

# THE CROATIAN PARLIAMENT

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Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

## DECISION

### PROMULGATING THE ACT ON AMENDMENTS TO THE MISDEMEANOUR ACT

I hereby promulgate the Act on Amendments to the Misdemeanour Act, passed by the Croatian Parliament at its session on 25 September 2015.

Class: 011-01/15-01/117

Reg. No.: 71-05-03/1-15-2

Zagreb, 1 October 2015

The President  
of the Republic of Croatia  
Kolinda Grabar-Kitarović,  
m. p.

## ACT

### ON AMENDMENTS TO THE MISDEMEANOUR ACT

#### Article 1

In the Misdemeanour Act (Official Gazette 107/07, 39/13 and 157/13), Article 14 b shall be amended to read as follows:

»(1) Enforcement of a decision on the seizure of items or the costs of a misdemeanour proceeding shall become statute barred upon expiry of five years from when the decision thereon becomes final.

(2) Enforcement of a decision on the confiscation of a pecuniary advantage shall not become statute barred.«.

#### Article 2

In Article 16, after paragraph 1, there shall be inserted the following paragraph 2:

»(2) Where a perpetrator's activity consists of more than one act committed respectively at different moments in time, a misdemeanour shall be committed on the day of the last act, and in the case of a continuing misdemeanour, on the day the act ceases.«.

#### Article 3

In Article 33, paragraph 9 shall be amended to read as follows:

»(9) Where any of the most serious misdemeanours referred to in paragraph 7 of this Article is committed by an entrepreneur, a fine in an amount ranging from 1% to 10% of the total revenue earned by the entrepreneur in the year the misdemeanour was committed and ascertained on the basis of the official financial statements for this year may be prescribed and imposed by a special statute. Where there is no financial statement for this year, the penalty shall be imposed on the basis of the last available official annual financial statement. A special statute may lay down what constitutes the total revenue of entrepreneurs.«.

#### Article 4

After Article 33, there shall be inserted the following Article 33a:

##### »Article 33a

(1) Where it is established in a proceeding that an entrepreneur benefited from or prevented the incurrance of a loss by committing any of the misdemeanours referred to in Article 33, paragraph 7, of this Act, they may be imposed a fine double the established amount of the benefit gained or the loss prevented, provided such amount exceeds the maximum fine amount expressed as a percentage, laid down in Article 33, paragraph 9, of this Act. In determining the individual penalty and imposing the total penalty under this paragraph, the restrictions applicable thereto, referred to in Article 33, paragraphs 1 through 6, of this Act, shall not apply.

(2) By way of exception, for a misdemeanour referred to in Article 33, paragraph 7, of this Act for which the authorised prosecutor is a legal entity with public powers that has been granted independent regulator status by a special statute, a fine of up to HRK 40,000,000.00 may be prescribed for and imposed upon the responsible person in a legal entity and/or another natural person. Where it is established in a proceeding that the defendant-responsible person in a legal entity and/or another natural person has benefited from or prevented the incurrance of a loss by the misdemeanour committed, such person may be imposed a fine double the established amount of the benefit gained or the loss prevented, provided such amount exceeds the maximum prescribed penalty. In determining the individual penalty and imposing the total penalty under this Article, the restrictions applicable thereto, referred to in Article 33, paragraphs 1 through 6, of this Act, shall not apply.

(3) For the purposes of this Act, an entrepreneur shall mean any legal entity or natural person pursuing an economic activity, irrespective of its legal status or the manner in which it is financed.«.

#### Article 5

In Article 37, paragraph 3, after point 2, there shall be inserted the following new point 3:

»3. where a fine is prescribed under Article 33, paragraph 9, and Article 33a of this Act, such fine may be mitigated up to half the determined fine amount in accordance with the prescribed special minimum fine amount;«

Paragraph 3 shall be renumbered 4.

After paragraph 3, there shall be inserted the following paragraph 4:

»(4) A court may impose a penalty less severe than the one prescribed for a particular misdemeanour also in cases where the authorised prosecutor and the defendant have agreed thereon, provided such penalty is within the limits of the penalty mitigation provisions of this Act.«

#### Article 6

In Article 50, paragraph 1, after point 6, there shall be inserted the following point 7:

»7. prohibition against frequenting a particular location or area.«

In paragraph 3, at the very beginning of the sentence, the following words shall be inserted: »Unless this Act provides otherwise,« and the upper-case letter »T« in the word: »The« shall be changed to lower-case.

