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PRELIMINARY INVESTIGATION ACCORDING TO THE CROATIAN CRIMINAL
PROCEDURE ACT

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Republic of Croatia adopted new Criminal Procedure Act in 2008, and by this act Republic of Croatia has left behind the accepted model of mixed criminal procedure and oriented to a party formulated model. In that period important changes to the original text of the Act were made, and the last one was made during 2013, under significant influence of Constitutional Court Decision on discrepancy of article 43. of the Act with Constitution of Republic of Croatia. An important influence on the most recent changes has been exercised by decisions of European Court with regards to Republic of Croatia and practices during criminal procedure.

This paper analyses normative framework for implementation of preliminary investigation of criminal offenses. During preliminary investigation, which is performed before criminal procedure begins, there are performed various categories of actions. Most often they belong to 2 categories: measures and acts of detection and evidentiary actions. These are investigating measures and acts which are also standardized in Croatia by Police duties and Powers Act, but these are also evidence gathering procedures, procedures of restricting and depriving suspects of freedom, and special evidence gathering procedures. In this paper legal basis and conditions of their implementation are also being analyzed, as well as, relationship between subjects of implementation and status of the suspects during preliminary investigation.

Key words: criminal offenses investigation, preliminary investigation, evidentiary actions, criminal procedure

PRELIMINARY INVESTIGATION ACCORDING TO THE CROATIAN CRIMINAL PROCEDURE ACT

1. INTRODUCTION

In 2008, Croatia adopted new Criminal Procedure Act, and afterwards there followed five changes and amendments to this Act, of which the last one – from 2013. is particularly important. Starting premises of changes and amendments to Criminal procedures Act are being conditioned by Decision of Constitutional Court of Republic of Croatia number: U-I-448/2009 from 19. July
Criminal procedure act from 2008 (CPA/08) was a reform of the pre-trial criminal procedure. In the pre-trial procedure: criminal prosecution, investigation and indictment are arranged, that is, defined as new legal institutes. Less innovation was made in the trial provisions. Some changes were made with regards to the way the witnesses were interrogated during the trial, summoning the witnesses and in the course of the trial. Evidence initiative is in hands of the parties while the court has a minimum possibility to propose evidences. Provisions on legal remedies haven’t been changed significantly too, however special legal remedy with regard to special mitigation of punishment is changed.

Following systematicity of the previous regulation from CPA/08, Criminal procedure Act /2013 (CPA/13), has divided the provisions of the act (from the pre-trial procedure) into subdivisions: a) Preliminary investigation and investigation (Chapter XVI: article 204. 215.); b) Inquiry (Chapter XVII: article 216. – 239); c) Evidentiary actions (Chapter XVIII: article. 240. – 340.) and d) Indictment (Chapter XIX: article 341. – 367). Preliminary Investigation include provisions on: a) criminal charges; b) preliminary investigation; c) urgent evidentiary actions and d) evidentiary actions regards to unknown perpetrator.

The most important subject of the entire pre-trial procedure, as well as, preliminary investigation has remained state attorney, who is helped by police and investigator who acts according to his orders.

Basic power and main duty of the state attorney is prosecution of criminal offenses perpetrators for which the criminal procedure is to be initiated ex officio. In order to fulfill its duty, during all criminal procedure, state attorney has numerous powers. He issues or brings about the decision on initiation of the procedure while the decision on starting the procedure is issued by the Court.

Differentiation between initiation and starting the criminal procedure that is their normative arrangement in CPA/13 in relation to existing solution of CPA/08 brought about defining the
inquiry as a phase of criminal procedure. In procedures with no inquiry, the procedure starts by confirming the indictment. In the same time (in addition) for such criminal offenses “inquiry” is being introduced as a pre-stage which does not oblige state attorney to issuing formal decision on starting criminal procedure, as in inquiry, but oblige him to inform the suspect on undertaking evidence gathering procedures against him (Article 213. paragraph 2, CPA/13).

2. PRELIMINARY INVESTIGATION

Legal area which refers to preliminary investigation is immensely complex and its detail elaboration is beyond scope of this article hence the focus here will be only on the most important parts of the last reform of the criminal procedure.

