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The Permanent Mission of Bosnia and Herzegovina to the United Nations Office at Geneva presents its compliments to the United Nations Office of the High Commissioner for Human Rights, Secretariat of the Working Group on Arbitrary Detention, and, referring to the Verbal note, dated June 17<sup>th</sup> 2013 and request for the information, has the honor to transmit the response of the Ministry of Human Rights and Refugees of Bosnia and Herzegovina.

The Permanent Mission of Bosnia and Herzegovina to the United Nations Office in Geneva avails itself of this opportunity to renew to the United Nations Office of the High Commissioner for Human Rights the assurances of its highest consideration.

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**OFFICE OF THE HIGH COMMISSIONER  
FOR HUMAN RIGHTS**

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ANSWERS TO THE QUESTIONNAIRE related to the right of anyone deprived of his or her

liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention and order his or her release if the detention is not lawful

*1.If your State is a party to the International Covenant on Civil and Political Rights, how is Article 9(4) of the Covenant incorporated into your domestic legislation? Please provide reference to the specific provisions, including their wording and date of adoption.*

*If your State is not a party to the International Covenant on Civil and Political Rights, is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court, in order that the court may decide without delay on the lawfulness of his or her detention incorporated into your country's domestic legislation?*

**Yes**

No

*If yes, please provide the legislation, their wording and year of adoption.*

**The answer is YES.**

In 1971, the Former Socialistic Federative Republic of Yugoslavia has ratified the International Covenant on Civil and Political Rights (Official Gazette No: 7/77).

The above mentioned document is a part of the legal system of Bosnia and Herzegovina and according to Annex I and the Constitution of Bosnia and Herzegovina is directly applicable. Article II of the Constitution of Bosnia and Herzegovina provides that Bosnia and Herzegovina and both Entities must ensure the highest level of internationally recognized human rights and fundamental freedoms. In accordance to this, Article 34 of the Law on the Courts of Bosnia and Herzegovina provides for the rights of the suspect and the accused in accordance to the right to freedom and personal safety and sets forth a rule that no one can be arbitrary arrested or detained or no one can be deprived of liberty except in accordance with the law. According to Article II paragraph 7 of the Constitution of Bosnia and Herzegovina, Bosnia and Herzegovina shall remain or become party to the international agreements listed in Annex I to this Constitution, namely, the International Covenant on Civil and Political Rights (1996) and Optional Protocols (1966 and 1989) thereto. On 1 September 1993 Bosnia and Herzegovina became State party of the Covenant and by the succession took over the mentioned Covenant and after two years the Optional Protocol thereto.

In 2003, the above mentioned provisions were adopted in the Criminal Proceeding Code of both Entites and District Brčko. This Law stipulates that only the police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offence and if there are any of the reasons referred to in Article 132 of this Code, but they must immediately, no later than 24 hours, bring that person before the Prosecutor. In apprehending the person concerned, the police authority shall notify the Prosecutor of the reasons for and time of the deprivation of liberty. The use of force in accordance with law is allowed when apprehending the person and person deprived of liberty must be instructed on all of his/her rights in accordance with the provisions, and not brought before the Prosecutor he/she shall be released.

Article 5 of the Criminal Procedure Code of Bosnia and Herzegovina titled „Rights of a Person Deprived of Liberty“ provides:

A person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about the reasons for his apprehension and instructed on the fact that he is not bound to make a statement or answer questions, on his right to a defense attorney of his own choice as well as on the right that his family, consular officer of the foreign state whose citizen he is, or another person designated by him be informed about his deprivation of liberty.

A person deprived of liberty shall have a defense attorney appointed upon his request if according to his financial status he cannot bear the expenses of his defense.

The provisions of paragraph 1, as well as throughout this article, provided the principle which is commonly described as the principle of the protection of human right to freedom. The principle of the right to freedom is founded in the international instruments relating to human rights (Article 5 of the European Convention on Human Rights and Article 9. of the Covenant). In this sense, the valid procedural code sets forth provisions for fundamental rights of persons deprived of their liberty. The provisions of paragraph 1 of this Article provide rights of persons deprived of liberty. These rights determine the position of a person who is deprived of one of the basic human rights - the right to freedom.

