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LAW ON CHANGES AND AMENDMENTS TO THE CRIMINAL PROCEDURE CODE OF BOSNIA AND HERZEGOVINA

“Official Gazette of Bosnia and Herzegovina”, 65/18

[NOTE: The Criminal Procedure Code of Bosnia and Herzegovina was published in the “Official Gazette of Bosnia and Herzegovina”, 3/03.](#)

Pursuant to Article IV/4.a) of the Constitution of Bosnia and Herzegovina, at the 42nd session of the House of Peoples, held on 11 September 2018, and at the 11th emergency session of the House of Representatives, held on 17 September 2018, the Parliamentary Assembly of Bosnia and Herzegovina adopted the following

LAW
ON CHANGES AND AMENDMENTS TO THE CRIMINAL PROCEDURE CODE
OF BOSNIA AND HERZEGOVINA

Article 1

In the Criminal Procedure Code of Bosnia and Herzegovina (“Official Gazette of BiH”, Nos. 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, 93/09 & 72/13) Article 84 shall be amended to read as follows:

“Article 84
(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 reply is likely to result in the danger of bringing prosecution upon himself.

(2) The witnesses exercising the right referred to in Paragraph (1) of this Article shall answer the same questions, provided that the Chief Prosecutor has issued an affirmation in writing indicating that he/she shall not undertake criminal prosecution of the witness for the actions stated in the witness’s testimony. A copy of the Chief Prosecutor’s written affirmation shall be delivered to the witnesses.

(3) The Chief Prosecutor may issue the affirmation referred to in Paragraph (2) of this Article on condition that the witness’s testimony is of importance for proving that another individual has committed the criminal offense referred to in Paragraph (4) of this Article.

(4) The Chief Prosecutor may issue the affirmation referred to in Paragraph (2) of this Article in the proceedings conducted on account of:

- a) the criminal offences against the integrity of Bosnia and Herzegovina,
- b) the criminal offences against humanity and values protected by international law,
- c) the criminal offences of terrorism,
- d) the criminal offenses of: provoking national, racial and religious hatred, discord and intolerance; unlawful deprivation of liberty; unauthorized wiretapping and sound or optical recording; violation of the freedom of voters’ choice; counterfeiting of currencies; counterfeiting of securities; money-laundering; tax evasion or fraud; smuggling; organizing a group of individuals or associations for smuggling or peddling uncustomed goods; customs frauds; receiving gifts and other forms of benefits; giving gifts and other forms of benefits;

receiving a reward or other forms of benefits in exchange for trading in influence; giving a reward or other forms of benefits in exchange for trading in influence; abuse of office or authority; unlawful release of an individual deprived of liberty; aiding and abetting the perpetrator after the commission of a criminal offense; aiding and abetting an individual accused by an international criminal court; preventing the collection and presentation of evidence; disclosure identity of a protected witness; obstruction of justice; association for the commission of criminal offenses; organized crime,

e) other criminal offenses for which a sentence of imprisonment of five years or more can be pronounced.

(5) The affirmation referred to in Paragraph (2) of this Article shall indicate specifically that it refers only to the criminal offense committed by a witness that is punishable with a penalty of the same or lesser gravity than the one established for the criminal offense that is subject to the witness testimony or with regard to which the proceedings are conducted and that it cannot refer to the criminal offences punishable by imprisonment of at least 10 years.

(6) By virtue of its ruling the Court shall determine whether the affirmation issued by the Chief Prosecutor referred to in Paragraph (2) of this Article is consistent with Paragraph (4) and Paragraph (5) of this Article and it shall appoint an attorney-at-law to act as a legal counsel to the witness during the hearing.

(7) Once the Court has rendered the ruling referred to in Paragraph (6) of this Article, the Chief Prosecutor shall summon the witness so that he/she could give his/her testimony. Before the hearing, the witness shall take an affirmation in writing in order to testify that as a witness in the criminal proceedings he/she shall give a truthful testimony and shall not fail to reveal anything known to him/her about the criminal offense subject to his/her testimony and about its perpetrator.

(8) Once the witness has testified, the Chief Prosecutor shall issue a ruling on the immunity enjoyed by the witnesses for the criminal offense arising from the testimony given by the witness in accordance with Paragraph (2) of this Article. The ruling shall provide the factual description and legal qualification of the criminal offense with regard to which no prosecution shall be conducted against the witness.