#### Article 7

In Article 54, after paragraph 6, there shall be inserted the following paragraph 7:

»(7) Exceptionally, where a defendant-responsible person in a legal entity commits the misdemeanour referred to in Article 33, paragraph 7, of this Act for which the authorised prosecutor is a legal entity with public powers that has been granted independent regulator status by a special statute, the court may impose on them the protective measure referred to in paragraph 1 of this Article on a permanent basis.«

#### Article 8

In Article 55, after paragraph 4, there shall be inserted the following paragraph 5:

»(5) Exceptionally, where a defendant-legal entity commits the misdemeanour referred to in Article 33, paragraph 7, of this Act for which the authorised prosecutor is a legal entity with public powers that has been granted independent regulator status by a special statute, the court may impose on them the protective measure referred to in paragraph 1 of this Article on a permanent basis.«

#### Article 9

After Article 58, there shall be inserted the following title and Article 58a:

»Prohibition against frequenting a particular location or area

#### Article 58a

(1) The protective measure of prohibition against frequenting a particular location or area may be imposed on a perpetrator whenever there is a risk that within a particular period of time, by frequenting this location or area, the perpetrator might recommit the same misdemeanour.

(2) The protective measure referred to in paragraph 1 of this Article may not be imposed for a period of less than one month and more than two years.

(3) Where a defendant acts contrary to the prohibition referred to in paragraph 1 of this Article, and the prohibition has been imposed alongside a suspended sentence, the court shall proceed as provided in Article 46, paragraph 4, of this Act.«.

#### Article 10

In Article 60, after paragraph 3, there shall be inserted the following paragraph 4:

»(4) Where a misdemeanour regulation provides for the misdemeanour liability of a legal entity and the responsible person in it, and the authorised prosecutor initiates a proceeding against either a legal entity or the responsible person, or the court establishes in a proceeding that the responsible person charged is not the person liable for this misdemeanour, the court may establish the misdemeanour liability of only the legal entity or only the responsible person.«.

#### Article 11

In Article 80, paragraph 3 shall be deleted.

#### Article 12

In Article 87, after paragraph 6, there shall be inserted the following paragraph 7:

»(7) Translation and interpretation costs incurred as a result of applying the provisions of this Article shall be borne by the court.«.

#### Article 13

In Article 94, after paragraph 4, there shall be inserted the following paragraph 5:

»(5) The misdemeanour court in Zagreb shall have exclusive territorial jurisdiction to try cases instituted in a court by an authorised prosecutor-legal entity with public powers that has been granted independent regulator status by a special statute.«.

#### Article 14

In Article 109e, paragraph 3, point 4, after the word: »determination«, there shall be inserted the words: »and the costs incurred by authorities in the proceeding where the agreement is reached in the course of the proceeding«.

#### Article 15

In Article 117a, after paragraph 4, there shall be inserted the following paragraph 5:

»(5) Documents drawn up in relation to a misdemeanour proceeding may be drawn up, filled in, kept, printed out and stored in electronic form. Where such document is signed, it may be signed on an electronic device, in accordance with the technical features of the device.«

#### Article 16

In Article 119, after paragraph 8, there shall be inserted the following paragraph 9:

»(9) Where an authorised official person of the authorised prosecutor draws up a record of the acts performed in relation to a committed misdemeanour at the location where the misdemeanour was committed, they may draw up such record in electronic form and seal it beneath the signature of the perpetrator of the misdemeanour, thus disabling its subsequent modification. A record may be signed on an electronic device in accordance with the technical features of the device.«

#### Article 17

In Article 128, paragraph 3 shall be amended to read as follows:

»(3) Where a defendant is being summoned for the first time, paragraph 2 of this Article and Article 109a, paragraph 1, of this Act shall apply in respect of the mandatory content of such summons, unless this Act provides otherwise.«

After paragraph 3, there shall be inserted the following new paragraphs 4 and 5 and paragraph 6:

»(4) Where a proceeding is instituted by a prosecutor filing a motion to indict accompanied, as provided in this Act, by the written notice referred to in Article 109a, paragraph 1, of this Act, signed by the defendant, the mandatory content of the first summons to the defendant shall be only as laid down in paragraph 2 of this Article.

(5) Where a proceeding is instituted by a prosecutor issuing a misdemeanour warrant or a mandatory misdemeanour warrant informing a defendant, in accordance with Article 234, paragraph 3, of this Act, of their rights and obligations set forth in Article 109a, paragraph 1, points 2 through 8, of this Act, the mandatory content of the first summons to the defendant shall be only as laid down in paragraph 2 of this Article.

(6) The first summons served on a defendant shall always be accompanied by the motion to indict.«

Paragraph 4 shall be renumbered 7.

