experts concluded that BiH has implemented Art. 45 UNCAC.

## **Article 46. Mutual legal assistance**

### **Paragraph 1 of article 46**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

486. BiH confirmed that it has fully implemented this provision of the Convention.

487. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters  
Article 13 (Definition)***

General aspects of mutual legal assistance particularly comprise the execution of certain procedural actions, such as: service of summons to the suspect, the prosecuted person, the accused, the witness, the expert witness, the person deprived of liberty or another participant in the criminal proceedings; the transmission of documents, written materials and other articles linked to the criminal proceedings in the requesting State, temporary seizure of articles, handing over the temporarily seized articles to the requesting State, the hearing of the prosecuted person, witness and expert witness, the on-site investigation, search of premises and persons, confiscation and control of shipment, surveillance and telephone tapping, the exchange of certain information and notifications, as well as other actions which could emerge during the criminal proceedings requiring mutual legal assistance, providing that they are not in contravention of this Law.

***Article 12  
Rule of Reciprocity***

- (1) Requests for assistance by judicial authorities of the State that Bosnia and Herzegovina does not have an agreement concluded on mutual assistance in criminal matters shall be executed only if, on the grounds of guarantees that the requesting State has given, the State may be expected to execute a similar request of the national judicial authorities.
- (2) A guarantee under paragraph 1 shall not be sought for the service of process, decisions, submissions and other documents.

***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)  
Article 8***

In Article 13, the word “confiscation “ shall be replaced with the words: “and seizure of articles found during search” and a full-stop shall be deleted at the end of the sentence and the following words added: “and the provisions of the criminal legislation of Bosnia and Herzegovina.”

488. BiH provided the following examples of implementation.

There are several examples for the implementation of item 1 of this article in practice in Bosnia and Herzegovina, which are:

Case number: 6461/10, where the competent judicial authorities in Bosnia and Herzegovina (Prosecutor's Office BIH) complied with the request of the Prosecutor's office in Vienna from 10 May 2010 and submitted the requested documentation and questioned

the witnesses in the presence of competent representatives of competent bodies of the Republic of Austria. The purpose of the requested activities was an investigation procedure conducted by the stated prosecutor's office against persons for the criminal offence of "embezzlement"(Article 153 of the Criminal Code of the Republic of Austria) and the criminal offence "receiving and giving bribes" (Article 307 of the Criminal Code of the Republic of Austria).

Case number: 12092/11, where the competent judicial authorities of Bosnia and Herzegovina (District Prosecutor's office Banjaluka) complied with the request of the Office for Prevention and Fight against Corruption of Latvia and submitted the requested documentation.

The documentation was requested for the purpose of conducting an investigation procedure against several persons for the crime "accepting bribes" (Article 320 paragraph 2 of the Criminal Code of Latvia), the crime "Intermediation in bribery" (Article 322 Paragraph 2 of the Criminal Code of Latvia), the crime "giving bribes" (Article 323 Paragraph 2 of the Criminal Code of Latvia), the crime "laundering of proceeds acquired through crime" (Article 195 paragraph 2 of the Criminal Code of Latvia) and the crime "financing of political organisations through mediators" (Article 288 of the Criminal Code of Latvia).

Case number: 2273/11, where the competent judicial authorities of Bosnia and Herzegovina complied with the request of the County Court in Rijeka and presented the accused person with the verdict (handled by the County court Bihać). The presentation of the verdict was requested for conducting a criminal procedure for the crime "giving bribes" (article 348 of the Criminal Code of the Republic of Croatia).

#### **(b) Observations on the implementation of the article**

489. The reviewing experts noted that mutual legal assistance is governed by the provisions of the LMLACM, as amended in July 2013. Such assistance can also be provided in accordance with international treaties or agreements in force. In the absence of such treaties or agreements or when certain matters are not regulated therein, assistance is provided pursuant to the LMLACM on the condition of reciprocity.
490. The reviewing experts concluded that BiH has implemented Art. 46(1) UNCAC.

#### **(c) Successes and good practices**

491. The reviewing experts identified as a good practice the fact that mutual legal assistance can also be afforded "in proceedings before courts and administrative authorities in respect of petty offences punishable with imprisonment or fines in accordance with the legislation of Bosnia and Herzegovina and in the cases where in the proceedings a decision of an administrative authority can result in proceedings before a court with subject-matter jurisdiction over criminal matters (Art. 1(3) LMLACM).

### **Paragraph 2 of article 46**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and*

*judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

492. BiH confirmed that it has fully implemented this provision of the Convention.

493. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***  
***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)***  
***Article 13***

Article 28 shall be modified to read as follows:

“Article 28

(Provision of Information on Natural and Legal Persons)

(1) Upon receipt of a Letter Rogatory of a foreign judicial authority, requesting information on natural and legal persons, the Ministry of Justice of Bosnia and Herzegovina shall weigh reasonableness of the request for provision of information under the international treaty and, if the request is well-founded, it shall forward the Letter Rogatory of the foreign judicial authority requesting information to the authority that maintains a database on such natural and legal persons.

(2) The Agency for Identification Documents, Records and Data Exchange of Bosnia and Herzegovina and other State authorities which hold and maintain databases on natural and legal persons shall be obliged to, upon a Letter Rogatory of a foreign judicial authority and in terms of the provisions of paragraph (1) of this Article, provide the Ministry of Justice of Bosnia and Herzegovina with information requested by the Letter Rogatory, whereas the Ministry of Justice of Bosnia and Herzegovina shall promptly forward such information to the authority of the requesting State which requested the data.

(3) The Ministry of Justice of Bosnia and Herzegovina and the relevant foreign judicial authority shall be obliged to keep secret all data provided by the relevant national authority and the Ministry of Justice shall particularly warn the foreign judicial authority of that duty.

***Criminal Procedure Code FoBiH***  
***Article 428. General Provision***

International assistance in criminal matters shall be rendered under the provisions of this Code, unless otherwise prescribed by the legislation of Bosnia and Herzegovina or an international agreement.

***Article 429. Communication of a Request for Legal Aid***

Requests of the court or the prosecutor for legal assistance in criminal matters shall be communicated to foreign authorities by diplomatic channels, in that the court or the prosecutor shall deliver such requests to the Federal Ministry of Justice to forward them to the competent Ministry of

Bosnia and Herzegovina.

**Article 430. Actions Following the Request of Foreign Authorities**

- (1) When the Federal Ministry of Justice receives a request of a foreign authority for legal assistance through the competent Ministry of Bosnia and Herzegovina, it shall be obligated to communicate such request to the competent prosecutor.
- (2) The prosecutor and the court shall decide as to the permissibility of and manner to carry out actions requested by the foreign authority in accordance with their competencies and under the legislation of Bosnia and Herzegovina.

**(Criminal Procedure Code RS) General Provision Article 401.**

International assistance in criminal matters shall be rendered under the provisions of this Code, unless otherwise prescribed by the legislation of Bosnia and Herzegovina or an international agreement.

**CRIMINAL PROCEDURE CODE OF BRČKO DISTRICT BIH**

**Article 407. General Provisions**

International assistance in criminal matters shall be rendered under the provisions of this Code, unless otherwise prescribed by the legislation of Bosnia and Herzegovina or an international agreement.

**(b) Observations on the implementation of the article**

494. As confirmed during the country visit, MLA can also be afforded in relation to offences for which a legal person may be held liable.

495. The reviewing experts concluded that BiH has implemented Art. 46(2) UNCAC.

**Subparagraphs 3 (a) to 3 (i) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(a) Taking evidence or statements from persons; (b) Effecting service of judicial documents;*

*(c) Executing searches and seizures, and freezing;*

*(d) Examining objects and sites;*

*(e) Providing information, evidentiary items and expert evaluations;*

*(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*

*(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*

(h) *Facilitating the voluntary appearance of persons in the requesting State Party;*

(i) *Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

**(a) Summary of information relevant to reviewing the implementation of the article**

496. BiH confirmed that it has fully implemented these provisions of the Convention.

497. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 13. (Definition)***

General aspects of mutual legal assistance particularly comprise the execution of certain procedural actions, such as: service of summons to the suspect, the prosecuted person, the accused, the witness, the expert witness, the person deprived of liberty or another participant in the criminal proceedings; the transmission of documents, written materials and other articles linked to the criminal proceedings in the requesting State, temporary seizure of articles, handing over the temporarily seized articles to the requesting State, the hearing of the prosecuted person, witness and expert witness, the on-site investigation, search of premises and persons, confiscation and control of shipment, surveillance and telephone tapping, the exchange of certain information and notifications, as well as other actions which could emerge during the criminal proceedings requiring mutual legal assistance, providing that they are not in contravention of this Law.

***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)***

***Article 8***

In Article 13, the word “confiscation “ shall be replaced with the words: “and seizure of articles found during search” and a full-stop shall be deleted at the end of the sentence and the following words added: “and the provisions of the criminal legislation of Bosnia and Herzegovina.”

498. BiH provided the following examples of implementation.

There are several examples for the implementation of item 1 of this article in practice in Bosnia and Herzegovina, which are:

Case number: 6461/10, where the competent judicial authorities in Bosnia and Herzegovina (Prosecutor's Office BIH) complied with the request of the Prosecutor's office in Vienna from 10 May 2010 and submitted the requested documentation and questioned the witnesses in the presence of competent representatives of competent bodies of the Republic of Austria. The purpose of the requested activities was an investigation procedure conducted by the stated prosecutor's office against persons for the criminal offence of “embezzlement”(Article 153 of the Criminal Code of the Republic of Austria) and the criminal offence “receiving and giving bribes” (Article 307 of the Criminal Code of the Republic of Austria).

Case number: 12092/11, where the competent judicial authorities of Bosnia and

Herzegovina (District Prosecutor's office Banjaluka) complied with the request of the Office for Prevention and Fight against Corruption of Latvia and submitted the requested documentation.

The documentation was requested for the purpose of conducting an investigation procedure against several persons for the crime "accepting bribes" (Article 320 paragraph 2 of the Criminal Code of Latvia), the crime "Intermediation in bribery" (Article 322 Paragraph 2 of the Criminal Code of Latvia), the crime "giving bribes" (Article 323 Paragraph 2 of the Criminal Code of Latvia), the crime "laundering of proceeds acquired through crime" (Article 195 paragraph 2 of the Criminal Code of Latvia) and the crime "financing of political organisations through mediators" (Article 288 of the Criminal Code of Latvia).

Case number: 2273/11, where the competent judicial authorities of Bosnia and Herzegovina complied with the request of the County Court in Rijeka and presented the accused person with the verdict (handled by the County court Bihać). The presentation of the verdict was requested for conducting a criminal procedure for the crime "giving bribes" (article 348 of the Criminal Code of the Republic of Croatia).

