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Date: 21 March 2022

OHCHR

Subject: Delivery of information

Dear all,

The Office of the High Commissioner for Human Rights (OHCHR) requested the Institution of Human Rights Ombudsman of Bosnia and Herzegovina to provide information covering developments since 1 July 2020 with regard to the question of the death penalty, so as to enable the Secretary-General to report to the Human Rights Council at its fifty-first session, in compliance with the Council's decision 18/117 and resolution 22/11. The death penalty represents the ultimate and strictest punishment still prescribed in some legal systems. Absolute prohibition of the death penalty in all circumstances is provided for in Protocol 13 to the European Convention on Human Rights and the European Charter of Fundamental Rights.

Article II of the Constitution of Bosnia and Herzegovina

1. Human Rights

Bosnia and Herzegovina and both entities shall ensure the highest level of internationally recognised human rights and fundamental freedoms.

2. International Standards

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

Criminal legislation in Bosnia and Herzegovina is governed by the Criminal Code of Bosnia and Herzegovina¹, Criminal Code of the Federation of Bosnia and Herzegovina², Criminal Code of the

¹ Criminal Code of Bosnia and Herzegovina, *The Official Gazette of Bosnia and Herzegovina*, no 3/2003, 32/2003 – corrigenda 37/2003, 54/2004, 61/2004, 30/2005, 53/2006, 55/2006, 8/2010, 47/2014, 22/2015, 40/2015, 35/2018 and 46/21 dated 27 July 2021 – (Decision of the High Representative for Bosnia and Herzegovina);

² Criminal Code of the Federation of Bosnia and Herzegovina, *The Official Gazette of the Federation of Bosnia and Herzegovina*, no 36/2003, 21/2004 – corrigenda 69/2004, 18/2005, 42/2010, 42/2011, 59/2014, 76/2014, 46/2016 and 75/2017;

Republika Srpska³ and Criminal Code of the Brčko District of Bosnia and Herzegovina⁴.

The Constitution of Bosnia and Herzegovina⁵ and Constitution of the Federation of Bosnia and Herzegovina⁶ do not provide for the death penalty.

Article 11 of the Constitution of the Republika Srpska⁷ stipulates as follows: “*Human life in inviolable. The death penalty may exceptionally be prescribed and imposed only for the gravest forms of serious criminal offence*”.

With regard to this, the Constitutional Court of Bosnia and Herzegovina, at its session held on 4 October 2019 took the following position⁸ in case no U 7/19: “*The Constitutional Court concludes that the disputed provision in Article 11 paragraph 2 of the Constitution of the Republika Srpska, providing for the imposition of the death penalty in exceptional circumstances for the most serious criminal offences does not comply with Article II/2 of the Constitution of Bosnia and Herzegovina in connection with Article 1 of Protocol no 13 to the European Convention, referring to the prohibition of imposing the death penalty in all circumstances, which Bosnia and Herzegovina has ratified and which represents a legally binding instrument for all government levels in Bosnia and Herzegovina, including the Republika Srpska entity.*”

It should be noted that courts in the Republika Srpska did not impose any death penalty in the post-war period, and since 1998 the death penalty as a criminal penalty has not been provided for in the criminal legislation of the Republika Srpska.

Currently, the system of punishments as forms of criminal penalties in criminal legislation in BiH comprises the following:

Criminal Code of Bosnia and Herzegovina

Article 40

The following penalties may be imposed on the perpetrator of a criminal offence:

- a) imprisonment;
- b) long-term imprisonment;
- c) fine.

Article 42

³ Criminal Code of the Republika Srpska, *The Official Gazette of the Republika Srpska*, no 64/2017, 104/2018 – CC Decision, 15/2021 and 89/2021)

⁴ Criminal Code of the Brčko District of Bosnia and Herzegovina, *The Official Gazette of the Brčko District of BiH*, no 19/2020 – consolidated text

⁵ Constitution of Bosnia and Herzegovina. Sarajevo. OHR, Office of the High Representative;

⁶ *The Official Gazette of the Republika Srpska*, no 21/1992 – consolidated text, 28/1994 – Amendments XXVI-XLIII, 8/1996 – Amendments XLIV-LI, 13/1996 – Amendment LII, 15/1996 - corr., 16/1996 – Amendment LIII, 21/1996 – Amendment LIV-LXV, 21/2002 – Amendments LXVI-XCII, 26/2002 - corr., 30/2002 - corr., 31/2002 – Amendments XCIII-XCVIII, 69/2002 – Amendments XCIX-CIII, 31/2003 – Amendments CIV and CV, 98/2003 – Amendments CVI-CXII, 115/2005 - Amendment CXIV, 117/2005 – Amendments CXV-CXXI and 48/2011 – Amendment CXXII);

⁸ Decision on Admissibility and Merits, U 7/19 section VII Conclusion item 31.

- 1) A prison sentence shall not be shorter than 30 days and shall not exceed 20 years.

Article 42b

- 1) A long-term prison sentence ranging between 21 and 45 years may be prescribed for the gravest forms of serious criminal offences committed with intent.
- 2) A long-term prison sentence shall not be prescribed as the sole principal punishment for a particular criminal offence.
- 3) A perpetrator who at the time the criminal offence was committed had not turned 21 shall not be sentenced to long-term imprisonment.