If we are to consider the term preliminary investigation, it can refer to a part of the pre-trial phase of criminal procedure, but it can also refer to part of the procedures that are being undertaken in that phase, which are mainly informal character. Unlike the old Criminal procedure act from 1997. (OG 110/97, 27/99, 112/99, 58/02, 143/02, 62/03, 178/04, 115/06) when such practices were partially listed in Criminal Procedure Act itself, they are now regulated or provisioned for in Police duties and Powers Act, (OG 76/09) and in the same time this is one of the innovations of the reform.

Preliminary investigation is an inclusive part of the pre-trial phase of criminal procedure and their normative regulation can determine efficiency of investigative authorities, and legal security of the citizens as well. In practice they are often being perceived as power and duty of the Police. They are activities which the police undertakes where there are reasonable suspicions that criminal offenses have been committed that are prosecutable ex officio. Their purpose is to find the perpetrator of the criminal offense, to prevent hiding and escape of the perpetrator or participants, detection and collection traces and objects which can serve to establish the facts and gather all information that can be useful for successful conducting of the criminal procedure (article 207. paragraph 1 CPA).

So, they have preliminary character and by the last amendment they are clearly separated from inquiry. This is exactly one of the important deficiencies to which Constitutional Court pointed in its decision on 19. July 2012, in paragraph 40.2. pointing out a need for clear demarcation of preliminary investigation from criminal prosecution. The importance of such demarcation is also emphasized by Đurđević due to necessity for securing due process rights of defense and necessity for court protection from unlawful prosecution (Đurđević, 2013).
The last reform of criminal procedure can be considered as another shift on the scale of relations amongst the subjects in charge of criminal prosecution. In modern history there were several such shifts, and it was always the case that real possibilities in daily situations would create balance. The issue of relations between the subjects that are authorized and obliged to conduct preliminary investigations is determined by personnel, material and organizational capacities of the bodies. In that sense the most significant capacities are in possession of the Police which has been undergone an adaptation in the recent period in order to be able to perform such activities. Thus the expansion of competencies of state attorney to the area of conducting preliminary investigation should be look upon as an exclusivity, and not the rule that is to be applied in daily practice. We should know that if the legal norm doesn’t reflect real possibilities of authorized state bodies in no time their application will be distorted and there will be created a practice that is corresponding to reality.

Effectiveness of preliminary investigation should be also improved by protection of privacy of the information obtained by performing the activities during investigation. Often sensible data obtained during preliminary investigations would be made available to public way too soon and thus directly harm progress of detection and resolving of the criminal offenses. Namely, by the latest CPA changes – in article 206. f there has been decreed that the procedures during the preliminary investigations are secret, and the body conducting the procedures is obliged during the preliminary investigation to inform persons participating in the procedure that revealing the secrets is a criminal offense.

In addition, there is decreed an obligation to compose a written note in the protocol or other document and certify with signature of such person confirming that the person understood the warning. However, considering this provision in terms of applicability it could be expected to cause a significant administrative load, in the first place of police officers, which will be obliged to document such warning after every investigative action. It will be particularly visible with more complex criminal investigations when for example it is necessary to gather information from numerous citizens.

A significant innovation in the last reform of the procedures during investigation is ability to apply force in order to bring to police station person who is found on the crime scene with elements of violence or criminal offense that threatens public security, and for which there is a possibility that he possesses the information on circumstances in which the criminal offense is committed or information on the perpetrator. As additional prerequisite for forceful bringing of
persons to police station there are stipulated: inability or significantly hard conditions for gathering of information in the place where the person is found, and it is reasonable to believe that delay in gathering of information from such person would be harmful to progress of criminal investigation (Article 208, paragraph 6. CPA).

Time of detention of such person after forceful bringing is restricted to 6 hours from the moment of arrival to the police premises. The purpose of forceful bringing is to gather information from citizens. The Provision of the act provides different levels of coercion towards such person. Before coercive bringing, such person should receive request for coming to the police station followed by police officers, and only if the persons refuses to come to the police without valid reason only then it could be made to coerced to the police station. The coerced person should be informed that it has the right to interpretation and translation, and that it has no obligation to give information and that after gathering of information is completed or 6 hours after bringing to police station has passed they can leave.