**(b) Observations on the implementation of the article**

499. The reviewing experts concluded that BiH has implemented Art. 46 (3) (a) - (i) UNCAC.

**Subparagraphs 3 (j) and 3 (k) of article 46**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

...

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

500. BiH confirmed that it has fully implemented these provisions of the Convention.

501. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***  
***Article 13. (Definition)***

General aspects of mutual legal assistance particularly comprise the execution of certain procedural actions, such as: service of summons to the suspect, the prosecuted person, the accused, the

witness, the expert witness, the person deprived of liberty or another participant in the criminal proceedings; the transmission of documents, written materials and other articles linked to the criminal proceedings in the requesting State, temporary seizure of articles, handing over the temporarily seized articles to the requesting State, the hearing of the prosecuted person, witness and expert witness, the on-site investigation, search of premises and persons, confiscation and control of shipment, surveillance and telephone tapping, the exchange of certain information and notifications, as well as other actions which could emerge during the criminal proceedings requiring mutual legal assistance, providing that they are not in contravention of this Law.

***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)***

***Article 8***

In Article 13, the word “confiscation “ shall be replaced with the words: “and seizure of articles found during search” and a full-stop shall be deleted at the end of the sentence and the following words added: “and the provisions of the criminal legislation of Bosnia and Herzegovina.”

**(b) Observations on the implementation of the article**

502. The reviewing experts concluded that BiH has implemented Art. 46 (3) (j) - (k) UNCAC.

**Paragraph 4 of article 46**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party to this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

503. BiH confirmed that it has fully implemented this provision of the Convention.

504. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***  
***Article 26. (Providing Information without Request)***

(1) Without prejudice to their own investigations or proceedings and subject to reciprocity, national judicial authorities may, without a prior request, forward to the relevant foreign judicial authorities information obtained during their own investigations and related to criminal offences if they consider that the disclosure of such information could assist in initiating investigations or criminal proceedings or if it could lead to a request for legal assistance by that State.

(2) The relevant national judicial authority shall request from the relevant foreign judicial authority to which it transmitted the information referred to in paragraph (1) of this Article

communication on any actions undertaken upon such information and it may also impose other conditions for the use of such information in the receiving State.

**(b) Observations on the implementation of the article**

505. The reviewing experts concluded that BiH has implemented Art. 46 (4) UNCAC.

**Paragraph 5 of article 46**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restriction on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

506. BiH confirmed that it has fully implemented this provision of the Convention.

507. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***  
***Article 26. (Providing Information without Request)***

(1) Without prejudice to their own investigations or proceedings and subject to reciprocity, national judicial authorities may, without a prior request, forward to the relevant foreign judicial authorities information obtained during their own investigations and related to criminal offences if they consider that the disclosure of such information could assist in initiating investigations or criminal proceedings or if it could lead to a request for legal assistance by that State.

The relevant national judicial authority shall request from the relevant foreign judicial authority to which it transmitted the information referred to in paragraph (1) of this Article communication on any actions undertaken upon such information and it may also impose other conditions for the use of such information in the receiving State.

**(b) Observations on the implementation of the article**

508. The reviewing experts concluded that BiH has implemented Art. 46 (5) UNCAC.

**Paragraph 8 of article 46**

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

**(a) Summary of information relevant to reviewing the implementation of the article**

509. BiH confirmed that it has fully implemented this provision of the Convention.

510. BiH cited the following implementation legislation:

***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)***

**Article 6**

Article 9 shall be modified to read as follows:

“Article 9

(Grounds for Denying Mutual Assistance)

“(1) Apart from other reasons for denying requests for certain forms of legal assistance as foreseen by this Law, a relevant national judicial authority shall deny a request for legal assistance in the following cases:

(a) if the execution of the request would prejudice the legal order of Bosnia and Herzegovina or its sovereignty or security;

(b) if the request concerns an offence which is considered to be a political criminal offence or an offence connected with a political criminal offence;

(c) if the request concerns a military criminal offence;

d) if the person to whom the request pertains has been acquitted of charges based on the substantive legal grounds or if the proceeding against him has been discontinued, or if he was relieved of punishment, or if the sanction has been executed or may not be executed under the law of the State where the verdict has been passed;

e) if criminal proceedings are pending against the accused in Bosnia and Herzegovina for the same criminal offence, unless the execution of the request might lead to a decision releasing the accused from custody;

(a) if criminal prosecution or execution of a sanction pursuant to the national law would be barred by the statute of limitations.

(2) The provisions of paragraph (1), subparagraph d) of this Article shall not apply in cases of reopening the criminal proceedings in the requesting State.

(3) In addition to the reasons as stipulated in paragraph (1) of this Article, legal assistance may also be denied on the basis of actual reciprocity with a certain State.”

**(b) Observations on the implementation of the article**

511. The reviewing experts noted that bank secrecy is not included among the grounds for refusal of MLA requests, as stipulated in article 9 LMLACM, as amended in July 2013.

512. The reviewing experts concluded that BiH has implemented Art. 46 (8) UNCAC.

**Subparagraph 9 (a) of article 46**

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the

*absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

**(a) Summary of information relevant to reviewing the implementation of the article**

513. BiH confirmed that it has fully implemented this provision of the Convention.

514. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

***Article 12***

***Rule of Reciprocity***

- (3) Requests for assistance by judicial authorities of the State that Bosnia and Herzegovina does not have an agreement concluded on mutual assistance in criminal matters shall be executed only if, on the grounds of guarantees that the requesting State has given, the State may be expected to execute a similar request of the national judicial authorities.
- (4) A guarantee under paragraph 1 shall not be sought for the service of process, decisions, submissions and other documents.

**(b) Observations on the implementation of the article**

515. The reviewing experts noted that the dual criminality is not foreseen in the BiH legislation as a condition for the provision of assistance. It was explained during the country visit that assistance can be afforded by the Bosnian authorities in the absence of dual criminality on the basis of the principle of reciprocity (article 12 LMLACM).

516. The reviewing experts concluded that BiH has implemented Art. 46 (9a) UNCAC.

**Subparagraph 9 (b) of article 46**

*(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

517. BiH confirmed that it has fully implemented this provision of the Convention.

518. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

***Article 12***

***Rule of Reciprocity***

- (5) Requests for assistance by judicial authorities of the State that Bosnia and Herzegovina does not have an agreement concluded on mutual assistance in criminal matters shall be executed only if, on the grounds of guarantees that the requesting State has given, the State may be expected to execute a similar request of the national judicial authorities.
- (6) A guarantee under paragraph 1 shall not be sought for the service of process, decisions, submissions and other documents.

**(b) Observations on the implementation of the article**

519. The reviewing experts noted that the dual criminality is not foreseen in the BiH legislation as a condition for the provision of assistance. It was explained during the country visit that assistance can be afforded by the Bosnian authorities in the absence of dual criminality on the basis of the principle of reciprocity (article 12 LMLACM).

520. The reviewing experts concluded that BiH has implemented Art. 46 (9b) UNCAC.

**Subparagraph 9 (c) of article 46**

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

**(a) Summary of information relevant to reviewing the implementation of the article**

521. BiH confirmed that it has fully implemented this provision of the Convention.

522. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 1. (Scope)***

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

**Article 12**  
**Rule of Reciprocity**

- (7) Requests for assistance by judicial authorities of the State that Bosnia and Herzegovina does not have an agreement concluded on mutual assistance in criminal matters shall be executed only if, on the grounds of guarantees that the requesting State has given, the State may be expected to execute a similar request of the national judicial authorities.
- (8) A guarantee under paragraph 1 shall not be sought for the service of process, decisions, submissions and other documents.

**(b) Observations on the implementation of the article**

523. The reviewing experts noted that the dual criminality is not foreseen in the BiH legislation as a condition for the provision of assistance. It was explained during the country visit that assistance can be afforded by the Bosnian authorities in the absence of dual criminality on the basis of the principle of reciprocity (article 12 LMLACM).

524. The reviewing experts concluded that BiH has implemented Art. 46 (9c) UNCAC.

**Paragraph 10 of article 46**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

*(a) The person freely gives his or her informed consent;*

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

525. BiH confirmed that it has fully implemented this provision of the Convention.

526. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

**Article 18**  
***Summons And Surrender of A Person In Custody***

- (1) A person in custody in Bosnia and Herzegovina, whose personal appearance as a witness or for purposes of confrontation, is summoned by a foreign judicial authority, can be temporarily transferred to the requesting State.
- (2) The person shall be temporarily transferred to the requesting State if it gives guarantees in respect of his protection under Article 17 above and guarantees that he will be returned by the deadline fixed.
- (3) Transfer may be refused:

- a) if the person in custody does not consent;
  - b) if transfer is liable to prolong his detention, or
  - c) if there are other overriding grounds for not transferring him to the territory of the requesting Party.
- (4) Transfer may be delayed if his presence is necessary at criminal proceedings pending before a national judicial authority.
- (5) Transfer of a person in custody in Bosnia and Herzegovina shall be decided by the Ministry of Justice of Bosnia and Herzegovina with a prior approval by the authority having ordered the custody.
- (6) Transfer of a person in custody through the territory of Bosnia and Herzegovina by a third State shall be granted if the person is not a national of Bosnia and Herzegovina. The decision shall be made by the Ministry of Justice of Bosnia and Herzegovina with a prior approval by the Ministry of Security of Bosnia and Herzegovina.
- (7) The transferred person under paragraph 1 shall remain in custody in the territory of the requesting Party.

**(b) Observations on the implementation of the article**

527. The reviewing experts concluded that BiH has implemented Art. 46 (10) UNCAC.

**Paragraph 11 of article 46**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

528. BiH confirmed that it has fully implemented this provision of the Convention.

529. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***

***Article 18***

***Summons And Surrender of A Person In Custody***

- (8) A person in custody in Bosnia and Herzegovina, whose personal appearance as a witness or for purposes of confrontation, is summoned by a foreign judicial authority, can be temporarily transferred to the requesting State.
- (9) The person shall be temporarily transferred to the requesting State if it gives guarantees in respect of his protection under Article 17 above and guarantees that he will be returned by the deadline fixed.
- (10) Transfer may be refused:
  - a) if the person in custody does not consent;
  - b) if transfer is liable to prolong his detention, or
  - c) if there are other overriding grounds for not transferring him to the territory of the requesting Party.
- (11) Transfer may be delayed if his presence is necessary at criminal proceedings pending before a national judicial authority.
- (12) Transfer of a person in custody in Bosnia and Herzegovina shall be decided by the Ministry of Justice of Bosnia and Herzegovina with a prior approval by the authority having ordered the custody.
- (13) Transfer of a person in custody through the territory of Bosnia and Herzegovina by a third State shall be granted if the person is not a national of Bosnia and Herzegovina. The decision shall be made by the Ministry of Justice of Bosnia and Herzegovina with a prior approval by the Ministry of Security of Bosnia and Herzegovina.
- (14) The transferred person under paragraph 1 shall remain in custody in the territory of the requesting Party.