A special place in this provision have the right of persons deprived of liberty to be informed, because the rights prescribed in this provision are related to the deprivation of liberty. Therefore, lawfully encroachment of the right to freedom is followed by precisely defined rights of any persons deprived of liberty. Namely, and as noted above, a person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about the reasons for his apprehension (the police authorities in many ways may find out which language is the native language of the person deprived of liberty , and which language a person

deprived of liberty understand, for example, by taking personal information, insight into personal documents or on the basis of free expression of detained person), with the procedural guarantees and rights that belong him by constitutional norms and international standards, and allow him/her to exercise these rights. These are the four equally set rights. First, in order of listing, person must be informed about the offense that he is charged with and grounds for suspicion against him. Second right the right to remain silent. Specifically, a person deprived of liberty shall not be required to give evidence. Third right is that person deprived of liberty has a right to present his own defense attorney. The right to attorney is designated as the right to present defense attorney of his own choice (Article 39). Given that deprivation of liberty is taking away of one of the basic human rights, the person deprived of liberty shall be appointed a defense attorney upon his request if according to his financial status he cannot pay the expenses of a defense( § 2 ). The fourth right is the right of the person deprived of liberty that his family, consular officer of the foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty. As already pointed out, about the above mentioned right, the persons deprived of liberty must be instructed immediately << >> and << >> simultaneously.

The mentioned rights are defined in international documents (for example, Article 6,para.3,point c of European Convention on Human Rights and Article 14, para.3 point d. of Covenant). In accordance with Article 78 (Article 219.para.3), the police is required to inform the Prosecutor about it at the request of the person and the prosecutor is required to send a motion appoint a defense attorney to the preliminary proceeding judge, on the grounds that the persons is indigent. So, in the interest of exercise of the right to professional legal counsel, a person deprived of liberty, will be given an opportunity to select defense attorney form selected list. An attorney will be appointed without delay. It flows that an attorney is appointed on the grounds that the person is indigent and only afterwards if required the request is request for attorney is reviewed for genuine circumstances of the suspect. (Article 46, paragraph 2). Counsel is set in the time of his detention and short-term retention may remain in the course of criminal proceedings, but it can give a power of attorney and other counsel.

The defense attorney may be present during the investigation suspects deprived of liberty (Article 78, paragraph 2 point B). For this reasons an exercising the right to defense attorney, the authorized official shall allow conversation between the person deprived of liberty and its attorney. During an investigation, the defense attorney has a right to inspect the files and obtained items that are in favor of the suspect (Article 47, paragraph 1 and Article 216, § 1). Thus, defense attorney may exercise this right only after the adoption of order for conducting the investigation. The law has no explicit provisions about it but this right is decided on the basis of Article 47 Paragraph 1.

Article 105 of the Law on Movement and Stay of Aliens and Asylum, Official Gazette of Bosnia and Herzegovina, No: 36/08 prescribes the conditions for international protection and Article 109 of amended Law, Official Gazette of Bosnia and Herzegovina, No: 87/12 prescribes procedure and competence for the issuance of decisions on international protection.

The principles contained in the above mentioned provision of the Covenant are consistently incorporated in Part I-Basic Principles of the Criminal Code Procedure of the Federation of BiH ("Official Gazette", no. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09 and 12/10) - (hereinafter: CPC Federation of BiH), which entered into force on 1 August 2003. The provisions of Article 153 provide arrest and detention. In Article 34 of the Law on Courts in Bosnia and Herzegovina are defined the rights of the suspect and the accused, related to the right on freedom and personal safety, so as that no one can be arbitrary arrested or detained, or that no one cannot be deprived of liberty except for the reasons and in accordance with the law.

Article 5 of the Criminal Procedure Code of Republika Srpska ("Official Gazette", No: 53/12) prescribes that persons deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about reasons for his apprehension and instructed on the fact that he is not bound to make a statement, on his right to a defense attorney of his own choice as well as on the fact that his family, consular officer of the foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty.

