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LAW AMENDING THE CRIMINAL PROCEDURE CODE OF THE FEDERATION OF BOSNIA AND HERZEGOVINA

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LAW
AMENDING THE CRIMINAL PROCEDURE CODE OF THE
FEDERATION OF BOSNIA AND HERZEGOVINA

Article 1

In the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (“Official Gazette of the FBiH”, nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 and 59/14), Article 98 shall be amended to read as follows:

“Article 98
(Right of the Witness to Refuse to Respond)

(1) The witness shall be entitled to refuse to answer such questions with respect to which a truthful reply would result in the danger of bringing criminal prosecution upon himself.

(2) The witnesses exercising the right referred to in paragraph (1) of this Article shall answer the same questions provided that immunity is granted to such witnesses by a competent Chief Prosecutor.

(3) The Chief Prosecutor may give the statement referred to in paragraph (2) of this Article provided that the witness' statement is important for proving that another person had committed a criminal offense referred to in paragraph (4) of this Article.

(4) The Chief Prosecutor may give the statement referred to in paragraph (2) of this Article in the procedure conducted for the following criminal offenses referred to in CC FBiH:

a) Criminal offenses against the constitutional organization of the Federation;

b) Criminal offenses of terrorism;

c) criminal offenses of: Murder (Article 166), Prevention of Return of a Refugee or Displaced Person (Article 178), Unlawful Deprivation of Freedom (Article 179. paragraphs 2 and 3), Kidnapping (Article 180), Forcing a Statement (Article 181, paragraph 2), Rape (Article 203), Sexual Intercourse with a Helpless Person (Article 204), Sexual Intercourse with a Child (Article 207), Human Trafficking (Article 210a), Abuse of a Child or Juvenile for Pornography (Article 211), Domestic Violence (Article 222, paragraphs 5 and 6), Illicit Transplantation of Human Body Parts (Article 231, paragraph 7), Unauthorized Production and Sale of Narcotic Drugs (Article 238 Possessing and Enabling Enjoyment of Narcotic Drugs (Article 239, paragraph 2), Money Laundering (Article 272), Tax Evasion (Article 273), Extortion (Article 295, paragraph 3), Blackmail (Article 296, paragraph 2), Arson (Article 301, paragraph 2), Environmental Pollution (Article 303, paragraphs 4 and 5), Causing Forest Fire (Article 317, paragraph 2), Organized Criminal Group (Article 342), Accessory After the Fact (Article 346, paragraph 3), Accepting Gifts and Other Forms of Benefits (Article 380, paragraph 1), Giving Gifts and Other Forms of Benefits (Article 381, paragraph 1), Illegal Interceding (Article 382), Giving Gifts and Other Forms of Benefits for Illegal Interceding (Article 382a, paragraph 1) Abuse of Office or Official Authority (Article 383), Embezzlement in Office (Article 384), Fraud in Office (Article 385), Unlawful Release of a Detainee (Article 391), Computer Fraud (Article 395. paragraphs 1, 2 and 3).

d) Other criminal offenses for which a long-term imprisonment sentence has been prescribed;

e) When a criminal proceedings are conducted for criminal offenses for which the Criminal Procedure Code of Bosnia and Herzegovina prescribes the possibility to grant immunity to a witness, and the Court of Bosnia and Herzegovina transferred the conduct of the proceedings to a court in the Federation.

(5) It shall be noted in the statement referred to in to paragraph (2) of this Article that it only refers to the actions of witnesses with prescribed sentence lesser than the sentence prescribed for the criminal offense in relation to which the statement is being given or for which the proceedings are being conducted, and that it may not refer to criminal offenses for which the imprisonment sentence of minimum of ten years is prescribed.

(6) The court shall determine with a ruling whether the statement of the Chief Prosecutor referred to in to paragraph (2) of this Article is in compliance with paragraphs (4) and (5) of this Article and identify the lawyer as counsel to the witness during the hearing.

(7) After the court makes the ruling referred to in to paragraph (6) of this Article, the Chief Prosecutor shall call the witness to give the statement. Prior to the hearing, the witness shall give written statement that he/she shall, as the witness in the criminal proceedings, give a truthful statement and that he/she shall not hold back anything known to him/her about which and its perpetrator he/she is giving the statement.

