| Chapter 6 |

Serbia: Criminal Law of the Republic of Serbia

Tatjana BUGARSKI

ABSTRACT

The criminal legislation of the Republic of Serbia has a legal tradition of nearly a century. Moving through its development, today, it is at the level of modern criminal justice systems, which is largely in line with generally accepted international legal standards that ensure effective legislation while protecting and ensuring basic human rights. Intensive reforms of criminal legislation in the Republic of Serbia started at the beginning of the 21st century. Although legislative interventions in the field of criminal law have been highly intensive both quantitatively and qualitatively over the last two decades, it must be stated that the same trend is noticeable in other European countries, even those that traditionally have stable criminal legislation. The development of criminal legislation is, on the one hand, conditioned by the harmonization of criminal legislation with the law and standards of the European Union, while, on the other hand, the legislature is guided by other reasons because regardless of how much one strives for stable criminal legislation, one cannot deny the dynamic character of crime, the intensity of which is accompanied by social, political, economic, and other changes that have accelerated in the modern world. The paper presents an overview of the criminal legislation of the Republic of Serbia regarding the following issues: a brief history of its development, the primary legal sources, relevant institutions, and a comparison with relevant EU documents and key international trends.

KEYWORDS

Republic of Serbia, relevant institutions of criminal justice, criminal law. criminal procedure law, execution of criminal sanctions

1. Brief history of development

Criminal law in medieval Serbia had the general characteristics of the European law of the time.[1] Through customary and particular law, it developed from a private to a state reaction.

The first sources of criminal law in Serbia are sporadically found in legal monuments of the 12th and 13th centuries. The first and most important written source of

1 On the development of criminal law in Serbia, see Stojanović, 2020, pp. 31–37.

Bugarski, T. (2022) 'Serbia: Criminal Law of the Republic of Serbia' in Váradi-Csema, E. (ed.) *Criminal Legal Studies. European Challenges and Central European Responses in the Criminal Science of the 21st Century.* Miskolc–Budapest: Central European Academic Publishing. pp. 157–204. https://doi.org/10.54171/2022.evcs.cls_6

Serbian medieval law is Dušan's Code from 1349 (amended in 1354), which contained a large number of criminal law provisions according to which crime was considered a public matter and not a private one. After Serbia fell under Turkish rule in 1459, all of the laws that were valid in the territory of Serbia up to that point ceased to apply, and Sharia law was applied, while only remnants of medieval Serbian criminal law were preserved through customs.

At the beginning of the 19th century, during the First Serbian Uprising (1804), the Code of Proteus Mateja Nenadović (1804) was passed, which incorporated certain criminal law provisions, and in 1807, Karađorđe's Criminal Code was passed. In the period up to 1860, there was no single regulation that regulated the matter of criminal law, but criminal law provisions were contained in various laws and bylaws, the most important of which is the Criminal Code for Police Offenses from 1850.

The first modern criminal law was passed in 1860, the Criminal Code for the Principality of Serbia (amended several times), which was created based on the model of the Prussian Criminal Code from 1851. Sociopolitical and state changes conditioned the adoption of the new Criminal Code for the Kingdom of Serbs, Croats, and Slovenes in 1929. Prior to the creation of the Kingdom of Serbs, Croats, and Slovenes, there had been six legal areas, including criminal law.

During the Second World War, several regulations were passed in the liberated territories, which initiated the construction of a new legal order. The most important written source of criminal law from that period was the Decree on Military Courts (1944). In the period after the Second World War, the Criminal Code of 1947 and the Criminal Code of the Federal People's Republic of Yugoslavia of 1951 were adopted (both were amended several times). The Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) from 1974 provided for the division of legislative competence between the federation and federal units; thus, nine criminal laws entered into force on July 1, 1977. Along with some innovations, criminal codes have taken over the solutions of the amended 1951 Criminal Code. The Criminal Code in force in Serbia was amended several times until the enactment of the current Criminal Code in 2005, which entered into force on January 1, 2006.

Regarding criminal procedural legislation in Serbia, the first integral codification was passed in the 19th century. The Code of Criminal Procedure of 1865 was the first code of its kind, after which seven other codes were passed to date[2].