**(b) Observations on the implementation of the article**

530. The reviewing experts concluded that BiH has implemented Art. 46 (11) UNCAC.

**Paragraph 12 of article 46**

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

**(a) Summary of information relevant to reviewing the implementation of the article**

531. BiH confirmed that it has fully implemented this provision of the Convention.

532. BiH cited the following implementation legislation:

*Law on Mutual Legal Assistance in Criminal Matters*

*Article 17*

*Protection of The Accused*

- (1) A person, whatever his nationality, summoned before the national judicial authorities to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of Bosnia and Herzegovina and not specified in the summons.
- (2) Prosecution or detention or any other restriction of personal liberty shall be allowed if a summoned person, having had an opportunity of leaving for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities, has nevertheless remained in the territory of Bosnia and Herzegovina, or having left it, has returned.

### **Article 18**

#### **Summons and Surrender of A Person In Custody**

- (15) A person in custody in Bosnia and Herzegovina, whose personal appearance as a witness or for purposes of confrontation, is summoned by a foreign judicial authority, can be temporarily transferred to the requesting State.
- (16) The person shall be temporarily transferred to the requesting State if it gives guarantees in respect of his protection under Article 17 above and guarantees that he will be returned by the deadline fixed.
- (17) Transfer may be refused:
  - a) if the person in custody does not consent;
  - b) if transfer is liable to prolong his detention, or
  - c) if there are other overriding grounds for not transferring him to the territory of the requesting Party.
- (18) Transfer may be delayed if his presence is necessary at criminal proceedings pending before a national judicial authority.
- (19) Transfer of a person in custody in Bosnia and Herzegovina shall be decided by the Ministry of Justice of Bosnia and Herzegovina with a prior approval by the authority having ordered the custody.
- (20) Transfer of a person in custody through the territory of Bosnia and Herzegovina by a third State shall be granted if the person is not a national of Bosnia and Herzegovina. The decision shall be made by the Ministry of Justice of Bosnia and Herzegovina with a prior approval by the Ministry of Security of Bosnia and Herzegovina.
- (21) The transferred person under paragraph 1 shall remain in custody in the territory of the requesting Party.

#### **(b) Observations on the implementation of the article**

533. The reviewing experts concluded that BiH has implemented Art. 46 (12) UNCAC.

#### **Paragraph 13 of article 46**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or*

*transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

534. BiH confirmed that it has fully implemented this provision of the Convention.

535. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters  
Article 4. (Channels of Communication)***

(1) Letters Rogatory requesting mutual legal assistance of the national judicial authorities shall be transmitted to foreign judicial authorities through the Ministry of Justice of Bosnia and Herzegovina. Requests for mutual assistance of foreign judicial authorities shall be transmitted to the national judicial authorities through the same channel.

(2) As an exception to Paragraph (1) of this Article, national judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when such a communication is envisaged by an international treaty.

(3) In urgent cases, when such a communication is envisaged by an international treaty, requests for mutual legal assistance may be transmitted and received through Interpol.

(4) In cases of communication referred to in Paragraphs (2) and (3) of this Article, the national judicial authority shall communicate a copy of the request for mutual legal assistance to the Ministry of Justice of Bosnia and Herzegovina.

***(Criminal Procedure Code RS) Communication of a Request for Legal Aid  
Article 402***

Requests of the court or the prosecutor for legal assistance in criminal matters shall be communicated to foreign authorities by diplomatic channels, in that the court or the prosecutor shall deliver such requests to the Ministry of Justice of Republika Srpska, to forward them to the competent Ministry of Bosnia and Herzegovina. The same method is used to deliver to domestic courts requests of foreign bodies for legal assistance addressed to courts in Republika Srpska.

***Criminal Procedure Code FBiH  
Article 429. Communication of a Request for Legal Aid***

Requests of the court or the prosecutor for legal assistance in criminal matters shall be communicated to foreign authorities by diplomatic channels, in that the court or the prosecutor shall deliver such requests to the Federal Ministry of Justice to forward them to the competent Ministry of Bosnia and Herzegovina.

***CRIMINAL PROCEDURE CODE OF BRČKO DISTRICT BIH  
Article 408. Communication of a Request for Legal Aid***

Requests for legal assistance in criminal matters by the courts of Brčko District of BiH, i.e. of the Prosecutor shall be delivered to foreign authorities through diplomatic channels in such a way that the Court, i.e. the Prosecutor, shall deliver the requests to the Judicial Commission of Brčko District of BiH, which will forward them to the competent ministry of Bosnia and Herzegovina.

**Article 409. Actions Following Requests of Foreign Authorities**

(1) When the Judicial Commission of Brčko District of BiH receives a request for legal assistance from a foreign authority, via the competent ministry of Bosnia and Herzegovina, it shall be obligated to forward such request to the Court, i.e. the Prosecutor.

(2) The prosecutor and the court shall decide as to the permissibility of and manner to carry out actions requested by the foreign authority in accordance with their competencies and under the legislation of Bosnia and Herzegovina.

**(b) Observations on the implementation of the article**

536. The reviewing experts noted that the Ministry of Justice of Bosnia and Herzegovina is the central authority designated to deal with MLA requests. Exceptionally, national judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when such a communication is envisaged by an international treaty. In urgent cases, when such a communication is envisaged by an international treaty, requests for mutual legal assistance may be transmitted and received through Interpol.

537. The reviewing experts further highlighted that the Bosnian authorities have not notified the Secretary-General of the United Nations of the central authority designated to deal with MLA requests and therefore made a pertinent recommendation.

538. The reviewing experts concluded that BiH has partially implemented Art. 46 (13) UNCAC.

**(c) Challenges and recommendations**

539. The reviewing experts recommend that the Bosnian authorities notify the Secretary-General of the United Nations of the central authority designated to deal with MLA requests.

**Paragraph 14 of article 46**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

540. BiH confirmed that it has fully implemented this provision of the Convention.

541. BiH cited the following implementation legislation:

***Law on Mutual Legal Assistance in Criminal Matters***  
***Article 4. (Channels of Communication)***

(1) Letters Rogatory requesting mutual legal assistance of the national judicial authorities shall be transmitted to foreign judicial authorities through the Ministry of Justice of Bosnia and Herzegovina. Requests for mutual assistance of foreign judicial authorities shall be transmitted to the national judicial authorities through the same channel.

(2) As an exception to Paragraph (1) of this Article, national judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when such a communication is envisaged by an international treaty.

(3) In urgent cases, when such a communication is envisaged by an international treaty, requests for mutual legal assistance may be transmitted and received through Interpol.

(4) In cases of communication referred to in Paragraphs (2) and (3) of this Article, the national judicial authority shall communicate a copy of the request for mutual legal assistance to the Ministry of Justice of Bosnia and Herzegovina.

**(b) Observations on the implementation of the article**

542. The reviewing experts noted that the Ministry of Justice of Bosnia and Herzegovina is the central authority designated to deal with MLA requests. Exceptionally, national judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when such a communication is envisaged by an international treaty. In urgent cases, when such a communication is envisaged by an international treaty, requests for mutual legal assistance may be transmitted and received through Interpol.

543. The reviewing experts further highlighted that the Bosnian authorities have not notified the Secretary-General of the United Nations of the acceptable languages for the submission of MLA requests and therefore made a pertinent recommendation.

544. The reviewing experts concluded that BiH has partially implemented Art. 46 (14) UNCAC.

**(c) Challenges and recommendations**

545. The reviewing experts recommend that the Bosnian authorities notify the Secretary-General of the United Nations of the acceptable languages for the submission of MLA requests.

**Paragraphs 15 and 16 of article 46**

15. A request for mutual legal assistance shall contain: (a) The identity of the authority making the request;  
(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

**(a) Summary of information relevant to reviewing the implementation of the article**

546. BiH confirmed that it has fully implemented these provisions of the Convention.

547. BiH cited the following implementation legislation:

***The Law on Mutual Legal Assistance in Criminal Matters***

***Article 3***

***Letters Rogatory***

- (1) A request for international legal assistance shall be submitted in the form of a letter rogatory.
- (2) The letter rogatory of a foreign judicial authority, together with supporting documents, shall be accompanied by a translation into one of the official languages of Bosnia and Herzegovina. The translation shall be certified by a court certified translator.
- (3) The letter rogatory by a national judicial authority, together with supporting documents, shall be accompanied by a translation into the official language of the requested State.
- (4) Unless otherwise stipulated in an international agreement or provisions of the present Law, a letter rogatory shall indicate as follows:
  - a) the name of the authority making the request, the case number, the full name of the requested State and the name of the requested authority, if possible,
  - b) legal grounds for the mutual assistance requested,
  - c) a full description of the actions requested in the mutual assistance and the cause of submission of the letter rogatory,
  - d) the Legal qualification of offence and a summary of the facts,
  - e) precise personal details and nationality of the person the mutual assistance pertains to and his capacity in the case,
  - f) name of the document and the name, address of the person to be served on, if it is service of process that is requested and
  - g) other details that may be important for the action to be taken at the letter rogatory.
- (5) A letter rogatory and the documents sent by courts or other competent authorities shall be signed and stamped by the seal of issuing court or other authority.
- (6) If the information indicated in a letter rogatory and supporting documents are not sufficient, additional information and documents can be asked for.

**(b) Observations on the implementation of the article**

548. The reviewing experts concluded that BiH has implemented Art. 46 (15) and (16) UNCAC.

### **Paragraph 17 of article 46**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

549. BiH confirmed that it has fully implemented this provision of the Convention.

550. BiH cited the following implementation legislation:

#### ***The Law on Mutual Legal Assistance in Criminal Matters*** ***Article 6. (Admissibility and Course of Action)***

(1) The relevant national judicial authority shall decide on the admissibility and course of action in providing mutual legal assistance requested by a foreign judicial authority in compliance with national regulations, unless otherwise stipulated by this Law or an international treaty.

#### ***Article 23*** ***Proceeding In A Particular Manner***

- (1) At the request of a court or other requesting authority a national judicial authority can comply with the letter rogatory in the manner cited in it, provided that it is not in contravention of fundamental principles of the legal system of Bosnia and Herzegovina and that the possibility is stipulated in an international agreement.
- (2) A national judicial authority shall issue a decision as soon as possible on a letter rogatory of a foreign judicial authority, taking account of specifically fixed deadlines set forth in the letter rogatory.
- (3) If a national judicial authority judges that it will not be able to comply with the letter rogatory meeting the specifically fixed deadlines, it shall promptly inform the requesting State about it, indicating the period of time needed for execution of the letter rogatory.
- (4) If a national judicial authority is not able to execute the letter rogatory meeting the requirements set forth, it shall promptly inform the requesting State about it, stating the reasons thereof.

