

4401. Act Amending the Criminal Procedure Act (ZKP-G), page 10624

Pursuant to the second indent of the first paragraph of Article 107 and the first paragraph of Article 91 of the Constitution of the Republic of Slovenia I hereby issue the

ORDER

on the promulgation of the Act

Amending the Criminal Procedure Act (ZKP-G)

I hereby promulgate the Act Amending the Criminal Procedure Act (ZKP-G) adopted by the National Assembly of the Republic of Slovenia at the session on 28 October 2005.

No. 001-22-120/05

Ljubljana, 7 November 2005

dr. Janez Drnovšek m.p.
President
of the Republic of Slovenia

ACT

AMENDING THE CRIMINAL PROCEDURE ACT (ZKP-G)

Article 1

In the third paragraph of Article 65 of the Criminal Procedure Act (Official Gazette of the Republic of Slovenia No. 96/04 - official consolidated text 2), the wording "other than the offences according to Articles 185 to 187, and" shall be deleted, whereas the wording "and criminal offence to traffic in human beings pursuant to Article 387.a" shall be added after the word "article".

Article 2

Article 109 shall be amended to read:

"Article 109

(1) If a claim for indemnification is filed in the pre-trial or criminal procedure, the court may order a provisional securing of this claim on a proposal of the claimant (Article 101).

(2) Concerning the conditions and the procedure of ordering, duration and termination of provisional securing of the claim for indemnification the provisions of this Act shall apply mutatis mutandis applied for the provisional securing of the claim for the confiscation of proceeds arising from the criminal offence or because of it (Articles 502 to 502.d)."

Article 3

In the first paragraph of Article 111, the wording “against this person (proti tej osebi)” shall be replaced by the wording “against this person (zoper to osebo).”.

Article 4

Article 141.a shall be amended to read:

"Article 141.a

(1) The defendants whose punishment may be mitigated in certain cases (point 3 of Article 42 and third paragraph of Article 297 of the Criminal Code) and witnesses referred to in Article 240.a of this Act who face real danger for their life or body, a personal security to the largest extent possible shall be provided in the pre-trial procedure, during and after the completed criminal procedure.

(2) Pursuant to the provisions of the Act referred to in the third paragraph of this Article the personal security shall also be provided for their close relatives (point 1 to 3 of the first paragraph of Article 236) and for other endangered persons on a proposal of defendants and/or witnesses referred to in the above-mentioned paragraph.

(3) The Act shall lay down the procedure and conditions to be included in the protection programme and for the termination of protection programme, authorities competent for proposing and ordering protection, urgent protection measures, protection programme measures, records and data protection as well as financing and control over the implementation of protection programmes."

Article 5

Article 143 shall be amended to read:

"Article 143

(1) The personal data controller must submit to the court, at the request and free of charge, the personal data from the filing system also without a personal consent of the individual whom the data refer to if the court states that the data are required for conducting a criminal procedure.

(2) The court shall keep the data referred to in the previous paragraph confidential, if stipulated by law.

(3) The court shall process the data referred to in the first paragraph of this Article for the purposes of implementing the provisions of this Act. The data shall be available to the public in compliance with the provisions of this Act."

Article 6

In the sixth paragraph of Article 154, the wording "and/or with the agreement referred to in Article 160.b of this Act" shall be added after the word "contracts".

Article 7

In the second paragraph of Article 157, the wording "there are grounds for suspicion" shall be replaced by the wording "there are reasonable grounds for suspicion".

Article 8

In Article 158, a new first paragraph shall be added to read as follows:

"(1) When there are grounds for suspicion that the criminal offence in the Slovenian Army Forces or in the Ministry responsible for the defence was committed by a military or civilian person employed in the Slovenian Army Forces and/or other worker employed in the field of defence and/or a person seconded to mission abroad, the authority competent by law within the Ministry responsible for defence shall be vested with police powers in the pre-trial procedure laid down in this Act."