The historical development of criminal procedure legislation has been dynamic. It moved from the organization of criminal proceedings in the spirit of the inquisitorial procedure (1865), through the modern procedure of the liberal state (1929), a repressive procedure (1948), and a mixed-type procedure (1976), all of which were largely developed under the influence of German-Austrian criminal procedure. Since the period after the Second World War, these have been strict laws, which have been

2 The Code of Criminal Procedure 1929, the Code of Criminal Procedure 1948, the Code of Criminal Procedure 1953, the Code of Criminal Procedure 1976, the Criminal Procedure Code 2001, the Criminal Procedure Code 2006, and the Criminal Procedure Code 2011.

amended several times but without modification of the basic conceptual mechanisms. Their concept was accompanied by the Criminal Procedure Code from 2001, which represents the beginning of the reform of criminal procedural legislation.

This Code has been amended a significant number of times, which is not a specificity of procedural legislation. The most extensive changes that significantly altered the character of the previous positive criminal procedure were made in 2009. The greatest specificity in the historical development was the adoption of the completely new Criminal Procedure Code in 2006, the implementation of which was largely postponed for a year after its adoption and then again for another longer period until it was repealed entirely.

The main characteristics of this law were the introduction of public prosecutorial investigation, which, until that time, had traditionally been the responsibility of the investigating judge (with the exception of the CPC of 1948), and procedural mechanisms aimed at creating conditions for faster and more efficient criminal proceedings, the number of alternatives to detention, and other aspects. After an extremely long vacasio legis, which, except for a few provisions, lasted for a year, the implementation of this law was postponed on two occasions, after which a decision was made to repeal it with the explanation that the conditions for its implementation were not met (primarily due to the fact that the Public Prosecutor's Office was not ready to take over the investigation either in technically or in terms of personnel).

Finally, the new Criminal Procedure Code was adopted in 2011, which introduced radical changes in criminal procedure compared to traditional codes. These changes are reflected in the introduction of a modified accusatory criminal procedure as well as specific elements of the party model. The adoption of this Code was accompanied by an intense reaction and criticism of new legal solutions not only by Serbian legal theory but also by numerous experts in practice. The concept of the new Code was criticized particularly because it eliminated the principle of truth from criminal proceedings, entrusted the investigation to the public prosecutor, and introduced elements of parallel investigation, enabling any out-of-court evidence to be easily and almost routinely used directly at the main trial. The theory went so far as to point out the unconstitutionality of certain provisions.

However, this Code entered into force on the eighth day from the day of its publication in the "Official Gazette of the Republic of Serbia," though the beginning of its application was postponed. Its full implementation began on October 1, 2013, excepting portions regarding criminal proceedings. For those, a special law stipulates that the public prosecutor's office of special jurisdiction will act. Hence, the implementation began on January 15, 2012.

Criminal executive law, as part of the criminal law system of Serbia, began its independent development after the Second World War with the enactment of the Law on the Execution of Sentences 1948, the Law on the Execution of Sentences, Security Measures and Educational and Corrective Measures of 1951, the Law on the Execution of Criminal Sanctions of 1977, and the Law on the Execution of Criminal Sanctions of 2005.

The current Law on the Execution of Criminal Sanctions was passed in 2014.

2. Main (legal) sources (legislation in force)

The criminal substantive law of the Republic of Serbia is regulated by the *Criminal Code* (CC) from 2005, which entered into force on January 1, 2006.[3] The Code brought novelties among the criminal law regulations, yet it also represented a certain continuity in relation to the previous criminal legislation. However, this Code has been amended nine times thus far, and the work of the Working Group for Amendments to the Criminal Code, which was formed in 2021, is underway. Therefore, it is almost certain that, although the work of this Working Group has not yet been completed, the 10th amendment to the Code will follow.

Having in mind the quantity and especially the quality of changes in the law (among which, for example, the changes from 2012 represented a discontinuity compared to the changes from 2009[4]), the period since the adoption of the current Criminal Code has been very turbulent, which is highly atypical for criminal legislation and its nature.

Criminal law in Serbia, which has been subject to frequent changes and additions, can be said to be unstable compared to previous decades, when this was one of the most stable branches of law. The reasons for intensive reform efforts are both substantive and formal in nature. They include new forms of crime; overall social, political and economic changes as well as the need to eliminate inaccuracies and omissions that are, as a rule, the result of changes in the law over a very short period of time; and harmonization of criminal legislation with the law and standards of the European Union and the relevant conventions of the Council of Europe, given that Serbia has undertaken certain obligations arising from ratified international treaties, membership in the Council of Europe, and EU requirements as part of the accession process and its candidate status, which also apply to criminal law.[5]

Amendments to the Criminal Code covered both the general and special parts, and because criminal acts are prescribed by other laws, these laws are subject to frequent changes as well. The reform of a special crime is primarily defined by several negative characteristics: prescribing heavier penalties for a large number of crimes; pronounced criminalization, namely, prescribing new crimes; the absence of both partial (narrowing and specifying the criminal zone) and complete decriminalization; and violation of the unity between the provisions of the general and special parts of criminal law.[6] In general, criminal law reforms have moved in two general directions: expanding the incrimination zone and tightening penalties.