BiH indicated that the requests for mutual legal assistance mentioned under Art. 46(1) were executed in line with the national legislation of Bosnia and Herzegovina.

#### **(b) Observations on the implementation of the article**

551. The reviewing experts noted that for the execution of MLA requests, the domestic legislation is applicable. As an exception, at the request of a court or other requesting authority, a national judicial authority can comply with the letter rogatory in the manner cited in it, provided that this does not contradict the fundamental principles of the domestic legal system and it is also stipulated in an applicable international agreement.
552. The reviewing experts concluded that BiH has implemented Art. 46 (17) UNCAC.

### **Paragraph 18 of article 46**

*18. Whenever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

553. BiH confirmed that it has fully implemented this provision of the Convention.
554. BiH cited the following implementation legislation:

#### ***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)***

##### ***Article 9***

##### **Article 9**

After Article 16, Articles 16a, 16b and 16c shall be added to read as follows:

“Article 16a (Examination of Witnesses and Expert Witnesses via a Video-link)

- (1) Where direct examination of witnesses and expert witnesses from Bosnia and Herzegovina is not possible on the territory of another State, the examination may be conducted via a video-conference link upon request of the judicial authorities of that State.
- (2) The request referred to in paragraph (1) of this Article must be made in writing and contain everything which is stipulated in Article 3 of this Law, including the explanation of the reasons precluding direct appearance of the witnesses and expert witnesses in the requesting State. The request must indicate the names of the judicial authorities and persons who are to attend the examination in the requesting State.
- (3) The request referred to in paragraph (1) of this Article shall be granted if it is not in contravention of the principles of the criminal legislation of Bosnia and Herzegovina, and it shall be satisfied by such judicial authority which is technically equipped for this type of examination, whether or not competent for offering such legal assistance under this request in terms of Articles 6 and 7 of this Law.
- (4) The summons for examination shall be served on persons under paragraph (1) of this Article by the judicial authority which shall conduct the examination.
- (5) A judicial authority of the State requesting the examination shall be responsible for the establishment of identity of a person to be examined and, if required, it shall also provide an

interpreter and conduct the examination directly in accordance with its legislation.

(6) Notwithstanding paragraph (5) of this Article, the examination may also be conducted by a judicial authority in Bosnia and Herzegovina under instructions of the judicial authority of the requesting State, with provisions made for interpretation, but only upon a request of the State which forwarded the Letter Rogatory.

(7) A witness and an expert witness may refuse to testify pursuant to the criminal legislation of Bosnia and Herzegovina, as well as pursuant to the criminal legislation of the requesting State.

(8) Applying the examination protective measures, the Bosnia and Herzegovina judicial authority conducting the examination shall produce a Record or videotapes pursuant to the criminal legislation of the party submitting the request and forward it to the judicial authority of the requesting State.

(9) If a person under paragraph (1) of this Article has refused to testify, no coercive measures may be imposed on him.

#### Article 16b

(Questioning of Suspects and Accused

Persons by Videoconferencing)

(1) By applying Article 16a of this Law adequately, the judicial authorities of another State may question a Suspect or an Accused person being in Bosnia and Herzegovina via video conference, by virtue of the mediation of the judicial authorities of Bosnia and Herzegovina if that person consents to that.

(2) The Bosnia and Herzegovina judicial authority which is to conduct the questioning and the judicial authority of the State which submitted the request for legal assistance shall agree upon the conditions and methods of questioning in accordance with the national criminal legislations and international instruments.

(3) If a person under paragraph (1) of this Article has refused to testify, no coercive measures may be imposed on him.

#### Article 16c

(Examination of Witnesses and Expert

Witnesses by Telephone Conferencing)

(1) By applying Article 16a of this Law adequately, the competent judicial authority in Bosnia and Herzegovina may, upon request of another State, organise examination of expert witnesses and witnesses via telephone conference, if a witness or an expert witness consents to that.

(2) The competent judicial authority in Bosnia and Herzegovina and the judicial authority of the State which submitted the request for legal assistance shall agree upon the manner of the examination in terms of paragraph (1) of this Article, of which the competent judicial authority in Bosnia and Herzegovina must produce a Record and verify the consent of the witness and expert witness along with establishing their oneness.

(3) If a person under paragraph (1) of this Article has refused to testify, no coercive measures may be imposed on him.

555. BiH provided the following examples of implementation.

An example to illustrate application of this item under Article 46 of the Convention in case law of Bosnia and Herzegovina is the referred case No. 6461/10, with the requested witness hearing based on letter rogatory of the State Prosecutor's Office in Vienna was executed in Bosnia and Herzegovina in presence of representatives of the competent judicial authorities of the Republic of Austria during the hearing. Through the competent prosecutor of the Prosecutor's Office of BiH, they could put questions to witnesses, that is, take part in the sought actions of witness hearing.

#### (b) Observations on the implementation of the article

556. The reviewing experts concluded that BiH has implemented Art. 46 (18) UNCAC.

### **Paragraph 19 of article 46**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

557. BiH confirmed that it has fully implemented this provision of the Convention.

558. BiH cited the following implementation legislation

#### ***The Law on Mutual Legal Assistance in Criminal Matters Article 26 (Providing Information without Request)***

(1) Without prejudice to their own investigations or proceedings and subject to reciprocity, national judicial authorities may, without a prior request, forward to the relevant foreign judicial authorities information obtained during their own investigations and related to criminal offences if they consider that the disclosure of such information might assist the receiving State in initiating investigations or criminal proceedings or might lead to a request for mutual assistance by that State.

(2) The competent national judicial authority shall ask of the foreign judicial authority that has received the information under paragraph 1 above to inform it about actions taken on the receipt of information and also can set other requirements for the use of such information in the receiving State.

#### **(b) Observations on the implementation of the article**

559. The reviewing experts concluded that BiH has implemented Art. 46 (19) UNCAC.

### **Paragraph 20 of article 46**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

560. BiH confirmed that it has fully implemented this provision of the Convention.

561. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters***  
***Article 28 (Confidentiality)***

(1) On the request of a foreign judicial authority, the Ministry of Justice of Bosnia and Herzegovina and the relevant national judicial authority shall keep confidential the data referred to in the Letter Rogatory, except to the extent necessary to execute the Letter Rogatory.

(2) If the confidentiality condition referred to in paragraph (1) of this Article cannot be fulfilled, the Ministry of Justice of Bosnia and Herzegovina, i.e. national judicial authority, shall notify the foreign judicial authority of this fact without delay.

**(b) Observations on the implementation of the article**

562. The reviewing experts concluded that BiH has implemented Art. 46 (20) UNCAC.

**Paragraph 21 of article 46**

*21. Mutual legal assistance may be refused:*

*(a) If the request is not made in conformity with the provisions of this article;*

*(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

*(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

*(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

563. BiH confirmed that it has fully implemented this provision of the Convention.

564. BiH cited the following implementation legislation.

*Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)*

**Article 6**

Article 9 shall be modified to read as follows:

“Article 9

(Grounds for Denying Mutual Assistance)

“(1) Apart from other reasons for denying requests for certain forms of legal assistance as foreseen by this Law, a relevant national judicial authority shall deny a request for legal assistance in the following cases:

(a) if the execution of the request would prejudice the legal order of Bosnia and Herzegovina or its sovereignty or security;

(b) if the request concerns an offence which is considered to be a political criminal offence or an offence connected with a political criminal offence;

(c) if the request concerns a military criminal offence;

d) if the person to whom the request pertains has been acquitted of charges based on the substantive legal grounds or if the proceeding against him has been discontinued, or if he was relieved of punishment, or if the sanction has been executed or may not be executed under the law of the State where the verdict has been passed;

e) if criminal proceedings are pending against the accused in Bosnia and Herzegovina for the same criminal offence, unless the execution of the request might lead to a decision releasing the accused from custody;

(a) if criminal prosecution or execution of a sanction pursuant to the national law would be barred by the statute of limitations.

(2) The provisions of paragraph (1), subparagraph d) of this Article shall not apply in cases of reopening the criminal proceedings in the requesting State.

(3) In addition to the reasons as stipulated in paragraph (1) of this Article, legal assistance may also be denied on the basis of actual reciprocity with a certain State.”

**(b) Observations on the implementation of the article**

565. The reviewing experts concluded that BiH has implemented Art. 46 (21) UNCAC.

**Paragraph 22 of article 46**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

566. BiH confirmed that it has fully implemented this provision of the Convention.

567. BiH cited the following implementation legislation.

*Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)*

**Article 7**

Article 10 shall be modified to read as follows:

“Article 10

(Exemptions from Denying Legal Assistance)

...

- (3) No request for mutual legal assistance shall be denied solely because it concerns an offence which is considered to be a fiscal offence pursuant to national law.”

**(b) Observations on the implementation of the article**

568. The reviewing experts concluded that BiH has implemented Art. 46 (22) UNCAC.

**Paragraph 23 of article 46**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

569. BiH confirmed that it has fully implemented this provision of the Convention.

570. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters  
Article 11 (Reasoning the Failure to Execute the Request)***

The decision refusing the request to afford mutual legal assistance or the failure to execute the request must be reasoned.

**(b) Observations on the implementation of the article**

571. The reviewing experts concluded that BiH has implemented Art. 46 (23) UNCAC.

**Paragraph 24 of article 46**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

572. BiH confirmed that it has fully implemented this provision of the Convention.

573. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters***  
***Article 23 (Special Proceedings)***

(1) On the request by the Court or other authority issuing the request, the national judicial authority shall be able to execute the request in the manner indicated in the request if it is not contrary to the fundamental principles of the legal order of Bosnia and Herzegovina and if an international treaty provides for such possibility.

(2) National judicial authority shall render a decision on the request submitted by a foreign judicial authority as soon as possible, taking into account the specific deadlines noted in the request

(3) If the national judicial authority foresees that it shall not be able to meet the specific deadline for the execution of the request, it shall inform the requesting State thereof **without delay and indicate the time required for the execution of the request.**

(4) If the national judicial authority is unable to execute the request in compliance with the required conditions, it shall inform the foreign judicial authority to this effect without delay, indicating the reasons.

**(b) Observations on the implementation of the article**

574. The reviewing experts took into account the legal framework aimed at expediting the MLA proceedings and were also briefed during the country visit that the length of MLA proceedings depends on the complexity of the case.

575. The reviewing experts concluded that BiH has implemented Art. 46 (24) UNCAC.

**Paragraph 25 of article 46**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of the article**

576. BiH confirmed that it has fully implemented this provision of the Convention.

577. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters***  
***Article 22 (Postponement)***

(1) National judicial authority may postpone the execution of the request for mutual legal assistance if such action would prejudice the course of the investigation, prosecution or criminal proceedings already pending before a national judicial authority, related to the request received.

