

Emerika Bluma 1, 71000 Sarajevo

Tel. 28 35 00 Fax. 28 35 01

## Department for Legal Affairs



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

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# **LAW**

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

### **Article 1**

In the Criminal Procedure Code of Republika Srpska (“Official Gazette of RS” No. 53/12), in Article 1, the wording: “prosecutor” shall be replaced with wording: “public prosecutor (hereinafter: prosecutor)”, as well as in the entire text of the Code in corresponding grammatical case.

### **Article 2**

In Article 2, wording: “Criminal Code of Republika Srpska (hereinafter: the Criminal Code)”, shall be replaced with wording: “Criminal Code of Republika Srpska (hereinafter: the Criminal Code)”, as well as in the entire text of the Code in corresponding grammatical case.  
**[Translator’s remark: N/A to English version]**

### **Article 3**

In Article 20, paragraph (1), lines b) and v) shall be amended to read:

“b) The term “accused” refers to a person against whom one or more counts in an indictment have been confirmed, as well as to the person against whom, after the proposal for the pronouncement of the security measure of mandatory psychiatric treatment, the main hearing was ordered;

v) The term “convicted person” refers to a person who has been found guilty of a particular criminal offense in a final and binding guilty verdict, or who has been found to be a perpetrator of an unlawful act that is defined as criminal offence in the law, unless if, on the basis of the Criminal Code, is deemed with no previous convictions;”.

### **Article 4**

In Article 148, paragraph (1) shall be amended to read:

“(1) The following persons may refuse to testify:

a) the spouse or the cohabitee of the suspect or accused;

b) lineal relatives of the suspect or accused, relatives in a collateral line to the third degree inclusive, or in-law to the second degree inclusive; and

v) an adoptive parent or adopted child of the suspect or accused.”

### **Article 5**

In Article 307, paragraph (2) shall be amended to read:

“(2) An appeal on behalf of the accused may also be filed by his legal representative, spouse or cohabitee, lineal relatives of the accused, brother, sister, adoptive parent or adopted child. In this case, the period allowed for the appeal shall run from the day when the accused or his defence attorney was delivered a copy of the verdict.”

#### **Article 6**

In Article 318, paragraphs (1) and (2) shall be amended to read:

“(1) The prosecutor, the accused and his defence attorney, injured party, person from whom the object was seized and person from whom the property gain obtained by a criminal offense was seized, who in their appeal or in response to the appeal requested to be informed about the session of the panel, shall be informed about the session of the panel. The presiding of the panel or the panel may decide on that the parties be informed about the holding of the session of the panel even when they do not request that, if their presence may be useful for the clarification of the matter.

(2) If the accused is in custody or serving the sentence, and he did request to be informed about the session of the panel, his presence shall be ensured, and the prosecutor and defence attorney shall in such case always be informed about the session of the panel.”

#### **Article 7**

The title of and text of the Article 383 shall be amended to read:

#### **“Procedure for Pronouncing the Security Measure of Mandatory Psychiatric Treatment**

#### **Article 383**

(1) If the suspect has committed unlawful act that is defined as a criminal offence in the state of mental incompetence, the prosecutor shall file to the court a proposal to order the security measure of mandatory psychiatric treatment and placement in a health institution, or the proposal for mandatory psychiatric treatment of the suspect at liberty, if the requirements for pronouncing such measure set forth in the Criminal Code exist.

(2) In the proposal for pronouncement of a security measure of mandatory psychiatric treatment, the prosecutor may propose that a detention be ordered against a suspect who is at liberty. After passing the ruling, the suspect, until the completion of the procedure for application of the security measure, shall be temporarily placed in an appropriate health institution or appropriate room.

(3) If the suspect is placed in detention at the time of filing the proposal for pronouncement of a security measure of mandatory psychiatric treatment, the court shall act in line with paragraph (2) of this Article.

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

(5) Security measures referred to in paragraph (1) of this Article may also be pronounced when the prosecutor changes filed indictment at the main hearing by filing the proposal for pronouncement of such measures.

(6) The court with jurisdiction for trial in first instance shall decide, after the main hearing is held, on the proposal for pronouncement of a security measure of mandatory psychiatric treatment and placement in a health institution, or mandatory psychiatric treatment at liberty.”

### **Article 8**

After Article 383, new articles 383a, 383b, 383v, 383g, 383d, 383đ, 303e and 383ž shall be added to read:

#### **“Presence at the Main Hearing Article 383a**

(1) Apart from the persons who must be summoned to the main hearing, the expert witness from the health institution that was entrusted with expert evaluation on mental capacity of the accused shall also be summoned.

(2) The accused shall be summoned if his condition is such that he can attend the main hearing. Before passing the decision, the presiding of the panel shall, as needed, question the expert witness who had conducted the psychiatric examination of the accused, and the accused shall be heard if his condition allows it.