The provisions of Article 192 of mentioned Law stipulates that the suspect or accused to whom the custody should be determined or is not determined only for the fear that he will escape, may stay free or released, if he, personally, or someone else for him guarantee that he will not escape until the end of procedure or hide or leave his residence. The bail is always an amount of money.

Article 196 stipulates that detention may be ordered or extended only under the conditions prescribed in the Criminal Procedure Code of Republika Srpska (hereinafter: CPC RS), only if the same effect cannot be achieved by another measure. The duration of custody must be reduced for the shortest possible time. Part XXIX of the above mentioned Law (Article 408-416) regulates the procedure for compensation, rehabilitation and exercise of other rights of convicted persons unjustifiably deprived of their liberty.

Provisions of the Article 9 (4) of the International Covenant on Civil and Political Rights are incorporated in the legislation of District Brčko, inter alia, into the provision of Part IX, section 6 of the Criminal Procedure Code of District Brčko of Bosnia and Herzegovina-consolidate version (Official Gazette of District Brčko BiH, No: 44/10), relating to the deprivation of liberty, detention and duration of custody, reduced for the shortest possible time. Article 139

paragraphs 5,6,7,8,and 9 of the Criminal Procedure Code of District Brčko of Bosnia and Herzegovina stipulates that the Prosecutor is obligated to question the apprehended person without delay, and no later than 24 hours shall decide within that time whether he will release the apprehended person or file the request for custody of the person in question to the preliminary proceeding judge. The preliminary proceeding judge shall immediately, and no later than 24 hours, issue a decision on custody or on releasing of the apprehended person. If the preliminary proceedings judge or preliminary hearing judge does not accept the motion of the Prosecutor to order custody, he shall request that the Panel decide the issue. Against the decision of the Panel ordering custody, the person taken into custody may file an appeal, which does not stay the execution of the decision. In cases referred to in Paragraphs 7 and 8 of this Article, the Apellate Court of District Brčko deciding the appeal must take a decision within 48 hours.

First of all we note that Article II para.3 point d. Of the Constitution of Bosnia and Herzegovina stipulates the rights to liberty and security of person. Article 5 of Criminal Procedure Code of Bosnia and Herzegovina ("Official Gazette", no. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32 / 07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09 and 93/09) prescribes that a person deprived of liberty must, in his native tongue or any other language that he understands, be immediately informed about reasons for his apprehension and instructed on the fact that he is not bound to make a statement, on his right to a defense attorney of his own choice as well as on the fact that his family, consular officer of the foreign state whose citizen he is, or other person designated by him shall be informed about his deprivation of liberty. A person deprived of liberty shall be appointed a defense attorney upon his request if according to his financial status he cannot pay the expenses of a defense.

*2) Does this mechanism apply to all forms of deprivation of liberty, such as administrative detention including detention for security reasons involuntary hospitalization, immigration detention or any other reason?*

Yes

No

*If yes, please provide the list of the forms of detention to which the mechanism is applicable.*

**The answer is NO.**

Legislation in Bosnia and Herzegovina does not recognize the concept of administrative detention, and does not recognize the mechanism of arbitrary detention. In relation to the

detention from a security reason as prescribed in the provisions of Article 146 CPC Federation BiH "reasons for detention," where in paragraph 1 Item c. are prescribed circumstances that partly may relate to the health and safety reasons.

Article 123 of CCC of Bosnia and Herzegovina stipulates the types of measures, namely, 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. 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. 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. The provision of this Chapter shall be applied to the suspect as well, as appropriate. Article 98 of the Law on Movement and Stay of Aliens ("Official Gazette" No.36/08) stipulates the structure of institutions for the accommodation and the reception of aliens and Article 99 of the same Law is related to the placing an alien under supervision. Supervision with placement at immigration center shall be imposed against an alien if there are reasonable grounds to believe that after the decision on the expulsion is made that free and unrestricted movement of alien might endanger public order, public order and security or international relations of Bosnia and Herzegovina, or pose a threat to public health in BiH, or if it is found to be poses a threat to public order, public order and security of BiH; In order to ensure enforcement of the decision on expulsion or in another case when, if there are reasonable grounds to believe that the alien will escape or otherwise prevent the execution of the decisions; Based upon the decision of the Service an alien may be kept in immigration centre as long as it is necessary to execute the purpose of supervision, or until the reasons for placing an alien in custody change but not longer than 90 days. Hence, the total period of supervision imposed against an alien may not exceed 180 days. The total duration of supervision the immigration center cannot be longer than 18 months continuously, except in cases where the alien for whom it was found to poses a threat the security of Bosnia and Herzegovina, when the period of supervision may be longer. The duration of stay of the alien in the Immigration Centre depends on him. The alien can voluntary leave the Immigration Centre if, during the stay in it, he cooperates with the Centre regarding the identity, native country or the country from which he entered into the territory of Bosnia and Herzegovina.

