



# ALTERNATIVES TO DETENTION

in the Serbian legal system  
– *Defendant's basic rights*



**PARTNERI**  
za demokratske promene  
**SRBIJA**

# To whom is this brochure intended for?

---

The Brochure is primarily intended for defense attorneys in criminal cases, but also for prosecutors and judges in assessing the justifiability of detention in a specific case. However, this Brochure can also be useful for persons accused or detained, as a practical guide to fulfilling their procedural rights.

Detention is a measure that can be applied against a defendant in all the systems and all the forms of criminal procedure law. Depending on the actual phase of the proceeding and the authorizations envisaged by the Criminal



Procedure Code (CPC), other measures are available to the court or the prosecution. Therefore, this Brochure explains possible alternative measures to detention prescribed by the Serbian Criminal Procedure Code (“Official Gazette of RS” no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 i 55/2014). It aims at determining whether it is possible to use detention less frequently as a measure than how it is currently used in Serbian jurisprudence, while ensuring at the same time that the criminal procedure is conducted with the same level of quality, without interference, and with the presence of the defendant.

The topics covered in the Brochure include:

1. Relation between detention and alternative measures for securing the presence of the accused (page 3)
2. Alternatives to detention in the Serbian legal system (page 6)
3. Questions and Answers (page 23)
4. Annex-Template of a proposal for ordering bail (page 28) - Document in Serbian

# Relation between detention and alternative measures for securing the presence of the accused

I

Detention is the least favorable measure for the defendant, as well as the measure which most profoundly affects the human rights of the defendant. With the detention of the defendant, a series of barriers arises in front of the defense impeding the successful preparation of a defense in criminal cases. The defendant in detention is primarily faced with the question “how long will detention last” or “when will he be released.” Instead, the defendant’s main question should be: “will he be acquitted at the end of the criminal case and will he successfully prove the claims presented in defense. Problems of technical nature include:

- difficult communication with the defendant’s attorney which is possible only during visits;
- the inability of the defendant to summon his attorney and the obligation to wait for his visit;
- difficulties with printed material in more extensive cases due to limited space in detention cells;

- the prohibition for defendants to use computers or any other electronic database for criminal cases amongst other difficulties in technical nature.

Serbian Criminal Procedure Code envisages other, less severe, measures than detention (Article 188 of the CPC):

- 1) summonses;
- 2) bringing [a defendant] in;
- 3) prohibition of approaching, meeting or communicating with a certain person;
- 4) prohibition of leaving a temporary residence;
- 5) bail;
- 6) prohibition of leaving a dwelling.

However, each of these measures is accompanied with concerns of appropriateness and the concern that the court might make a mistake in not choosing detention, but some other measure. In practice, prosecutors often request detention without offering arguments indicating why the criminal proceedings could not be conducted without obstructions and more efficiently with some other measure. For courts, detention represents a specific guarantee that the procedure will be carried out undisturbed and efficiently. The principle that an innocent person shall not be sentenced is not respected without deference for the basic rights of the defendant. One of these paramount rights of the defendant and the defense is the right to be

released pending trial, i.e. that detention is only imposed if the same purpose cannot be achieved by some other measure.

We will try to show that alternatives to detention can quite often adequately replace detention, and with the application and more frequent usage of such measures a better criminal procedure can be ensured. This could also provide a less negative influence on the rights of the defendant before final judgment. The presumption of innocence would gain greater significance and the defendant would be allowed to better prepare his defense. The court would not have to review reasons for periodic extension of detention nor resolve defense appeals against such decisions. Further, the defendant would not be a burden for the state in view of his stay in detention, transfers to court, medical treatments etc. - all paid for by public funds, which also cover damages claims in case of exculpatory judgments and the fees of the state-appointed defense counsel for visiting the defendant in detention.

In contemporary society, it is often possible to replace detention with some alternative measure. Lamentably, this is not applied in practice as much as it should be. By raising the awareness and the knowledge of defense counsel, and of the bar itself, much more could be done in the interest of the defendant, including the introduction of new standards and practices by prosecutors and courts, to the effect that detention would not be applied unless necessary, i.e. if some other measure could be used.