In order to prevent possible manipulations with time of the arrest of the potential perpetrators the act provides that if person who is coerced into police station be arrested afterwards, the time of arrest starts from the time of bringing the person into police station.

2.1. Preliminary investigations of the defense

Besides police and state attorney as main subjects conducting investigative actions it is necessary to mention the act provided possibility to undertake investigation actions by the defendant side. Namely it is a provision from article 67. CPA which allows gathering of information from citizens, besides victim and person harmed by the criminal offense, with the purpose of preparing defense that can be undertaken by the defense. Defense lawyer may even call upon such persons for the purpose of gathering information provided he states the reason he is calling upon the persons, however without warning persons to consequences of not responding to the summon.

2.2. “Property investigations”

An innovation in legal provisions of investigations are so called “property investigations” (Gluščić, 2013). What this is all about is actions that are being undertaken when there are reasonable doubts that there has committed a criminal offense which is prosecutable ex officio, and by this criminal offense material gain is being acquired.

3. URGENT EVIDENTIARY ACTIONS
A significant change of the last amendment of the Criminal Procedure Act refers to possibilities of conducting urgent evidentiary actions. Namely, Criminal Procedure Act from 1997 provided a possibility for police in the article 184. , in case of danger of delay to conduct inquiry, even before inquiry has begun (been initiated), to temporary seize objects, conduct procedure of recognition, takes fingerprints and prints other body parts and in case of danger of delay to order necessary expertise except autopsy and body exhumation.

Police authorities were obliged to inform state attorney on everything they did. However the reform from 2008 left that position in such an extent that the police was completely disallowed to conduct urgent evidentiary actions on their own initiative. And despite practical viewpoints with regards impossibility of conducting such model due to inadequate capacities of state attorney office and non existence of satisfactory normative and practical arrangement of investigator, as new subject in criminal procedure, were almost unison, such law proposal was accepted.

Practical application of Criminal Procedure Act brought about expected change in viewpoints in that sense and police started to got their urgent evidentiary actions gradually back. In that respect the last amendment made the farthest step back. It can be said that it is a significant step back to the previous solution. Greater independence of police in conducting urgent evidentiary actions is provided for criminal offenses from jurisdiction of municipal court, while conducting urgent evidentiary actions from jurisdiction of district court (except for temporary seizure of objects) requires order to be issued from state attorney to police or investigator, in case state attorney isn’t able to conduct them himself.

With regards to criminal offenses from municipal court jurisdiction a distinction has been made between criminal offenses for which threatening punishment is prison up to 5 years and those for which the punishment is prison sentence greater than 5 years. List of evidence gathering procedures performed by police before criminal procedure initiation, when there is a danger of delay, is limited to: search, temporary seizure of objects, crime scene investigation, taking fingerprints and prints other body parts.

The purpose of this distinction is that for the first group of the lighter, criminal offenses police is able to undertake urgent evidentiary actions on its own initiative, while for the other more serious group of criminal offenses from jurisdiction of municipal court state attorney need to be informed, and only he could undertake urgent evidentiary actions or leave it to the police. The obligation to perform such informing is required for search and crime scene investigation, while
for two other urgent evidentiary actions this is not necessary. There remains the obligation for police to inform state attorney on such conducted procedures without delay.

The essence and purpose of standardization of the urgent evidentiary actions after the last amendment stayed the same with only necessary corrections which according to decision of Constitutional Court (articles 129., 133. and 137.) should have been made considering the earlier regulation of home search without warrant while performing the crime scene investigation, conducting the home search during night and searching a person.

According to the problematic provision of article 246. paragraph 1. CPA there existed a wide possibility for state attorney, investigator or police within 8 hours of detection of the criminal offense and during crime scene investigation, to perform search of the crime scene that is prosecuted ex officio except if it is a home or premises whose search is determined and by special laws.