With respect to the portion of queries requesting information on "non-volitional hospitalization," the mentioned is provided in the Law on Extra-Judicial Procedure the FBiH ("Official Gazette of Federation of BiH" no. 2/98, 39/04) where is prescribed the method for determining involuntary hospitalization of a mentally ill and mentally incompetent persons.

Receiving of people to treatment in the Clinical Center of Istočno Sarajevo-Psychiatric Clinic in Sokolac admits people for treatment in accordance with the Law on the Protection of Persons with Mental Disorders ("Official Gazette of RS", No. 46/04) and in accordance with the Criminal Code of RS ("Official Gazette of RS, no. 49/03). So all people who come for treatment in this institution are admitted on the basis of the final decision of the court or on the basis of voluntary hospitalization.

Mechanism of court control applies to all detentions of persons. If a suspicion arises that the accountability of the suspect or the accused has been diminished, expert evaluations consisting of examination of the suspect or the accused by a psychiatrist shall be ordered. If a suspect or accused who is in pre-trial custody is sent to a medical institution, the judge shall inform that institution of the reasons why pre-trial custody was ordered so that the necessary measures can be taken to achieve the purposes of custody. If the suspect committed a criminal offense in the state of mental incompetence, the prosecutor shall propose in the indictment that the court should establish whether the accused committed a criminal offense in a state of mental incompetence and that the case be referred to the body responsible for social care, for the purpose of commencing the appropriate procedure. Mentioned provisions are defined in the Article 124 Psychiatric Expert Evaluation, and in the Article 410, Procedure in Case of Mental Incompetence (The mentioned Law came into force on 1 August 2003, the similar provisions were stipulated in the previous laws). The Court of Bosnia and Herzegovina decides on the „extrajudicial detention“ and according to the Law on the International Legal Assistance in Criminal Matters (Official Gazette of BiH, No: 53/09 and 58/13) which stipulates (in the Article 41 Provisional Custody of the Alien whose Extradition is Requested) that the Court decides on the custody.

Legal remedy prescribed by Article 101 (Legal remedy against the decision on placing alien under supervision) of this Law is allowed against the decision on the extension of supervision of an alien. An appeal against the decision on placing an alien under detention in immigration centre may be lodged with the Ministry, within 3 days from the delivery of the decision. The appeal does not suspend execution of the decision. If the Ministry does not revoke decision on placing alien under supervision in immigration centre or fails to take a decision upon the appeal within 3 days from the date of its receipt, lawsuit may be filed in the administrative procedure before the Court of Bosnia and Herzegovina.

In fact, in all cases of detention, the person has the right to ask the court to decide on the legality of his detention. In previous responses and conditions are set out some of these instruments. According to the criminal legislation of Bosnia and Herzegovina, Article 123 of the Criminal Procedure Code of Bosnia and Herzegovina stipulates Grounds for Pre-trial Custody:



If there is a grounded suspicion that a person has committed a criminal offense, custody may be ordered against him: if he hides or if other circumstances exist that suggest a possibility of flight; if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices; if particular circumstances justify a fear that he will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, and for such criminal offenses a prison sentence of five (5) years may be pronounced or more; if the criminal offense is punishable by a sentence of imprisonment of ten (10) years or more, where the manner of commission or the consequence of the criminal offense requires that custody be ordered for the reason of public or property security. If the criminal offense concerned is the criminal offense of the terrorism, it shall be considered that there is assumption, which could be disputed, that the safety of public and property is threatened. 2) In a case of Item b), Paragraph 1 of this Article, custody shall be cancelled once the evidence for which the custody was ordered has been secured.