(8) After the witness gives his/her statement, the Chief Prosecutor shall issue a decision on immunity for the offense arising from the testimony of the witness given in accordance with paragraph (2) of this Article. The decision shall state the factual description and legal qualification of the criminal offense for which no criminal prosecution of witnesses shall be undertaken.

(9) If the witness does not act in accordance with paragraph (7) of this Article during the criminal proceedings, the Chief Prosecutor shall issue a reasoned decision denying the witness immunity for the criminal offense referred to in paragraph (2) of this Article. The Prosecutor shall also deny immunity in the event that the actions stated by the witness in his/her testimony relate to criminal offenses for which immunity cannot be granted in terms of paragraphs (4) and (5) of this Article. In these cases, the testimony of the witness with the answers to the questions referred to in paragraph (1) of this Article shall be separated from the case file and kept separately, and may not be used in criminal proceedings against the witness.

(10) In case the Chief Prosecutor does not issue a decision referred to in paragraph (8) of this Article, the testimony of the witness with answers to the questions referred to in paragraph (1) of this Article shall be separated from the case file and kept separately, and may not be used in criminal proceedings against witnesses.

(11) The witness referred to in paragraph (2) of this Article may be prosecuted for the criminal offense of giving false testimony.”

Article 2

Article 131 shall be amended to read as follows:

“Article 131

(Criminal Offenses as to Which Special Investigative Measures May be Ordered)

Special investigative measures referred to in Article 130, paragraph (2) of this Code may be ordered for the following criminal offenses:

a) Importing Hazardous Material into the Federation (Article 160), Inciting National, Racial or Religious Hatred, Discord or Hostility (Article 163), Unlawful Deprivation of Freedom (Article 179), Unauthorized Tapping and Sound Recording (Article 188), Unauthorized Optical Recording (Article 189), Violating the Free Decision-making of Voters (Article 195), Abduction of a Child or Juvenile (Article 217), Illicit Transplantation of Human Body Parts (Article 231), Damage, Destruction and Illicit Export of Cultural Monuments and Protected Natural Objects (Article 321), Illicit Research and Appropriation of Cultural Monuments (Article 322), Associating for the Purpose of Perpetrating Criminal Offences (Article 340),

Coercing Against a Person Performing a Judicial Office (Article 359a), Destruction or Concealment of Archival Materials (Article 368), Giving Gifts and Other Forms of Benefits (Article 381), Damaging Computer Data and Programs (Article 393), Computer Forgery (Article 394), Computer Fraud (Article 395), Disturbing the Work of the Electronic Data Processing System and Network (Article 396), Unauthorised Access to the Electronic Data Processing Protected System and Network (Article 397).

b) For other criminal offenses for which a sentence of imprisonment of five years or longer may be pronounced.”

Article 3

In Article 132, paragraph (2) shall be amended to read as follows:

“Special investigative actions referred to in Article 130, paragraph (2), items a) to d) and item g) of this Code, may last up to one month, and if they give results and there is a reason to continue with their implementation in order to collect evidence, they can be extended for another month at the reasoned proposal of the prosecutor, provided that the measures referred to in items a) to c) paragraph (2) of Article 130 of this Code may last for a maximum of six months in total for criminal offenses punishable by imprisonment for a term exceeding five years or more, and for other criminal offenses for a maximum of four months. Measures referred to in items d) and g), paragraph (2) of Article 130 of this Code may last for a maximum of three months in total for criminal offenses punishable by imprisonment for a term exceeding five years or more, and for other criminal offenses for a maximum of two months. Exceptionally, in relation to the criminal offense of organized crime and the criminal offense of terrorism, special investigative measures referred to in Article 130, paragraph (2), items a) to d) and item g) of this Code, if they give results and there is a reason to continue their implementation for the purpose of gathering evidence, they may be extended for another three months at the reasoned proposal of the prosecutor. The proposal for action referred to in Article 130, paragraph (2), item f) of this Code may refer only to a one-time act, and the request for each subsequent action against the same person must contain the reasons justifying its use.”

Article 4

After Article 144, new Section 5a and new articles 144a, 144b, 144c, 144d and 144e shall be added to read as follows:

“Section 5a - HOUSE ARREST WITH ELECTRONIC SURVEILLANCE

Article 144a

(Conditions for Ordering House Arrest with Electronic Surveillance)

(1) House arrest with electronic surveillance may be ordered, at the reasoned proposal of the prosecutor, against the suspect or defendant, if there is a reasonable suspicion that he/she has committed a criminal offense and one or more reasons referred to in Article 146, paragraph (1) items a), c) and d) of this Code if the purpose to be achieved by ordering or extending custody can be achieved by applying house arrest with electronic surveillance.