(3) The spouse of the accused and his parents or guardian, and according to circumstances also another person referred to in Article 307, paragraph (2) of this Code, shall be informed about the main hearing.

#### **Deciding on the Proposal Article 383b**

(1) If the court establishes on the basis of the evidence presented that the accused had perpetrated an unlawful act that is defined as criminal offence in the law and that at the time of perpetration of the offence was in the state of mental incompetence, it shall be ruling pronounce against the accused a security measure of mandatory psychiatric treatment and placement in a health institution, or mandatory psychiatric treatment at liberty.

(2) In deciding which security measure it shall pronounce, the court shall not be bound by prosecutor’s proposal.

(3) Following the completion of the main hearing, the court shall immediately pronounce the decision and make it public along with the essential reasons.

(4) If the court establishes that there are reasons referred to in articles 297 or 298 of this Code, it shall pass a refusing or acquitting judgment.

(5) If the court establishes that the accused at the time of perpetration of the criminal offence was in the state of mental incompetence, it shall suspend the procedure for application of a security measure by a ruling.

(6) In a ruling by which it had pronounced the security measure, the court shall under terms provided by this Code decide on the property claim.

#### **New Indictment Article 383v**

(1) Immediately after the ruling on suspension of the procedure for application of a security measure is made public, the prosecutor may give an oral statement waiving the right to appeal and file the indictment for the same criminal offence.

(2) The main hearing shall be held before the same panel or a judge, and previously presented evidence shall not be presented again, unless the court decides otherwise.

### **Persons Authorized for Filing Appeal Article 383g**

An appeal may be filed against the ruling on pronouncement of the security measure of mandatory psychiatric treatment within eight days from the day of reception of the ruling by the persons referred to in Article 307, paragraphs (1) and (2) of this Code.

### **Pronouncement of the Security Measure Along with the Sentence Article 383d**

When the Court pronounces a sentence against a defendant who had perpetrated a criminal offence in the state of seriously reduced mental capacity, it shall pronounce by the same judgment against the defendant the security measure of mandatory psychiatric treatment and placement in a health institution if it establishes that there are legal requirements for that.

### **Deciding on Deprivation of Business Capacity Article 383d**

(1) Final decision by which the security measure of mandatory psychiatric treatment and placement in a health institution, or mandatory psychiatric treatment at liberty referred to in Article 383b, paragraph (1) and Article 383d of this Code was pronounced shall be delivered to the court competent to decide on deprivation of business capacity.

(2) The body of guardianship shall also be informed about the decision.

### **Suspension of the Application of the Security Measure Article 383e**

(1) The court that pronounced the security measure of mandatory psychiatric treatment and placement in a health institution in first instance, at the proposal of the health institution, body of guardianship or convicted person, i.e. ex officio, shall examine every nine months whether the need for treatment and placement in a health institution has ceased.

(2) After taking the statement from the prosecutor, the court shall suspend by ruling the measure referred to in paragraph (1) of this Article and order the release of the accused from the health institution, if it establishes on the basis of the opinion of doctor that the need for treatment and placement in a health institution has ceased, and it can also order his mandatory treatment at liberty.

(3) If the proposal for suspension of the measure referred to in paragraph (1) of this Article is rejected, it can be filed again after expiry of the period of six months from the day of issuing of that ruling.

(4) When a convicted person whose mental capacity was seriously reduced is released from a health institution, and who spent less time in that institution than prison sentence he had been sentenced to, the court shall decide by a ruling on release whether the convicted person shall serve the remainder of the sentence or shall be conditionally released.

(5) Convicted person who is conditionally released may also be pronounced a security measure of mandatory psychiatric treatment at liberty, if there are legal requirements for that.

**Substitution of the Pronounced Security Measure of Mandatory  
Psychiatric Treatment and Placement in a Health Institution  
Article 383ž**

(1) The court referred to in Article 383, paragraph (6) of this Code may, ex officio or at the proposal of the health institution where the convicted person is receiving or should have received treatment, pronounce the security measure of mandatory psychiatric treatment and placement in a health institution against the convicted person to whom the security measure of mandatory psychiatric treatment at liberty was applied.

(2) The court shall make the decision referred to in paragraph (1) of this Article after it takes the statement from the prosecutor if it finds that the offender did not undergo treatment or left it wilfully or that, despite the treatment, he remained so dangerous for his environment that his placement and treatment in the health institution is needed.

(3) Before making the decision, the court shall question the expert witness who had conducted the psychiatric examination of the accused, and the accused shall be heard if his condition allows it. The court shall inform the prosecutor and defence attorney about the hearing for questioning of the expert witness.”

**Article 9**

This Law shall enter into force on the eighth day after its promulgation in the “Official Gazette of RS”.