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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT LAW

AMENDING THE CRIMINAL PROCEDURE CODE

OF BULGARIA

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AMENDING THE CRIMINAL PROCEDURE CODE

(Promulgated, SG, No 86/28 Oct 2005, amended SG, No 46/12 June 2007, amended SG, No 109/20 Dec 2007, amended SG, No 69/5 Aug 2008, amended SG, No 109/23 Dec 2008, amended SG, No 12/13 Feb 2009, amended SG, No 27/10 Apr. 2009, amended SG, No 32/28 Apr. 2009, amended SG, No 33/30 Apr 2009, amended SG, No 15/23 Feb 2010, amended SG, No 32/27 Apr 2010)

§ 1. In art. 35, par. 3 at the end a comma is put and the words “except in cases falling under the jurisdiction of the specialized criminal court” are added.

§ 2. Art. 174 is amended as follows:

1. New par. 3 and 4 are created:

“(3) Warrant authorizing the use of special means of surveillance in cases falling under the jurisdiction of the specialized criminal court shall be given in advance by the president of that court or specifically designated vice president.

(4) Warrant authorizing the use of special means of surveillance shall be given by the president of the appellate specialized criminal court or specifically designated vice president of that court when the special means of surveillance shall be used in respect of a member of the Supreme Judicial Council and the Inspectorate thereat, administrative head of judicial body or deputy thereof, judge, prosecutor or investigator “.

2. Present par. 3 becomes par. 5 and the words “under par. 1 and 2” in its text are replaced by the words “par. 1 - 4”.

3. Present par. 4 is deleted.

4. Present par. 5 becomes par. 6.

5. Present par. 6 becomes par. 7 and the words “par. 1 and 2” in its text are replaced by the words “par. 1-4”.

§ 3. New chapter thirty-one “a” including art. 411a-411j is created:

“Chapter thirty-one “a”

Special rules for the proceedings before the specialized criminal courts

Crimes falling under the jurisdiction of the specialized criminal courts

Art. 411a (1) The specialized criminal court shall have jurisdiction over the crimes established in chapter I, art. 142, par. 2 and 3, art. 143a, art. 159b – 159d, art. 253, par. 3 and par. 5, art. 321, par. 3 and art. 321a of the Criminal Code as well as over crimes mandated by an organized criminal group or committed in furtherance of a decision of such a group.

(2) The specialized criminal court shall have jurisdiction over the crimes established in art. 202, art. 203, art. 209-212, art. 219, art. 220, art. 253 – 254b, art. 282-283a and art. 301-307 of the Criminal Code when committed by persons having immunity, members of the Supreme Judicial Council and the Inspectorate thereat, administrative heads of judicial bodies and their deputies, judges, prosecutors, investigators, persons listed in art.

19, par. 2, p. 2-4, par. 3 and par. 4 of the Administration Act as well as by deputy ministers and secretaries general of ministries.

(3) The specialized criminal court shall have jurisdiction over the crimes listed in par. 1 and 2 when committed abroad.

(4) If the defendant is charged with several crimes one of which falls within the jurisdiction of the specialized criminal court the trial for all crimes shall take place before that court.

(5) If a joint punishment has to be imposed in case of several entered into force guilty verdicts one of which is delivered by a specialized criminal court the joint punishment shall be determined by that court.

(6) If several defendants are charged as accomplices with one or more crimes and one of the defendants must be tried by the specialized criminal court all of them shall be tried by that court.

(7) If two or more cases for different crimes against different defendants are connected they shall be integrated into a joint case when it is necessary for reaching a right decision. If one of these cases falls within the jurisdiction of the specialized criminal court, that court shall hear the joint case.

(8) If a case falls within the jurisdiction of the specialized criminal court and a military court it shall be tried by the military court.

Jurisdiction of the courts of second and third instance

Art. 411b. Cases tried by the specialized criminal court as a first instance court shall be tried by the appellate specialized criminal court as a second instance court and by the Supreme Court of Cassation as a third instance court; the latter shall hear all cases for reopening of criminal proceedings for crimes falling under the jurisdiction of the specialized criminal court.

Disputes over jurisdiction

Art. 411c. Disputes over jurisdiction between the specialized criminal court and the district courts shall be resolved by the Supreme Court of Cassation.

Pre-trial phase bodies in proceedings for crimes falling under the jurisdiction of the specialized criminal courts

Art. 411 d (1) Pre-trial phase bodies competent to conduct proceedings for crimes falling under the jurisdiction of the specialized criminal court shall be the prosecutors from the specialized prosecutor's office and the investigating bodies.

(2) The investigating bodies in proceedings for crimes falling under the jurisdiction of the specialized criminal court are the investigators from the investigating department at the specialized prosecutor's office and the investigating policemen designated by order of the Minister of Interior.

