

## **ARRESTS**

### **Consular Notification and Access**

Under the Vienna Convention on Consular Relations, British citizens arrested in Serbia may request visits from consular officers. Article 36 of the Convention provides that a host country government must notify a foreign national arrestee without delay of the arrestee's right to communicate with his or her consular officials, and must notify the consular officials without delay if the arrestee so requests.

### **Overview of the**

#### **Criminal Procedure in Serbia**

The criminal procedure in Serbia is regulated by the Code on Criminal Procedure (Official Gazette of RS, No. 58/2004, 85/2005, 115/2005, 46/2006, 49/2007, 122/2008, 20/2009, 72/2009, 76/2010) (hereinafter: "the Criminal Procedure Code").

Under the provisions of the Criminal Code, the criminal procedure comprises (i) preliminary criminal procedure during which parties, who became aware that a felony is committed, are obliged to report the felony to the public prosecutor, or to the police which further reports the felony to the public prosecutor; (ii) initial criminal procedure which comprises (a) investigation against the suspect for the felony committed; (b) raising of the indictment by the public prosecutor; (iii) main trial and the court verdict and (iv) legal procedure due to legal remedies (appeal, renewal of the criminal procedure, request for protection of legality).

In the Civil Law system, the following authorities are involved in the criminal procedure: (i) a public prosecutor who directs trial proceedings ) investigative judge who oversees the investigation, in the preliminary and the initial phase of the criminal procedure and (ii) the trial judge, namely the trial committee of judges, during the main trial and passing of the court verdict.

The investigation is conducted upon a request of the public prosecutor, who files that request to the investigative judge. The investigative judge passes a decision on conducting of investigation, if he is agreed with the request of the public prosecutor. The investigative judge conducts interrogations of suspects, issues rulings at detention hearings and decides if there is enough evidence to charge a suspect with a crime. If so, the case then goes to the trial judge, who conducts the trial and, often in collaboration with other committee judges who participate in the trial, determines guilt or innocence.

#### **Initial Arrest, Interrogation and the Right to Counsel - the Police**

In addition to executing an arrest on the basis of a warrant, law enforcement officials (the police) in Serbia may temporarily detain individuals at the scene where a criminal offense either is occurring or recently occurred, or where the police have a "well founded belief" that a serious crime has been committed. Under these circumstances, the police may hold a person in order to ask questions that will lead to the identity of a perpetrator. The police may also hold a person in order to prevent the flight of suspects, or to secure evidence. Police may hold persons at the scene for up to six hours so that they may be questioned by an investigative judge.

At the point when the police initiate a formal interrogation, they must inform the person they are interrogating that s/he is entitled to have a lawyer present during the interrogation, that the person may refuse to answer questions and that any statement made during the interrogation may be used against the person at trial. If the person being interrogated is not informed of these rights, the trial judge may later refuse to admit into evidence any statements made by the person interrogated.

If the person who is detained cannot retain a lawyer by himself, the state must provide one. These lawyers are selected from a list submitted by the bar association. The police are required to refrain from interrogating the suspect until the arrival of defense counsel. If defense counsel has not been secured after eight hours as of the moment when the detained person was allowed to provide for the counsel, the police must release the suspect or bring him before the investigating judge without delay. In exceptional circumstances, the police may detain a person for up to 48 hours.

### **Initial Arrest, Interrogation and the Right to Counsel - the Investigative Judge**

After taking a suspect into custody, the police are required to bring a suspect before an investigative judge without delay. This is defined as within eight hours, or more if sufficient reasons are given. As noted above, in exceptional circumstances, the police, without referring the matter to an investigative judge, may issue a decision to detain a suspect for up to 48 hours in order to collect additional evidence before bringing the suspect before the investigative judge. However, the investigative judge must be immediately informed of this and can ask for the detainee to be brought before him immediately. In such circumstances, the police must also ensure that the suspect is provided with a lawyer immediately. The suspect and defense counsel may appeal the decision for additional detention and this appeal shall immediately be submitted to the investigating judge. The investigating judge is bound to render a decision on the appeal within four hours of receipt of the appeal.

Once the suspect is brought before the investigative judge, the judge must inform the suspect of his or her right to a lawyer. The investigative judge must also assist the suspect to obtain a lawyer before interrogating the suspect if the suspect is mute, deaf or otherwise unable successfully to defend himself, or if the proceedings are carried out for a criminal offense punishable by imprisonment for a term of more than ten years. Interrogation by the investigative judge may be delayed up to 24 hours to allow the suspect to obtain counsel. Otherwise, the presence of a defense lawyer is not mandatory and if the detainee has not engaged a lawyer or has explicitly waived this right, the investigative judge shall immediately interrogate the detainee. Immediately after interrogating the suspect, the investigative judge must render a decision about whether the suspect is to be released or detained further.

Whether the interrogation is conducted by the police or by an investigative judge, the interrogation of a foreign citizen in Serbia must be carried out through an interpreter. Additionally, foreign citizens in detention have the right to submit briefs to the court in their native language. Translations of court proceedings must also be provided by the court. Failure to provide a foreign citizen with these translations may be grounds for appealing a subsequent conviction.