Paragraph 5, renumbered 8, shall be amended to read as follows:

»(8) Paragraphs 1 through 7 of this Article shall accordingly apply to a defendant-legal entity and its representative in a misdemeanour proceeding.«

#### Article 18

In Article 137, paragraph 1, after the word: »intoxicant«, there shall be inserted the following words: »or where a person is showing signs of being under the influence of an intoxicant but refuses to take a test for intoxicants«.

#### Article 19

In Article 138, the full stop at the end of paragraph 1 shall be replaced by a comma followed by the following words: »as well as expenditures arising from the destruction of seized items of a misdemeanour.«.

#### Article 20

In Article 139, after paragraph 6, there shall be inserted the following paragraphs 7 and 8:

»(7) Where the court finds a defendant guilty, the misdemeanour decision on the seizure of items of a misdemeanour may impose on the defendant payment of the costs of destroying such items of a misdemeanour as under Article 76a of this Act must be destroyed either in the course of a proceeding or after it is concluded by a final decision.»

(8) Where there is no information on the costs referred to in paragraph 7 of this Article, the court shall make a special decision within the meaning of paragraph 7 of this Article provided such information is provided to the court within one year from when the misdemeanour decision becomes final.«.

#### Article 21

In Article 140, paragraphs 1 and 2 shall be amended to read as follows:

»(1) A judgement of acquittal and a judgement dismissing a charge shall also specify the costs of a proceeding.

(2) In the case referred to in paragraph 1 of this Article, the judgement shall also state that the costs of a misdemeanour proceeding are to be borne by the court, unless this Act specified otherwise, and the costs set forth in Article 138, paragraph 2, points 5 and 7, of this Act, by the court only if the defendant is acquitted of the charge due to the act not being a misdemeanour or there being no evidence that the defendant committed a misdemeanour.«.

#### Article 22

In Article 172, paragraph 2, the first sentence shall be amended to read as follows:

»Where a defendant is to be interrogated for the first time about a misdemeanour that is alternatively punishable by imprisonment or where, within the meaning of Article 134 of this Act, a defendant is arrested and brought before the court, the judge shall be required to inform them of their right to counsel.«.

#### Article 23

In Article 184, after paragraph 4, there shall be inserted the following paragraphs 5 and 6:

»(5) A special statute may provide that, upon receipt of a non-final misdemeanour decision, the authorised prosecutor-legal entity with public powers that was granted independent regulator status by a special statute may publish such decision on its web pages provided it states that the decision is not final. In such a case, it shall also publish the remedies filed against the decision and the outcome of the proceeding on the remedies filed. A special statute may specify in which exceptional cases the identity of the perpetrator will not be disclosed.

(6) Where in the course of service of a non-final misdemeanour decision or within the time limit for filing a remedy against a misdemeanour decision the statutory limitation period for misdemeanour prosecution expires, a decision shall be made stating that the limitation period for misdemeanour prosecution has expired and misdemeanour prosecution shall be terminated.«.

#### Article 24

Article 186 shall be amended to read as follows:

»(1) Any misspelled names or incorrectly written numbers, other obvious spelling or arithmetic mistakes or omissions, formal defects in, or discrepancies between a written misdemeanour decision or another decision, on the one hand, and the original, on the other, shall be corrected by a special decision of the judge or panel chair upon motion of any party or upon the judge's or chair's own motion.

(2) After the decision referred to in paragraph 1 of this Article becomes final, the judge or panel chair shall make a new, corrected copy of the misdemeanour decision or another decision which shall be served on the persons referred to in Article 184 of this Act accompanied by a decision on corrections. Under the name of the corrected decision it shall be specified: (correction).

(3) A decision on corrections to be made to a non-final misdemeanour decision or another decision shall not be subject to special appeal, while the decision on corrections to be made to a final misdemeanour decision or another decision shall be subject to appeal, except in the case referred to in Article 211, paragraph 4, of this Act.

(4) In the cases set out in the previous paragraphs, the deadline for filing an appeal against a non-final misdemeanour decision or another decision shall start to run from the day the new, corrected copy of the misdemeanour decision or another decision is served.«.

#### Article 25

In Article 211, paragraphs 2 and 3 shall be amended to read as follows:

»(2) In deciding on an appeal, the court of second instance may decide:

1. to reject the appeal as belated, inadmissible or incomplete;
2. dismiss the appeal as unfounded; or
3. uphold the appeal or, in the case of an appeal filed *ex officio*, amend or set aside the decision and, where necessary, remand the case.



(3) The provisions on the appeal against a misdemeanour decision shall apply accordingly to the procedure for appealing against a decision and the court of appeal shall always examine of its own motion whether a statutory basis for the making of a decision existed and whether a decision was made by an authorised body.«.