One of the major changes in criminal law is that concerning the most severe punishment. Namely, until 2019, the most severe prescribed prison sentence in Serbia

3 *Official Gazette of RS*, No. 85/2005, 88/2005 – amended, 107/2005 – amended, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, and 35/2019.
4 See Stojanović, 2013.
5 Ibid., p. 120.
6 See Deli, 2014.

was a sentence of 30 to 40 years. It was prescribed instead of the death penalty for the most serious crimes and was not often imposed in practice. Bearing in mind that it could be pronounced only for a perpetrator who had turned 21 at the time of the commission of the crime, it is to be expected that a certain number of the convicted would serve this sentence for the rest of their lives. However, in 2019, life imprisonment was introduced in Serbia as a replacement for this sentence for the most serious crimes and the most serious forms of crime in addition to regular imprisonment. This sentence cannot be imposed on a person who has not reached the age of 21 at the time of the commission of the criminal offense.

The *Criminal Procedure Code (CPC)*[7] is the main source of criminal procedural law in the Republic of Serbia and has been changed several times thus far; in December 2021, a new Working Group was formed to amend the Criminal Procedure Code to harmonize it with the EU acquis. The Code regulates the rules of criminal procedure (both general and special criminal procedures) for the trial of adult perpetrators of criminal offenses. Its goal is not to convict anyone who is innocent but, rather, to convict perpetrators by applying the appropriate sanction under the conditions prescribed by substantive criminal law. In addition, the CPC determines the rules on conditional release, rehabilitation, termination of security measures and legal consequences of conviction, exercising the rights of persons deprived of their liberty and unjustly convicted, confiscation of property, resolving property claims, and issuing arrest warrants.

The *Law on Juvenile Criminal Offenders and the Criminal Protection of Juveniles*[8] contains provisions that apply to juvenile perpetrators of criminal offenses as well as provisions related to substantive criminal law, competent authorities for enforcement, criminal proceedings, and execution of criminal sanctions against these perpetrators of criminal offenses. The provisions of this Law accordingly apply to adults who are tried for criminal offenses they committed as minors (when the conditions provided by law are met) as well as to persons who committed the respective criminal offense as adults. The law also contains special provisions on the protection of children and minors as victims in criminal proceedings.

Along with the basic sources, there are additional sources of criminal procedural law (termed secondary criminal procedural legislation), which include laws relating to certain criminal procedural entities such as the court, public prosecutor, and defense counsel. These include the Law on the Organization of Courts, the Law on Judges, the Law on the High Judicial Council, the Law on the State Council of Prosecutors, the Law on Seats and Areas of Courts and Public Prosecutor's Offices, the Law on Advocacy, and so on. In addition, secondary criminal procedural legislation includes sources that regulate important issues related to the conduct of criminal proceedings, such as the Law on Official Use of Languages and Scripts; the Law on International Legal

7 *Official Gazette of RS*, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of Constitutional Court and 62/2021 – decision of Constitutional Court.
8 *Official Gazette of RS*, No. 85/2005.

Assistance in Criminal Matters; the Law on Cooperation with International Criminal Courts; the Law on Organization and Competences of State Bodies in War Crimes Proceedings; the Law on Organization and Competences of State Bodies for Combating High-Tech Crime; the Law on Organization and Competences of State Bodies in Combating Organized Crime, Terrorism, and Corruption; the Law on Programs for the Protection of Participants in Criminal Procedures; and the Law on Police.

The procedure for the execution of criminal sanctions is regulated by the *Law on the Execution of Criminal Sanctions (LECS)*.[9] This law regulates the execution procedure for criminal sanctions against adults, the rights and obligations of persons against whom criminal sanctions are executed, the organization of the Administration for Execution of Criminal Sanctions, supervision of its operations, execution of imposed sanctions for economic and misdemeanor crimes, confiscation of criminal proceedings, and the application of detention measures. The provisions of this Law are applied in criminal sanctions against the juvenile execution procedure as well as in the execution procedure of imprisonment imposed for misdemeanors unless otherwise determined by a special law.