# Alternatives to detention in the Serbian legal system

---

This section will cover:

1. Prohibition of approaching, meeting or communicating with a certain person and frequenting certain locations;
2. Prohibition of leaving one's temporary residence;
3. Bail; and
4. Prohibition of leaving one's dwelling

Summonses and bringing [a defendant] in shall not be specifically analyzed in this review. They are basic measures that the authority conducting the proceedings applies in compliance with the law. These two measures cannot be a replacement for detention in the sense of a truly alternative measure. A review of other possible measures is detailed below.

Detailed training for attorneys on the alternatives to detention is available through ABA ROLI and Partners Serbia's E-learning platform at: <http://www.partners-serbia.org/elearning/>.

## Prohibition of approaching, meeting or communicating with a certain person and frequenting certain locations (Article 197-198 of the CPC)

# 1

Prohibition of approaching, meeting or communicating with a certain person and frequenting certain locations is one of the measures that can replace detention which is pending or has been implemented due to the presence of specific circumstances (as defined in Art. 211, para. 1, item 2 of the CPC) indicating that the defendant shall interfere with the proceedings by influencing witnesses, accomplices or concealers, or specific circumstances indicating that in a short period of time he shall repeat the criminal offence, complete an attempted criminal offence, or commit a criminal offence he is threatening to commit (Article 211 para. 1 item 3 of CPC).

The author of this text is of the opinion that the measure envisaged in Article 197 does not expressly specify its usage due to the threat of evidence destruction; a prohibition of frequenting specific locations, where such evidence exists or might exist, could be a sufficient alternative to detention.

This measure can be ordered initially, at the beginning of the proceedings, but it can also replace an order for detention that has been previously issued. Defense attorneys propose mentioned alternatives to the court. It could be judge for preliminary hearing, judge panel (depending on the phase of



proceedings). On the preparatory hearing such proposal can be given to the president of the panel. In every case prosecutor's approval is necessary for replacing or repealing of any measure.

The Criminal Procedure Code does not prescribe the obligation to also inform the persons that the defendant is prohibited from approaching about this measure. Perhaps such a notification would allow additional control on the one hand, and reduce the risk of the defendant involuntarily being in the vicinity or communicating with such persons on the other. With regard to this measure, the low level of possibility of verifying its implementation might precisely be the reason for it not being used sufficiently in practice. The defense attorney and the defendant, being the ones most often proposing the usage of this measure over detention, have the strongest possibility of convincing the court that implementation can sufficiently guarantee the unhindered conduct of criminal proceedings.

Along with this measure, the court can also instruct the defendant to periodically report to the Police or some other authority.

## Prohibition of leaving one's temporary residence (Art. 199-200 of the CPC)



The prohibition to leave the place of temporary residence is imposed in view of circumstances indicating that the defendant might flee, hide or go abroad. These are the circumstances listed in the Article 211 para 1 (1) of the CPC. This measure, serving as a replacement for detention, implies a reduced risk of the defendant fleeing. Upon ordering detention, if the court reaches the conclusion that the risk of the defendant fleeing has decreased, such detention can be replaced by this, less severe, measure. The prohibition of leaving one's residence is a less strict measure compared to bail and the prohibition of leaving one's dwelling.

The court can alternatively prohibit the defendant to leave his place of residence or the territory of the Republic of Serbia. This virtually means that the court may impose only the prohibition to leave the Republic of Serbia, without the prohibition of leaving the place of temporary residence.

The prohibition encompassed in this measure is not absolute and it is possible to deviate at the court's discretion. Along with this measure, the court may prohibit the defendant from visiting certain localities; order him to report periodically to a given state authority - most usually the police; or to temporarily seize his travel documents or his driving license.

In practice, along with this measure, the defendant is very often ordered to report to the police at given intervals. The Law does not specify the greatest or the least admissible frequency, but court orders range from daily to monthly reporting. Evidence is kept by the police or some other state body, and the defendant should be issued a certificate indicating his compliance with the obligation to report. Prohibition of leaving the residence can also be decreed against foreign citizens having a registered place of residence within the territory of the Republic Serbia. The court can order the seizure of a travel document, be it national or foreign, if there is a risk of the defendant fleeing abroad.

