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NATIONAL ASSEMBLY

2770 Act amending the Criminal Procedure Act (ZKP-E)

Pursuant to clause 2, paragraph 1 of Article 107, and paragraph 1 of Article 91 of the Constitution of the Republic of Slovenia, I hereby issue this

D E C R E E

on the proclamation of the Act amending the Criminal Procedure Act (ZKP-E)

I hereby proclaim the Act amending the Criminal Procedure Act as adopted by the National Assembly of the Republic of Slovenia in its session of 29 May 2003.

No. 001-22-38/03

Ljubljana, 9 June 2003.

/sgd./

Dr Janez Drnovšek

President

of the Republic of Slovenia

ACT AMENDING THE CRIMINAL PROCEDURE ACT (ZKP-E)

Article 1

In the eighth paragraph of Article 25 of the Criminal Procedure Act (Official Gazette RS, No. 63/94, 70/94 - correction, 25/96, 39/96, 5/98 – Constitutional Court ruling, 49/98 - the Police Act, 72/98, 6/99, 66/2000, 111/2001, 32/2002, 44/2003 - CC ruling), the text "of the supreme court panel" shall be replaced by the text "from the third paragraph of this Article".

Article 2

In Article 39, a new subparagraph 4.a) shall be added and shall read:

"4.a) if in the course of determining any question within the proceeding he became acquainted with evidence which under this Act must be excluded from the files (Article 83), he may not in the same matter decide on the charge or appeal or extraordinary legal remedy against the decision that determined the charge, unless the content of evidence is of such nature that it obviously could not influence his decision."

Article 3

(1) In paragraph 4 of Article 44, paragraphs 1, 4 and 5 of Article 218 and paragraph 4 of Article 220, the words "authorised internal affairs officers" shall be replaced by "police officer".

(2) In paragraph 8 of Article 84, paragraph 3 of Article 152, paragraph 1 of Article 153, Article 160, paragraphs 1, 2 and 3 of Article 164, Article 173, paragraph 1 of Article 174, paragraph 2 of Article 177, paragraph 2 of Article 194, paragraph 2 of Article 195.b, paragraph 5 of Article 199.a, Article 208, paragraph 1 and 2 of Article 525, paragraph 5 of Article 548, paragraph 2 of Article 549 and paragraph 5 of Article 551, the words "internal affairs agency" shall be replaced by the word "police".

Article 4

In Article 58 a new fifth paragraph shall be added, and shall read:

"(5) The decision to discontinue criminal proceedings issued on the basis of the first paragraph of this Article shall become final after the expiry of the terms referred to in the second and third paragraphs of this Article."

Article 5

In Article 61 a fourth paragraph shall be added, and shall read:

"(4) The decision by which the charge in the instance referred to in the first paragraph of this Article was dismissed shall become final after the expiry of the terms for filing an application for reinstatement of the previous state of affairs."

Article 6

Article 71 shall be amended to read:

"(1) If defence is not mandatory, a defendant who by reason of his material situation cannot afford to retain a lawyer may upon request have defence counsel appointed for him ex officio if that is in the interest of justice.

(2) The defendant may file a request from the preceding paragraph after the indictment has been served. The request shall be decided by the judge presiding the panel and defence counsel shall be appointed by the president of the court. The provision of paragraph 5 of the preceding Article shall apply to the question of who may be appointed as defence counsel.

(3) A lawyer appointed by the police ex officio as defence counsel for a suspect (paragraph 4, Article 4) shall also discharge that duty in the proceedings under Article 204.a of this Act and in the criminal proceedings against the defendant, under the same conditions as a defence counsel appointed by the court."

Article 7

Article 83 shall be amended to read:

"(1) Before the public prosecutor submits a request for investigation (paragraph 1, Article 168) or a motion for non-investigation (paragraph 1, Article 170) to the investigating judge, or files an indictment without investigation (paragraph 6, Article

170) or a summary charge sheet on the basis of a crime report (paragraph 2, Article 430), or files a motion for execution of individual acts of investigation (paragraph 1, Article 431) or for issue of a punitive order (paragraph 1, Article 445.a) with a single judge, the public prosecutor shall exclude from the documents he will send to the court the information which the police has gathered from the suspect before the latter was instructed as provided in paragraph 4 Article 148 of this Act. The public prosecutor shall make an official note on the exclusion, enclose it with the papers he will send to the court and keep the excluded information in his file. If the record of the interrogation of the suspect (paragraph 1, Article 148.a), the records of the acts of investigation performed (Articles 164-166) or other evidence which in the opinion of the public prosecutor may not serve as basis for the decision of the court are enclosed with the crime report, he shall send the papers containing such evidence to the investigating judge or a judge sitting alone who shall deal with them as provided by the provisions of the second and third paragraphs of this Article.