Unlike certain areas of criminal law that can be regulated only by law, the execution of a prison sentence is regulated by a large number of regulations of different legal force. In addition to the law in the field of the execution of imprisonment, bylaws regulating the area of imprisonment execution are important, such as the Rulebook on Treatment, Treatment Programs, Classification, and Subsequent Classification of Convicts; the Rulebook on Sending Convicts, Misdemeanors, and Detainees to Prisons for the Execution of Criminal Sanctions; the Rulebook on the Work of Convicted Persons; the Rulebook on Clothing, Footwear, Underwear, and Bedding of Convicted Persons; the Rulebook on House Rules of Penitentiaries and District Prisons; the Rulebook on Measures to Maintain Order and Security in Penitentiaries; the Rulebook on Disciplinary Procedure against Convicted Persons; and the Decree on the Establishment of Institutions for the Execution of Criminal Sanctions in the Republic of Serbia. The Law of Enforcement of the Prison Sentence for Criminal Offenses of Organized Crime[10] regulates the execution procedure of imprisonment for criminal offenses that, in terms of the Law on Organization and Competences of State Bodies in Suppressing Organized Crime, are considered criminal acts of organized crime; this law also regulates the organization and competence of state bodies in sentence executions, the position of convicts, and supervision over imprisonment execution.

Under the conditions provided by this Law, in ti, its provisions shall also apply to the execution of a prison sentence for the following: a) the criminal offense of terrorism referred to in Article 312 of the Criminal Code and the criminal offense of international terrorism referred to in Article 391 of the Criminal Code b) criminal offenses under Article 370 to 384 and Article 385 and 386 of the Criminal Code c) grave breaches of international humanitarian law committed in the territory of the former

9 *Official Gazette of RS*, No. 55/2014, 35/2019.
10 *Official Gazette of RS* No. 72/09, 101/2010.

Yugoslavia since January 1, 1991, as set out in the Statute of the International Criminal Tribunal for the Former Yugoslavia d) the criminal offense of assistance to the perpetrator after the commission of the criminal offense referred to in Article 333 of the Criminal Code if it was committed in connection with the criminal offenses referred to in items 2) and 3) of this paragraph (in Article 1).

For the execution of the sentence of imprisonment for criminal offenses referred to in Article 1, Paragraph 1 and 2 of this Law, a special department for serving a prison sentence for criminal offenses of organized crime shall be established in a closed penitentiary-correctional institution with special security (hereinafter: the Special Department). For adults who are sentenced to imprisonment for criminal offenses under Article 1 Paragraph 1 and 2 of this Law, the security measure of compulsory psychiatric treatment and custody in a health institution, compulsory treatment of alcoholics and drug addicts, and treatment during the execution of a prison sentence and special rooms under supervision are provided in the Special Prison Hospital, in Article 2.

3. Relevant institutions

3.1. Court of law

According to the principle of division of power into legislative, executive, and judicial power over the territory of the Republic of Serbia, judicial power is a special and unique branch of power exercised by courts.

Courts are autonomous and independent state bodies that exercise judicial power on the basis of the Constitution, laws and other general acts when provided by law, generally accepted rules of international law, and ratified international treaties.

Judicial power in the Republic of Serbia is vested in courts of general and special jurisdiction[11] the establishment, organization, jurisdiction, and composition of which are regulated by law. Temporary, indirect, or extraordinary courts are prohibited by the Constitution[12]. Within the courts of general jurisdiction, there are criminal departments in which criminal matters are tried. The function of the trial is performed by the court, and it includes conducting criminal proceedings and adjudicating criminal matters, provided that it does not extend to the area of execution of criminal sanctions because this area is within the domain of special administrative bodies. Exceptionally, courts may engage in some interventions in the field of executing criminal sanctions. For example, the court supervises the implementation of security measures of mandatory psychiatric treatment and custody in health institutions.

In the Republic of Serbia, judicial power in criminal matters is entrusted to courts of general jurisdiction.

11 Courts of special jurisdiction are commercial courts, the Commercial Appellate Court, minor offense courts, the High Minor Offenses Court, and the Administrative Court.