Before the indictment is confirmed, the court shall decide on ordering this measure on a motion by the prosecutor, and after the indictment is confirmed, *ex officio*. Although the law does not say this explicitly, it is clear that both the attorney and the defendant can motion the court to replace the proposed or ordered detention with the prohibition of leaving one's residence. Such motions must be backed by precise and clear arguments and accompanied by evidence related to the statements made in the motion.

## Bail (Art. 202 – 207 of the CPC)

**B**ail is an alternative to detention which can be ordered due to the risk of the defendant fleeing or going into hiding, as well as due to reasons listed in relation to the seriousness or manner in which the crime was committed. Bail may also be set in place of detention even when the criminal offence involved is punishable by a term of imprisonment of more than ten years, or a term of imprisonment of more than five years for a criminal offence with elements of violence, or when the sentence by a court of first instance is to a term of imprisonment of five years or more, and the way of perpetration or the gravity of consequences of the criminal offense have disturbed the public to such an extent that this may threaten the unimpeded and fair conduct of criminal proceedings.

The court can set bail following a motion made by either defense counsel; the parties, or a person offering to put up bail for the defendant. As with the other alternatives to detention, when it comes to proposing the bail; it is the role of the defense attorney (or other person proposing the measure) to provide a detailed explanation and additional documents to support the petition for an alternative method of detention. (A template of proposal for ordering bail is included in this brochure as an Annex; see page 28).

The bail is always set as a monetary amount. In practice, along with

deposits in cash, mortgage can be set on property owned by the defendant or some other person offering to pay the bail. To perfect the mortgage, proof of ownership must be provided along with the assessment of value provided by an expert specialized in construction, followed by the registration of mortgage by the Real Estate Cadastre based on a decree on acceptance of bail. Only when such mortgage has been perfected the court shall abolish detention, i.e. actually replace it with bail. The court shall proceed in the same way in case of bail made in cash, namely after the money has been paid or deposited, the court shall pass a decision abolishing detention, and the defendant shall be released.

Although the public prosecutor is authorized to propose that bail be set, this does not occur in practice. By rule - the prosecutor requests that detention be ordered or extended, and voices his view of the motion made by the defense council for setting bail.

The court may also set bail without a motion by the parties and the defense counsel, but must previously hear their opinion about it. The court may include the decision on bail within the decision on detention or in a special order if the defendant is already in detention. This means that the court may use its decision of detention to also set a certain bail without a previous motion by the parties. Such an approach could significantly reduce the duration of detention and lead to a more economical procedure in relation to setting bail. It means that the preliminary proceedings judge, after rendering the defendant, along with ordering detention without any proposal

by the parties could also set the amount for bail, replacing detention. The judge may use information contained in the case file or additional documentation submitted by the defense to fully assess the degree of risk of the defendant fleeing, his personal and family status and his financial standing. This means that the concrete decision would imply bail must be personally paid by the defendant and not by third persons. The defendant would have to vow to not go into hiding and not to leave his place of residence without the court's approval.



Should the court refuse the proposed bail because the amount is not sufficient, the Court may define a different amount for bail, which it does deem acceptable. This would prevent bad practice of the court rejecting a series of bail proposals, until the defense can reach an amount that the court deems adequate for bail. Such an approach significantly prolonged the defendant's detention. Thus if the court refuses bail because the amount offered is not sufficient, it should specify in its ruling an amount that would be sufficient. In practice, court decisions state that the proposed bail is being refused, and only point out in the rationale that a greater amount would be sufficient. This approach also leads to an unnecessary loss of time because the defendant has to submit a new proposal with the amount indicated by the court, which is then again sent to the prosecutor. A proper and most cost-effective approach would be for the court to pass a decision accepting the motion for bail made by the defendant or the defense counsel, rejecting the offered amount and determining a higher one. Such a court decision is made possible and fully acceptable under the Criminal Procedure Code and represents the best and fastest way to decide on bail as an alternative measure.

The amount of money representing bail can be deposited in cash at the court deposit, or it can be paid into the court account if the payment is in dinars. The courts still have no option of receiving foreign currency payments into their accounts, which leads to unnecessarily complicated procedure in case of larger amounts.