(2) Where this Act provides that a court decision may not be based on a statement by the suspect or defendant, witness or expert, or on the records, objects, recordings, reports or pieces of evidence, the investigating judge or the judge who carries out individual acts of investigation shall issue ex officio, or on the motion of a party, a decision excluding the aforesaid evidence from the papers immediately upon establishing that the statements or evidence of such a nature are involved. He shall act in the same manner in respect of the information referred to in the preceding paragraph unless the public prosecutor has already excluded it, as well as in respect of the information disclosed to the police by persons who may not be examined as witnesses (Article 235) or who under this Act have renounced testimony (Article 236) or may not under this Act be appointed as experts (Article 251). The parties may request the exclusion of records and other evidence only until the opening of the main hearing and may request it in the main hearing only if they were not able to do it before.

(3) The decision on the exclusion or on the rejection of a party's motion for the exclusion referred to in the preceding paragraph may be challenged by a special appeal. Once the decision becomes final, the excluded records and other evidence shall be sealed in a separate envelope and kept apart from other files, and it shall not be allowed to view them or use them in criminal proceedings except in instances referred to in the fourth paragraph of this Article.

(4) The provision of the preceding paragraph notwithstanding, the president of the court who decides the request for exclusion of a judge for reasons set out in point 4.a of Article 39 of this Act as well as the panel who decide on legal remedy against the decision in the main cause, shall be allowed to inspect and use the records and other evidence that were excluded from the files under a final decision if that is necessary for determining whether the grounds for the exclusion of a judge exist. After being inspected and used, the excluded records and other evidence shall again be sealed in a separate envelope with an indication thereon of who inspected them and when they were inspected.

(5) The provisions of the preceding paragraph shall apply correspondingly when the court of second instance determines an appeal from a judgement, whereby the appeal also challenges the decision on the exclusion of evidence (paragraph 4, Article 340)."

- (1) The fourth paragraph of Article 96 shall be deleted.
- (2) The present fifth paragraph shall become the fourth paragraph.

Article 9

In Article 128 a new sixth paragraph shall be added, and shall read:

"(6) The state prosecutor shall enable the defendant and defence counsel to view the official notes about the information which the public prosecutor has excluded from the files (paragraph 1, Article 83)."

Article 10

In Article 130, the text "one day in prison for each tenth of the average net monthly salary in the commercial sector in the Republic of Slovenia" shall be replaced by "one day in prison for each 10,000 tolar or part thereof".

Article 11

(1) The first indent of Article 144 shall be amended to read:

"- the suspect, meaning a male or female suspect, is a person against whom the competent government agency undertook, before the introduction of criminal proceedings, a specific act or measure because grounds existed to suspect that he had committed, or participated in the commission of, a criminal offence;"

(2) The tenth indent shall be amended to read:

"- depending on the context, the police may mean a police station or any other police unit."

(3) The eleventh indent shall be deleted.

Article 12

(1) In the first paragraph of Article 148 the text "internal affairs agencies shall be bound to" shall be replaced by "the police shall be bound to".

(2) In the second paragraph the text "internal affairs agencies may" shall be replaced by "the police may".

(3) In the third paragraph the text "Internal affairs agencies may summon" shall be replaced by "The police may summon", the text "internal affairs agencies may not" shall be replaced by "the police may not", the full stop at the end of the paragraph shall be deleted and the text "except for the suspect in the case referred to in Article 148.a of this Act" shall be added.

(4) A new fourth, fifth and sixth paragraphs shall be added after the third paragraph, and shall read:

"(4) When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person,

before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his fellow beings or to confess guilt, that he is entitled to have a lawyer of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

(5) If the suspect declares that he wants to retain a lawyer, the interrogation shall be put off until the arrival of the lawyer or until the time determined by the police which, nevertheless, may not be shorter than two hours. Other acts of investigation, except for those which it would be unsafe to delay, shall also be put off until the arrival of the lawyer. The interrogation of the suspect shall be conducted according to the provisions of Article 148.a of this Act.