A suspect has a right to a defense attorney and the defense attorney has a right to be present during the interrogation of authorized person. To the suspect shall be appointed a defense attorney upon his request if according to his financial status he cannot pay the expenses of a defense. A suspect has a right to choose defense attorney from the list and inform the court about it. The suspect, on his first questioning, must be informed about the offense that he is charged with and grounds for suspicion against him. 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 favor. The suspect or accused shall not be bound to present his defense or to answer questions posed to him. It is forbidden to extort a confession or any other statement from the suspect, the accused or any other participant in the proceedings. The Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this or other laws.

When answering, two deadlines are important: the first is the period within which the person deprived of liberty must be brought before a judge, and the other is a time limit in which the same person can be detained while awaiting trial.

*3. Is the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court available for individuals subjected to preventive detention measures?*

Yes

No

*If yes, please explain in which case(s) your country's laws do not provide remedies and cite relevant legislation.*

**The answer is NO.**

We note that the legislation of Bosnia and Herzegovina do not recognize the term „arbitrary detention“ but in overall criminal proceedings is guaranteed the right to defense, complaints to the first-degree decision, defense attorney (A person deprived of liberty shall be appointed a defense attorney upon his request if according to his financial status he cannot pay the expenses of a defense).

In all cases of deprivation of liberty the person has a right to be informed about the lawfulness of his or her detention.

Article 131 of the Criminal Procedure Code of Bosnia and Herzegovina stipulates that Custody may be ordered only under the conditions prescribed by this Code and only if the same purpose cannot be achieved by another measure. The duration of custody must be reduced to the shortest necessary time. It is the duty of all bodies participating in criminal proceedings and of agencies extending them legal aid to proceed with particular urgency if the suspect or the accused is in custody. Throughout the proceedings, custody shall be terminated as soon as the grounds for which it was ordered cease to exist, and the person in custody shall be released immediately.

In accordance to the Article 139 of the Criminal Procedure Code of Bosnia and Herzegovina, Police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offense and if there are any of the reasons as referred to in Article 132 of this Code, but they must immediately, but no later than 24 hours, bring that person before the Prosecutor. In apprehending the person concerned, the police authority shall notify the Prosecutor of the reasons for and time of the deprivation of liberty. Use of force in accordance with law is allowed when apprehending the person. A person deprived of liberty must be instructed in accordance with Article 5 of this Code. If a person deprived of liberty is not brought before the Prosecutor within the period as specified in Paragraph 1 of this Article, he shall be released. The Prosecutor is obligated to question the apprehended person without delay, and no later than 24 hours. The Prosecutor shall decide within that time whether he will release the

apprehended person or file the request for custody of the person in question to the preliminary proceeding judge. The preliminary proceeding judge shall immediately, and no later than 24 hours, issue a decision on custody or on releasing of the apprehended person. If the preliminary proceeding judge rejects the proposal for the custody, he shall act in accordance with Paragraph 5 of Article 134 of this Code.

The Article 6 and Article 7 of the Criminal Procedure Code of Bosnia and Herzegovina are prescribing the 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.
- 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 favor.
- 3) The suspect or accused shall not be bound to present his defense or to answer questions posed to him.

Article 7 Right to Defense

- 1) The suspect or accused has a right to present his own defense or to defend himself with the professional aid of a defense attorney of his own choice.
- 2) If the suspect or accused does not have a defense attorney, a defense attorney shall be appointed to him in cases as stipulated by this Code.
- 3) The suspect or accused must be given sufficient time to prepare a defense.

The Article 101 (Legal remedy against the decision on placing alien under supervision) of the Law on Movement and Stay of Aliens and Asylum of Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina", 36/08, 87/12) stipulates that If the Ministry does not revoke decision on placing alien under supervision in immigration centre or fails to take a decision upon the appeal within 3 days from the date of its receipt, lawsuit may be filed in the administrative procedure before the Court of Bosnia and Herzegovina.