## **Bail – jurisprudence of the European Court of Human Rights (ECHR)**

The complete case law can be found at [www.coe.int](http://www.coe.int) in English or French, but numerous ECHR judgments or excerpts from the most important judgments have also been translated into Serbian. One of the tasks of the defense council in criminal cases is to invoke ECHR case law in the interest of the defendant - when a decision is being passed about possible alternative measures to detention.

- The position of the ECHR is that the defendant shall provide in a conscientious way and on his own, enough data about the value of his property which can be verified, so that authorities may estimate the amount of bail to be set (*Bonnecau v. Switzerland* 8224/78, 05.12.1979.).
- In an another case the European Court for Human Rights concluded that the amount of 3m Euros was not disproportionate to the legal interest to be protected, the severity of the crime and the consequences in the sense of environmental and economic disaster, and the personal circumstance regarding the defendant and his



status as employee of a ship-owner insured against events encompassed by the crime (Mangouras v. Spain, 12050/04, 8.1.2009.).

- When the only remaining grounds for extending detention is the fear that the defendant might flee, he must be released if capable of offering appropriate guarantees as assurance of appearing at the trial, for example by paying bail (Letellier v. France, 12369/86, 26.6.1991).
- Rights guaranteed by Article 5, paragraph 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) have been violated in the case ruled upon by a national court when the decision determining the amount and the manner of paying bail took four months and fourteen days, during which the defendant was held in detention, albeit grounds for acceptance of bail already existed (Iwancuk v. Poland, 25196/94, 15.11.2001.).

The court is authorized to confiscate the bail if the defendant breaches the promise he has given by going into hiding, fleeing, or changing his temporary residence without court approval. In such cases, the amount in question is entered into the budget of the Republic of Serbia. The Criminal Procedure Code allows for bail to be repealed if the defendant fails to appear after proper summons has been served, and in case of repeal, the bail posted i.e. its value is returned to the defendant, and he is placed back into detention. The same occurs in case of a final judgment, of a final ruling on discontinuing proceedings or a dismissal of the charges. If the defendant is sentenced to prison, the bail is repealed only when the convict starts serving his prison sentence.



## Prohibition of leaving one's dwelling (Art. 208-209 of the CPC)

This measure has been introduced in our criminal procedure law with the new CPC. The prohibition of leaving one's dwelling is often referred to as "home detention".

Instead of detention that might be ordered due to circumstances indicating that the defendant might flee, or if the defendant has gone into hiding or is obviously avoiding to appear at the main hearing, the court can prohibit the defendant from leaving his dwelling in the following circumstances:

- If there are other circumstances indicating the risk of the defendant fleeing;
- If there are particular circumstances indicating that he might repeat the crime within a short period of time, or complete or commit one he has previously threatened to do and,
- When the crime involved is punishable by one of the following:
  - a. a term of imprisonment of more than ten years;
  - b. a term of imprisonment of more than five years for a criminal offence with elements of violence
  - c. when the sentence by a court of first instance is to a term of imprisonment of five years or more, and the way of perpetration or the gravity of consequences of the criminal offense have disturbed

the public to such an extent that this may threaten the unimpeded and fair conduct of criminal proceedings.

All the conditions listed are reason for ordering detention pursuant to Article 211, Paragraph 1, Items 1, 3 and 4 of the Criminal Procedure Code. This measure can be accompanied by prohibition of allowing certain persons into the dwelling, the prohibition of using the telephone or the Internet, as well as by other conditions, but regardless of that it cannot be pronounced as an independent measure due to fear that the defendant might influence witnesses, i.e. for reasons listed in Article 211, paragraph 1, item 2 of the CPC. The defendant can leave his dwelling only after being given approval, and without approval only for emergency medical treatment or due to serious threat to life or health. As soon as this is possible, after leaving the dwelling without approval, the defendant has to report this to the officer of the authority in charge of the execution of criminal sanctions.

During investigation this measure is also deliberated upon by the preliminary proceedings judge after a motion by the public prosecutor, and after the indictment is confirmed. In his motion for the repeal of detention or in his oral argument against the order for detention, the defense counsel may quote reasons and suggest the prohibition of leaving one's dwelling as an alternate measure to detention. When the court decides on ordering detention or other measures, it can take into consideration: the defendants reputation and criminal record, the gravity of the committed offence, time spent in jail, health condition and so on.