By this change such a possibility is restricted to situations when it is indispensable for urgent removing life and health threatening situations or saving the property of huge proportions or in order to secure traces and evidences which are directly connected to criminal offense for which the crime scene investigation is performed in the first place.

In a similar way there was introduced a limitation in possibility of performing the search during the night, making it a rule that it is possible only “when there is a danger of delay” in stipulated situations (it started during the day, urgent searches, approval of the person in whose premises the inquiry is being performed, written approval of the judge of the inquiry), which was not the case previously.

Also, the provision with regards to possibility search of person, transport vehicles that is the persons uses and premises it resides in (article 251. paragraph 1. CPA) is made limited to the interpretation that premises in which the victim resides cover also the home as a category that is specially protected by the Constitution.

Special significance in conducting urgent evidentiary actions in the stage of pre-trial phase of criminal procedure is given to the case when the perpetrator of the criminal offense is unknown. Namely, state attorney is allowed according to article 214 CPA to conduct by himself or to give order to the investigator to conduct evidence gathering procedures if they may lead to discovering the perpetrator or if there is a danger of delay. In case when the investigator was conducting the evidence gathering procedures, state attorney should be informed on this as soon as possible.
4. SPECIAL EVIDENTIARY ACTIONS

Special evidentiary actions have found their way back into Croatian criminal procedure through CPA/98 provisions and from then on until today with certain changes and amendments represent a fundamental tool for proving serious criminal offenses. Conditions for their determination are defined as general and special, with explicit normative standardization of proving value. General conditions refer to: a) existence of conditions from which it can be concluded that inquiry cant be conducted in any other way or its conducting would be possible but only with huge difficulties, b) minimum legal standard – a reasonable doubt that the criminal offense has been committed which must be directed toward a particular person, because measures are to be determined according to person whose identity is known, c) criminal offenses listed in CPA (article 334.) catalog consisting of 3 groups of criminal offenses with regards to their severity, way of perpetration (the offense is committed), victim and obligations from international treaties, d) can be decreed only based on written elaboration request of state attorney (article 332. paragraph 1.) which must contain evidences necessary for issuing decision by judge of the inquiry, and they refer to information available on person against which special evidentiary actions are being applied, facts from which follows a necessity to conduct and the time limit that must be appropriate to goal accomplishment as well as way, extent and place of conducting the procedure, e) the order must contain a precise description of the procedure whose conducting is being approved of, available information on person against whom special evidentiary actions are being conducted, the facts from which follows the necessity for conducting the procedures and the timeline/time limit that must be appropriate to accomplishment of the goal as well as way, extent and place of conducting the actions.

f) the order is being executed by police officers, in the course of conducting a certain special procedures of monitoring communication devices, postal workers are obliged to secure all the technical support necessary for performing the action. Police is obliged to compose daily reports and documentation of technical record during conducting the actions and submit it to state attorney upon his request and

g) person against whom the procedure is conducted against is being informed of conducting the procedure in two ways. First, ex officio, after the procedure is completed, second, upon his request even before the completion of the procedure if progress of the criminal procedure calls for it.
Special conditions standardized by the act, refer to conducting of certain measures and conduct of the police during performing of the measures and they are even additionally prescribed according to measures and persons toward which they can be applied.

Special evidentiary actions are being performed if investigations of criminal offenses cant be conducted in any other way or if it is possible only with disproportionate difficulties and only for certain criminal offenses. One of the news is that formulation of competencies and powers of state attorney to issue warrant for conducting the evidentiary actions for a time limit of 24 hrs. Such a warrant state attorney can issue in case if conditions are met referring to existence of danger of delay and assessment of the state attorney himself that he will not be able to obtain a warrant of investigating judge, but not for the procedures requiring entering a home.

These procedures require court warrant. When state attorney issues order he must confirm the same with investigating judge no later than 8 hours after issuing the order, otherwise (in case investigating judge doesn’t accept it) the results can not be used as an evidence in the criminal procedure. Information gathered based on the order of state attorney which is not confirmed are to be submitted to the investigating judge immediately who is obligated to destroy them and leaves a written record with regards to it (article 332. CPA/13).