The Article 53 -Right to a Defense Attorney- of the Criminal Procedure Code of Federation of Bosnia and Herzegovina stipulates that if the suspect or accused does not himself hire a defense attorney, a defense attorney may be engaged for him by his legal representatives, spouse or extramarital partner, blood relatives in a direct line to any degree whatsoever, adoptive parents, adopted children, brothers, sisters or foster parents, if the suspect or the accused does not explicitly oppose it.

*4. Does this mechanism provide for any particular remedies? In particular, does the mechanism provide for release and compensation for unlawful detention?*

**Yes**

**No**

*If yes, please state and explain the relevant remedies.*

**The answer is YES.**

Regarding the questions related to the remedies we point out that Article 11 of the Criminal Procedure Code of Bosnia and Herzegovina stipulates the right to Compensation and Rehabilitation so as the other rights established in the law and in Article 436 stipulates which persons can exercise these rights. The following persons shall be entitled to compensation of damages: a) person who was in detention, but criminal proceedings were not initiated or proceedings were suspended or an effective verdict was pronounced acquitting the person of charges or charges were rejected; b) a person who served a sentence of imprisonment, and was pronounced a shorter imprisonment sentence in new criminal proceedings than the sentence he had served, or was pronounced a criminal sanction other than imprisonment or he was pronounced guilty and freed from sanction; c) a person who was subject to groundless apprehension or retained in detention or a correctional institution due to a mistake; d) a person who was in detention longer than the sentence to which he was convicted. A person who was imprisoned without a legal ground shall be entitled to compensation of damages if no pre-trial detention was ordered against him or the time for which he was imprisoned was not included in the sentence pronounced for a criminal offense or minor offense.

Mechanism for protection of arbitrary deprivation of liberty or detention are provided for in all criminal proceedings. There are also the mechanism for remedy which were already mentioned in the laws. Mechanism of remedy exists namely in Article 439 of the Criminal Procedure Code of Federation of BiH, Other Persons Entitled to Compensation of Damages.

Legal remedy against the decision on placing alien under supervision:

- 1) An appeal against the decision on placing an alien under detention in immigration centre may be lodged with the Ministry within 3 days from the delivery of the decision. The appeal does not suspend execution of the decision.
- 2) If the Ministry does not revoke decision on placing alien under supervision in immigration centre or fails to take a decision upon the appeal within 3 days from the date of its receipt, lawsuit may be filed in the administrative procedure before the Court of Bosnia and Herzegovina.
- 3) The lawsuit from paragraph 2 of this Article must be filed before the Court of Bosnia and Herzegovina within 3 days from the expiry of the deadline under paragraph (2) of this Article. The Court shall consider such cases urgent and hear the alien and render the

decision within 3 days as of the filing of the lawsuit. The lawsuit does not suspend execution of the decision.

- 4) An appeal against the decision on placing an alien under supervision restrictions on movement on defined area or place, appeal may be submitted to the Ministry within 15 days of delivery, or delivery of the decision. The appeal does not suspended enforcement.

Article 102 of the Law on Stay and Movement of Aliens and Asylum, Official Gazette No: 87/12 provides the Execution of the decision placing an alien under supervision and extending supervision. Criminal Procedure Code of Federation of BiH stipulates the Compensation of Damages Caused by Unjust Conviction, or arbitrary detention.

Regarding the compensation for the unlawful detention, Article 439 of the Criminal Procedure Code of Federation of BiH provides that a person who was subjected to unlawful detention or retained in detention or a correctional institution due to a mistake is entitled to compensation of damages.

If the competent court rejects a motion for custody in accordance with the CPC BD, such person immediately have to be released and besides this, Article 414 - 423 of the same law provided a right to compensation for unlawful detention and detailed procedures for compensation, rehabilitation and exercise of other rights of persons unjustly convicted and unlawfully detained. The Person in custody has the right to appeal to the appellate court as soon as possible. Also, the appellate court shall rule on such appeals in a very short time (48 hours) because it is a procedure that is treated as an emergency and have such status. In addition, the person in custody and persons deprived of their liberty have the ability to start the procedure before the Constitutional Court for possible human rights violations.

An alien, if because the legal conditions (if it cooperates with the authorities, if they have secured accommodation, funds for support) can be determined by a milder form of control to the specified location with the obligation to report to the competent authority.