An important specificity related to this measure is the option of using an electronic supervision and location device to be placed on the ankle or the wrist, as provided for by Article 190 of the CPC.

Should the court order this measure instead of detention, the ruling shall specify that detention of the defendant is thereby repealed, that he is to be released immediately, that the prohibition of leaving one's dwelling is ordered instead, along with the (possible) prohibition of using the telephone and the Internet, that the defendant is thereby prohibited from leaving his dwelling without court approval, that electronic supervision is ordered to ensure the respect of the measures imposed involving the placement of the locating device, and warning the defendant that he can be placed back in detention in case of a breach of the prohibition and the accompanying orders.

The motion by the defense council for replacing detention, should include proof of registered residence of the defendant, proof of ownership of the dwelling covered by the said measure, a written and certified consent of the owner of the dwelling (if it is not the defendant) for the implementation of the proposed measure, and proof of an existing fixed phone line in the dwelling (it is now possible to implement this measure even without a phone land-line).

## Current and Future Use of Alternatives to Detention

Finally, it should be noted that in our criminal case law, alternative measures are not used often enough. The courts which deliberate on detention or alternatives adhere to a customary practice of not perceiving correctly the possible alternatives to detention, and the rationale accompanying orders on detention often reveals the stand that “detention cannot be replaced by any other measure”, without true reasons for it.

Appropriate motions by defense councils for replacing detention with other measures, could advance the jurisprudence and induce courts to approach this problem in a more versatile way. For each alternative measure allowed by the law, the court should provide reasons why it cannot be applied in the specific case, and if said reasons are missing, opt for such a measure.

On September 27, 2006, the Committee of Ministers of the Council Europe passed the “Recommendation on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse” (Recommendation No. 13 (Rec 2006) 13). The Recommendation states, *inter alia*:

- Considering the fundamental importance of the presumption of innocence and the right to the liberty of the person; aware of the irreversible damage that remand in custody may cause to persons ultimately found to be innocent or discharged and of the detrimental

impact that remand in custody may have on the maintenance of family relationships;

- Taking into consideration the financial consequences of remand in custody for the state, the individuals affected and the economy in general;
- Noting the considerable number of persons remanded in custody and the problems posed by prison overcrowding;
- Considering the need to ensure that the use of remand in custody is always exceptional and is always justified;
- Bearing in mind the human rights and fundamental freedoms of all persons deprived of their liberty and the particular need to ensure that not only are persons remanded in custody able to prepare their defense and to maintain their family relationships but they are also not held in conditions incompatible with their legal status, which is based on the presumption of innocence;
- and in view of these, the Recommendation insists that strict limits be set for the use of remand in custody, i.e. detention, and that the use of alternative measures be encouraged wherever possible.

Such encouragement of application of alternative measures refers primarily to courts and public prosecutors, but must equally apply to defense attorneys who are the basic protectors of the rights of defendants in criminal cases.

## **WHY DO ALTERNATIVES TO DETENTION MATTER?**

Human dignity of the defendant kept in detention is not equal to the dignity of the defendant released pending trial. The ability of the defendant to rightly assess the situation in relation to facts, evidence and procedural standing is not the same when a defendant is held in detention and when he is released or subject to an alternative detention measure.

It should always be kept in mind that the primary and most important right of the defendant held in detention is that such detention should last as short as possible. Without the respect of human rights the rule of law cannot be achieved, and consequently not even a fair trial. To harbor that right, all possible alternatives to detention must be properly reviewed - primarily the defense counsel, but also the court and public prosecutor.

## **WHAT ARE THE DEFENSE COUNSEL'S DUTIES IN REGARD TO IMPOSING MEASURES FOR SECURING THE DEFENDANT'S PRESENCE?**

The defense council has the duty to act on behalf of the defendant, and reiterate to the court throughout the proceedings and for the whole



duration of detention, all the options that are available instead of detention. The defense counsel is most certainly expected to inform the defendant of all the alternatives to detention, This obligation of the defense counsel is contained in the provisions of Article 72, paragraph 1, item 2 of the Criminal Procedure Code, which specify that the defense attorney shall assist the defendant in a professional, conscientious and timely manner. The defense counsel cannot rely on the obligation of the court not to order detention if the same purpose can be achieved with a less severe measure, because the court will usually not have available all data and reasons that can lead to an appropriate replacement for detention.



