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## **Department for Legal Affairs**



# **LAW ON CHANGES AND AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF REPUBLIKA SRPSKA**

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# **LAW ON CHANGES AND AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF REPUBLIKA SRPSKA**

## **Article 1**

In the Criminal Procedure Code of Republika Srpska (“Official Gazette of Republika Srpska”, Nos. 50/3, 115/04 and 29/07; hereinafter: “Code”), in Article 20, paragraph 1, item e, at the end of the text, a full stop shall replace the comma, and new sentence shall be added to read:

“Expert associates as well as investigators working for the Prosecutor’s Office under the authorization of the Prosecutor shall also be considered as authorized officials.”

## **Article 2**

In Article 180 of the Code, paragraph (1), the words “house arrest” shall be replaced by the words “prohibiting measures”.

## **Article 3**

Before Article 183 of the Code, the title of the Section 4 shall be amended to read “Prohibiting Measures”.

## **Article 4**

Article 183 of the Code shall be amended to read:

“House Arrest and Travel Ban

(1) If there are circumstances indicating that the suspect or 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 5**

After Article 183 of the Code, new Articles 183a, 183b, 183c, 183d, 126e, 183f and 183g shall be added to read:

“Article 183a  
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 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 183 of this Code, or as separate measures.

#### Article 183b 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 defense 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 defense 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 (5) of this Code within three days of receipt of the appeal. An appeal shall not stay the execution of decision.

#### Article 183c 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 183d

##### 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 defense 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 offense 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 offense related to the performance of that activity.

#### Article 183e

##### 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 Center.

(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 183f**  
**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 183g**  
**Special Provision on Travel Ban**

- (1) Exceptionally, in emergency cases, in particular in cases involving a criminal offense 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 182, 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 6**

The provisions of articles 1, 2, 3 and 4 of this Law shall apply to all cases in which the final verdict has not been rendered before the date of entry into force of this Law.

**Article 7**

In Article 208 of the Code, the sentence: “If the suspect or the accused is in custody or in a psychiatric institution he shall not be released but instead the court shall issue a decision on temporary detention of the suspect or the accused up to a maximum of 30 days following the day of issuance”, shall be deleted.

## **Article 8**

Article 400 of the Code shall be amended to read:

### **“Procedure in Case of Mental Incapacity**

(1) If the suspect committed a criminal offense in the state of mental incapacity and the conditions for ordering compulsory placement in the medical institutions of the persons with severe mental difficulties prescribed by law are present, the prosecutor shall propose in the indictment to be established that the accused committed an illicit action in the state of incapacity, as well as to order his/her compulsory placement in the medical institution, along with informing the institution.

(2) On the explained proposal of the prosecutor, the custody may be ordered against the suspect or accused referred to in paragraph (1) above, for the reasons specified in Article 189 of this Code. If the custody against the accused has been ordered or extended, it shall be executed in the medical institution and may last as long as the reasons referred in Article 189 of this Code are present, but not longer than the time limits specified in Article 192 and in Article 194, paragraphs (2) and (4) of this Code, that is, until the final ruling on ordering compulsory placement.

(3) If the court finds following the conduct of the main trial that the accused had committed the illicit action in the state of mental incapacity, it shall make the verdict determining that the accused had committed the illicit action in the state of mental incapacity, and it shall order by separate ruling the placement in the medical institution for the duration of 6 month. The appeal against this ruling shall be allowed within 15 days from the day of delivery of the ruling.

(4) Upon the finality of the ruling referred to in paragraph (3) above, the prosecutor shall, in accordance with the separate law governing the protection of such persons, notify the competent court on initiating the procedure for compulsory placement of the person with severe mental illness in the medical institution. Medical documentation and final ruling on temporary ordering of the compulsory placement in the medical institution shall be forwarded along with this notification.

(5) If the evidence presented during the main trial indicates that the accused committed an illicit action in the state of mental capacity, diminished capacity or substantially diminished capacity, the prosecutor shall abandon the proposal referred to in paragraph (1) above, continue the procedure and alter the indictment. In case of substantially diminished capacity, the prosecutor may propose a security measure of mandatory psychiatric treatment, pronounced along with another criminal law sanction.

(6) If the court finds that the accused in the time of committing the illicit action was not in the state of mental incapacity, and the prosecutor does not abandon the proposal referred to in paragraph (1) above, the court shall make a verdict rejecting the charges.

(7) After the proposal referred to in paragraph (1) of this Article has been filed, the suspect or accused must have his defense attorney.

## **Article 9**

In Article 442, paragraph (3) of the Code, after the word: “confirmed”, the words: “or in which, under the prosecutor’s proposal, a ruling pronouncing the security measure of mandatory psychiatric treatment and placement in a medical institution, that is, mandatory psychiatric treatment at liberty, has been passed,” shall be added.

### **Article 10**

This Law shall enter into force on the eight day from publication in the “Official Gazette of Republika Srpska”.