After paragraph 3, there shall be inserted the following paragraph 4:

»(4) Decisions of the High Misdemeanour Court of the Republic of Croatia shall not be subject to appeal.«.

#### Article 26

In Article 234, after paragraph 4, there shall be inserted the following paragraph 5:

»(5) An authorised issuer of a misdemeanour warrant may issue on the spot to a perpetrator of a misdemeanour the notice referred to in Article 234a of this Act where the misdemeanour warrant and the accompanying records, receipts and other pertinent documents are drawn up in electronic form by means of an electronic device.«.

#### Article 27

After Article 234, there shall be inserted the following title and Article 234a:

»Notice issued on the spot to a perpetrator of a misdemeanour

#### Article 234a

(1) An authorised issuer of a misdemeanour warrant may draw up on the spot, by means of an electronic device, a notice in electronic form, print it out, and hand it on the spot to a perpetrator of a misdemeanour.

(2) The notice referred to in paragraph 1 of this Article shall state the following: personal details about the perpetrator of a misdemeanour, legal designation of a misdemeanour, fine amount, type of measure imposed, costs of the proceeding, misdemeanour warrant designation and a list of all the accompanying documents drawn up in electronic form by means of an electronic device in the course of determining a misdemeanour and made available for inspection by or read out to the perpetrator of a misdemeanour, notification of the possibility of being served with a misdemeanour warrant and all accompanying documents in written form at the authority that has made the decision, place for noting down any remarks by the perpetrator of a misdemeanour, place for the recipient's signature and acknowledgement of service, and instructions to the perpetrator of a misdemeanour as to what may be done following receipt of the notice.

(3) The said notice shall be drawn up under the same electronically generated number (code) as is specified on the misdemeanour warrant and any other documents drawn up at the time of misdemeanour determination. With the printing out of the said notice, the misdemeanour warrant and the said documents shall be electronically sealed, rendering any subsequent modification thereto impossible.



(4) By signing the notice referred to in paragraph 1 of this Article, a perpetrator of a misdemeanour acknowledges that they are acquainted with the contents of the misdemeanour warrant and any other documents drawn up in their presence in electronic form by means of an electronic device at the time of misdemeanour determination.«

#### Article 28

In Article 235, after paragraph 4, there shall be inserted the following paragraphs 5 and 6:

»(5) Payment of a fine before or after an objection is filed shall be deemed, respectively, a defendant's waiver of their right to file an objection or their withdrawal of an already filed objection to a misdemeanour warrant, provided the defendant has been notified thereof in the instruction on the right to object.

(6) Paragraph 5 of this Article shall not apply to the defendant referred to in Article 136 of this Act.«

#### Article 29

In Article 239, after paragraph 5, there shall be inserted the following new paragraph 6:

»(6) An authorised prosecutor may issue on the spot to a perpetrator of a misdemeanour the notice referred to in Article 234a of this Act in cases where the mandatory misdemeanour warrant and the accompanying records, receipts and other documents are drawn up in electronic form by means of an electronic device.«

Paragraphs 6 and 7 shall be renumbered 7 and 8, respectively.

#### Article 30

In Article 241, after paragraph 3, there shall be inserted the following paragraphs 4 and 5:

»(4) Payment of a fine before or after an objection is filed shall be deemed, respectively, a defendant's waiver of their right to file an objection or their withdrawal of an already filed objection to a mandatory misdemeanour warrant, provided the defendant has been notified thereof in the instruction on the right to object.

(5) Paragraph 4 of this Article shall not apply to the defendant referred to in Article 136 of this Act.«

### TRANSITIONAL AND FINAL PROVISIONS

#### Article 31

(1) Misdemeanour proceedings instituted prior to the entry into force of this Act shall be continued and finally concluded in accordance with the procedural provisions of the Misdemeanour Act (Official Gazette 107/07, 39/13 and 157/13).

(2) Notwithstanding paragraph 1 of this Article, the provisions of Articles 9, 11, 12, Article 15, paragraph 2, and Article 16 of this Act shall apply to misdemeanour proceedings instituted prior to the entry into force of this Act.

(3) Notwithstanding paragraph 1 of this Article, Article 1 of this Act shall likewise apply to proceedings for the enforcement of a decision on the confiscation of a pecuniary advantage that on the date of the entry into force of this Act are ongoing.

#### Article 32

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette.

Class: 022-03/15-01/37

Zagreb, 25 September 2015

THE CROATIAN PARLIAMENT

The President of  
the Croatian Parliament

Josip Leko, m. p.

PROVISIONAL TRANSLATION