(6) If the suspect states that he does not want to retain a lawyer or the lawyer does not arrive until the time determined by the police, an official note of the statement of the suspect shall be made. The note shall include the legal instruction given, the statement of the suspect and, in the event that the suspect wants to declare himself on the offence, the essence of his statement and comments thereon. The official note shall be read to the suspect and a copy thereof shall be delivered to him. The suspect shall by his signature acknowledge the receipt of the copy. The statement of the suspect may be recorded by a sound and picture recording device after the recording has been announced to the suspect."

(5) The present fourth paragraph shall become the seventh paragraph.

(6) In the present fifth paragraph, which shall become the eighth paragraph, the words "internal agencies may" shall be replaced by "the police may".

(7) In the present sixth paragraph, which shall become the ninth paragraph, the words "internal affairs agency" shall be replaced by "the police", and the last sentence shall be amended to read: "If upon submitting the crime report the police learns of new facts, evidence or traces of the criminal offence, they shall gather the necessary information and send the public prosecutor a report thereon as a supplement to the crime report."

(8) In the present seventh paragraph, which shall become the tenth paragraph, the words "the internal affairs agency" shall be replaced by "the police".

Article 13

After Article 148 a new Article 148.a shall be added, and shall read:

"Article 148.a

(1) The interrogation of the suspect may only be conducted in the presence of the lawyer. The interrogation may be attended by the public prosecutor who shall be properly informed thereon by the police.

(2) The interrogation of the suspect shall be conducted by the police according to the provisions of this Act applying to the interrogation of the defendant (Articles 227 to 233 inclusive). The record of the interrogation shall be drawn up according to the provisions of Articles 79 to 82 inclusive of this Act. This record may be used as evidence in criminal proceedings. The interrogation of the suspect may be recorded by the sound and picture recording device after the recording has been announced to the suspect.

(3) If the suspect has not been informed of his rights under the fourth paragraph of the preceding Article, or the instruction and the statement of the suspect in respect of his right to a lawyer have not been noted down in the record, or the suspect was interrogated without a lawyer being present, or the interrogation was conducted contrary to the provisions of paragraph 8, Article 227 of this Act, the court may not base its decision on the statement of the suspect."

Article 14

(1) In the first paragraph of Article 149, the text "Authorised officers of interior affairs agencies" shall be replaced by "Police officers".

(2) In the second paragraph, the words "Interior affairs agencies may" shall be replaced by "Police may".

(3) In the third paragraph, the words "and biological traces" shall be added after "the identity of fingerprints", the text "interior affairs agencies shall be entitled to" shall be replaced by "the police may", and the words "and mouth swabs" shall be added after "take the fingerprints".

Article 15

Article 156 shall be amended to read:

"(1) The investigating judge may upon a properly reasoned proposal of the public prosecutor order a bank, savings bank or savings-credit service to disclose to him information and send documentation on the deposits, statement of account and account transactions or other transactions by the suspect, the defendant and other persons who may reasonably be presumed to have been implicated in the financial transactions or deals of the suspect or the defendant, if such data might represent evidence in criminal proceedings or are necessary for the seizure of objects or the securing of a request for the seizure of property benefits or the seizure of property whose value is equivalent to the value of property benefits.

(2) The bank, savings bank or savings-credit service shall immediately send to the investigating judge the data and documentation referred to in the preceding paragraph.

(3) Subject to conditions from the first paragraph of this Article, the investigating judge may upon a properly reasoned proposal by the public prosecutor order a bank, savings bank or savings-credit service to keep track of financial transactions of the suspect, the defendant and other persons reasonably presumed to have been implicated in financial transactions or deals of the suspect or the defendant, and to disclose to him the confidential information about the transactions or deals the aforesaid persons are carrying out or intend to carry out at these institutions or services. In the order, the investigating judge shall set the time period within which the bank, savings bank or savings-credit service shall provide him with the data.

(4) The measure referred to in the preceding paragraph may be applied for three months at most, but the term may for weighty reasons, upon motion of the public prosecutor, be extended to six months at most.

(5) The bank, savings bank or savings-credit service may not disclose to their clients or third persons that they have sent, or will send, the data and documentation to the investigating judge."