In the present first paragraph which shall become the second paragraph, the words "defence forces" shall be replaced with the wording "Ministry responsible for defence."

In the present second paragraph, which shall become the third paragraph, the words "defence forces" shall be replaced with the wording "Ministry responsible for defence."

In the present third paragraph, which shall become the fourth paragraph, the words "preceding paragraphs" shall be replaced with the wording "of the second and third paragraphs of this Article".

Article 9

After Article 160.a a new Article 160.b shall be added to read as follows:

"Article 160.b

(1) In the case which is the subject to the pre-trial procedure, investigation or criminal procedure in one or more countries, the police may cooperate with the police staff of the other country in the territory or outside the territory of the Republic of Slovenia in carrying out tasks and measures in the pre-trial procedure and investigation procedure for which it is responsible following the provisions of this Act.

(2) In carrying out the tasks and measures referred to in the previous paragraph, the police shall be directed by the State Prosecutor pursuant to Article 160.a of this Act and may cooperate with the State Prosecutors of the other country in the territory and outside the territory of the Republic of Slovenia in carrying out the stated activity and in exercising other powers in compliance with the provisions of this Act (joint investigation team).

(3) The tasks, measures, guidance and other powers referred to in the previous paragraphs of this Article must be carried out in accordance with the agreement on the establishment and operation of joint investigation team in the territory of the Republic of Slovenia or other countries that shall be concluded on a case by case basis by the State Prosecutor General or under his authorisation by his deputy with the State Prosecution Office, Court, Police or other competent authorities of other states as set out in the Council Framework Decision of 13 June 2002 on joint investigation teams (Official Journal of the European Union, No. L 162/1, 20.6.2002) or in the existing international treaty concluded

with a country not being a member of the European Union after obtaining the opinion of the Director General of the Police. The agreement shall be concluded on the initiative of the State Prosecutor General, the Head of the District State Prosecution Office or the Head of the Group of State Prosecutors for Special Affairs or on the initiative of the competent authority of another state.

(4) The agreement referred to in the previous paragraph shall lay down which authorities are to conclude the agreement, in which case the joint investigation team will act, the purpose of functioning of the team, the State Prosecutor of the Republic of Slovenia who is its Head in the territory of the Republic of Slovenia, other team members and the duration of its functioning. The State Prosecutor General must notify in writing the Ministry of Justice of the concluded agreement.

(5) The police personnel, State Prosecutors or other competent authorities of other states shall carry out tasks, measures, guidance and/or other powers referred to in the first and second paragraphs of this Article in the territory of the Republic of Slovenia only within the framework of the joint investigation team in compliance with the provisions of the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article.

(6) If so provided for in the agreement on the establishment and operation of the joint investigation team referred to in the third paragraph of this Article, the representatives of competent authorities of the European Union such as for instance EUROPOL, EUROJUST and OLAF may participate in the joint investigation team. The representatives of competent authorities of the European Union shall exercise their powers in the territory of the Republic of Slovenia only within the framework of the joint investigation team in compliance with the provisions of the agreement as stipulated in the third paragraph of this Article.

(7) The police organisation units and State Prosecution Offices of the Republic of Slovenia are obliged to offer all the necessary assistance to the joint investigation team.

(8) The head of the joint investigation team shall make a report in writing to all its members and the General State Prosecutor upon the completion of the work done by the joint investigation team."

Article 10

In the second paragraph of Article 162, the number "244" shall be replaced by the number "224".

Article 11

A new second sentence shall be added after the first sentence in the first paragraph of Article 195 to read as follows: "If the defendant is subject to the criminal procedure due to a criminal offence committed abroad, and if there is a danger that he/she will repeat the criminal offence abroad, a commitment may be required from him that he would not leave for abroad without the court's permission."