(2) The proposal of the prosecutor referred to in paragraph (1) of this Article must also contain data on the technical feasibility of the application of the measure of house arrest with electronic surveillance.

(3) The court may also order house arrest with electronic surveillance when deciding on the prosecutor's proposal for ordering or extending custody, if the conditions referred to in paragraphs (1) and (2) of this Article are met.

(4) House arrest with electronic surveillance may be ordered after the court has previously heard the suspect or the accused on the circumstances of the reasons for which this measure is proposed.

(5) House arrest with electronic surveillance consists of prohibiting the suspect or defendant from leaving the premises he/she stays without permission and when necessary in determining the conditions under which he/she will stay in the premises, such as the prohibition of contacts with certain persons. When ordering house arrest with electronic surveillance, the suspect or defendant shall be warned that in case of violation of certain obligations, he/she may be ordered into custody.

(6) The provisions of paragraph (5) of this Article shall not apply to the contacts of the suspect or the accused and his defense counsel.

(7) Notwithstanding paragraph (5) of this Article, the suspect or defendant may leave the room without approval if it is necessary for emergency medical interventions in relation to him/her or the person with whom he/she lives in the room or to avoid or prevent a serious danger to human life or health that is, assets of large-scale. The suspect or defendant shall be obliged to immediately inform the court or the prosecutor about leaving the room in which he is staying, the reasons for that, as well as his/her current whereabouts.

(8) House arrest with electronic surveillance may not be ordered to a suspect or defendant for whom there is a reasonable doubt that he/she has committed criminal offenses against marriage, family and youth against persons living with him in the same household.

(9) Time spent in house arrest with electronic surveillance shall be included in the custody of the suspect or defendant, i.e. in punishment if it is pronounced.

Article 144b

(Ordering House Arrest with Electronic Surveillance)

(1) The provisions of articles 148 and 149 of this Code shall apply accordingly to the determination and extension of house arrest with electronic surveillance and its duration in the course of investigation.

(2) The provisions of Article 151 of this Code shall apply accordingly to the determination and extension of house arrest with electronic surveillance and its duration after the confirmation of the indictment.

(3) The provisions of Article 152 of this Code shall apply accordingly to the determination and extension of house arrest with electronic surveillance and its duration after the pronouncement of the judgment.

Article 144c

(Termination of House Arrest with Electronic Surveillance)

(1) The duration of house arrest with electronic surveillance must be reduced to the shortest time necessary.

(2) During the entire procedure, house arrest with electronic surveillance shall be terminated as soon as the reasons on the basis of which it was determined cease to exist.

(3) At the motion of the suspect or defendant or the defense counsel to terminate the house arrest with electronic surveillance, which is based on new facts, the court shall hold a hearing of which it shall inform the parties and the defense counsel. The absence of the parties and the defense counsel, who have been duly informed, shall not prevent the holding of a hearing. No

appeal shall be allowed against the decision to reject the proposal to terminate the house arrest with electronic surveillance.

Article 144d

(Appeal Against the Decision on Ordering, Extension and Termination of House Arrest with Electronic Surveillance)

(1) The parties and the defense counsel may file an appeal against the decision ordering, extending or terminating the measure of house arrest with electronic supervision, and the prosecutor may also file an appeal against the decision rejecting the proposal for ordering the measure.

(2) The provisions of articles 148 to 152 of this Code shall apply accordingly to the deadlines and competence for deciding on the appeal.

(3) The appeal shall not stay the execution of the decision.

Article 144e

(Execution of House Arrest with Electronic Surveillance)

(1) Installation and removal of electronic surveillance equipment shall be performed by an expert person of the competent institution.

(2) The expert person referred to in paragraph (1) of this article shall give instructions to the suspect or defendant on the method of operation of the equipment.

(3) The expert person referred to in paragraph (1) of this article shall handle the equipment with which the movement of the suspect or defendant is remotely monitored and shall notify the court and the prosecutor without delay of any breach of obligations by the suspect or defendant.

(4) Electronic surveillance shall be conducted by the institution competent for the execution of a prison sentence or another institution determined by a special law.