Article 16

(1) In the first sentence of the first paragraph of Article 157, the words "Authorised officers of an internal affairs agency" shall be replaced by "Police officers", in the second sentence "the internal affairs officer" shall be replaced by "the police officer", and at the end of the paragraph two new sentences shall be added which shall read:

"The investigating judge shall have delivered to him on that occasion a copy of the crime report together with the record of the interrogation of the suspect and other enclosures, except for the official notes about the information the police has gathered from the suspect before the latter was instructed according to the fourth paragraph of Article 148 of this Act. The police shall send these official notes together with the crime report to the public prosecutor."

(2) In the second paragraph, the words "Authorised officers of an internal affairs agency" shall be replaced by "Police officers", and "prosecuted ex officio" shall be replaced by "for which the perpetrator is prosecuted ex officio".

(3) In the third paragraph, the first sentence shall be amended to read:

"The person deprived of freedom without a court decision shall in his capacity as suspect be immediately informed as provided by the provisions of the first paragraph of Article 4 and the fourth paragraph of Article 148 of this Act."

(4) The fourth paragraph shall be amended to read:

"(4) If the suspect states that he wants to retain a lawyer, the police shall adjourn interrogating him as well as other acts of investigation, except those which it would be unsafe to delay, until the arrival of the lawyer, but no longer than two hours after the suspect was granted the opportunity to inform the lawyer. The police shall at the request of the suspect help him to retain a lawyer. The interrogation of the suspect shall be conducted in the presence of the lawyer, in accordance with the provisions of Article 148.a of this Act. If the suspect states that he will not retain a lawyer or the chosen lawyer does not arrive within two hours, the police shall act in accordance with paragraph 6 of Article 148 of this Act."

(5) In the fifth paragraph, the words "the authorised officer of the internal affairs agency" shall be replaced by "the police officer".

(6) In the sixth paragraph, the words "the authorised officer of the internal affairs agency" shall be replaced by "the police officer".

(7) A new, eighth paragraph shall be added, and shall read:

"(8) The police shall on each arrest immediately inform the public prosecutor thereof who may give them instructions as to further measures (Article 160.a). The police shall be bound to abide by those instructions."

Article 17

(1) In the first paragraph of Article 158, the words "prosecuted ex officio" shall be replaced by "for which the perpetrator is prosecuted ex officio", and the words "to the internal affairs agency" shall be replaced by "to the police".

(2) In the second paragraph, the words "to the internal affairs agency" shall be replaced by "to the police".

(3) In the third paragraph, the words "The internal affairs agency" shall be replaced by "The police".

Article 18

After Article 160, a new Article 160.a shall be added and shall read:

"Article 160.a

(1) The public prosecutor may in exercising his authority under this Act set guidelines for police work by giving directions, expert opinions and proposals for the information gathering and execution of other measures coming within the competence of the police, with a view to detecting a criminal offence and its perpetrator or gathering information necessary for his decision.

(2) The procedure, instances, terms and manner of the directing and informing referred to in the preceding paragraph shall be prescribed by the Government of the Republic of Slovenia."

Article 19

(1) In the second sentence of the first paragraph of Article 161, the words "internal affairs agency" shall be replaced by "government agency".

(2) In the last sentence of the second paragraph the text "to ask of internal affairs agencies to notify him of what they have undertaken" shall be replaced by "to ask of the police to notify him of what they have undertaken".

Article 20

After Article 163, a new Article 163.a shall be added and shall read:

"Article 163.a

(1) In the procedure under Article 162 of this Act, the public prosecutor shall summon the suspect and the injured party to the Public Prosecutor's Office. In the summons he shall cite the reasons for summoning them. If they respond to the summons, the public prosecutor shall acquaint the suspect with the crime report and tell him that he will dismiss the crime report if the suspect behaves according to his instructions and performs certain tasks in due course.

(2) If the public prosecutor needs to obtain certain information directly from the suspect or injured party in order to be able to decide whether to leave the case to be resolved in a settlement (Article 161.a), or desist from starting criminal prosecution (Article 163), or move for the issue of a punitive order (Article 445.a), he may summon the suspect and the injured party, or only one of them, to the Public Prosecutor's Office. The suspect shall be informed by the public prosecutor of the crime report and decisions the prosecution might take in acting upon the crime report, and the injured party shall be informed of his rights.