12 Article 143 Paragraph 3. *Official Gazette of RS*, No. 98/2006.

There are four types of courts that are competent in criminal matters:

1. Basic courts, which are courts of a lower rank[13], established for the territory of a town or one or several municipalities by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices[14]
2. High courts, which are courts of a higher rank, established for the territory of one or several basic courts by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices
3. Appellate courts, which are established for the territory of several high courts; There are four appellate courts: Novi Sad, Belgrade, Kragujevac, and Niš
4. The Supreme Court of Cassation, which is the court of highest instance in the Republic of Serbia, with its seat in Belgrade

Rules on the substantive jurisdiction of courts in criminal procedure are contained in the Law on the Organization of Courts (LOC).[15]

Basic courts adjudicate in *the first instance* in connection with criminal offenses that are punishable, as the principal penalty, by a fine or imprisonment of up to 10 years unless some such offenses fall under the jurisdiction of another court. They also decide on requests to suspend a security measure or legal consequences of the conviction for criminal offenses under its competence[16].

A *high court* in *the first instance*

1. adjudicates in connection with criminal offenses punishable by imprisonment of more than 10 years as the principal penalty;
2. adjudicates in connection with criminal offenses against the Army of Serbia; disclosure of state secrets; incitement to change of constitutional order by use of force; provoking national, racial, and religious hatred and intolerance; violation of territorial sovereignty; conspiracy for anti-constitutional activity; organization and incitement of genocide and war crimes; damaging the reputation of the Republic of Serbia; damaging the reputation of a foreign state or an international organization; money laundering; disclosure of official secrets; violation of law by judges, public prosecutors, or their deputies; endangerment of air traffic safety; murder in the heat of passion; rape; copulation with a powerless person; copulation by abuse of authority; abduction; trafficking minors for the purpose of adoption; violent conduct at sports

13 The division of courts in the first instance into courts of lower and higher rank was carried out according to the gravity of criminal offenses. In the Republic of Serbia, within the courts of the first instance, the basic courts are the courts of lower rank, and the higher courts are the courts of higher rank.

14 *Official Gazette of RS*, No. 101/2013.

15 *Official Gazette of RS*, Nos. 116/2008, 104/2009, 101/2010, 31/2011 – other Law, 78/2011 – other Law, 101/2011, 101/2013, 106/2015, 40/2015 – other Law, 13/2016, 108/2016, 113/2017, 65/2018- Decision of Constitutional Court of RS, 87/2018, and 88/2018- Decision of Constitutional Court of RS.

16 Article 22 Paragraph 1 LOC.

events; accepting bribes; abuse of the position of the responsible person[17] and criminal offenses for which a special law determines the jurisdiction of the higher court; and abuse in public procurement[18];

3. adjudicates in juvenile criminal proceedings[19].

Moreover, a high court acts as *second instance,* deciding on appeals against decisions taken by basic courts 1. on imposing measures to secure the presence of defendants, 2. for criminal offenses punishable by a fine and imprisonment for up to five years[20].

In terms of Article 24 LOC, appellate courts decide on appeals against a) decisions of high courts; b) decisions of basic courts in criminal proceedings unless under the jurisdiction of a high court to decide on the appeal concerned.

As for the Jurisdiction of the Supreme Court of Cassation, the Law differs for trial jurisdiction[21] and jurisdiction outside the trial[22]. The Supreme Court of Cassation decides on extraordinary legal remedies filed against the Republic of Serbia's court decisions and in other matters set forth by law. Furthermore, the Supreme Court of Cassation shall decide on conflicts of jurisdiction between courts if this does not fall under the jurisdiction of any other court as well as on court jurisdiction transfer to facilitate proceedings or due to some other important reasons[23]. The Supreme Court of Cassation determines general legal views to ensure uniform application of the law by courts, reviews the application of law and other regulations as well as the work of courts, appoints judges of the Constitutional Court, provides opinions on candidates for the President of the Supreme Court of Cassation, and exercises other competences set forth by law[24].