In the second paragraph, a full stop shall be deleted after the word "document" and the wording "and/or prohibit the use of another document for border crossing" shall be added

whereas the wording "and/or on prohibition of the use of another document for border crossing" shall be added after the word "documents".

Article 12

In the first paragraph of Article 240.a the wording "well-founded danger to her life and the life" shall be replaced by the wording "serious danger to her life or body, the life or body" whereas the wording "or persons proposed by the witness in accordance with the provisions of the law stipulated in the third paragraph of Article 141.a of this Act" shall be added after the wording "(points 1 to 3 of the first paragraph of Article 236)".

In the third paragraph, the full stop at the end of the paragraph shall be deleted after the word "paragraph" and the wording "and in the case of identity control pursuant to the ninth paragraph of this Article." shall be added.

In the point 1 of the fourth paragraph, the wording "well-founded danger to the life of the witness and the life" shall be replaced with the wording "serious danger to the life or body of the witness, the life or body" whereas the wording "or persons proposed by the witness in compliance with the provisions of the law stipulated in the third paragraph of Article 141.a of this Act" shall be added after the word "relative".

In the fifth paragraph the wording "of this Article" shall be replaced by the wording "in the case of identity control pursuant to the ninth paragraph of this Article. If the investigating judge establishes at the hearing that protection measures referred to in the first paragraph of this Article do not prove sufficient to ensure personal security, he may propose to the State Prosecutor to take the initiative in compliance with the provisions of the law stipulated in the third paragraph of Article 141.a of this Act."

A new sixth paragraph shall be added to read as follows:

"(6) If urgent protection measures or measures under the protection programme under the law as referred to in the third paragraph of Article 141.a of this Act are already ordered before the hearing as to a certain witness, the investigating judge shall gather data from the witness at the hearing pursuant to the third paragraph of Article 240 of this Act and shall verify whether in fact the same witness is concerned for whom the measures were ordered. The findings shall be recorded in the minutes. The data gathered shall be removed from the file immediately after their identification and before the hearing of the witness and shall be kept as an official secret. In the case of such a witness the investigating judge shall decide on the concealed identity by the decision for the purposes of court procedure after the assessment made as referred to in point 4 of the fourth paragraph of this Article."

In the present sixth paragraph that shall become the seventh paragraph, the wording "or in respect of which the measures under the protection programme by law as referred to in the third paragraph of Article 141.a of this Act" shall be added after the word "Article".

The present seventh paragraph shall become the eighth paragraph.

In the present eighth paragraph that shall become the ninth paragraph, the wording "or in respect of which the measure is ordered pursuant to the sixth paragraph of this Article" shall be added after the word "Article".

Article 13

In Article 242.a, the wording "could the life, body or property of greater value be endangered" shall be replaced with "there is a serious danger to life or body".

Article 14

In Article 359, a new fourth paragraph shall be added to read as follows:

"(4) In the case of judgement published as set out in point 7 of the first paragraph of this Article the following personal data from the judgement pronounced shall be published: name and surname, date of birth, permanent, temporary or other address and nationality of the defendant."

Article 15

In Article 435, a new second paragraph shall be added to read as follows:

"(2) If the judge issues a decision referred to in the third paragraph of Article 286 of this Act, the panel (the sixth paragraph of Article 25) shall decide on the appeal against such a decision that may order that the main trial should be held before another judge regarding the contents of the excluded evidence."

In the present second paragraph, which shall become the third paragraph, the words "preceding paragraph" shall be replaced with the words "preceding paragraphs".

Article 16

In the introductory sentence and in point 2 of the first paragraph of Article 498.a, the wording "and Article 269" shall be replaced by the wording "Articles 269 and 269.a".

Article 17

Article 502 shall be amended to read:

"Article 502

(1) When the confiscation of proceeds is taken into consideration in the criminal procedure and there is a danger that the defendant alone or through other persons should use these proceeds for a further criminal activity or to conceal, alienate, destroy or otherwise dispose of it in order to prevent or render substantially difficult their confiscation after the completed criminal procedure, the court shall order on a proposal of the State Prosecutor a provisional securing of the claim for the confiscation of proceeds.

