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Or. Engl.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

BULGARIA

DRAFT ACT

SUPPLEMENTING THE CRIMINAL PROCEDURE CODE

AND

THE JUDICIAL SYSTEM ACT

DRAFT!

ACT SUPPLEMENTING THE CRIMINAL PROCEDURE CODE

(promulgated State Gazette (SG), issue 86 of 2005; amended, issues 46 and 109 of 2007, issues 69 and 109 of 2008, issues 12, 27, 32 and 33 of 2009, issues 15, 32 and 101 of 2010, issues 13, 33, 60, 61 and 93 of 2011; judgment No. 10 of the Constitutional Court of 2011 – issue 93 of 2011; amended, issues 19, 20, 25 and 60 of 2012, issues 17, 52, 70 and 71 of 2013, issue 21 of 2014, issues 14, 24, 41, 42, 60, 74 and 79 of 2015, issues 32, 39, 62, 81 and 95 of 2016, issues 13, 63 and 101 of 2017, issues 7 and 44 of 2018; judgment No. 14 of the Constitutional Court of 2018 – issue 87 of 2018; amended, issue 96 of 2018, issues 7 and 16 of 2019)

§ 1. Chapter Twenty-Nine A shall be created with Articles 384b – 384g:

“Chapter Twenty-Nine A SPECIAL RULES FOR HEARING CASES FOR INTENTIONAL CRIMES OF A GENERAL NATURE COMMITTED BY THE PRESIDENT OF THE SUPREME COURT OF CASSATION, THE PRESIDENT OF THE SUPREME ADMINISTRATIVE COURT AND THE PROSECUTOR GENERAL

Pre-trial proceedings

Article 384b. (1) The pre-trial proceedings shall begin upon a permission of the Plenum of the Supreme Judicial Council.
(2) Pre-trial proceedings authorities in cases within the jurisdiction of the Specialised Criminal Court shall be prosecutors from the Specialised Prosecutor’s Office and in cases within the jurisdiction of the Sofia City Court – prosecutors from the Sofia City Prosecutor’s Office.

Instance and judicial review in the event of suspension and termination of the criminal proceedings by a prosecutor

Article 384c. (1) The prosecutor’s decrees under Article 243, para 1 and Article 244, para 1 shall be sent together with the case to the immediate superior prosecutor’s office.

(2) The prosecutor from the superior prosecutor’s office shall render an opinion within 7 days and may: `

1. affirm the decree;
2. amend the decree as regards the grounds for suspension or termination, the order with the exhibits, the lifting of the remand measure and precautionary measures;

3. repeal the decree and return the case to the respective prosecutor's office with specific instructions.

(3) In cases under para 2, the prosecutor shall send the case to the respective court.

(4) In an open court hearing, sitting as a panel of three judges designated as per the random assignment principle, the court shall rule on the grounds and legality of the decree within one month as of receipt of the case by means of a ruling, which shall be final. No seconded and junior judges may sit on the court panel.

Panel

Article 384d. (1) In the cases of Article 28, para 1, items 1 and 2, the cases against the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General as a first instance shall be heard by a panel of three judges and in the cases under Article 28, para 1, item 3 – by a panel of five judges.

(2) In hearing the cases as an appellate instance, the court shall sit in a panel of five judges.

(3) The judicial panels and the judges rapporteur shall be designated as per the random assignment principle. No seconded and junior judges may sit on the panels.

(4) As a cassation instance, the cases shall be heard by the Criminal College of the Supreme Court of Cassation.

Special rules for the judicial proceedings

Article 384e. (1) Following the initiation of the case as per the random assignment principle, the court president shall designate the members of the panel and the judge rapporteur, who shall schedule an executive session within 15 days as of its receipt.

(2) In any events of postponement, the case shall be scheduled for review in a court hearing not later than thirty days.

Acts, which shall not be subject to review

Article 384f. The ruling of the court under Article 384c, para 4 affirming a decree under Article 384c, para 2 and the judgment of the cassation instance under Article 384d, para 4 shall not be subject to review under Chapter Thirty-Three.

Application of the general rules

Article 384g. Inasmuch as the present chapter does not set out special rules, the general rules shall apply.”

Final provision

§ 2. The Judicial System Act (promulgated, SG, issue 64 of 2007; amended, issues 69 and 109 of 2008, issues 25, 33, 42, 102 and 103 of 2009, issue 59 of 2010, issues 1, 23, 32, 45, 81 and 82 of 2011; judgment No. 10 of the Constitutional

Court of 2011 – issue 93 of 2011; amended, issues 20, 50 and 81 of 2012, issues 15, 17, 30, 52, 66, 70 and 71 of 2013, issues 19, 21, 53, 98 and 107 of 2014, issue 14 of 2015, issues 28, 39, 50, 62 and 76 of 2016, issue 13 of 2017; judgment No. 1 of the Constitutional Court of 2017 – issue 14 of 2017; amended, issues 63, 65, 85, 90 and 103 of 2017, issues 7, 15, 49 and 77 of 2018, issue 17 of 2019; judgment No. 2 of the Constitutional Court of 2019 – issues 19 and 29 of 2019) shall be amended as follows:

1. Item 6a shall be created in Article 30, para 2:

“6a. upon a proposal of at least three members of the respective college of the Supreme Judicial Council, allows the launch of criminal proceedings for an intentional crime of a general nature against the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General and for their temporary suspension under Article 230a.”

2. In Article 33, para 3, the words “Article 30, para 2, items 2 and 6” shall be replaced with “Article 30, para 2, items 2, 6 and 6a”.

3. Article 175, para 5 shall be amended as follows:

“(5) The grounds for pre-term dismissal of the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General shall be established by the Plenum of the Supreme Judicial Council by virtue of a decision under Article 173, para 11 proposing dismissal to the President. The President may not refuse dismissal in the event of a repeated proposal.”

4. Article 230a shall be created:

“Article 230a. (1) Proposals to the Plenum of the Supreme Judicial Council to allow the launch of criminal proceedings for an intentional crime of a general nature against the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General and for their temporary removal from position may be made not less than three members of the respective college of the Supreme Judicial Council. The proposal shall be accompanied by detailed motivation in writing.

(2) The proposals shall be reviewed not later than seven days as of their submission at a session of the Plenum of the Supreme Judicial Council when the person whose temporary removal from position is proposed shall be heard.

(3) The Plenum of the Supreme Judicial Council shall allow the launch of the criminal proceedings for an intentional crime of a general nature against the President of the Supreme Court of Cassation, the President of the Supreme Administrative Court and the Prosecutor General by virtue of a decision under Article 173, para 11. In such cases, the Plenum of the Supreme Judicial Council

shall also issue a decision about temporary removal from position until the completion of the criminal proceedings.

(4) The term for temporary removal from position may not exceed the term under Article 234, para 8 of the Criminal Procedure Code.

(5) The decision of the Plenum of the Supreme Judicial Council shall be subject to appeal within three days of its issuance by a five-member panel of the Supreme Administrative Court set as per the random assignment principle from among all the judges of that court. The decision shall be issued within 7 days as of the appeal receipt and shall be final.”