Special evidentiary actions can be ordered only for offenses decreed in article 334. CPA/13. The catalog of criminal offenses is structured in 3 points according to criterion of severity of criminal offenses determining possibility of general determination, conductibility of special evidentiary actions. The catalog is keeping the original structure, however it is expanded with certain criminal offenses which are referring to officials. For criminal offenses in paragraph 1. (the most severe criminal offenses in catalog) the longest possible duration for special evidence gathering procedures is 18 months, for criminal offenses in paragraph 2. (medium criminal offenses in catalog) the longest duration is 12 months, for criminal offenses in paragraph 3. (the lightest criminal offenses in the catalog) the longest duration is 6 months.

Along with catalogization of criminal offenses for which may be decreed special evidentiary actions, and their structure according to severity and thus their terms are also determined, CPA/13 in article 335. paragraph 3. also determines other conditions for their lengthening, and they refer to existence of results and reasons that justify their further conducting, that is existence of necessity of their further implementation for the purpose of realizing the purpose they were approved for, for the gravest criminal offenses.
With these changes, application with regards to duration and extension of special evidentiary actions is restricted with regards to provisions of CPA/08. With measures whose implementation is extended for 6 months, investigating judge have to request delivery of notice on further need for conducting those measures (article 337. paragraphs 1. and 2. CPA/13) after 3 months.

Checking up of establishing of telecommunication contact (article 339. a CPA/13) is a new special evidence gathering procedure which is being conducted based on order of investigating judge, exceptionally, with post de facto convalidation and by order of state attorney, if there is a doubt that registered owner or user of telecommunication device committed a criminal offense for which criminal procedure is being initiated ex officio or is connected with person for which there is a doubt that he has committed criminal offense for which criminal procedure is being initiated ex officio.

Order for checking up of establishing of telecommunication contacts is not needed if registered owner or user of telecommunication device gave approval in writing. Information gathered without a warrant from investigation judge, that is, information obtained with warrant of state attorney that is not accepted by the judge can not be used as evidence in the procedure.

### 5. ARREST AND CUSTODY

#### 5.1. Arrest

The changes in standardized regulation with regard to arrest primarily refer to rights of the arrestee and procedure during the arrest. CPA/13 by standardizing the rights of arrestee determines two remedies about rights of arrestees.

In article 108. a CPA/13 standardize written remedy on rights of the arrestee that the arrestee has the right to keep with himself during the arrest. It contains notice on: 1) reasons for arrest, 2) right not to say anything, 3) right of the defender of its own choice or to a defender appointed from the list of resident lawyers 4) right to interpretation and translation according to article 8. CPA/13, 5) right to inform his family on him being arrested or any other person he determines, per his request, 6) right of the foreign citizen to, upon his request, inform of his arrest appropriate consulate body or embassy and allow him to have contact with them (article 116. CPA/13), 7) right to insight into case file according to provisions of CPA/13, 8) right to urgent medical help, 9) his detention, from the moment of the arrest to the moment of standing before the judge can
last 48h at the most, and for criminal offenses for which there is a prescribed punishment of imprisoning up to 1 years, 36 hours at the most.

During arrest, the arrestee must be delivered a written notice on his rights. If the written notice can not be handed to him, the police must immediately inform him in a way that he understands on his fundamental rights from article 7. paragraph 2. point 1.- 4. CPA/13. It is allowed to delay handing of this notice if the arrestee isn’t able to comprehend or there is a life danger or body threatening danger, as long as there exist these reasons. If the remedy in writing from article 108.a paragraph 1. CPA/13 isn’t handed to the arrestee during the arrest, it must be handed to him immediately upon arrival to the police station.

The police is obliged to immediately inform state attorney and tutor of the arrestee if arrestee is devoid of legal capability, as well as, appropriate organ of social care if it is necessary for the purpose of taking care of children or other members of the arrestees family that he usually takes care of. Upon the request of the arrestee the defender is being informed, the family or other person, as well as, the appropriate consulate body or embassy.