(2) The court may also order such provisional securing in the pre-trial procedure if there are reasonable grounds for suspicion that a criminal offence has been committed by means of which or for which the proceeds were acquired or such proceeds were acquired for another person or transferred to another person.

(3) The securing referred to in the previous paragraphs may be ordered against the defendant and/or suspect, against the recipient of the proceeds or against another person to whom they were transferred provided they could be confiscated as laid down in the provisions of the Criminal Code."

Article 18

After Article 502 new articles, namely Articles 502.a, 502.b, 502.c, 502.č and 502.d shall be added to read as follows:

"Article 502.a

(1) The provisional securing of the claim for the confiscation of the proceeds shall be ordered by a decision issued by the investigating judge in the pre-trial procedure and during the investigation. After filing the indictment, the decision out of the main trial shall be issued by the president of the penal whereas at the main trial by the penal.

(2) The decision referred to in the previous paragraph shall be served to the State Prosecutor, suspect and/or defendant and the person against whom the provisional securing was ordered (participants). The decision shall be submitted to the competent authority and/or person to implement it. The decision shall be submitted to the suspect and/or defendant and person against whom the provisional securing is ordered simultaneously with its enforcement or after it, however, without undue delay.

(3) The authority that issued the decision must enable the suspect and/or defendant and the person against whom the provisional securing was ordered to take note of all the records of case.

(4) If the provisional securing is not ordered, the decision shall only be served to the State Prosecutor who may lodge an appeal against the decision.

(5) The suspect and/or defendant or the person against whom the provisional securing is ordered may raise an objection against the decision referred to in the first paragraph of this Article within eight days from the date of service of the decision and shall propose that the court should hold a hearing. The court shall file the objection to other participants and shall fix a time limit for reply. The objection shall not withhold the execution of the decision.

(6) The court shall decide on the hearing with regard to the circumstances of the case taking into account the statements in the objection. If the court does not conduct a hearing, the court shall decide on the objection on the basis of the documents and other material submitted and shall state the reasons for its decision in the decision on the objection (eighth paragraph of this Article).

(7) In the objection and at the hearing, the objector and other participants should be rendered possible to make a statement about the proposed and ordered measures, to present their positions, statements and proposals for all the questions of provisional securing.

(8) When the participants of the hearing make a statement about all the issues and produce evidence if necessary to decide on the objection, the court shall decide on the objection. According to the decision on the objection issued, the court shall dismiss the objection by applying Article 375 *mutatis mutandis*, declare the objection admissible and repeal or amend the decision on ordering the provisional securing or reject the objection.

(9) The participants shall have a right to make an appeal against the decision under the above paragraph. The appeal shall not withhold the execution of the decision.

Article 502.b

(1) In the decision, by means of which a provisional securing is ordered, the court must specify the property which is the subject to the provisional securing, the manner of securing (first paragraph of Article 272 and first paragraph of Article 273 of the Execution of Judgements in Civil Matters and Insurances of Claims Act) and the duration of the measure. The decision shall include an explanation.

(2) In determining the term of duration of a measure, the court must consider the stage of criminal proceedings, type, nature and seriousness of the criminal offence, complexity of the case, and the volume and significance of the property being subject to the provisional securing.

(3) In the pre-trial procedure and after the issue of the decision on the introduction of the investigation, the provisional securing may take three months. After presenting the indictment, the duration of the provisional securing shall not be longer than six months.

(4) The term of duration referred to in the previous paragraph may be extended during the same time periods. The total duration of the provisional securing prior to introducing the investigation and/or if this one has not been introduced, prior to presenting the indictment, must not be longer than one year. In the investigation, the total duration of provisional securing shall not be longer than two years. After the presentation of the indictment until the pronouncement of the judgment by the court of first instance the total duration of provisional securing shall not exceed three years.