In addition to the rules in LOC and according to the provisions of special organizational laws, the jurisdiction of the High Court in Belgrade, specifically, some of its departments, to judge in the first instance for the territory of the Republic of Serbia has been established: a) Special Department for organized crime, terrorism, and other particularly serious crimes in terms of the Law on the Organization and Competence of State Authorities for Suppressing Organized crime, Terrorism, and Corruption[25]; b) Special Department for war crimes in terms of the Law on the Organization and Competence of the Government Authorities in War Crimes Proceedings[26]; c) Special

17 Article 234 Paragraph 3 of the Criminal Code.
18 Article 234a Paragraph 3 of the Criminal Code.
19 Article 23 Paragraph 1 LOC.
20 Article 23 Paragraph 2 LOC.
21 Article 30.
22 Article 31.
23 Article 30.
24 Article 31.
25 *Official Gazette of RS*, No. 94/2016, and 87/2018 – other Law.
26 *Official Gazette of RS*, No. 67/2003, 135/2004, 61/2005, 101/2007, 104/2009, 101/2011 – other Law, and 6/2015.

Department for cybercrime in terms of the Law on the Organization and Competence of Government Authorities Combating Cyber Crime[27].

Moreover, military departments have been established in the High Court in Novi Sad, Belgrade, and Niš. They are competent to try such crimes, which were previously under the jurisdiction of military courts. That aligns with the Law on taking over the jurisdiction of military courts, military prosecutor's offices, and the military attorney's office.[28]

Finally, special departments for the suppression of corruption have been formed at the higher courts in Novi Sad, Belgrade, Kraljevo, and Niš in terms of the Law on Organization and Competence of State Authorities in the Suppression of Organized Crime, Terrorism, and Corruption.

3.2. Public Prosecutor's Office

The Public Prosecutor's Office of the Republic of Serbia has a hierarchical organizational structure, with the Republic Public Prosecutor's Office based in Belgrade at the top.

Lower public prosecutor's offices include the following: appellate public prosecutor's offices (Belgrade, Nis, Novi Sad, and Kragujevac), higher public prosecutor's offices, basic public prosecutor's offices, and public prosecutor's offices with special competencies (Prosecutor's Office for Organized Crime and Prosecutor's Office for War Crimes). The substantive and territorial jurisdiction of public prosecutor's offices corresponds to the substantive and territorial jurisdiction of courts, except in the case of the Republic Public Prosecutor's Office (RJT) and special jurisdiction prosecutor's offices established for the territory of the Republic of Serbia.

In addition, there are forms of specialization of public prosecutors. For high-tech crime, the Higher Public Prosecutor's Office in Belgrade is responsible for the entire territory of the Republic. Republic Public Prosecutor's Office military departments have been established within the Higher Public Prosecutor's Offices in Belgrade, Novi Sad, and Niš. Moreover, special departments for combating corruption have been established within Public Prosecutor's offices in Belgrade, Novi Sad, Niš, and Kraljevo.

The Law on the Public Prosecutor's Office[29] regulates the organization and competence of public prosecutor's offices, conditions, and procedures for the election and termination of the public prosecutor and deputy public prosecutor; the rights and duties of the public prosecutor and deputy public prosecutor; evaluation of their work, promotion, and disciplinary responsibility; performance of the tasks of judicial and prosecutorial administration in the public prosecutor's offices; providing funds

27 *Official Gazette of RS*, No. 61/2005, and 104/2009.

28 *Official Gazette of RS*, No. 137/2004.

29 Article 1. *Official Gazette of* RS, No. 116/2008, 104/2009, 101/2010, 78/2011 – other Law, 101/2011, 38/2012 – Decision of Constitutional Court of RS, 121/2012, 101/2013, 111/2014 – Decision of Constitutional Court of RS, 117/2014, 106/2015 and 63/2016 – Decision of Constitutional Court of RS.

for the work of public prosecutor's offices; and other issues of importance for the work of these offices.

The Public Prosecutor's Office is an independent state body (judicial-administrative) that prosecutes perpetrators of criminal offenses and other criminal offenses and takes measures to protect constitutionality and legality[30]. However, the public prosecutor also acts in civil, administrative, executive, non-litigious, and other proceedings, performing actions to which they are authorized by special laws[31].

In addition, the Public Prosecutor's Office may initiate a procedure of constitutionality and legality[32]. The public prosecutor in criminal proceedings undertakes actions personally or through their deputy. Regarding criminal proceedings for which a prison sentence of up to five years is prescribed, the public prosecutor may also take actions through a prosecutor's associate and, in criminal proceedings for which the sentence is prescribed imprisonment for up to eight years, through a senior prosecutor's associate.[33]