A detainee has the right to appeal to the Constitutional Court within 60 days from the date of delivery of judgment by which they exhausted all ordinary remedies. An alien, can be ordered a milder form of surveillance in a specified location with his/her obligation to report to the competent authority (if legal requirements, if he/she cooperates with the authorities, if he/she has accommodation available and funds for support). A detainee has the right to appeal to the Constitutional Court within 60 days from the date of delivery of judgment by which has exhausted all ordinary remedies.

Claims can be made in accordance with the Criminal Procedure Code of Bosnia and Herzegovina in civil actions against Bosnia and Herzegovina: damages claims. A judgment acquitting the

accused of charges or dismissing the charges – is rendered, a decision will be issued that the costs will be borne from the budget.

Article 147- Unlawful Deprivation of Freedom of the Criminal Code of Bosnia and Herzegovina stipulates: “An official or responsible person in the institutions of Bosnia and Herzegovina who unlawfully imprisons another person, keeps him imprisoned or otherwise restricts his freedom of movement, shall be punished by a fine or imprisonment for a term not exceeding three years. If the unlawful deprivation of freedom lasted for more than thirty days, or if the manner of the execution was cruel, or if such a treatment of the person who was illegally deprived of freedom caused grave impairment of his health, or if some other serious consequences occurred, the perpetrator shall be punished by imprisonment for a term between two and eight years. If the person who has been illegally deprived of freedom lost his life as a result of the deprivation, the perpetrator shall be punished by imprisonment for a term not less than five years”.

*5. Are there persons other than the detainee who can initiate the procedure on behalf of detainee under your country's domestic law?*

**Yes**

*No*

*If yes, please state who.*

**The answer is YES.**

Article 39 of the Criminal Procedure Code of Bosnia and Herzegovina provides for the right to a defense attorney throughout criminal proceedings. Besides the detainees, his/her defense attorney, can submit, apart from an appeal against the decision on custody to the court, a written motion for the detention ordered or extended to be lifted on which the court must issue a separate decision.

The Criminal Procedure Code of Bosnia and Herzegovina that person deprived of liberty shall be appointed a defense attorney upon his request if according to his financial status he cannot pay the expenses of a defense.

In addition to the appeal which can be always lodged against the decision ordering or extending custody, there is a possibility, throughout the proceedings of the accused or counsel lodging a motion for termination of custody within the meaning of Article 145 Paragraph 5 of the Criminal Procedure Code of Federation of BiH.

Article 150 of the Criminal Procedure Code of Federation of BiH stipulates that in the course of the investigation and before the expiration of custody, the preliminary proceedings judge may

terminate custody by decision upon hearing from the prosecutor. When deciding custody any person required is granted defense attorney, *ex officio*, who is authorized to file an appeal against the decision on custody and to take other actions on behalf of detained persons. Article 417 CPC BD established the right of an heir to initiate or continue the process in order to get compensation for the unlawful arrest.

The Ombudsman for Human Rights of Bosnia and Herzegovina is also entitled to take judicial initiative on behalf of the detainee, pursuant to Article 24 of the Law on Ombudsman of Human Rights of BiH.

*6. What are the formal requirements and procedures for a detainee to invoke the right to bring proceedings before court, in order that the court may decide without delay on the lawfulness of the detention? Please cite relevant domestic legislation.*

Article 139 of the Criminal Procedure Code of Bosnia and Herzegovina stipulates "The Prosecutor is obligated to question the apprehended person without delay, and no later than 24 hours. The Prosecutor shall decide within that time whether he will release the apprehended person or file the request for custody of the person in question to the preliminary proceeding judge. The preliminary proceeding judge shall immediately, and no later than 24 hours, issue a decision on custody or on releasing of the apprehended person".

Article 134 of the Criminal Procedure Code of Bosnia and Herzegovina stipulates "... The person taken into custody may appeal the decision on custody with the Panel....The Panel deciding the appeal must take a decision within 24 hours".