(9) In the event that the witness has failed to comply with Paragraph (7) of this Article during the course of the criminal proceedings, the Chief Prosecutor shall issue a reasoned ruling refusing to grant immunity to the witness for the criminal offense that was subject to witness testimony referred to in Paragraph (2) of this Article. The Prosecutor shall refuse to grant immunity also in the event that the actions stated in the witness testimony refer to the criminal offences for which no immunity can be granted as required under Paragraph (4) and Paragraph (5) of this Article. In such events, the witness testimony containing the answers to the questions referred to in Paragraph (1) of this Article shall be separated from the case file, it shall be kept separately without being allowed to be used in the criminal proceedings against the witness.

(10) In the event that the Chief Prosecutor has failed to issue the ruling referred to in Paragraph (8) of this Article, the witness testimony containing the answers to the questions referred to in Paragraph (1) of this Article shall be separated from the case file, it shall be kept separately without being allowed to be used in the criminal proceedings against the witness.

(11) Criminal prosecution for the criminal offence of giving false testimony may be conducted against the witness referred to in Paragraph (2) of this Article.”

Article 2

In Article 117, Item d) shall be amended to read as follows:

“d) the criminal offenses of: provoking national, racial and religious hatred, discord and intolerance; unlawful deprivation of liberty; unauthorized wiretapping and sound or optical recording; violation of the freedom of voters’ choice; counterfeiting of currencies; counterfeiting of securities; money-laundering; tax evasion or fraud; smuggling; organizing a group of individuals or associations for smuggling or peddling uncustomed goods; customs frauds; receiving gifts and other forms of benefits; giving gifts and other forms of benefits; receiving a reward or other forms of benefits in exchange for trading in influence; giving a reward or other forms of benefits in exchange for trading in influence; abuse of office or authority; unlawful release of an individual deprived of liberty; aiding and abetting the perpetrator after the commission of a criminal offense; aiding and abetting an individual accused by an international criminal court; preventing the collection and presentation of evidence; disclosure identity of a protected witness; obstruction of justice; association for the commission of criminal offenses; organized crime,”

After Item d), a new Item e) shall be added to read as follows:

“e) other criminal offences for which a prison sentence of five (5) years or more can be pronounced.”

Article 3

Paragraph (3) of Article 118 shall be amended to read as follows:

“(3) The investigative actions (hereinafter: the measures) referred to under Items a) through d) of Paragraph (2) of Article 116 of this Code may last up to one (1) month; however, in the event that such measures result in some of the desired effects, while there is still any reason justifying their continued undertaking for the purpose of collecting evidence, the duration of these measures may upon the properly reasoned motion of the Prosecutor be prolonged for a term of another month, provided that the measures referred to under Items a), b) and c) may last up to six (6) months in total for the criminal offenses for which an imprisonment sentence of five (5) years or more can be pronounced, whereas they may last up to three (3) months for other criminal offences. The measures referred to under Items d) and g) may last up to three (3) months in total for the criminal offenses for which an imprisonment sentence of five (5) years or more can be pronounced, whereas they may last up to two (2) months for other criminal offenses. Exceptionally with regard to the criminal offense of Organized Crime and the criminal offenses of Terrorism, the investigative actions referred to under Items (a) through (d) and sub-Paragraph (g) of Paragraph (2) of Article 116 of this Code, in the event that such measures result in some of the desired effects, while there is still any reason justifying their continued undertaking for the purpose of collecting evidence, the duration of these measures may upon the properly reasoned motion of the Prosecutor be prolonged for yet another term of up to three months. The motion for undertaking the measure referred to in Item f) of Paragraph

2 of Article 116 of this Code may refer only to a single act, whereas the motion as to each subsequent measure against the same individual must contain a statement of reasons justifying its application.”

Article 4

In Article 224 (Cessation of Investigation) in Paragraph (1) after Item d) the punctuation mark of full stop shall be deleted, a comma and a new Item e) shall be added to read as follows:

“(e) that other circumstances exist for cessation of the investigation referred to in Paragraph (5) of Article 225, or Paragraph (3) of Article 226 of this Code.”

In Paragraph (3) after the reference: “Item c)”, the following reference shall be added: “and Item e)”.

Article 5

Article 225 shall be amended to read as follows:

“Article 225 (Completion of Investigation)

(1) The Prosecutor shall order a completion of investigation after he concludes that the status is sufficiently clarified to allow the bringing of charges. Completion of the investigation shall be noted in the casefile.