3.3. Authorities responsible for the execution of criminal sanctions

In the Republic of Serbia, there are various state bodies responsible for the execution of criminal sanctions, depending on the type of sanctions. Although their competencies and scope of work differ, given that they participate in the enforcement procedure, they all form a system of state bodies for the execution of criminal sanctions. These include the Directorate for the Execution of Criminal Sanctions, the court, the police, the inspection, and health institutions.[34] The police, inspection, and healthcare institutions may have ancillary or exclusive competence in the procedure of execution of criminal sanctions.[35]

The *Directorate for the Execution of Criminal Sanctions* (the body within the ministry responsible for justice[36]) organizes, implements, and supervises the execution of imprisonment, juvenile imprisonment, work in the public interest, suspended sentences with protective supervision, security measures of mandatory psychiatric

30 Article 2.

31 Article 26 Paragraph 2.

32 Article 168 Paragraph 1 of the RS Constitution.

33 Article 48 of the CPC. The title of prosecutorial associate can be acquired by a person who has passed the bar exam, and the title of senior prosecutor's associate can be acquired by a person who has at least two years of work experience in the legal profession after passing the bar exam (Article 120). Although this legal solution is directly contrary to Article 159 Paragraph 4 of the RS Constitution, according to which the public prosecutor is replaced by deputy public prosecutors, this provision in the CPC has survived with the explanation that it strengthens the human resources of the public prosecutor's office, which has been performing investigative activities since the CPC 2011. This legal solution has been the subject of serious, vigorous, and completely justified criticism from the scientific and professional public.

34 On the bodies responsible for the execution of criminal sanctions, see Drakić and Milić, 2019, pp. 17–20.

35 Ibid., p. 20.

36 The internal organization, organization, and scope of the organizational units within the Administration shall be prescribed by the Government.

treatment and custody, obligatory treatment of drug addicts and alcoholics, and educational measures related to sending to an educational-correctional home[37].

Moreover, the Directorate implements the measure of detention and other measures to ensure the presence of the accused and the unhindered conduct of criminal proceedings in accordance with the law; they also perform other tasks determined by law. The administration is involved in the procedures of social reintegration and admission of convicts. In performing its tasks, the Administration cooperates with appropriate institutions, associations, and organizations that deal with problems related to the execution of criminal sanctions.

Within the Administration are the following institutes for the execution of criminal sanctions: 1) penitentiary and district prison, 2) penitentiary for women, 3) penitentiary for juveniles, 4) special prison hospital, and 5) correctional facility.

The institutions provide the following services: 1) treatment service, 2) security service, 3) training and employment service, 4) health care service, 5) general affairs service.

The execution of non-institutional sanctions (house arrest, punishment in the form of work in the public interest, a conditional sentence with protective supervision, and conditional release under supervision) is within the competence of the *Trust Service* established within the Directorate for Execution of Criminal Sanctions. The organizational structure of the Trustee Service implies the establishment of trustee offices for the area of territorial jurisdiction of one or more courts.

The court has a specific role in the procedure for the execution of criminal sanctions, such as security measures of a medical nature, security measures for object confiscation, or a fine execution. In addition, the court decides on the postponement of the execution of a prison sentence, conditional release, termination of the prison sentence, and so on. The LECS introduced a new institute: a *judge for the execution of criminal sanctions*.

In each higher court, in accordance with this law, the president of the court shall appoint a judge for the execution of criminal sanctions from the judges of that court. In the cases for which they are competent, the enforcement judge acts as a single judge. The enforcement judge may be assisted by a special professional service provided by the employees of the court. The Enforcement Judge, in accordance with the Rules of Procedure, keeps special records of the cases in which they act. The Enforcement Judge protects the rights of detainees, convicts, persons sentenced to security of mandatory psychiatric treatment and custody in a health institution, and mandatory treatment of drug addicts or alcoholics when conducted in an institution; monitors the legality of criminal sanctions; and ensures equal treatment of these persons before the law. Therefore, the enforcement judge now decides on certain rights and obligations that were once determined by prison authorities.

In the event of a change in the place of execution of a prison sentence or detention measure, the higher court shall have jurisdiction over further treatment of the

37 Article 12 Paragraph 1 of the LECS.

convicted or detained person according to the seat of the institution to which the convicted or detained person was transferred. The execution judge from the seat of the institution where the convicted or detained person was transferred from shall immediately submit the case file to the execution judge at the seat of the institution to which the convicted or detained person was transferred to[38].

4. Main substantive criminal law

4.1. General principles

Criminal law in the Republic of Serbia is based on the principles of legality, legitimacy, individual subjective responsibility, humanity, fairness, and proportionality.[39] These principles are the result of the historical development of the criminal law, and today, the criminal law of Serbia can be justifiably said to be in line with contemporary criminal law standards.