Article 148 paragraph 4 of the Criminal Procedure Code of Bosnia and Herzegovina stipulates "The person taken into custody may appeal the decision on custody with the panel (Article 25, Paragraph 6) within 24 hours of the receipt of the decision. If the person taken into custody is questioned for the first time after the expiration of this period, he may file an appeal during the questioning. The appeal with a copy of the minutes on questioning, if the person in custody has been questioned, and the decision on custody shall be submitted immediately to the Panel. An appeal shall not stay the execution of the decision". In addition to the mechanisms prescribed in the CPC Federation of BiH, the question the lawfulness of the detention can be placed before the Constitutional Court of Bosnia and Herzegovina.

An appeal against a decision ordering or extension custody is governed in Article 199 CPC RS. Any person suspected committing a criminal offence or any person that statutory grounds for detention can apply to, i.e. any person that is deprived of liberty on these grounds has the right that the lawfulness of deprivation of liberty or detention is decided on pursuant Article 139 CPC BD.

A review of the lawfulness of detention has been already secured through the right to appeal/the principle of two instances and the right to an effective remedy, so in this case the cited the provision of the above- mentioned Article applies. If the Ministry does not revoke decision on placing alien under supervision in immigration centre or fails to take a decision upon the appeal within 3 days from the date of its receipt, lawsuit may be filed in the administrative procedure before the Court of Bosnia and Herzegovina (Article 101 Legal remedy against the decision on placing alien under supervision of the amended Law on Stay and Movement of Aliens and Asylum, Official Gazette of BiH, No: 87/12).

*7.Does the legislation provide for a time limit for submitting such application to the court? If so, please indicate what is the maximum time in number of:*

*Days (How many?)*

*Months (How many?)*

*Years (How many?)*

Answer: regarding the exercise of right of an aliens, the application may be lodged within 3 days before the Court of Bosnia and Herzegovina, if the Ministry does not revoke decision on placing alien under supervision in immigration centre or fails to take a decision upon the appeal.

When it comes to the appeal to the Supreme Court of the Federation the time limit is 24 hours, and in the case of extension of custody the time limit for filing an appeal is three days (the mentioned applies to the control of detention within the meaning of Article 151, paragraph 1 of the CPC of Federation of BiH. The time limit to the Federal Police Administration is 24 hours (one day).The time limit to the Supreme Court of RS is 3 days.Police may deprive a person of liberty if there are grounds for suspicion that he may have committed a criminal offense must immediately, but no later than 24 hours, bring that person before the Prosecutor except for the criminal offense of the terrorism where the time limit is 72 hours, and after that the proceeding judge shall immediately, and no later than 24 hours, issue a decision. The person deprived of liberty has a right to appeal on the decision, or his/her defense attorney, to the Appellate Court of Brčko District within 72 hours.

All time limits for appeal are provided in Article 139 of BD Criminal Procedure Code.

Days: 24 hours for appeal against the decision on custody, 3 days for the appeal against extension of custody.

Months: 60 days to appeal to the Constitutional Court of Bosnia and Herzegovina

Years: 3 years for lawsuit for compensation.



8. Are there any major decisions of your country's Constitutional or Supreme Courts concerning the right of anyone deprived of liberty by arrest or detention to bring proceedings before court?

Yes

No

*If yes, please provide the date and number of the decision(s) and, if possible, a copy of the decision(s)*

Answer - Yes

There are decisions of the Constitutional Court and the Supreme Court of the Federation relating to the custody. For example in Case No. AP 1885/13, the Constitutional Court of Bosnia and Herzegovina deciding an appeal of Mr. Živko Budimir at a meeting held on 24 May 2013, decided that the appellant was unlawfully detained and ordered the adoption of a new decision. On the other hand, the Supreme Court of Federation of BiH has also issued a number of decisions relating to custody, and one of them is the decision of the Supreme Court of the Federation of BiH, No. 03 OK 009 126 12 Kv 3 of 6 June 2012.

In the appeals before the Constitutional Court, so far, in several instances the decision of the Service for Foreigners' Affairs relating to the procedure of placing an alien under surveillance have been confirmed. In Brčko District, the Appellate Court of Brčko District of Bosnia and Herzegovina is the last recourse for reviewing detention and deprivation of liberty in the territory of Brčko District.