(3) In instances referred to in the preceding paragraphs, the public prosecutor shall draw up an official note in which he shall record the statements of the suspect and

injured party. He shall not send the official note to the court if he starts criminal prosecution against the suspect.

(4) The suspect or injured party who without good reason fail to respond to the summons may not be summoned again."

Article 21

After Article 165, a new Article 165.a shall be added, and shall read:

"Article 165.a

(1) Before filing a request for investigation or an indictment without the investigation, the public prosecutor may propose to the investigating judge to perform a specific act of investigation if the execution of such an act is necessary for his deciding whether to dismiss the crime report or start criminal prosecution.

(2) The public prosecutor, the injured party, the suspect and the lawyer may be present at the execution of the act of investigation, of which the investigating judge shall notify them in a proper way. If the proposed act of investigation is the interrogation of the suspect, the provisions of this Act on the summoning and interrogation of the suspect shall be applied.

(3) If the investigating judge disagrees with the proposal of the public prosecutor for the execution of the act of investigation, the investigating judge shall notify the public prosecutor thereof who may propose the execution of such an act in the request for investigation or in the indictment."

Article 22

In the second paragraph of Article 169, the text "or where, in view of the already executed interrogation according to Article 148.a of this Act and the submitted request for investigation, he assesses that another investigation is not necessary" shall be added after the word "to postpone investigation".

Article 23

In the sixth paragraph of Article 170, the word "five" shall be replaced by "eight".

Article 24

(1) At the end of the fourth paragraph of Article 213.b, a new sentence shall be added, and shall read: "An appeal against this decision shall not stay the execution of the decision."

(2) In the fifth paragraph, the word "third" shall be replaced by "fourth".

Article 25

(1) In the first paragraph of Article 214, the text "if there is a likelihood" shall be replaced by "if there is reasonable suspicion that a specific person has committed criminal offence and there is a likelihood".

(2) In the second paragraph, the text "if it seems probable" shall be replaced by "if there is reasonable suspicion that a specific person has committed criminal offence and it seems probable".

Article 26

(1) The second and third paragraphs of Article 227 shall be amended to read:

"(2) The defendant shall then be informed of the offence he is charged with and of the grounds for the charge. He shall be instructed that he is not obliged to plead and answer questions, that if he pleads he is not obliged to incriminate himself or his fellow beings or to confess guilt, that he is entitled to retain a lawyer of his choosing or to have a lawyer appointed for him ex officio under conditions defined by this Act, and that the lawyer may be present at the interrogation.

(3) If involved are criminal offences which under the Penal Code must in certain instances be remitted or mitigated, the defendant shall be informed thereof".

(2) The ninth and tenth paragraphs shall be amended to read:

"(9) The defendant may be interrogated in the absence of a lawyer if he has explicitly waived that right and defence is not mandatory, or if the lawyer is not present although he was notified of the interrogation (Article 178).

(10) If the defendant was not instructed about his rights under the second paragraph of this Article, or the instruction and the statement of the defendant concerning the right to a lawyer are not entered in the record, or the interrogation was conducted in violation of the provisions of the eighth or ninth paragraph of this Article, the court may not base its decision on the statement of the defendant."

Article 27

In Article 228, a new third paragraph shall be added, and shall read:

"(3) If the interrogation was conducted in violation of the provisions of the first paragraph of this Article, the court decision may not be based on the statement of the defendant."

Article 28

(1) In the first paragraph of Article 236, the full stop at the end of point 5 shall be replaced by the comma and the following text shall be added: "except in instances referred to in the third paragraph of Article 65 of this Act, or if statutory conditions are fulfilled under which such persons are absolved from the duty to guard secret or are bound to disclose confidential information to competent bodies."

(2) The second paragraph shall be amended to read:

"(2) The court conducting proceedings shall be bound to instruct the persons referred to in the preceding paragraph, each time before examining them, that they are not obliged to testify the moment the court learns that there are circumstances that absolve said persons from the duty to testify. If a witness declares that he waives that right and wants to testify, he shall be warned that the court might base its decision on

his testimony even if he waives the testimony in the main hearing. The instruction and the answer shall be entered in the record."

Article 29

(1) In Article 242, which shall become the first paragraph of Article 242, a new sentence shall be added at the end, and shall read: "Identification by means of other senses (hearing, touch, smell etc.) shall proceed in a corresponding way."