The defense attorney has the duty to identify an appropriate alternative measure, propose it timely argue it appropriately and enclose valid evidence that will allow the court to repeal detention and replace it with another measure.

It is very important that the defense council proposes several appropriate measures if reasons for detention exceed the scope of a single measure. Even if a single measure covers the legal reasons for which detention has been ordered or might be imposed, the defense counsel can propose a set of several measures as a safer alternative solution.

### **DOES AN EX OFFICIO COUNSEL HAVE THE SAME DUTIES AS THE CHOSEN COUNSEL?**

If a court-appointed attorney is managing the case of the defendant, his obligations are identical to those of a chosen defense counsel. This means that he has to undertake all actions allowed and admissible according to the Criminal Procedure Code, including submitting a motion for alternative measures. Along with such duties of the court-appointed defense counsel, Article 76 of the CPC also prescribes the obligation of the bar associations to supervise the list of court-appointed attorneys in a way that it includes lawyers whose practical or professional work gives grounds for the assumption that the defense will be effective.

## WHO DECIDES ON ORDERING ALTERNATIVES TO DETENTION?

Except for the summons and the bringing-in of a defendant, which can also be invoked by the prosecutor as the body conducting proceedings during investigation, all other measures are decided on by the court only. The replacement of a harsher measure with a more lenient one does not imply a request by the defense counsel or by the parties, as the authority conducting the proceedings shall make the choice ex officio. However, one could say that in practice, detention is replaced by a less severe measure infrequently, and when it is replaced, it occurs very rarely without the initiative of the defense. The motion of the defense counsel for the replacement of detention with a different measure is regularly opposed by the



prosecution because he naturally undertakes all activities that may lead to a conviction. It should not be in the interest of the prosecution to hold the defendant in detention if this is not really justified and necessary. This is why the prosecutor's office should approach each case in a way to allow a correct review of possible alternatives to detention. One should also keep in mind Article 31 of the Constitution providing that detention "shall be reduced to the shortest period necessary". This does not mean that detention ends only with unconditional abolition, but rather the necessity of a shorter period of detainment also implies the replacement of detention with some other, more lenient measure.

It should also be noted that the preliminary proceedings judge may, with regard to the public prosecutor's motion to order detention, opt instead of detention for a more lenient measure not listed in the proposal submitted by the prosecutor. Such authority is granted by Article 189 of the CPC and Article 210, paragraph 1 of the CPC. He can order one or more alternative measures instead of the proposed detention even without express request by the prosecutor.

# ANNEX – template of a proposal for ordering a bail

**VIŠEM SUDU U BEOGRADU  
POSEBNO ODELJENJE  
SUDIJI ZA PRETHODNI POSTUPAK**

Kao branilac NN, po punomoćju u spisima, na osnovu člana 204. stav 1. Zakonika o krivičnom postupku, podnosim

**PREDLOG DA SE PRITVOR ZAMENI JEMSTVOM**

Predlažem da se pritvor za NN, koji je određen \_\_\_\_ godine, zameni jemstvom stavljanjem hipoteke u iznosu od \_\_\_\_ dinara (\_\_\_\_ evra) na kuću čiji je vlasnik PP, koja se nalazi u \_\_\_\_\_, u ul. \_\_\_\_\_.

O b r a z l o ž e n j e:

Prema NN određen je pritvor \_\_\_\_ godine, na osnovu člana 211. stav 1.

tačka 3. i 4. Zakonika o krivičnom postupku, a zatim još dva puta produžavan na osnovu člana 211. stav 1. tačka 1. Zakonika o krivičnom postupku. Prilikom ova dva produženja pritvora, sudija za prethodni postupak nije prihvatio predlog zamenika tužioca za organizovani kriminal da se prema okr. NN pritvor produži i na osnovu odredbe člana 211. stav 1. tačka 3. ZKP-a, s obzirom na to da u spisima predmeta nema dokaza da je okr. NN učestvovao u više radnji izvršenja, osim što je registrovano da je dana \_\_\_\_ godine, bio na sastanku sa okrivljenima NA i NB, zbog čega smatra da u odnosu na ovog okrivljenog ne postoje osobite okolnosti koje ukazuju da će u kratkom vremenskom periodu ponoviti krivično delo”.