(2) If the investigation has not been completed within six (6) months after the order on its conducting has been issued, the prosecutor shall inform the Chief Prosecutor about the reasons for the failure to complete the investigation. Within the period of 30 days the Chief Prosecutor shall set a new period of time required for the completion of the investigation that shall generally not exceed the period of six (6) months, or that shall not exceed the period of one (1) year for the criminal offenses punishable by imprisonment for a term of 10 years or a more severe punishment, and he/she shall order the undertaking of the necessary measures in order to complete the investigation.

(3) If the investigation could not be completed within the period referred to in Paragraph (2) of this Article, within the period eight (8) days the Prosecutor shall inform the Chief Prosecutor, the suspect and the injured party about the reasons for the failure of completion of the investigation.

(4) Within the period of 15 days following the date of delivery of the information referred to in Paragraph (3) of this Article, the suspect and the injured party may file a complaint with the Chief Prosecutor on account of the extended duration of the proceedings. Should the Chief Prosecutor find that the complaint is well-founded, within the period of 30 days he/she shall set a new period within which, on condition that the procedural requirements have been met, the investigation must be completed, but which cannot exceed the period of six (6) months, or which may not exceed the period of one (1) year for the criminal offenses punishable by imprisonment for a term of 10 years or a more severe punishment, and shall order the

undertaking of the necessary measures in order to complete the investigation, whereof he/she shall inform the complainant within the period of 15 days.

(5) If the investigation is not completed within the time limit referred to in Paragraph (4) of this Article, although the procedural requirements have already been met, the investigation shall be considered suspended, whereof the Prosecutor shall issue an order, and within the period of 15 days he/she shall inform the Chief Prosecutor, the suspect and the injured party thereof.

(6) The indictment shall not be issued if the suspect was not questioned.”

Article 6

Article 226 shall be amended to read as follows:

“Article 226 (Issuance of the Indictment)

(1) Should the Prosecutor find during the course of an investigation that there is enough evidence for grounded suspicion that the suspect has committed a criminal offense, the Prosecutor shall prepare and refer the indictment to the preliminary hearing judge within the period of 30 days following the date when the completion of the investigation has been recorded in the case file.

(2) Should the Prosecutor fail to issue an indictment within the period referred to in Paragraph (1) of this Article, within the period of eight (8) days he/she shall inform the Chief Prosecutor about the reasons for the failure to issue the indictment, and the Chief Prosecutor shall then undertake the measures in order to enable the Prosecutor to issue the indictment within a period that may not exceed 30 days. The suspect and the injured party shall be informed about of the determination of the additional period.

(3) Should the Prosecutor fail to issue the indictment within the period referred to in Paragraph (2) of this Article, he/she shall inform the Chief Prosecutor thereof, and also [inform] the suspect and the injured party [thereof] who shall be entitled to file a complaint with the Chief Prosecutor within the period of eight (8) days following the end of that period. Within the period of 30 days, the Chief Prosecutor shall give a mandatory instruction to the Prosecutor ordering him/her to issue the indictment within the period of 30 days. Should the Prosecutor fail to issue the indictment even after the mandatory instructions are given by the Chief Prosecutor, the investigation shall be considered suspended, whereof the Prosecutor shall issue an order, and within the period of 15 days he/she shall inform the Chief Prosecutor, the suspect and the injured party thereof.

(4) Once the indictment has been issued, the suspect or/and the accused and the defence attorney shall be entitled to examine all the case files and evidence.

(5) Once the indictment has been issued, the parties and the defence attorney may file a motion with the preliminary hearing judge requiring from him/her to take the actions as provided under Article 223 of this Code.”

Article 7

In the cases where an order has been issued to conduct the investigation pending the entry into force of this Law, the proceedings shall be continued under the provisions of the Criminal Procedure Code of Bosnia and Herzegovina („Official Gazette of BiH“, Nos. 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, 93 / 09 & 72/13).”

Article 8

This Law shall enter into force on the eighth day following the date of its publication in the “Official Gazette of BiH”.

No: 01,02-02-1-1028/18
17 September 2018
Sarajevo

Speaker
of the House of Representative
of the BiH Parliamentary Assembly
Mladen Bosić, *manu propria*

Speaker
of the House of Peoples
of the BiH Parliamentary Assembly
Safet Softić, *manu propria*