(2) The second, third and fourth paragraphs shall be added and shall read:

"(2) Before identification, the witness shall be warned according to the second paragraph of Article 240 of this Act.

(3) The investigating judge who conducts the identification process shall ensure that before the identification the witness does not see the persons or objects he is about to identify.

(4) A record of the identification shall be made and a group photograph of all the persons viewed shall be enclosed with it."

Article 30

After Article 242, a new Article 242.a shall be added, and shall read:

"Article 242.a

If the life, body or valuable property of the person doing the identification or his close relatives (point 1-3, first paragraph, Article 236) might be endangered, or there is a likelihood that the person being identified might influence the course of the identification process, the identification shall be conducted in such a way that the person being identified cannot see the person making the identification."

Article 31

In the second paragraph of Article 271, the words "or a private charge" shall be added after "charge sheet".

Article 32

In Article 286, a new fourth paragraph shall be added and shall read:

"(4) When the panel of judges (paragraph 6, Article 25) hears an appeal from the decision referred to in the preceding paragraph, the panel may rule that, in view of the substance of the excluded evidence, the main hearing be conducted before another president of the panel."

Article 33

In the second paragraph of Article 288, the comma after the bracket and the text "and that he will be considered to have waived the right to appeal if he does not announce

the appeal within eight days at the latest of the day of announcement of the judgement" shall be deleted.

Article 34

In the second sentence of first paragraph of Article 289, the words "piece of the evidence" shall be replaced by "evidence".

Article 35

In Article 293, a new third paragraph shall be added and shall read:

"(3) The president of the panel shall discontinue criminal proceedings by a decision also in instances where, after the indictment or a private charge has taken effect, it is established that some other circumstances exist that would require the rendering of a judgement of rejection in the main hearing (2nd, 3rd and 4th point of Article 357)."

Article 36

(1) In the second paragraph of Article 307 the words "Articles 200 though 213" shall be replaced by "Article 200, the second, third, fourth and sixth paragraphs of Article 202, and Articles 208 through 213".

(2) At the end of the third paragraph of Article 307, a new sentence shall be added and shall read: "If the defendant has no lawyer, the panel shall act according to the first paragraph of this Article and may also decide that a lawyer be appointed for the defendant ex officio."

Article 37

The present fourth paragraph of Article 340 shall become the third paragraph; the present third paragraph shall become the fourth paragraph and shall be amended to read:

"(4) Before the hearing of evidence is completed the panel shall issue ex officio, or upon a motion of the parties, a ruling by which it shall exclude from the files the records and other evidence on which under the provisions of this Act the court decision may not rest. If the panel rejects the motion of a party for the exclusion, it shall issue a separate ruling thereon. The ruling by which the records and other evidence are excluded may only be challenged by an appeal from the judgement. The excluded records and other evidence shall be sealed in an envelope and delivered to the investigating judge for safekeeping apart from other files (paragraph 3, Article 83)."

(2) A new, fifth paragraph shall be added and shall read:

"(5) When considering the appeal from the judgement by which the ruling from the preceding paragraph is contested as well, the court of second instance may, in view of the contents of the excluded record or other evidence, rule that a new main hearing be held before a completely new panel."

Article 38

In the fourth paragraph of Article 361, the word "four" shall be replaced by "five".

Article 39

(1) The first paragraph of Article 362 shall be amended to read:

"(1) After announcing the judgement the presiding judge shall instruct the parties entitled to appeal (Article 367) of their right to appeal and the obligation to announce the appeal and shall warn them that they will be considered to have waived the right to appeal if they fail to announce it within eight days of the day of announcement of the judgement. The instruction on legal remedy shall be entered in the record of the main hearing."

(2) A new, third paragraph shall be added, and shall read:

"(3) A party who is entitled to appeal and was not present at the announcement of the judgement shall be sent a copy of the operative part of the judgement and the instruction on legal remedy referred to in the first paragraph of this Article, with an indication that the term for announcing his appeal shall start running as of the day the copy of the operative part of the judgement has been served on him."

(3) The present third paragraph shall become the fourth paragraph.

Article 40

In the first paragraph of Article 368 the full stop at the end of the paragraph shall be replaced by the comma and the following text shall be added: "or from the day of service of the copy of the operative part of the judgement if they were not present at the announcement of the judgement (third paragraph, Article 362)."