(5) The decision on ordering, extending or terminating house arrest with electronic surveillance shall be delivered without delay to the police body competent for the area where the measure is being executed, which is authorized to directly check the fulfillment of obligations ordered by the measure of house arrest with electronic surveillance. If the suspect or defendant does not fulfill the imposed obligations, the competent police body shall be obliged to immediately inform the prosecutor and the court on that.

(6) The court may at any time order a verification of the measure of house arrest with electronic surveillance and request a report from the police body referred to in paragraph (5) of this article.

(7) The Federal Minister of Justice shall, within 30 days from the day this Law enters into force, adopt the Rulebook on the manner of conducting house arrest with electronic surveillance.

(8) Unless otherwise provided by the Law on Execution of Criminal Sanctions in the Federation of Bosnia and Herzegovina, the costs of execution of a measure of house arrest with electronic surveillance shall be borne by the canton.”

Article 5

Article 240 shall be amended to read as follows:

“Article 240
(Completion of Investigation)

- (1) The prosecutor shall terminate the investigation when he finds that the state of affairs has been sufficiently clarified so an indictment may be filed. The completion of the investigation shall be recorded in the file.
- (2) If the investigation is not completed within six months from the issuance of the order on conducting the investigation, the prosecutor shall notify the Chief Prosecutor of the reasons for not completing the investigation. The Chief Prosecutor shall set a new deadline for the completion of the investigation, which may not exceed six months, or which may not exceed one year for criminal offenses punishable by imprisonment for a term of ten years or more, and order the taking of necessary measures to complete the investigation.
- (3) If the investigation could not be completed within the period referred to in paragraph (2) of this Article, the prosecutor shall, within eight days, notify the Chief Prosecutor, suspect and injured party of the reasons for which the investigation has not been completed.
- (4) Suspects and injured parties may, within 15 days from the day of delivery of the notification referred to in paragraph (3) of this Article, submit a complaint to the Chief Prosecutor due to the duration of the proceedings. If the Chief Prosecutor determines that the complaint is well-founded, he will set a new deadline within which, if there are procedural preconditions, the investigation must be completed, of which he will inform the complainant.
- (5) An indictment may not be filed if the suspect has not been questioned.”

Article 6

Article 241 shall be amended to read as follows:

“Article 241 (Issuance of the Indictment)

- (1) When during the investigation the prosecutor finds that there is sufficient evidence from which arises a reasonable doubt that the suspect has committed a criminal offense, he shall prepare and send the indictment to the judge for preliminary hearing within 30 days from the day the completion of investigation was recorded in the case file.
- (2) If the prosecutor fails to file the indictment within the period referred to in paragraph (1) of this Article, he shall be obliged to notify the Chief Prosecutor within eight days of the reasons for not filing the indictment, and the Chief Prosecutor shall take the measures that the prosecutor files an indictment within a deadline that cannot exceed 30 days. The suspects and the injured party shall be notified of the determination of the additional deadline.
- (3) If the prosecutor does not file an indictment within the time limit referred to in paragraph (2) of this Article, he shall notify the Chief Prosecutor, and the suspect and injured party who have the right to file a complaint with the Chief Prosecutor within eight days. Chief Prosecutor shall issue a binding instruction to the prosecutor to file an indictment within a certain period of time, which may not exceed 30 days.
- (4) After the indictment has been filed, the suspect, i.e. the defendant and the defense counsel shall have the right to inspect all files and evidence.
- (5) After the indictment has been filed, the parties or the defense counsel may propose to the preliminary hearing judge to take actions in accordance with Article 238 of this Code. ”

Article 7

In cases in which an order has been issued to conduct an investigation until the entry into force of this Law, the proceedings shall continue in accordance with the provisions of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina (“Official Gazette of the

Federation of BiH”, nos. 35/03, 37/03, 56 / 03, 78/04, 28/05, 55/06, 27/07, 53/07, 9/09, 12/10, 8/13 and 59/14).

Article 8

This Law shall enter into force on the day after the day of its publication in the "Official Gazette of the Federation of BiH", and the provisions of articles 144a, 144b, 144c, 144d and 144e shall start to apply six months after the date this Law enters into force.

Speaker
House of Representatives
Parliament of the Federation of BiH
Mirsad Zaimović, *manu propria*

Speaker
House of Peoples
Parliament of the Federation of BiH
Tomislav Martinović, *manu propria*