



**Arbitration Act of
Bosnia and Herzegovina
(Bosnie Herzégovine)**

CIVIL PROCEDURE CODE

[...]

PART FIVE: SPECIAL PROCEEDINGS

[...]

XXX - ARBITRATION PROCEEDINGS

Article 434

Parties may agree to entrust the resolution of the disputes, not being non-dispositive cases falling with Article 3, paragraph 2 of this law, on to the arbitration.

Article 435

1) An arbitration agreement may be concluded with an existing dispute or on future possible disputes that could stem from certain legal relation. The arbitration agreement shall be valid only if it was concluded in writing and signed by the parties.

2) An arbitration agreement shall be considered concluded in writing also when concluded by means of exchanging letters, telegrams, telexes or other telecommunication means that may provide the written evidence of a concluded agreement. .

3) An arbitration agreement shall be considered concluded in writing also when concluded by means of exchanging the complaints in which the plaintiff asserts the existence of an arbitration agreement and in the response to the complaint the defendant does not contest the assertion.

4) The arbitration contract may be proved by documents only.

Article 436

An arbitration agreement shall be considered legitimately concluded also when the provision on jurisdiction of the arbitration board is embodied in the

general requirements for the conclusion of legal business.

Article 437

1) The number of arbitrators in the arbitration board must be odd.

2) Unless the number of the arbitrators is determined by the agreement, each party shall appoint one arbitrator and they shall elect the president among themselves.

Article 438

1) If the parties have agreed to entrust the resolution of the certain dispute to the arbitration, the court which received the complaint concerning the same dispute among the same parties shall proclaim itself incompetent upon the defendant's objection, revoke actions commenced in the proceedings and dismiss the complaint.

2) The objection referred to in paragraph 1 of this Article may be filed in the response to the complaint at the latest.

Article 439

1) A party, who is supposed to appoint the arbitrator on the basis of the arbitration agreement, may be summoned by the adverse party to perform the said appointment and notify the adverse party within fifteen (15) days.

2) The summons, in accordance with paragraph 1 of this Article, shall be valid only if the issuing party has appointed its arbitrator and informed the adverse party about it.

3) When, pursuant to the arbitration agreement, a third party is to perform the appointment of the arbitrator, each party may send the summons referred to in paragraph 2 of this Article to that person.

4) A person summoned to appoint the arbitrator of the arbitration board is bound

to the appointment from the moment the adverse party or one of the parties has been notified on the appointment.

Article 440

1) If an arbitrator of the arbitration board has not been appointed on time, and the agreement does not state otherwise, the arbitrator shall be appointed by court upon a party's proposal.

2) If the arbitrators cannot agree as to the election of the president of the arbitration board, and the agreement does not require otherwise, the president shall be appointed by the court upon the proposal of each arbitrator or a party.

3) The court that would have been competent for the first instance proceedings if the arbitration contract had not been made shall be competent for the appointment of an arbitrator or the president of the arbitration board.

4) No appeal shall be allowed against the court decision.

5) A party that does not want to use the authorization referred to in the paragraphs 1 and 2 of this Article may request in the complaint that the court competent for the appointment proclaims the contract on arbitration terminated.

Article 441

Except for the case referred to in Article 440 of this Law, any party may request in the complaint that the court terminates the arbitration agreement if:

1. the parties cannot agree on the appointment of arbitrators who they need to elect;
2. a person who has been appointed arbitrator in the agreement does not want to or is not able to perform that duty.

The Court foreseen in Article 440, paragraph 3 of this Law shall decide on the request.

The court shall summon the parties to the hearing for the deliberation upon the request.

Article 442

1) The arbitrator of the arbitration body shall be obliged to exempt him/herself from the duty of the arbitrator when the grounds for exemption stipulated in Article 357 of this Law exist. The parties may request the exemption of the arbitrator of the arbitration board for the same reasons.

2) A party who has individually or together with the adverse party appointed an arbitrator may demand his/her exemption only if that reason occurred, or the party learnt about it, after the appointment of the arbitrator.

3) The Court shall decide on the exemption foreseen in Article 440, paragraph 3, unless the parties have agreed otherwise.

Article 443

The arbitrator shall order the arbitration proceedings unless the parties have agreed otherwise.

Article 444

1) The arbitration board cannot impose coercive measures or penalties on witnesses, parties and other participants in the proceedings.

2) The arbitration board may request the court territorially competent for providing legal assistance pursuant to the provisions of Article 414 to hear evidence that the board cannot hear on its own.

3) The provisions of this Law on presentation of evidence before the court carrying out functions on behalf of another court at its request shall be applied in the procedure on presentation of evidence.

Article 445

The arbitration board may pass the judgment *ex aequo et bono* only if empowered to do so by the parties.

Article 446

1) When the arbitration board is comprised of more than one arbitrator, the judgment shall be reached by majority of votes,

unless otherwise stipulated by the arbitration contract.

2) The arbitration board is obliged to notify the parties if they cannot reach a required majority of votes.