Article 41

In the fourth paragraph of Article 374, the words "the present" shall be deleted.

Article 42

In the third paragraph of Article 394, the words "the confirmation or" shall be added after "due to", and the word "third" shall be replaced by "second".

Article 43

In the sixth paragraph of Article 397, the words "(eighth paragraph, Article 361)" shall be replaced by "(seventh paragraph, Article 361)".

Article 44

In the fourth paragraph of Article 420, the text "on the ruling on remand in custody and extension thereof" shall be replaced by "on the ruling on remand in custody and

against the final decision on the extension of remand only under a ruling of the Supreme Court panel" (second paragraph, Article 205) and in case of extension after the filing of the charge sheet (second paragraph, Article 272)".

Article 45

In the first sentence of the third paragraph of Article 421, the text "or eight days in case of the decision from the fourth paragraph of Article 420 of this Act," shall be added after the words "three months".

Article 46

In the first sentence of the second paragraph of Article 423, the text "or within eight days if involved is the request against the decision referred to in the fourth paragraph of Article 420 of this Act," shall be added after the words "of receipt of the request".

Article 47

In the first paragraph of Article 432, the text "which is prosecuted ex officio or on the motion" shall be replaced by "for which the perpetrator is prosecuted ex officio".

Article 48

In the second paragraph of Article 435, the words "the principal" shall be replaced by "the president", and "The principal" shall be replaced by "The president".

Article 49

Article 438 shall be deleted.

Article 50

In Article 439, the second sentence of the second paragraph shall be deleted.

Article 51

In the fifth paragraph of Article 443, the text "or until the commencement of the sentence" shall be added after the word "judgement".

Article 52

After Article 445, a new Chapter XXV.a and Articles 445.a to 445.e inclusive, shall be added and shall read:

"Chapter XXV.a

PROCEDURE FOR THE ISSUE OF PUNITIVE ORDER

Article 445.a

(1) Where punishable offences falling within the province of circuit court are involved, the public prosecutor may in filing the summary charge sheet propose to the court to issue without holding the main hearing a punitive order by which the proposed punitive sanction or measure is imposed on the defendant.

(2) The public prosecutor may propose the pronouncing of the following punitive sanctions and measures:

- 1) a fine, prohibition from driving a motor vehicle, suspended sentence with a specific fine, or up to six months imprisonment, or judicial admonition;
- 2) the seizure of objects and property benefits acquired through commission of criminal offence.

Article 445.b

If the judge considers that the evidence contained in the summary charge sheet does not provide sufficient grounds for issuing a punitive order, or disagrees with the imposition of the sanction proposed by the public prosecutor, he shall schedule the main hearing to which he shall summon the persons referred to in the first paragraph of Article 439 of this Act. In such an instance the defendant shall only be served with the copy of the summary charge sheet without the proposal for the issue of a punitive order.

Article 445.c

(1) If the judge agrees with the proposal, he shall issue a punitive order by means of a ruling.

(2) In the punitive order the judge shall rule that the proposal of the public prosecutor is granted and the defendant, whose personal data must be cited therein, is awarded the proposed punitive sanction or measure. The operative part of the ruling on the issue of a punitive order shall contain the necessary data from the first and second paragraphs of Article 359 of this Act. The statement of grounds shall contain only such evidence from the summary charge sheet as warrants the issue of the punitive order.

(3) The punitive order shall also contain instructions to the defendant as to his or her right to file objection referred to in the second paragraph of Article 445.č of this Act, and a warning that unless the objection is filed within a specified period of time the punitive order shall upon expiry of that time period become final and the awarded punitive sanction or measure shall be executed.

Article 445.č

(1) A certified copy of the ruling on the issue of the punitive order shall be served on the defendant, his lawyer, if any, and the public prosecutor.

(2) The defendant or his lawyer may within eight days of the ruling on the punitive order being served file an objection to the ruling. The objection may be filed in writing or orally to be entered in the record at the court. The objection shall contain an indication of the ruling under which the punitive order was issued and may also propose evidence to be taken at the main hearing. The defendant may waive the right to object and, so long as the main hearing is not scheduled, may withdraw an already filed objection. The waiver and the withdrawal of the objection may not be

revoked. Paying fine before the expiry of the term for submitting the objection shall not be considered as the waiver of the right to objection.