Special rules for examination of witnesses before a judge

Art. 411e (1) When there is well-founded information that a risk for the life or health of a witness exists his examination before a judge shall take place according to the rules for examining of anonymous witness.

(2) Copy of the protocol with the testimony of the witness shall be given to the defendant and his counsel and they may ask the witness questions in writing.

Disclosure of bank secret and tax and social security information

Art. 411f (1) In criminal proceedings for crimes falling under the jurisdiction of the specialized criminal court bank secret under the Credit Institutions Act and tax and social security information under the Tax and Social Security Procedural Code shall be disclosed on request of the administrative head of the specialized prosecutor's office.

Prosecutor's powers after the closure of the investigation

Art. 411g (1) When the investigation is closed the prosecutor shall discontinue the criminal proceedings, suspend the criminal proceedings, file a proposal for exoneration of criminal responsibility and imposition of administrative penalty, file a proposal for adjudicating the case with an agreement or file an indictment.

(2) The prosecutor shall exercise his powers under par. 1 within 15 days.

Special rules for trials before the specialized criminal court

Art. 411h (1) The specialized criminal court shall hear cases in panels composed in accordance with art. 29 of this code.

(2) Having instituted the trial case the president of the court shall designate a judge-rapporteur who shall send the case to public hearing or exercise his powers under art. 249-251 within 15 days.

(3) No private prosecutors and civil plaintiffs shall take part in trials heard by specialized criminal courts.

(4) Summons, messages and papers shall be served by officials of the court, pre-trial phase bodies, officials of the Ministry of Interior or officials of the Ministry of Justice.

(5) The participants in the trial must appear before the court regardless of their summoning before other courts or investigating bodies.

(6) If a witness or an expert does not appear before the court for no excusable reason they shall be brought compulsory before the court for the next day of the trial.

(7) Having heard the last word of the accused the court shall retrieve for secret deliberation and shall deliver its verdict and the reasons therefore within 15 days.

Proceedings before the court of second instance

Art. 411i (1) The proceedings before the court of second instance shall be initiated on request of the prosecutor, the accused or his counsel.

(2) The proceedings before the court shall be conducted in accordance with the rules of chapter twenty-one of this code.

(3) The court shall deliver its verdict or decision within the time-limits set in art. 411h, par. 7.

Application of the general rules

Art. 411j As far as there are no special rules in this chapter, the general rules shall apply.

TRANSITIONAL POVISIONS

§ 4. In the Tax and Social Security Procedural Code (promulgated SG, No 105 as of 29 Dec 2005, last amended SG, No 15 as of 23 Feb 2010), in art. 74, par. 1, p. 3 after the words “Prosecutor general” a comma is put and the words “administrative head of the appellate specialized prosecutor’s office” are added.

§ 5. In the Special Means of Surveillance Act (promulgated, SG, No 95 as of 21 Oct 1997, last amended SG, No 32 as of 27 Apr 2010), in art. 15 the following amendments are made:

1. in par. 1 the words “and of” are deleted, a comma is put and after the words “district courts” the words “and of the specialized criminal court” are added.

2. par. 3 is amended as follows:

“(3) Warrant authorizing the use of special means of surveillance shall be given by the president of the appellate specialized criminal court or specifically designated vice president of that court when the special means of surveillance are to be used in respect of a member of the Supreme Judicial Council and the Inspectorate thereat, administrative head of judicial body or his deputy, judge, prosecutor or investigator”.

§ 6. In the Credit Institutions Act (promulgated SG, No 59 as of 21 July 2006, last amended SG, No 95 as of 1 Dec 2009) art. 62, par. 10 is amended as follows:

“(10) If there is information for organized criminal activity or money laundering the prosecutor general or duly authorized deputy prosecutor general or the administrative head of the specialized prosecutor’s office may request from the banks to provide the information provided for in par. 2. The requests to the banks and the information received shall be entered into a register at the prosecutor general’s office, at the specialized prosecutor’s office as well as at the BNB.”

§ 7. (1) The trials which have not reached the stage of evidence gathering shall be discontinued by the judge-rapporteur and the cases shall be transmitted to the specialized criminal court.

(2) The pre-trial phase proceedings shall be completed by the investigative bodies working on them at the moment of entering into force of this law.

§ 8. This law shall enter into force on 1 January 2011.

Reasons for proposing the draft law amending the Criminal Procedure Code

The proposed amendments to the Criminal Procedure Code (CPC) are a necessary consequence of the draft law amending the Law on Judicial Power which proposes the establishment of specialized judicial bodies. Their establishment is a logical step in the process of reforming the judicial system which is one of the tasks provided for in the Strategy for continuing the reform of the judicial system in Bulgaria as a full member of the EU. The proposal for setting up such specialized bodies comes as a result of the unsatisfactory achievements in the fight against organized crime and corruption pointed out in the Reports of the European Commission under the Cooperation and Verification Mechanism. At the same time the criminal offences committed by organized criminal groups, pose extremely high level of danger to the society and have negative effects for the society, the state and its image in the EU.