(2) If the execution of the request is postponed, the relevant foreign judicial authority that transmitted the request shall be informed thereof, providing the reasons for the postponement.

**(b) Observations on the implementation of the article**

578. The reviewing experts concluded that BiH has implemented Art. 46 (25) UNCAC.

**Paragraph 26 of article 46**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

579. BiH confirmed that it has fully implemented this provision of the Convention.

580. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters  
Article 12 (Reciprocity)***

(1) National judicial authorities shall afford assistance in respect of the request for mutual legal assistance to a judicial authority of the State that has no treaty on mutual legal assistance in force with Bosnia and Herzegovina, only if it may be expected based on the assurances provided by the requesting State that it would execute a corresponding request of the national judicial authority.

(2) The assurances referred to in Paragraph (1) of this Article shall not be sought for the purpose of service of judicial decisions, submissions of parties and/or other documents.

**(b) Observations on the implementation of the article**

581. The reviewing experts took into account the legal framework reported for the implementation of this provisions. It was also explained to them during the country visit that the issue of consultations is mostly dealt with in practice.

582. The reviewing experts concluded that BiH has implemented Art. 46 (26) UNCAC.

**Paragraph 27 of article 46**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in*

*an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

583. BiH confirmed that it has fully implemented this provision of the Convention.

584. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters  
Article 16 (Protection of Witnesses and Expert Witnesses)***

(1) A witness or an expert witness, maintaining permanent or temporary residence abroad, appearing in the state territory of Bosnia and Herzegovina in response to a summons by national judicial authorities, shall not, regardless of his/her citizenship, be criminally prosecuted, ordered into custody due to an offence subject to the criminal proceedings during which his/her presence was required or due to an offence he/she had committed prior to leaving the state territory of Bosnia and Herzegovina, or committed to serve a sentence based on a previously rendered decision of the court.

(2) The provision set forth in paragraph (1) of this Article shall not apply in case the witness or expert witness does not leave the state territory of Bosnia and Herzegovina within the deadline of 15 days after he/she was informed that his/her presence was no longer required, even though the person had an opportunity to do so. This deadline shall not include the period during which the witness or expert witness was unable to leave the state territory of Bosnia and Herzegovina due to objective reasons.

**(b) Observations on the implementation of the article**

585. The reviewing experts concluded that BiH has implemented Art. 46 (27) UNCAC.

**Paragraph 28 of article 46**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

586. BiH confirmed that it has fully implemented this provision of the Convention.

587. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters***  
***Article 25 (Costs)***

- (1) The refund of costs incurred in respect of the afforded mutual legal assistance shall not be sought, except in the cases as follows:
  - a) substantial costs incurred by the expert testimony and other substantial costs incurred as a result of the expert testimony;
  - b) costs incurred by a temporary transfer of persons deprived of liberty for the purpose of testimony or confrontation in the requesting State, and
  - c) costs of substantial or extraordinary nature.
- (2) The witness or expert witness who responds to the summons issued by the national judicial authority is entitled to a full refund of travel and accommodation costs, in compliance with the national regulations.
- (3) Summonses served upon persons referred to in paragraph (2) of this Article shall comprise the refund they are entitled to and, upon their request, they shall receive an advance payment to cover their expenses.
- (4) Expert testimony may be conditioned by a previous advance deposit if the costs of the expert testimony are borne by the party itself.

**(b) Observations on the implementation of the article**

588. The reviewing experts concluded that BiH has implemented Art. 46 (28) UNCAC.

**Subparagraph 29 (a) of article 46**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

**(a) Summary of information relevant to reviewing the implementation of the article**

589. BiH confirmed that it has fully implemented this provision of the Convention.

590. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters***  
***Article 31 (Information on Regulations)***

On the request of national judicial authorities, the Ministry of Justice of Bosnia and Herzegovina shall obtain from the relevant foreign judicial authorities regulations which are or were effective in other states, and, if necessary, also the information about specific legal matters. In the same manner, the Ministry of Justice of Bosnia and Herzegovina shall forward the national regulations or information about specific legal matters to foreign judicial authorities at their request, while the authority having jurisdiction to act pursuant to those regulations shall be the one to forward the regulations and the information to the Ministry of Justice of Bosnia and Herzegovina.

**(b) Observations on the implementation of the article**

591. In addition to the reported legal framework on the provision of information on regulations, it was explained during the country visit that copies of records, documents or information available to the general public fall within the concept of “specific legal matters” mentioned in article 31 LMLACM and, thus, can be requested through mutual legal assistance. Official documents may, under certain circumstances, be kept secret under domestic legislation.
592. The reviewing experts noted, at the same time, that the issue of access of the general public to information falls outside the scope of the review at this review cycle of the Review of Implementation Mechanism of the Convention.
593. The reviewing experts concluded that BiH has implemented Art. 46 (29a) UNCAC.

**Subparagraph 29 (b) of article 46**

*29. The requested State Party: ...*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

594. BiH confirmed that it has fully implemented this provision of the Convention.
595. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters  
Article 31 (Information on Regulations)***

On the request of national judicial authorities, the Ministry of Justice of Bosnia and Herzegovina shall obtain from the relevant foreign judicial authorities regulations which are or were effective in other states, and, if necessary, also the information about specific legal matters. In the same manner, the Ministry of Justice of Bosnia and Herzegovina shall forward the national regulations or information about specific legal matters to foreign judicial authorities at their request, while the authority having jurisdiction to act pursuant to those regulations shall be the one to forward the regulations and the information to the Ministry of Justice of Bosnia and Herzegovina.

**(b) Observations on the implementation of the article**

596. In addition to the reported legal framework on the provision of information on regulations, it was explained during the country visit that copies of records, documents or information available to the general public fall within the concept of “specific legal matters” mentioned in article 31 LMLACM and, thus, can be requested through mutual

legal assistance. Official documents may, under certain circumstances, be kept secret under domestic legislation.

597. The reviewing experts noted, at the same time, that the issue of access of the general public to information falls outside the scope of the review at this review cycle of the Review of Implementation Mechanism of the Convention.

598. The reviewing experts concluded that BiH has implemented Art. 46 (29b) UNCAC.

### **Paragraph 30 of article 46**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to, or enhance the provisions of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

599. BiH confirmed that it has fully implemented this provision of the Convention.

600. BiH cited the following implementation legislation.

Law on the Conclusion and Implementation Procedure of International Agreements (OG BiH, Number 29\_00)

#### **(b) Observations on the implementation of the article**

601. The reviewing experts noted that, as confirmed during the country visit, a number of bilateral agreements on international cooperation, including MLA, have been concluded. Those agreements, as well as regional MLA treaties/protocols to which Bosnia and Herzegovina is a party, are mentioned under article 48(1f) of the Convention, together with agreements on law enforcement cooperation. During the country visit, hard copies of lists of bilateral treaties were provided to the review team.

602. The reviewing experts concluded that BiH has implemented Art. 46(30) UNCAC.

## **Article 47. Transfer of criminal proceedings**

### **Article 47**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

603. BiH confirmed that it has fully implemented this provision of the Convention.

604. BiH cited the following implementation legislation:

*The Law on Mutual Legal Assistance in Criminal Matters*

*Article 83 (Transfer of criminal prosecution to the foreign country)*

(1) If an alien having permanent residence in a foreign country committed a criminal offence in the territory of Bosnia and Herzegovina, all relevant criminal records may be transferred to that foreign country for the purpose of criminal prosecution and trial, unless the foreign country objects.

(2) The transfer of the criminal prosecution and trial shall not be allowed if the alien may be exposed to unfair treatment, inhuman and humiliating treatment or punishment.

(3) Prior to filing an Indictment, a decision on transfer shall be rendered by the Prosecutor. Upon filing an Indictment and pending the assignment of the case to the Judge or the Panel in order to schedule the main trial - such decision shall be rendered by the Preliminary Hearing Judge on the proposal of the Prosecutor.

(4) Upon opening the main trial, on the proposal of the Prosecutor, the decision to transfer criminal prosecution shall be rendered by the Judge or the Panel before which the main trial is being held.

(5) The transfer may take place for the criminal offences falling within the Court's jurisdiction which carry a punishment of imprisonment for a term of up to ten years, unless otherwise stipulated by the international treaty or if there is no presumed reciprocity with that State, unless proven otherwise.

(6) If the aggrieved party is a national of Bosnia and Herzegovina, the transfer shall not be allowed if he objects, unless security has been provided for his/her property claim.

605. BiH cited the following examples of implementation:

An example of the application of this Article in the case law of Bosnia and Herzegovina is the case No. 12740/11, wherein the letter rogatory of the competent court in Bosnia and Herzegovina for the takeover of criminal prosecution of an individual, a national of the Republic of Macedonia, with permanent residence in the Former Yugoslav Republic of Macedonia, was transmitted to the Former Yugoslav Republic of Macedonia with its accompanying case files. The individual is suspected of having committed the criminal offense of "Giving Gifts and Other Forms of Benefits" under Article 218 Paragraph 1 of the Criminal Code of Bosnia and Herzegovina. The letter rogatory was refused as the individual had not been found on the territory of the Former Yugoslav Republic of Macedonia, regardless of holding permanent residence in that country.

**(b) Observations on the implementation of the article**

606. The reviewing experts noted that the transfer of criminal proceedings is regulated in chapters IX of the LMLACM (articles 83-92). In addition, Bosnia and Herzegovina is a party to the European Convention on the Transfer of Proceedings in Criminal Matters (1972).

607. The reviewing experts concluded that BiH has implemented Art. 47 UNCAC.

## Article 48. Law enforcement cooperation

### Subparagraph 1 (a) of article 48

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

608. BiH confirmed that it has fully implemented this provision of the Convention.

609. BiH cited the following implementation legislation.

#### ***The Law on Mutual Legal Assistance in Criminal Matters Article 4 (Channels of Communication)***

(1) Letters Rogatory requesting mutual legal assistance of the national judicial authorities shall be transmitted to foreign judicial authorities through the Ministry of Justice of Bosnia and Herzegovina. Requests for mutual assistance of foreign judicial authorities shall be transmitted to the national judicial authorities through the same channel.

(2) As an exception to Paragraph (1) of this Article, national judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when such a communication is envisaged by an international treaty.

(3) In urgent cases, when such a communication is envisaged by an international treaty, requests for mutual legal assistance may be transmitted and received through the Interpol.

(4) In cases of communication referred to in Paragraphs (2) and (3) of this Article, the national judicial authority shall communicate a copy of the request for mutual legal assistance to the Ministry of Justice of Bosnia and Herzegovina.