3) Unless the parties have otherwise agreed on the case referred to in paragraph 2 of this Article, each party may request the termination of the arbitration agreement in its complaint to the court authorized in Article 440 paragraph 3 of this Law.

Article 447

1) The arbitration award has to be explained unless the parties have agreed otherwise.

2) All arbitrators shall sign the original and all transcripts of the arbitration award. The arbitration award shall be deemed valid if one of the arbitrators refuses to sign it, provided that the award has been signed by the majority of arbitrators and it has been indicated on the award itself that one signature is missing.

3) The copies of the arbitration award shall be served on parties through the court as set forth in Article 440, paragraph 3 of this Law.

Article 448

The original copy of the arbitration award and the Acknowledgment of Service shall be kept in the court as set forth in Article 440, paragraph 3 of this Law.

Article 449

1) Unless the possibility of contesting the arbitration award before a higher instance arbitration board has been envisaged by the arbitration agreement, the arbitration award shall be considered final for the parties.

2) At the request of the party, the court set forth in Article 440, paragraph 3 of this Law shall put a note on the copy of arbitration on its finality and enforceability.

Article 450

1) An arbitration award may be annulled upon the party's complaint.

2) The court as set forth in Article 440, paragraph 3 of this Law shall decide on that complaint.

Article 451

The annulment of the arbitration award may be requested in the following cases:

1) if an arbitration agreement has not been concluded at all, or if the agreement is not valid ;

2) if in a view of composition of the arbitration board or in relation with the decision making, a provision of this Law or arbitration agreement has been violated;

3) if an explanation of the arbitration award has not been given pursuant to Article 447, paragraph 1 of this Law, or if the original copy of the arbitration award or other copies have not been signed in the manner stipulated by Article 447, paragraph 2 of this Law;

4) if the arbitration board has exceeded the limits of its competence;

5) if the operative part of the award is illegible or contradictory;

6) if the arbitration award is in conflict with the Constitution of Bosnia and Herzegovina and the Constitution of the Federation;

7) if any of the reasons exist for reopening of the proceedings referred to in Article 255 of this Law.

Article 452

1) A complaint requesting the annulment of the arbitration award may be filed with the competent court within thirty (30) days.

2) If the annulment of the arbitration award is requested due to reasons stated in Article 451 sub-paragraphs 1 to 6 of this Law, the time limit for filing the complaint shall be calculated from the day of serving the award on the party, and if a party has

learnt the reason later, the period shall be calculated from that day.

3) In calculating the time limit for the annulment due to the reasons stated in Article 451, sub-paragraph 7 of this Law, the corresponding provisions of Article 257, paragraphs 1 and 2 of this Law shall be applied.

4) The annulment of an arbitration award may not be requested one year after the finality of the arbitration award.

Article 453

Parties may not by agreement waive the application of the provisions of Article 442, paragraphs 1 and 2, Article 447 paragraphs 2 and 3 and Articles 450-452 of this Law.

[...]

XXVI - LEGAL ASSISTANCE

Article 414

1) The courts in the Federation are obliged to provide legal assistance to all courts in Bosnia and Herzegovina in civil proceedings.

2) If the court which was asked to provide legal assistance is not competent to conduct the action which it was asked to conduct, it shall pass the request to the competent court or other government organ and notify the court from which it had received the request. If the court is not familiar with the competent court or the governmental organ, it shall send the request back to the court that had filed it.

3) If in one town there are several courts with substantive competence to render legal assistance, the request for rendering legal assistance may be filed with any of those courts.

[...]

XIX EXEMPTION

Article 357

A judge cannot adjudicate the case if:

1) S/he is the party, legal representative, authorized agent, co-agent, co-debtor, regressive debtor, or has taken or was called to take the stand as a witness or court expert.

2) The party, legal representative or authorized agent is his/her blood relative in direct line to any degree or in the lateral line up to fourth degree, or if they are spouses or relatives up to second degree, regardless of whether the marriage has been terminated or not.

3) S/he is the guardian, adoptive parent or adopted child of a party, party's legal representative or an agent.

4) S/he has participated in reaching the judgment of the inferior instance court or another organ in the same case.

5) There are other circumstances that call into question his/her impartiality.

[...]

IX - EXTRAORDINARY LEGAL REMEDIES

[...]

2. Reopening of the Proceedings

Article 255

Proceedings completed by a final court ruling may be reopened at the party's motion in the following cases:

1. if a judge, who should have been exempted according to the provisions of this law, participated in the rendering of the ruling;

2. if a party was not given the possibility to be heard before the court due to the unlawful conduct of the court;

[...]

Article 257

1) A motion for reopening shall be filed within thirty (30) days, as follows:

1. in the case referred to in Article 255, sub-paragraph 1 of this Law – from the date when the party learnt about the reason for reopening;
2. in the case referred to in Article 255, sub-paragraph 2 of this Law – from the date when the ruling was served on the party;

[...]

I - BASIC PRINCIPLES

Article 3

- 1) Parties may freely dispose of their claims they filed during the proceedings.
- 2) The court shall not recognize dispositions by the parties which contravene mandatory regulations.