(5) Until the execution of the final court decision on the confiscation of the proceeds, the total provisional securing may not take longer than ten years.

Article 502.c

(1) The court may extend the provisional securing, ordered by a decision from the first paragraph of Article 502.a of this Act, with the decision on the explained proposal of the State Prosecutor, taking into consideration criteria from the first paragraph of Article 502 of this Act and the time limits referred to in the fourth and fifth paragraph of Article 502.b of this Act. Prior to its decision on the proposal the court shall submit the proposal to other participants to make a statement about it and set a reasonable deadline for reply.

(2) On a proposal of the State Prosecutor, the suspect and/or defendant or the person against whom a provisional securing was ordered and taking into consideration the criteria referred to in the first paragraph of Article 502 of this Act, the court may order a new manner of securing and repeal the former decision on the provisional securing. Prior to its decision the court shall submit a proposal to other participants to make a statement about it and set a reasonable deadline for reply. The decision repealing the measure shall be executed after the execution of the decision by which the new manner of provisional securing is ordered.

(3) The court shall abolish provisional securing on a proposal of participants. The court may abolish the provisional securing also ex officio due to the expiry of the deadline or if the State Prosecutor dismisses crime report and/or states that he will not institute the criminal prosecution or that he will abandon it. The State Prosecutor must notify the court of his decision.

(4) If the court considers that the provisional securing is not necessary any longer, it shall invite the State Prosecutor to make a statement about it within a specified time limit. If the State Prosecutor does not make a statement within the time limit or if he is not opposed to the abolition of provisional securing, the court shall abolish the provisional securing.

Article 502.č

The court must take a decision on the proposal for ordering, extension, amendment or abolition of provisional securing rapidly. If the provisional securing was ordered, the authorities in the pre-trial protection must proceed in a special rapid manner, whereas the criminal procedure shall be considered preferential.

Article 502.d

In the procedure for provisional securing of the confiscation of proceeds, the provisions of the Execution of Judgements in Civil Matters and Insurance of Claims Act concerning the method of securing (first paragraph of Article 272 and first paragraph of Article 273), exemptions and limitations of securing, proving of risk (second, third and fourth paragraph of Article 270 and second and third paragraph of Article 272), effects of the decision (article 268) and compensation of damage (Article 279) shall be applied *mutatis mutandis*."

TRANSITIONAL AND FINAL PROVISIONS

Article 19

For the purpose of provisional securing of claims for the confiscation of proceeds that are ordered on the day of entry into force of this Act on the basis of provisions applied until this Act has entered into force, the State Prosecutor must propose the extension in compliance with the first paragraph of Article 502.c of the Act within three months after the entry into force of this Act, unless the court set a shorter time limit in the last decision issued prior to the enforcement of this Act.

Article 20

(1) Notwithstanding the time limit referred to in the third paragraph of Article 421 of the Act, a convicted person, the defence counsel, persons referred to in the second paragraph of Article 367 of the Act and persons related collaterally at three removes may file a request for the protection of legality until 31 December 2008 against the court decision for criminal offences referred to in the second paragraph of this Act that became final up to 2 July 1990 and about which a final decision was not taken on the basis of the request for the protection of legality pursuant to Article 559 of the Criminal Procedure Act (Official Gazette of the Republic of Slovenia, No. 63/94) and against the court procedure that was initiated prior to such a final decision.