(5) The Ministry of Justice of Bosnia and Herzegovina shall transmit and receive through the Ministry of Foreign Affairs of Bosnia and Herzegovina the requests for mutual legal assistance to/from a foreign State that has no international treaty in force with Bosnia and Herzegovina, as well as in cases when an international treaty explicitly envisages use of diplomatic channels of communication.

(6) Requests for mutual legal assistance may also be received if transmitted via electronic or some other means of telecommunication with a written record, and if the foreign relevant judicial authority is willing, upon request, to deliver a written evidence of the manner of transmission and the original request, provided that this manner of transmission is regulated in an international treaty.

#### ***Law on Mutual Legal Assistance in Criminal Matters Article 26. (Providing Information without Request)***

(1) Without prejudice to their own investigations or proceedings and subject to reciprocity, national judicial authorities may, without a prior request, forward to the relevant foreign judicial authorities information obtained during their own investigations and related to criminal offences if they consider that the disclosure of such information could assist in initiating investigations or

criminal proceedings or if it could lead to a request for legal assistance by that State.

(2) The relevant national judicial authority shall request from the relevant foreign judicial authority to which it transmitted the information referred to in paragraph (1) of this Article communication on any actions undertaken upon such information and it may also impose other conditions for the use of such information in the receiving State.

**(b) Observations on the implementation of the article**

610. The reviewing experts noted the legal framework reported by the Bosnian authorities (provisions of the LMLACM, including on the issue of spontaneous transmission of information prior to MLA requests. They were also briefed about the practice followed to promote law enforcement cooperation, including the access to the database of Interpol and the use by SIPA of communication channels to coordinate with foreign counterparts.

611. The reviewing experts concluded that BiH has implemented Art. 48(1a) UNCAC.

**Subparagraph 1 (b) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

...

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

**(a) Summary of information relevant to reviewing the implementation of the article**

612. BiH confirmed that it has fully implemented this provision of the Convention.

613. BiH cited the following implementation legislation.

***The Law on Mutual Legal Assistance in Criminal Matters***  
***Article 13 (Definition)***

General aspects of mutual legal assistance particularly comprise the execution of certain procedural actions, such as: service of summons to the suspect, the prosecuted person, the accused, the witness, the expert witness, the person deprived of liberty or another participant in the criminal proceedings; the transmission of documents, written materials and other articles linked to the criminal proceedings in the requesting State, temporary seizure of articles, handing over the temporarily seized articles to the requesting State, the hearing of the prosecuted person, witness and expert witness, the on-site investigation, search of premises and persons, confiscation and control of

shipment, surveillance and telephone tapping, the exchange of certain information and notifications, as well as other actions which could emerge during the criminal proceedings requiring mutual legal assistance, providing that they are not in contravention of this Law.

***The Law on Confiscation of the Proceeds from Crime in RS - V INTERNATIONAL COOPERATION***

***Article 48***

(1) International cooperation with the aim of seizure of the proceeds acquired through perpetration of a criminal offence shall be executed based on an international treaty.

(2) In absence of an international treaty or in case that certain issues have not been provided for by an international treaty, international cooperation shall be executed under the provisions of this law.

***Article 49***

(1) International cooperation, pursuant to provisions of this law, shall include assistance in locating proceeds acquired through perpetration of a criminal offence, ban on disposal and temporary or permanent confiscation of proceeds acquired from criminal offences.

(2) Jurisdiction of a national prosecutor's office in the procedure of international cooperation from paragraph 1 of this Article shall be determined pursuant to the application of relevant legal provisions on mutual assistance and execution of international treaties in criminal law matters.

**(b) Observations on the implementation of the article**

614. The reviewing experts concluded that BiH has implemented Art. 48(1b) UNCAC.

**Subparagraph 1 (c) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

...

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

**(a) Summary of information relevant to reviewing the implementation of the article**

615. BiH confirmed that it has fully implemented this provision of the Convention.

616. BiH cited the following implementation legislation.

The Law on Mutual Legal Assistance in Criminal Matters  
Article 27 (Provisional Measures)

On the request of the foreign judicial authorities, in compliance with the national legislation, the national judicial authority shall undertake provisional measures with the aim of collecting evidentiary material and securing the evidence already collected, or protecting the legal interests at

stake.

**(b) Observations on the implementation of the article**

617. The reviewing experts concluded that BiH has implemented Art. 48(1c) UNCAC.

**Subparagraph 1 (d) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

...

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

**(a) Summary of information relevant to reviewing the implementation of the article**

618. BiH confirmed that it has fully implemented this provision of the Convention.

619. BiH cited the following implementation legislation.

The Law on Mutual Legal Assistance in Criminal Matters  
Article 26 (Providing Information Without Request)

(1) Without prejudice to their own investigations or proceedings and subject to reciprocity, national judicial authorities may, without a prior request, forward to the relevant foreign judicial authorities information obtained during their own investigations and related to criminal offences if they consider that the disclosure of such information might assist the receiving State in initiating investigations or criminal proceedings or might lead to a request for mutual assistance by that State.

(2) The relevant national judicial authority shall request from the relevant foreign judicial authority to which it transmitted the information referred to in paragraph (1) of this Article communication on any actions undertaken upon such information and it may also impose other conditions for the use of such information in the receiving State.

**(b) Observations on the implementation of the article**

620. The reviewing experts concluded that BiH has implemented Art. 48(1d) UNCAC.

**Subparagraph 1 (e) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

...

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

**(a) Summary of information relevant to reviewing the implementation of the article**

621. BiH confirmed that it has fully implemented this provision of the Convention.
622. BiH cited the following implementation legislation and other implementing measures (applicable agreements).

The Law on Mutual legal Assistance in Criminal Matters

Article 1 (Scope)

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

- Bilateral agreement on cooperation, Police Cooperation Convention for Southeast Europe (PCC)

Agreement on Cooperation in Combating International Terrorism, Illicit Trafficking in Narcotics, Drugs and Psychotropic Substances and Organized Crime between the Council Ministers of BiH and the Government of the Republic of Turkey, Agreement between the Government of the Republic of Bosnia and Herzegovina and the Republic of Hungary on Cooperation in Combating Terrorism, Drug Trafficking and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Hellenic Republic on Cooperation in Combating Crime, in Particular Terrorism, Drug Trafficking and Organized Crime, Agreement on Cooperation between the Council of Ministers of Bosnia and Herzegovina and the Republic of Italy in Combating Organized Crime, Agreement between Bosnia and Herzegovina and the Russian Federation (Internal Cooperation between Police Agencies), Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Islamic Republic of Iran on Cooperation in the Field of Security, Agreement between the Ministry of Security of Bosnia and Herzegovina and the Federal Ministry of Internal Affairs of the Republic of Austria on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Slovak Republic on Cooperation in Combating Crime, in Particular Terrorism, Illicit Drug Trafficking and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Arab Republic of Egypt on Cooperation in the field of Crime Prevention, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Slovenia on Police Cooperation, Agreement between Bosnia and Herzegovina and the Swiss Confederation on Police Cooperation in Combating Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of Romania on Cooperation in Combating Terrorism and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of Montenegro on Cooperation in Combating Terrorism, Organized Crime, Illicit Trafficking in Narcotics, Psychotropic Substances and Precursors, Illegal Migration and Other Criminal Offences, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Bulgaria on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Macedonia on Cooperation in Combating Terrorism, Organized Crime, Illicit Trafficking in Narcotics, Psychotropic Substances and Precursors, Illegal Migration and Other Criminal Offences, Agreement between the Council of

Ministers of Bosnia and Herzegovina and the Council of Ministers of the Republic of Albania on Cooperation in Combating Crime, in Particular Terrorism, Drug Trafficking and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Croatia on Police Cooperation in Combating Cross-border Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Serbia on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of France on Cooperation in the field of Internal Security, Memorandum of Understanding for Cooperation on Security Issues between the Council of Ministers of Bosnia and Herzegovina and the Government of Qatar, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Hashemite Kingdom of Jordan on Cooperation in Combating Crime, in Particular Terrorism, Drug Trafficking and Organized Crime, Agreement between Bosnia and Herzegovina and the Kingdom of Spain on Cooperation in Combating Crime, in Particular Terrorism, Illicit Drug Trafficking and Organized Crime, Police Cooperation Convention for Southeast Europe, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Kingdom of Sweden on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of Moldova on Cooperation in Combating Organized Crime, Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, Terrorism and Other Types of Serious Crime.

**(b) Observations on the implementation of the article**

623. The reviewing experts were informed that there is one Bosnian liaison officer posted in SELEC (Bucharest), while in some situations the focal points of the Missions of Bosnia and Herzegovina in OSCE and Interpol are also involved. Ten (10) foreign liaison officers are posted in Bosnia and Herzegovina. There are also contacts with attaches of foreign embassies.

624. The reviewing experts concluded that BiH has implemented Art. 48(1e) UNCAC.

**Subparagraph 1 (f) of article 48**

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

...

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

625. BiH confirmed that it has fully implemented this provision of the Convention.

626. BiH cited the following implementation legislation.

## The Law on Procedure of Conclusion and Execution of International Treaties Bilateral Police Cooperation Agreements

### Police Cooperation Convention for Southeast Europe (PCC)

Bosnia and Herzegovina is a signatory to conventions and agreements in the field of international cooperation in criminal matters:

1. The United Nations Convention on Transnational Organized Crime (abbreviated UNTOC)
2. Council of Europe - Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
3. Council of Europe - Criminal Law Convention on Corruption
4. European Convention on Mutual Assistance in Criminal Matters of 1959 and its second Additional Protocol of 2001.
5. Council of Europe - Convention on Extradition Act of 1957 and its two Additional Protocols of 1975 and 1978
6. European Convention on the Transfer of Proceedings in Criminal Matters of 1972- Council of Europe
7. European Convention on the Transfer of Sentenced Persons of 1983
8. European Convention on Information on Foreign Law of 1968
9. European Convention on the Transfer of Proceedings in Criminal Matters of 1972
10. European Convention on the Transfer of Sentenced Persons of 1983
11. Police Cooperation Convention for Southeast Europe of 2006

Bilateral agreements signed by Bosnia and Herzegovina:

1. Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on mutual execution of court decisions in criminal matters;
2. Agreement between the Bosnia and Herzegovina and the Republic of Croatia on amending the agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of Croatia on mutual execution of court decisions in criminal matters;
3. Agreement between Bosnia and Herzegovina and the Republic of Croatia on legal assistance in civil and criminal matters;
4. Agreement between Bosnia and Herzegovina and the Republic of Croatia on amending the agreement between the Bosnia and Herzegovina and the Republic of Croatia on legal assistance in civil and criminal matters;
5. Agreement between Bosnia and Herzegovina and the Republic of on legal assistance in civil and criminal matters (sic!);
6. Agreement between Bosnia and Herzegovina and the Republic of Slovenia on extradition;
7. Agreement between Bosnia and Herzegovina and the Republic of Slovenia on mutual execution of court decisions in criminal matters;
8. Agreement between Bosnia and Herzegovina and the Republic of Macedonia on legal assistance in civil and criminal matters;
9. Agreement between the Republic of Macedonia and Bosnia and Herzegovina on mutual execution of court decisions in criminal matters;
10. Agreement between Bosnia and Herzegovina and Serbia and Montenegro on Legal Aid in Civil and Criminal Matters dated 24 February 2005;
11. Agreement between Bosnia and Herzegovina and Serbia and Montenegro on Mutual Execution of Court Judgements in Criminal Matters dated 24 February 2005.