(3) A defendant who for legitimate reasons fails to file an objection within the set time limit shall be granted by the court the reinstatement of the previous state of affairs. In so doing the court shall apply pertinently the provisions of Articles 89 and 90 of this Act.

(4) If in applying pertinently the provisions of the second paragraph of Article 375 of this Act the Court does not dismiss the objection, the court shall by a decision invalidate the ruling on the punitive order and shall proceed according to the provisions of Articles 439 through 443.a of this Act.

Article 445.d

In rendering the judgement on the submitted objection, the court shall not be bound by the proposal of the public prosecutor referred to in the second paragraph of Article 445.a nor by the prohibition referred to in Article 385 of this Act.

Article 445.e

In the proceedings for issue of a punitive order, the provisions of Article 445.a through 445.d shall apply and questions not regulated by those provisions shall be subject to pertinent application of other provisions of this Act."

Article 53

In the first paragraph of Article 447 the second sentence shall be amended to read:

"The provisions of Article 368 of this Act shall, with regard to the obligation to announce the appeal, apply correspondingly."

Article 54

In the first paragraph of Article 467, the text "third paragraph of the preceding Article" shall be replaced by "fourth paragraph of the preceding Article".

Article 55

In the first paragraph of Article 472, the words "or second" shall be deleted.

Article 56

In the initial sentence of the first paragraph of Article 498.a, the words "162," shall be added after the words "bribe under Articles", and in the second point of the first paragraph the words "162," shall be added after "criminal offences under Articles".

Article 57

(1) In Article 519, a new third paragraph shall be added and shall read:

"(3) The agencies from the preceding paragraph shall in considering the surrendering of criminal files also take into account the hitherto and future costs of criminal proceedings from inception to end."

(2) The present third paragraph shall become the fourth paragraph.

(3) A new fifth paragraph shall be added and shall read:

"(5) The surrendering of criminal files shall not be permitted in instances where the seizure, or a temporary securing of the petition for forfeiture, of illegally acquired funds or property referred to in Article 252 of the Penal Code was ordered, or where unlawfully offered or accepted bribe referred to in Articles 162, 168, 247, 248, 267, 268 and 269 of the Penal Code was ordered, save where the court issued the aforesaid orders on the initiative of a foreign country. In these instances, and in instances where a temporary securing of the petition for forfeiture of property benefits was ordered in conjunction with other criminal offences, the agencies from the second paragraph of this Article may only surrender criminal file to another country provided that, prior to surrendering it, they satisfy themselves that the country in question has an appropriate legislation in connection with the forfeiture of property benefits and surrendering of criminal files to another country, and that they take into consideration the value of the temporarily secured property."

(4) The present fifth paragraph shall become the sixth paragraph.

Article 58

In Article 521, a new second paragraph shall be added and shall read:

"(2) A foreigner may only be extradited in instances provided for by the international treaties binding on the Republic of Slovenia."

Article 59

In the first subparagraph of Article 522 the semicolon at the end shall be replaced by the comma and the text "except in instances defined by an international treaty binding on the Republic of Slovenia." shall be added.

Article 60

In the second paragraph of Article 530, the first sentence shall be amended to read:

"The Minister of Justice shall not permit the extradition of a foreigner if the latter enjoys the right of asylum in the Republic of Slovenia, if a political or military offence is involved or an international treaty with the country demanding the extradition does not exist."

Article 61

Article 564 shall be amended to read:

"The rights and duties vested under this Act in the president of the district court, except those under Articles 191 and 213 of this Act, shall in respect of criminal offences falling within the province of the circuit court be vested in the president of the circuit court."

TRANSITIONAL AND FINAL PROVISIONS

Article 62

The Government of the Republic of Slovenia shall issue the regulation referred to in the second paragraph of Article 160.a of this Act within six months of the coming into force of this Act.

Article 63

If a term for the filing of a request for the protection of legality against a decision referred to in the fourth paragraph of Article 420 of this Act has already commenced on the day this Act takes effect, the term shall expire according to regulations which were in force until the coming into force of this Act.

Article 64

The provisions of Articles 12, 13, 16 and 22 of this Act shall commence application a year after this Act has taken effect.

Article 65

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

No. 713-01/93-10/81
Ljubljana, 29 May 2003
EPA 780 III

President of the
National Assembly
of the Republic of Slovenia
Borut Pahor