(2) The request for the protection of legality set out in the previous paragraph can be filed against the court decision about criminal offences referred to in the:

1. Criminal Offence against the People and the State Act (Official Gazette of DFJ, No. 66/45 and Official Gazette of SFRJ, No. 59/46);
2. Combating Unpermitted Speculation and Economic Sabotage Act (Official Gazette of the DFJ, Nos. 26/45, 32/45 and 53/45);

3. Suppression of Unpermitted Trade, Unpermitted Speculation and Economic Sabotage Act (Official Gazette of FLRJ, Nos 56/46, 66/46, 74/46, 105/46, 44/47 and 104/47);
4. Criminal Offences against Common People's Property and the Property of Cooperative and other Social Organisations Act (Official Gazette FLRJ, No 87/48);
5. Punishment of Crimes and Transgressions against the Slovene National Honour Act (Official Gazette of SNOS and NVS No 7/45);
6. Decrees on Military Courts (Vestnik, Official gazette of the headquarters personnel of the NOV and PO Slovenia, No 6 of 20 October 1944);
7. Confiscation of Property and Execution of Confiscation Act (Official Gazette of DFJ, No. 40/45);
8. Confiscation of Property and Execution of Confiscation Act (Official Gazette of FLRJ No. 61/46);
9. Military Criminal Offences Act (Official Gazette of FLRJ No. 107/48):
 - Article 16 (hostile talking about the army),
 - Article 34 (evasion of military service due to religious or other personal belief);
10. Fundamental Act on Agricultural Cooperatives (Official Gazette of FLRJ, No. 49/49):
 - Article 112,
 - Article 113;
11. Criminal Code (Official Gazette of FLRJ No. 13/51, 30/59, 11/62 and 31/62 as well as Official Gazette SFRJ, No. 15/65, 15/67, 20/69 and 6/73):
 - Article 109 (cooperation in hostile operation against FLRJ),
 - Article 117 (assembling against the nation and state),
 - Article 118 (hostile propaganda),
 - Article 236 (unfulfilling obligatory delivery of agricultural products),
 - Article 237 (submitting false data concerning the delivery and artificial increase of weight of delivered products),
 - Article 238 (negligence of cultivated land and breeding of livestock),
 - Article 239 (pest in agriculture),
 - Article 240 (undermining of cooperatives),
 - Article 241 (breaching voluntaries of membership in cooperatives),
 - Article 292.a (spreading of lying consciousness);
12. Criminal Code of SFRJ (Official Gazette of SFRJ, Nos 44/76,34/84, 74/87, 57/89, 3/90 and 38/90):
 - Article 131 (cooperation in hostile operation),
 - Article 133 (hostile propaganda),
 - Article 201 (unfulfilling the order or renouncing obedience),
 - Article 202 (refusal of acceptance or use of weapons),
 - Article 214 (disobedience in calling up for military service and evasion of military service);
13. Criminal Code of SR Slovenia (Official Gazette of SRS, Nos 12/77, 3/78, 19/84, 47/87, 33/89 and 5/90):
 - Article 228 (spreading of lying consciousness),
 - Article 236 (misuse of faith and church).

(3) In connection with the court decisions and court procedures referred to in the previous paragraphs against priests and priest women and/or monks and nuns of registered religious communities the request for the protection of legality pursuant to this Article can be submitted also by legal representatives of their registered religious communities.

(4) The request for the protection of legality against the court decisions and court procedures referred to in the previous paragraphs that were dismissed as being too late due to the expiry of the time limit referred to in Article 559 of the Criminal Procedure Act (Official gazette, No 63/94) may be resubmitted in compliance with the previous paragraphs.

(5) Persons related collaterally at three removes and legal representatives of religious communities may submit a request for the protection of legality referred to this article after the death of the convicted person and to his benefit.

Article 21

The provisions of the first and second paragraph of Articles 4 and 12 of this Act shall begin to apply on the day of the entry into force of the Act as referred to in the third paragraph of Article 141.a of the Act.

Article 22

This Act shall enter into force on the fifteenth day following its publication in the Official Gazette of the Republic of Slovenia.

No. 713-01/93-10/102
Ljubljana, 28 October 2005
EPA 357-IV

President
of the National Assembly
of the Republic of Slovenia
France Cukjati, dr. med., m.p.