Agreements signed by the Prosecutor's Office of BiH

1. Memorandum of Understanding of the Public Prosecutor's Office of the Republic of Macedonia, of the General Prosecutor's Office of the Republic of Albania, of the State Prosecutor's Office of Bosnia and Herzegovina, of the State Prosecutor's Office of the Republic of Croatia, of the Republic's Public Prosecutor's Office of the Republic of Serbia and of the Chief State Prosecutor's Office of the Republic of Montenegro for Regional Cooperation against Organised crime signed in Skopje on 30 March 2005;
2. Protocol on Agreement in Achievement of Mutual Co-operation Fighting All Forms of Serious Crimes with the State Prosecutor's Office of the Republic of Croatia signed in Sarajevo on 21

January 2005; 3. Protocol on Agreement in Achievement of Mutual Co-operation Fighting All Forms of Serious Crime with the Supreme State Prosecutor of the Republic of Montenegro signed in Sarajevo on 26 May 2005; 4. Memorandum on Agreement in Achievement and Improvement of Mutual Co-operation in Fighting All Forms of Serious Crime with the Republic Public Prosecutor's Office and the Prosecutor's Office for War Crimes of the Republic of Serbia, signed in Belgrade on 1 July 2005; 5. Memorandum on Co-operation in Fighting Transnational Crime, Trafficking in Persons and Illegal Migration with the Public Prosecutor's Office of the Republic of Macedonia, signed in Ohrid on 30 May 2007; 6. Memorandum on Understanding with the Public Prosecutor's Office of Ukraine signed in Sarajevo on 3 April 2008.

The most significant treaties which were, by notification on succession, assumed by Bosnia and Herzegovina:

1. Agreement on Legal Assistance in Civil and Criminal Matters between SFRY and the Democratic People's Republic of Algeria; 2. Agreement between Yugoslavia and the Mongolian People's Republic on the provision of legal assistance in civil, family and criminal matters dated 8 June 1981; 3. Agreement between FPRY and the USSR on legal assistance in civil, family and criminal matters dated 24 February 1962 Note: The Russian Federation as a legal successor of the USSR has assumed this Agreement. Ukraine and Belarus have explicitly confirmed the assumption of this Agreement, while some other states that have formed on the territory of the former USSR assumed the Agreement tacitly; 4. Convention on Judicial Assistance in Criminal Matters between SFRY and the Republic of Turkey from 8 October 1973;

**(b) Observations on the implementation of the article**

627. The reviewing experts concluded that BiH has implemented Art. 48(1f) UNCAC.

**Paragraph 2 of article 48**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

628. BiH confirmed that it has fully implemented this provision of the Convention.

629. BiH cited the following implementation legislation.

Bilateral Agreements on Police Cooperation (listed in the previous question)

Police Cooperation Convention for Southeast Europe

**(b) Observations on the implementation of the article**

630. The reviewing experts took into account the explanations provided by the Bosnian authorities during the country visit that the UNCAC can be used as a legal basis for law enforcement cooperation. However, no practical cases of such use were reported.

631. Based on assurances that the Convention can be used to enable law enforcement cooperation, the reviewing experts concluded that BiH has the ability to implement in future Art. 48(2) UNCAC.

**Paragraph 3 of article 48**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

632. BiH confirmed that it has fully implemented this provision of the Convention.

633. BiH cited the following implementation legislation.

*The Law on Mutual legal Assistance in Criminal Matters  
Article 1 (Scope)*

(1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.

Bosnia and Herzegovina has ratified the Convention on Cybercrime of the Council of Europe, which serves as the basis for cooperation.

**(b) Observations on the implementation of the article**

634. The reviewing experts concluded that BiH has implemented Art. 48(3) UNCAC.

**(c) Technical assistance needs**

- Summary of good practices/lessons learned;
- Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation.

## Article 49. Joint investigations

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

### (a) Summary of information relevant to reviewing the implementation of the article

635. BiH confirmed that it has fully implemented this provision of the Convention.

636. BiH cited the following implementation legislation:

#### ***Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)***

##### ***Article 10***

Article 24 shall be modified to read as follows:

“Article 24

(Joint Investigation Teams)

(1) If the circumstances of the specific case so justify, joint investigation teams may be formed by an agreement between the relevant Prosecutor’s Office in Bosnia and Herzegovina and the relevant authorities of a foreign State for the purpose of conducting the criminal investigation on the territory of one or more contracting states which have formed a joint team for a restricted period of time.

(2) The agreement shall define: the composition of the team, the tasks of the team, its authority and the period of time to which it has been formed. If so agreed by the signatory parties to the agreement, the team may extend its operation even after expiry of the deadline set forth in the agreement.

(3) A request for setting a joint team should include data as referred to in Article 3 of this Law, and it may be filed by any interested party. The request shall be filed through the Ministry of Justice of Bosnia and Herzegovina to the relevant Prosecutor’s Office in Bosnia and Herzegovina, along with the proposal for the team composition. In the same manner, a Prosecutor with the relevant Prosecutor’s Office in Bosnia and Herzegovina shall forward such request to the relevant judicial authority of the foreign State, if he finds it necessary.

(4) The team shall be formed in one of the signatory parties to the agreement in which the investigative actions are expected to be taken. The request shall also include a proposal for the team composition.

(5) A joint investigation team may be formed when:

a) investigation of criminal offences conducted in one State requires a complex and thorough investigation connected with other States;

b) several parties conduct investigation of criminal offences whose nature requires coordinated and harmonized actions by the States involved;

c) investigative actions should be taken in turn in Bosnia and Herzegovina and in another State, that is, in several States.

(6) A joint investigation team shall act on the territory of Bosnia and Herzegovina under the following conditions:

a) the Team Leader shall be a Prosecutor with the relevant Prosecutor’s Office in Bosnia and Herzegovina;

b) the team shall take investigative actions in accordance with the criminal legislation in Bosnia and Herzegovina, and national and foreign members of the joint team shall perform their tasks lead by the Team Leader;

c) the relevant Prosecutor's Office in Bosnia and Herzegovina shall take all required organizational measures to meet the needs of the team.

(7) Foreign members of the joint investigation team shall have the right to stay on the territory of Bosnia and Herzegovina during the investigation. For certain reasons and in compliance with the legislation of Bosnia and Herzegovina, the Team Leader may decide otherwise.

(8) The Team Leader may transfer powers to foreign members of the joint investigation team for taking certain investigative actions in accordance with the legislation of Bosnia and Herzegovina and with the consent of the relevant foreign judicial authorities of the State foreign members came from.

(9) If a joint investigation team is to take investigative actions on the territory of Bosnia and Herzegovina, national members of the team may ask the relevant authorities in Bosnia and Herzegovina to take such actions. These actions shall be taken in compliance with laws of Bosnia and Herzegovina.

(10) If, during an investigation on the territory of Bosnia and Herzegovina, the joint investigation team requires a legal assistance from a third State, a request for mutual legal assistance shall be filed by a relevant national judicial authority.

(11) The relevant national judicial authorities may use information the national or foreign members reached in the course of their work in the joint investigation team, which is not available otherwise, for the following purposes:

a) for the purpose for which the team has been established;

b) for detection, investigation or prosecution of other criminal offences, with the consent of the State to whose foreign members information has been made available;

c) for prevention of direct or serious threat to public safety and without prejudice to the provisions of sub-paragraph b) if the criminal investigation is to be instigated at a later point in time;

d) for other purposes if so agreed upon by the parties which have formed the team.

637. BiH cited the following examples of implementation:

In order to collect information on the examples of the establishment of joint investigation teams and joint investigations with other countries, in the context of the implementation of Article 49 of the Convention, High Judicial and Prosecutorial Council of Bosnia and Herzegovina urged all Prosecutors' offices in Bosnia and Herzegovina, to provide information on established investigative teams and conducted joint investigations.

Based on the responses of Prosecutors' offices, only the Sarajevo Canton Prosecutors Office has reported on the formal establishment of joint investigations teams with foreign prosecuting authorities. A joint investigation was conducted with the authorities of the Republic of Austria for the criminal offense of attempted murder under Article 166 of the Criminal Code of FoBiH and other criminal offenses such as bodily injury under Article 83, paragraph 1, and criminal offense of resistance against state power under Article 269, paragraph 1 in conjunction with Article 15 of the Criminal Law of the Republic Austria. In this case, after the commission of the offenses, the suspects were at large; three of them were located in Vienna (Austria). After successful cooperation between the Prosecutor's Office in Sarajevo Canton, Sarajevo Canton Ministry of Interior, Austrian Embassy, Interpol Austria, the Prosecutor's Office and the court of Vienna, the suspects have been tracked down. At the request of the Prosecutor's Office in Sarajevo Canton, the National Prosecuting Authority and competent court in Vienna, several orders for special investigative techniques of interception have been issued. Then in early April, Acting Prosecutor and authorized officers of the Ministry of Interior of Sarajevo Canton, stayed five days in Interpol Vienna to conduct special investigative techniques, together with their team including Prosecutor's Office and the court. On that occasion, one suspect was extradited. Also, as a result of this

cooperation, the criminal proceeding for the aforementioned offenses under the Criminal Code of the Republic of Austria was taken over by Bosnia and Herzegovina.

Also, in some cases, have been conducted joint investigations in the form of co-operation in criminal matters of organized crime in connection with the illicit trade in narcotics. In these cases, the Sarajevo Canton Prosecutor's office cooperated with the Judicial and Prosecutorial Council and Police of Montenegro, as well as with the Office for Suppression of Corruption and Organized Crime of the Republic of Croatia (hereinafter : Uskok) regarding some Croatian nationals residing in the Republic of Croatia, for which the Sarajevo Canton Prosecutor's office had information according to which they have been involved in the transport of narcotics to the Republic of Croatia and Bosna and Herzegovina. Therefore, checks have been made through Uskok and resulted in discovering the perpetrators of the aforementioned crime.