The draft amendments to the CPC provide for the jurisdiction of the specialized criminal court and the appellate specialized criminal court. The specialized criminal court will have jurisdiction over the crimes established in chapter I, art. 142, par. 2 and 3, art. 143a, art. 159b – 159d, art. 253, par. 3 and par. 5, art. 321, par. 3 and art. 321a of the Criminal Code as well as over crimes mandated by an organized criminal group or committed in furtherance of a decision of such a group. The specialized criminal court will have jurisdiction also over the crimes established in art. 202, art. 203, art. 209-212, art. 219, art. 220, art. 253 – 254b, art. 282-283a and art. 301-307 of the Criminal Code when committed by persons having immunity, members of the Supreme Judicial Council and the Inspectorate thereat, administrative heads of judicial bodies and their deputies, judges, prosecutors, investigators, persons listed in art. 19, par. 2, p. 2-4, par. 3 and par. 4 of the Administration Act as well as by deputy ministers and secretaries general of ministries. Establishing jurisdiction in such a way is not new for the Bulgarian criminal procedure as far as under current art. 35, par. 3 CPC Sofia City Court hears cases for crimes committed by persons having immunity and members of the Council of Ministers.

A specialized criminal court with this subject-matter jurisdiction can be expected to hear about 250-300 cases per year. This estimation is based on the number of cases, falling in its jurisdiction, heard by the Sofia City Court. This number is 270 for 2008 and 228 for 2009.

Appellate specialized criminal court will hear the appeals against the decisions of the specialized criminal court and the Supreme Court of Cassation will be the third instance court. It means that the specialized criminal courts are part of the judicial system and their work is controlled by the highest judicial body in the country. The Supreme Court of Cassation will resolve the disputes over jurisdiction and will decide on the requests for reopening of criminal proceedings falling under the jurisdiction of the specialized criminal courts.

Specialized prosecutor's office will be established at the specialized criminal courts. The specialized prosecutor's office will have an investigative department. Investigative officials for crimes falling under the jurisdiction of the specialized criminal

court will be the investigators from this investigative department and policemen designated by order of the Minister of Interior.

The specialized criminal courts will apply the same procedural rules as the ordinary courts. There are some special rules but they do not change the nature of the procedure, do not violate the basic principles of criminal procedure, do not infringe upon human rights. These special rules are as follows: 1) private prosecutors and civil plaintiffs will not participate in the court hearings before the specialized criminal courts. This is not a new situation in our criminal procedure. Currently these parties do not participate in the fast proceedings and the immediate proceedings as well as in cases against minors. Nevertheless the victims of crime can protect their rights and legal interests filing a civil claim before the civil courts. It has to be taken into account also that even under the provisions currently in force the criminal court may not accept the civil claim in the criminal proceedings when this will slow-up or cause difficulties for the trial; 2) short time limits are provided for for making decisions and rendering procedural acts – the prosecutor exercises his powers after the closure of the investigation within 15 days. The same time limit must be observed by the judge-reporter and the courts of first and second instance for rendering their decisions and the reasons therefor; 3) priority will be given for appearing before the specialized criminal court when a witness or expert witness has been summoned before an ordinary court or body and the specialized criminal court; 4) if a witness or expert witness does not appear before the court for no good reason he will be brought compulsory before it for the next day of trial; 5) in criminal proceedings for crimes falling under the jurisdiction of the specialized criminal court bank secret under the Credit Institutions Act and tax and social security information under the Tax and Social Security Procedural Code will be disclosed on request of the administrative head of the specialized prosecutor's office.

Warrant authorizing the use of special means of surveillance in cases falling under the jurisdiction of the specialized criminal court will be given in advance by the president of that court or specifically designated vice president. Such a warrant will be given by the president of the appellate specialized criminal court or specifically designated vice president of that court when the special means of surveillance will be used in respect of a member of the Supreme Judicial Council and the Inspectorate thereat, administrative head of judicial body or deputy thereof, judge, prosecutor or investigator.

The transitional provisions provide for that the trials which have not reached the stage of evidence gathering will be discontinued by the judge-reporter and the cases shall be transmitted to the specialized criminal court. The pre-trial phase proceedings will be completed by the investigative bodies working on them at the moment of entering into force of this law.

It is expected that establishment of the specialized bodies will result in criminal justice of better quality delivered in reasonable time and in full compliance with the basic principles of criminal procedure and human rights. This is the best way to guarantee the rights of the parties in a concrete criminal case and the rights of the society and the state.