### **Detention After Arrest**

Within 24 hours of the suspect being brought before the investigative judge, the judge must issue a decision to either detain or release the accused. The grounds for detention after arrest relate to the seriousness of the offense and the risk of flight posed by the suspect. Obviously, foreign citizens who are suspects in crimes represent a significant flight risk. However, under the Criminal Procedure Code, the courts are obligated to limit the duration of detention to the shortest time necessary and to employ the least restrictive means to ensure the presence of the accused in the proceedings. Often, this includes granting provisional release on bail. Bail may be granted in exchange for sureties such as cash or liens on real property. The Criminal Procedure Code provides that an individual illegally detained may sue the state for compensation.

### **Search**

Searches of persons and dwellings must be ordered by a written warrant issued by the court stating the reasons for the search. The person against whom a warrant was issued may request that legal counsel be present during the search. The search may be delayed up to three hours to allow for the presence of counsel. Two adult citizens are required to be present during the search. In regards to the search of persons, females may only be searched by female officers and the witnesses present must also be female. Searches may be conducted without a warrant under exceptional circumstances such as a high risk of armed resistance to the search or if it appears evidence is being destroyed.

### **Right to a Lawyer**

As described above, the Criminal Procedure Code provides for the right to have a lawyer present throughout the criminal procedure. Serbia does not have vigorous public defender offices. As noted above, under the Criminal Procedure Code, the state is under an absolute duty to provide a lawyer to persons who are about to be interrogated by the police. This duty extends to proceedings before an investigative judge for persons who are mute, deaf, or otherwise unable to defend themselves, or who are charged with a crime punishable by more than 10 years in prison. It also applies when additional detention is ordered by the police or by an investigative judge. Under these circumstances the court is mandated to appoint counsel regardless of whether the accused person has the means to hire a lawyer. The accused has the right to retain his or her own counsel and if s/he does so the court will release the lawyer provided by the state.

In regards to persons against whom detention is ordered, the state's duty to provide a lawyer is limited to the detention hearing itself. For crimes carrying a sentence of 3 to 10 years, the court may appoint counsel if the accused is unable to afford one. For crimes carrying a sentence less than 3 years, the court may only appoint counsel if the accused lacks the financial means and if it is in the interest of justice. At the present time there is no standard method to determine whether the accused has the financial means to hire a lawyer, and the system of appointing lawyers in all circumstances other than the "mandatory defense" cases described above is ad hoc at best. Any person who is arrested for anything other than a minor violation is urged to obtain competent legal counsel promptly.

### **Travel Restrictions During Criminal Procedures**

Article 136 of the Criminal Procedure Code Serbia allows authorities to seize a foreign national's passport if circumstances indicate that the subject of a criminal investigation might flee the jurisdiction.

### **Drugs**

The Basic Criminal Code of the Republic of Serbia describes all controlled substances, including the materials needed to produce them, as narcotics. Punishment for drug offenses is not linked to the type of drug that was possessed or distributed. The minimum sentence for unauthorized production, refining, selling, purchasing for the purpose of selling and any other form of unauthorized distribution is 5 years imprisonment. If the court finds that a group of individuals organised themselves to conduct these activities, the minimum sentence is 7 years imprisonment. Unauthorised possession of narcotics is punishable by either a fine or imprisonment for up to 3 years. It is also a crime to induce others to ingest narcotics. The sanction for this is imprisonment for up to 10 years. However, if the person so induced was a minor, there is a minimum sentence of 3 years imprisonment.

### **Traffic Laws**

A British citizen may travel through Serbia in a vehicle duly registered outside of Serbia. A British citizen charged with a serious traffic violation in Serbia may be prohibited from using his or her UK driving license in Serbia.

**The new Code on Criminal Procedure (Official Gazette nos. 72/2011, 101/2011, 121/2012, 32/2013), in effect as of 1 October 2012**

The principal changes that are envisaged by the new law are set out below.

1. Investigative Authority of the Prosecutor

By contrast to the previous legislation, the prosecutor is authorised and obliged to undertake investigative actions in preliminary proceedings which are instigated *ex officio*. There is no investigative judge, but rather a “judge sitting in preliminary proceedings” which oversees the proceedings and ensures the rights of all participants are obeyed.

2. Agreement on Admission of Guilt

The new law entitles the prosecutor to enter with the defendant into an agreement on admission of guilt, if such an agreement can be achieved. The agreement on admission of guilt can be concluded from the moment investigation starts until the defendant’s final plea during the main hearing.

3. Grounds and Reasons for Instigating Investigation

Investigation can now be opened even where there is a lower level of doubt, the so-called “grounds of doubt”, not “founded doubt”.

Another novelty is that investigation can be conducted against an unknown perpetrator when there are ground of doubt that a felony has been committed.

These changes have been introduced in an effort to narrow the authorities and actions undertaken by the police and transfer them as soon as possible to a judicial entity i.e. the prosecutor.

4. The Indictment

The prosecutor raises the indictment when there is founded doubt that a suspect committed a felony. The prosecutor must raise the indictment within 15 days from the end of investigation. By way of exception, this deadline may be extended to 30 days in particularly complex cases.

By contrast to the previous legislation, the court is now obliged to consider *ex officio* each and every indictment