**(b) Observations on the implementation of the article**

638. The reviewing experts noted the new provision on joint investigation teams in the 2013 amendment of the LMLACM, as well as the information on cases of implementation, as provided by the Bosnian authorities after the country visit.

639. The reviewing experts concluded that BiH has implemented Art. 49 UNCAC.

**Article 50. Special investigative techniques**

**Paragraph 1 of article 50**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

**(a) Summary of information relevant to reviewing the implementation of the article**

640. BiH confirmed that it has fully implemented this provision of the Convention.

641. BiH cited the following implementation legislation:

***The Law on Mutual Legal Assistance in Criminal Matters***

CHAPTER II

GENERAL TYPES OF MUTUAL LEGAL ASSISTANCE

Article 13

## The Concept

General types of mutual legal assistance shall include execution of individual procedural actions such as service of summons on a suspect, the accused, an indictee, a witness, an expert, a person in custody, or other party to the criminal proceedings, service of documents, written materials and other objects relevant to the criminal proceedings in the requesting State, seizure of objects, handing over of seized objects to the requesting State, taking testimony from the accused, a witness or an expert, spot examination, search of sites and persons, confiscation and control of delivery, **surveillance and telephone tapping, information and intelligence exchange** and other actions that may arise in criminal proceedings to require mutual assistance and are not contrary to the present Law.

### *Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)*

#### *Article 11*

After Article 24, Articles 24a, 24b and 24c shall be added to read as follows:

#### Article 24c

##### (Undercover Investigations)

(1) The relevant Prosecutor's Office in Bosnia and Herzegovina and the relevant foreign judicial authority may agree to, through the Ministry of Justice of Bosnia and Herzegovina or upon a direct written request of any party, if such a possibility is stipulated in the international treaty, assist one another in a specific criminal case which the internal affairs officers run under a secret or false identity.

(2) Upon receipt of the request, the relevant Prosecutor's Office in Bosnia and Herzegovina shall examine:

a) if the request contains all relevant data required for enabling that, in compliance with the criminal legislation of Bosnia and Herzegovina, a motion to order a special investigative action undercover investigators and informants, is filed with the Court having jurisdiction thereof;

b) if the request pertains to criminal investigations related to the criminal offences for which a special investigative action - undercover investigators and informants, may be imposed pursuant to the criminal legislation of Bosnia and Herzegovina.

(3) If the relevant Prosecutor's Office has established that the request does not contain all relevant data, it shall notify accordingly the relevant foreign judicial authority which may subsequently provide the required data.

(4) If the relevant Prosecutor's Office has established that the request does not satisfy the requirements as referred to in paragraph (2) of this Article, it shall refuse the request and notify the relevant foreign judicial authority accordingly.

(5) If the request satisfies the requirements as referred to in paragraph (2) of this Article, the Prosecutor of the relevant Prosecutor's Office in Bosnia and Herzegovina shall make a motion to order a special investigative action – undercover investigators and informants, and file it with the Court having jurisdiction thereof pursuant to the criminal legislation of Bosnia and Herzegovina.

(6) Pursuant to the criminal legislation of Bosnia and Herzegovina, the Court having jurisdiction thereof shall decide as to whether the requirements for granting the motion and issuing the order for a special investigative action have been satisfied. The relevant Prosecutor's Office shall notify the foreign judicial authority of the Court decision.

(7) Executing, managing and controlling the special investigative action –foreign undercover investigators and informants, shall be performed in accordance with the criminal legislation of Bosnia and Herzegovina.

(8) The relevant Prosecutor's Office in Bosnia and Herzegovina and the relevant foreign judicial authority participating in the investigation shall agree upon duration of the undercover investigation, details, conditions and legal status of official persons during the undercover investigation, while observing the legislation and procedures in Bosnia and Herzegovina, and shall cooperate in

preparation and supervision of the undercover investigation, including protection of official persons acting under a secret or false identity.

(9) A written agreement on the reached consents as referred to in paragraph (8) of this Article shall be made and signed by the contracting parties.

**(b) Observations on the implementation of the article**

642. The reviewing experts noted the applicable legal framework, including the recently (July 2013) inserted provisions in LMLACM. Regarding the admissibility in court of evidence derived from special investigative techniques, it was explained by the Bosnian authorities during the country visit that evidence obtained from such techniques cannot always and automatically be taken into account in court as it has to be “accompanied” by other evidence as well.

643. The reviewing experts concluded that BiH has partially implemented Art. 50(1) UNCAC.

**Paragraph 2 of article 50**

*2. For the purpose of investigating the offences covered by this Convention, States parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

**(a) Summary of information relevant to reviewing the implementation of the article**

644. BiH confirmed that it has fully implemented this provision of the Convention.

645. BiH cited the following implementing measures:

Police Cooperation Convention for Southeast Europe

Bilateral Agreements on Police Cooperation:

Agreement on Cooperation in Combating International Terrorism, Illicit Trafficking in Narcotics, Drugs and Psychotropic Substances and Organized Crime between the Council Ministers of BiH and the Government of the Republic of Turkey, Agreement between the Government of the Republic of Bosnia and Herzegovina and the Republic of Hungary on Cooperation in Combating Terrorism, Drug Trafficking and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Hellenic Republic on Cooperation in Combating Crime, in Particular Terrorism, Drug Trafficking and Organized Crime, Agreement on Cooperation between the Council of Ministers of Bosnia and Herzegovina and the Republic of Italy in Combating Organized Crime, Agreement between Bosnia and Herzegovina and the Russian Federation (Internal Cooperation between Police Agencies), Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Islamic Republic of Iran on

Cooperation in the Field of Security, Agreement between the Ministry of Security of Bosnia and Herzegovina and the Federal Ministry of Internal Affairs of the Republic of Austria on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Slovak Republic on Cooperation in Combating Crime, in Particular Terrorism, Illicit Drug Trafficking and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Arab Republic of Egypt on Cooperation in the field of Crime Prevention, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Slovenia on Police Cooperation, Agreement between Bosnia and Herzegovina and the Swiss Confederation on Police Cooperation in Combating Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of Romania on Cooperation in Combating Terrorism and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of Montenegro on Cooperation in Combating Terrorism, Organized Crime, Illicit Trafficking in Narcotics, Psychotropic Substances and Precursors, Illegal Migration and Other Criminal Offences, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Bulgaria on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Republic of Macedonia on Cooperation in Combating Terrorism, Organized Crime, Illicit Trafficking in Narcotics, Psychotropic Substances and Precursors, Illegal Migration and Other Criminal Offences, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Council of Ministers of the Republic of Albania on Cooperation in Combating Crime, in Particular Terrorism, Drug Trafficking and Organized Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Croatia on Police Cooperation in Combating Cross-border Crime, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of Serbia on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Republic of France on Cooperation in the field of Internal Security, Memorandum of Understanding for Cooperation on Security Issues between the Council of Ministers of Bosnia and Herzegovina and the Government of Qatar, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Hashemite Kingdom of Jordan on Cooperation in Combating Crime, in Particular Terrorism, Drug Trafficking and Organized Crime, Agreement between Bosnia and Herzegovina and the Kingdom of Spain on Cooperation in Combating Crime, in Particular Terrorism, Illicit Drug Trafficking and Organized Crime, Police Cooperation Convention for Southeast Europe, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of the Kingdom of Sweden on Police Cooperation, Agreement between the Council of Ministers of Bosnia and Herzegovina and the Government of Moldova on Cooperation in Combating Organized Crime, Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, Terrorism and Other Types of Serious Crime.

**(b) Observations on the implementation of the article**

646. The reviewing experts concluded that BiH has implemented Art. 50(2) UNCAC.

**Paragraph 3 of article 50**

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis*

*and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

**(a) Summary of information relevant to reviewing the implementation of the article**

647. BiH confirmed that it has fully implemented this provision of the Convention.

648. BiH cited the following implementing measures:

Bilateral Agreements on Police Cooperation  
Police Cooperation Convention for Southeast Europe

**(b) Observations on the implementation of the article**

649. The reviewing experts concluded that BiH has implemented Art. 50(3) UNCAC.

**Paragraph 4 of article 50**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

650. BiH confirmed that it has fully implemented this provision of the Convention.

651. BiH cited the following implementation legislation:

*Law on Amendments and Supplements to the Law on Mutual Legal Assistance in Criminal Matters (in force since 23 July 2013)*  
*Article 11*

After Article 24, Articles 24a, 24b and 24c shall be added to read as follows:

Article 24b

(Controlled Deliveries)

(1) A foreign judicial authority may, through the Ministry of Justice of Bosnia and Herzegovina or directly to the relevant Prosecutor's Office in Bosnia and Herzegovina if so stipulated in an international treaty, file a request for authorization of a controlled delivery – supervised transport and delivery of objects of criminal offence on the territory of Bosnia and Herzegovina.

(2) Upon receipt of the request, the relevant Prosecutor's Office in Bosnia and Herzegovina shall examine:

a) if the request contains all relevant data required for enabling that, in compliance with the criminal legislation of Bosnia and Herzegovina, a motion to order a special investigative action supervised transport and delivery of objects of criminal offence, is filed with the Court having jurisdiction thereof;

b) if the request pertains to criminal investigations related to the criminal offences for which a special investigative action - supervised transport and delivery of objects of criminal offence, may be imposed pursuant to the criminal legislation of Bosnia and Herzegovina.

(3) If the relevant Prosecutor's Office has established that the request does not contain all relevant data to enable deciding on the request, it shall notify accordingly the relevant foreign judicial authority which may subsequently provide the required data, as requested.

(4) If the relevant Prosecutor's Office has established that the request does not satisfy the requirements as referred to in paragraph (2) of this Article, it shall refuse the request and notify the relevant foreign judicial authority accordingly.

(5) If the request satisfies all of the requirements as referred to in paragraph (2) of this Article, the Prosecutor of the relevant Prosecutor's Office in Bosnia and Herzegovina shall make a motion to order a special investigative action - supervised transport and delivery of objects of criminal offence, and file it with the Court having jurisdiction thereof pursuant to the criminal legislation of Bosnia and Herzegovina.

(6) Pursuant to the criminal legislation of Bosnia and Herzegovina, the Court having jurisdiction thereof shall decide as to whether the requirements for granting the motion and issuing the order for a special investigative action have been satisfied. The Court order shall constitute an authorization. The relevant Prosecutor's Office shall notify the foreign judicial authority of the Court decision.

(7) Executing, managing and controlling the special investigative action referred to in paragraph (1) of this Article shall be performed by the law enforcement agency of Bosnia and Herzegovina in accordance with the criminal legislation of Bosnia and Herzegovina.

652. BiH cited the following implementing measures:

Bilateral Agreements on Police Cooperation  
Police Cooperation Convention for Southeast Europe

**(b) Observations on the implementation of the article**

653. The reviewing experts concluded that BiH has implemented Art. 50(4) UNCAC.