Criminal Code of the Federation of Bosnia and Herzegovina

Article 43

Imprisonment

- 1) A prison sentence shall not be shorter than 30 days and shall not exceed 20 years
- 2) A prison sentence shall be imposed for full-year and full-month periods and if it does not exceed six months, it shall be imposed for full-day periods.
- 3) The prison sentence referred to in par. 1) and 2) shall not be imposed on minors. Minors may be imposed a juvenile prison sentence under the conditions set forth in Chapter X (RULES ON CARE RECOMMENDATIONS, CARE MEASURES AND ON PENALISING MINORS) below. In terms of its purpose, nature, duration and method of execution, a juvenile prison sentence is a special punishment comprising of deprivation of liberty.

Article 43b

Long-term imprisonment

- 1) A long-term prison sentence ranging between 21 and 45 years may be prescribed for the gravest forms of serious criminal offences committed with intent.
- 2) A long-term prison sentence shall not be prescribed as the sole principal punishment for a particular criminal offence.
- 3) A perpetrator who at the time the criminal offence was committed had not turned 21 shall not be sentenced to long-term imprisonment.

Criminal Code of the Republika Srpska

Article 42

The following penalties may be imposed on the perpetrator of a criminal offence:

- 1) life imprisonment;
- 2) imprisonment;
- 3) fine;
- 4) revocation/suspension of a driving licence.

Life imprisonment

Article 45

- 1) A life sentence may be prescribed for the gravest criminal offences and gravest forms of serious criminal offences.
- 2) A life sentence shall not be prescribed as the sole punishment for a particular criminal offence.
- 3) A life sentence shall not be imposed on a perpetrator who at the time the criminal offence was committed had not turned twenty-one, on a pregnant woman, on a perpetrator whose responsibility at the time the criminal offence was committed was substantially diminished (Article 31, paragraph 1), nor shall it be imposed for attempting to commit a criminal offence.

Imprisonment

Article 46

- 1) A prison sentence shall not be shorter than three months and shall not exceed thirty years
- 2) A prison sentence shall be imposed for full-year and full-month periods and if it does not exceed six months, it shall be imposed for full-day periods.
- 3) A prison sentence for a term not exceeding one year may also be exceptionally executed at the convicted person's place of living (house arrest). The court may also impose this method of execution of a prison sentence on a perpetrator who is old or infirm, seriously ill, has a disability, on a pregnant woman, on a single parent of underage children, if the purpose of punishment is likely to be achieved this way and if the perpetrator agrees to it.
- 4) A convicted whose prison sentence has been imposed pursuant to paragraph 5 below shall not leave their residence, except in cases provided for by the law governing the execution of criminal penalties.
- 5) If the conditions for controlling the execution of house arrest by electronic or telecommunications means are not met, the court may impose that control and supervision measures be taken by the police in the place where the convicted person's residence is, with the obligation to regularly report on the enforcement of control and supervision. If the convicted person violates the ban to leave the residence, the court may determine that the remainder of the prison sentence be served in an institution for the execution of prison sentences.
- 6) The execution of a prison sentence as prescribed in paragraph 5 above shall not be imposed on a person convicted of a criminal offence committed against marriage and the family who lives in the same family household as the injured party.

Criminal Code of the Brčko District of Bosnia and Herzegovina

Article 41

- 1) The following penalties may be imposed on the perpetrator of a criminal offence:
 - d) imprisonment;
 - e) long-term imprisonment;
 - f) fine.

- 2) A prison sentence may be imposed solely as the principal punishment.
- 3) A fine may be imposed as both the principal and secondary punishment.
- 4) If multiple punishments are prescribed for a single criminal offence, only one punishment may be imposed as the principal punishment.
- 5) A fine may be imposed as the secondary punishment for criminal offences committed out of greed even if not prescribed by law, or when the law prescribes that the perpetrator shall be sentenced to prison or fined and the court imposes a prison sentence as the principal punishment.

Imprisonment

Article 43

- 1) A prison sentence shall not be shorter than 30 days and shall not exceed 20 years
- 2) A prison sentence shall be imposed for full-year and full-month periods and if it does not exceed six months, it shall be imposed for full-day periods.

Long-term imprisonment

Article 43b

Long-term imprisonment

- 1) A long-term prison sentence ranging between 21 and 45 years may be prescribed for the gravest forms of serious criminal offences committed with intent.
- 2) A long-term prison sentence shall not be prescribed as the sole principal punishment for a particular criminal offence.
- 3) A perpetrator who at the time the criminal offence was committed had not turned 21 shall not be sentenced to long-term imprisonment.
- 4) A long-term prison sentence shall be imposed for full-year periods only.
- 5) If a long-term prison sentence is imposed, amnesty and pardon may be granted only once three fifths of the sentence have been served.

At its today's session in Sarajevo, the Constitutional Court of Bosnia and Herzegovina made a decision to abolish the death penalty in the Republika Srpska Constitution.

The motion for constitutional review of Article 11, paragraph 2, of the RS Constitution, i.e. the provision setting forth the imposition of the death penalty, was filed by the Bosniak Caucus in the Council of Peoples of the Republika Srpska.

"The court found that the disputed provision did not comply with Article II/2 of the Constitution of Bosnia and Herzegovina in connection with Article 1 of Protocol no 13 to the European Convention referring to the abolition of the death penalty in all circumstances", stated the release from the Constitutional Court.

Legally binding instrument for all government levels

The Constitutional Court abolished the disputed provision and found that it would cease to have effect the

day after the decision of the Constitutional Court was published in *The Official Gazette of Bosnia and Herzegovina*.

The court stated that the death penalty was abolished in all circumstances by the entry into force of Protocol no 13 to the European Convention, and that the said Protocol constituted a legally binding instrument for all government levels in Bosnia and Herzegovina, including its entities.

THE INSTITUTION OF HUMAN RIGHTS OMBUDSPERSONS OF BOSNIA AND HERZEGOVINA