Person who is arrested because of existence of reasonable doubt that he committed criminal offense which is being prosecuted ex officio and existence of some of the reasons for prescribing investigative prison, as well as a person which is caught while committing criminal offense that is prosecuted ex officio has the right to freely, without interference, and without monitoring talk to his defender in duration of 30 minutes (except in case state attorney issued decision on monitoring of conversations between arrestee and defender based on article 75., paragraph 2. CPA/13). If arrestee doesn’t have defender he has chosen himself, or he isn’t able to come, he must be enabled to take a defender from the list of resident lawyers of Croatian Bar Association.

CPA/13 in article 108.b standardize norms for possibility of delay of informing the arrestee’s defender, his family, or another person. Decision on delay issues state attorney by his order if there is a danger threatening life or property of wider extent, danger of perpetrating another criminal offense for which prescribed punishment is more than 5 years of imprisonment, or there is a threat that evidences will be hidden or destroyed. Order of state attorney must contain concrete reasons for delay of the notice. Delay of giving a notice stays in power as long as there are reasons for the delay, and not longer than 12 hours from the moment of the arrest.

During that time there can be no gathering of information from the arrestee nor conduct any of the procedures towards him, except of the procedure of determining identity (from article 211.,
paragraphs 1. and 3. CPA/13), as well as searching the person/individual (in case from article 246. paragraph 4. CPA/13). It is obligation of police to submit to state attorney order with the notice about arrest and bringing in.

A news with regards to regulation of arrest refer also to duration of arrest, which is 12 hours for the criminal offenses for which it is prescribed imprisonment up to 1 year (article 109., paragraph 2. CPA/13), another news is an obligation of custody officer to inform state attorney of arrestee admission immediately because there is an obligation to complete questioning not later than 16 hours after he is submitted to custody officer, that is 12 hours for criminal offenses for which prescribed punishment is imprisonment up to 1 year.

5.2. Custody

Custody is determined decreed by state attorney in writing by issuing decision that is explained. For prescribing custody what is necessary is cumulative fulfillment of conditions referring to: existence of reasonable doubt that arrestee committed criminal offense for which criminal procedure is being initiated ex officio, existence of some of the reasons for investigative prison from article 123., paragraph 1., point 1. – 4. CPA/13, and the custody is necessary for the purpose of determining identity, checking alibi or gathering information on evidences (article 112., paragraph 1., CPA/13). A news in this area is that custody can be prescribed if during arrest existence of reasonable doubt is established that arrestee committed another offense for which criminal procedure is being initiated ex officio. In that case second arrest is not possible (article 112. paragraph 2, CPA/13).

Investigating judge extends the custody, based on suggestion by state attorney. Custody may be extended for additional 36 hours if it is necessary for the purpose of gathering evidence on criminal offense for which the prescribed punishment is imprisonment of 5 years or more. Against the decision of investigating judge on custody extension, the arrestee can submit appeal not later than 6 hours. The appeal is being decided by council not later than 12 hours. The appeal doesn’t prevent enforcement of the decision, and it can be submitted on the record.

6. CONCLUSION

Review of changes in Criminal Procedure Act which refer to criminal offense investigation points to the most significant changes which are caused by efforts to bring the text of CPA/13 in concordance with decision of Constitutional Court of Republic of Croatia. Preliminary
investigation by the changes shown become pre-stadium significant for the entire criminal procedure because during conducting the preliminary investigation “evidences” are being gathered based on which there will be decided on conducting of inquiry, indictment or making of decision for stopping the procedure (rejection of criminal charges).

Normative organization of preliminary investigation, procedures and measures undertaken during preliminary investigation, must be considered in context of new arrangement of criminal procedure in which there is no more division on regular and shortened procedure but only modalities of conduct conditioned by degree of criminal offense which is being under investigation. Preliminary investigation as pre-stadiums exist also with criminal offenses for which inquiry is being conducted, as also with the offenses for which investigation is being conducted. Their goal is identical, to detect the offense, perpetrator and obtain evidences and useful information for conducting the criminal procedure.

7. REFERENCES


10. Criminal Procedure Act (Official Gazzette 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13).