Apelacioni sud u Beogradu, \_\_\_\_ godine, produžio je pritvor NN na osnovu člana 211. stav 1. tačka 1. i 3. Zakonika o krivičnom postupku, navodeći pri tome, kao razlog za tačku 3., netačnu činjenicu da su se NN i odbegli NB više puta sastajali. Pošto je ova tvrdnja netačna, Apelacioni sud u Beogradu nije mogao da se pozove ni na jedan jedini dokaz za takvu tvrdnju, pa se samim tim taj osnov pokazuje kao neosnovan.

Imajući u vidu činjenicu, s jedne strane, da osnov za pritvor po tački tri ne postoji, a, s druge strane, da se okrivljeni koji se nalazi u pritvoru zbog postojanja razloga propisanih u članu 211. stav 1. tačka 1. Zakonika o krivičnom postupku, a na osnovu člana 202. istog zakona, može pustiti na

slobodu, ako neko za njega pruži jemstvo da do kraja postupka neće pobeći, predlažem, u skladu sa članom 189. stav 1. i 3. Zakonika o krivičnom postupku, da se pritvor zameni predloženim jemstvom.

S tim u vezi, obaveštavam sud da je NN, iz Okružnog zatvora u Beogradu, poslao sudu pismenu izjavu kojom obećava da se neće kriti i da bez odobrenja suda neće napustiti boravište, a da je u potpunosti spreman da da i usmenu izjavu pred sudom ukoliko je to potrebno, a sve u skladu sa članom 202. Zakonika o krivičnom postupku.

Posebno molim sud da ima u vidu da je NN porodičan čovek, otac dvoje maloletne dece i da je u stalnom odnosu kao vlasnik i direktor preduzeća koje bez njegovog prisustva ne bi moglo da funkcioniše.

Takođe, ukazujem sudu i na to da je odbrana, prikupljajući dokaze, ispitala tri svedoka koji u svemu potkrepljuju odbranu NN, o čemu je obavestila Tužilaštvo za organizovani kriminal i dostavila po jedan primerak ovih izjava, o čemu kao dokaz u prilogu dostavljam sudu fotokopiju obaveštenja.

Jemstvo za NN, da do kraja krivičnog postupka neće pobeći u iznosu od \_\_\_\_\_ dinara (\_\_\_\_\_ evra), koje bi se realizovalo upisom hipoteke

na kući koja se nalazi u \_\_\_\_\_, u ul. \_\_\_\_\_, pruža PP, čiju hipotekarnu izjavu dostavljam u prilogu.

Radi utvrđivanja imovnog stanja davaoca jemstva PP, u prilogu dostavljam uverenje Poreske uprave - Filijale u \_\_\_\_\_, kojim se potvrđuje da mu je mesečni lični dohodak \_\_\_\_ dinara.

Kao dokaz da je PP vlasnik kuće bez tereta, koja se nalazi u \_\_\_\_\_, u ul. \_\_\_\_\_, u prilogu dostavljam prepis lista nepokretnosti broj \_\_\_\_.

U prilogu Vam dostavljam i izveštaj o izvršenoj proceni vrednosti nepokretnosti koji je izradio stalni sudski veštak za oblast građevinarstvo \_\_\_\_\_, sa rešenjem Ministarstva pravde kojim se on imenuje za stalnog sudskog veštaka.

U Beogradu \_\_\_\_\_, godine

BRANILAC



The statements and analysis contained herein are the work of the American Bar Association's Rule of Law Initiative and Partners for Democratic Change Serbia. The statements and analysis expressed are solely those of authors, and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and do not represent the position or policy of the American Bar Association and Partners for Democratic Change Serbia. Furthermore, nothing in this report is to be considered rendering legal advice for specific cases. This report is made possible by the generous support of the U.S. Department of State, Bureau of International Narcotics and Legal Affairs (INL). The content is the responsibility of the American Bar Association's Rule of Law Initiative and Partners for Democratic Change Serbia and does not necessarily reflect the views of INL or the United States Government.