The first chapter of the Criminal Code contains the basic principles of criminal law: a) No Criminal Offense or Punishment Without Law: No one can be punished or have any other criminal sanction imposed on them for an offense that did not constitute a criminal offense at the time that it was committed, nor may a punishment or other criminal sanction be imposed that was not applicable at the time the criminal offense was committed[40]; b) No Punishment Without Guilt: Punishment and caution can be imposed only on an offender who is guilty of the committed criminal offense[41]; c) Basis and Scope of Criminal Law Compulsion: Protection of a human being and other fundamental social values constitute the basis and scope for defining criminal acts and imposing and enforcing criminal sanctions to the degree necessary for the suppression of these offenses[42].

4.2. General part

Criminal offense is defined by the Criminal Code[43] as an act that is provided by law as a criminal offense, is unlawful, and is perpetrated with guilt.

The notion of a criminal offense defined in this way has four elements: action, prescription of the criminal offense by law, unlawfulness, and guilt (culpability). The definition of a criminal offense according to the law is an objective-subjective notion of a criminal offense, which is in line with the newer theory of criminal law. This norm can be successfully applied in practice; therefore, it is not merely declarative.[44] The action of a criminal act is the basic element of the concept, while the other

38 Article 35.
39 Stojanović, 2020, pp. 20–31.
40 Article 1.
41 Article 2.
42 Article 3.
43 Article 14 Paragraph 1 of the Criminal Code.
44 Ibid., p. 92.

elements are only in the function of the first element because they define it more closely. Nevertheless, without them, there is no criminal act. Consequently, they are obligatory. These four elements have a specific order that cannot be changed because it represents a way to determine the realization of the elements of the crime.

The Criminal Code provides several grounds for the exclusion of criminal offenses, whereby the so-called "justifications" exclude the unlawfulness of the act, and the so-called "excuses" exclude guilt (culpability). There is no criminal offense if unlawfulness and guilt are excluded, despite the fact all other features of a criminal offense determined by law are present[45]. The grounds for excluding unlawfulness are an act of minor significance, self-defense, and extreme necessity.[46] The grounds for excluding guilt (culpability) are insanity, mistake of fact, and mistake of law.

In Article 18, the Code states that an offense is *not considered a criminal offense* if, despite having elements of a criminal offense, it represents an *offense of minor significance*. An offense of minor significance is the one in which the degree of the offender's responsibility is not high, the consequences are absent, insignificant, or eliminated by the offender, and the general purpose of imposing criminal sanctions does not require sanctioning. Nevertheless, these provisions may be applied only to criminal offenses carrying imprisonment sentence of up to three years or a fine.

In Article 19, the Code regulates *self-defense*. It is stated that an act committed in self-defense *is not a criminal offense*. Self-defense is such a defense as is necessary for the perpetrator to repel a concurrent unlawful attack on their, or on another person's, legally protected rights. However, for a perpetrator who has exceeded the limits of self-defense, the punishment may be mitigated, whereby a perpetrator who exceeds the limit of self-defense due to extreme provocation or fear caused by assault may be acquitted.

If an act is committed in *extreme necessity*, it *does not constitute a criminal offense*. Extreme necessity exists when an act is committed by the perpetrator to repel from themselves or the other person a concurrent unprovoked danger that could not be otherwise repelled, and the damage inflicted does not exceed the damage threatened. However, there is no extreme necessity if the offender was under obligation to expose themselves to imminent danger. Punishment of a perpetrator, who caused the danger themselves, both due to negligence and having exceeded the limits of extreme necessity, may be mitigated. Moreover, a perpetrator who has exceeded the limits of extreme necessity under particularly extenuating circumstances may receive remittance of the punishment[47].

An act committed *under irresistible force is not a criminal offense*. In this case, a person using irresistible force shall be considered the perpetrator of the criminal

45 Article 14 Paragraph 2 of the CC.

46 Not all grounds for excluding wrongdoing are provided for in the general part of Criminal Code: performing official duties, acting on the order of a superior, receiving the consent of the injured party, permitted risk, parental right to care for a child, undertaking medical procedures, and many other factors are defined in other branches of law. On this, see Stojanović, 2020, pp. 153–161.

47 Article 20.

offense. If a criminal offense is committed under force that is not irresistible or under threat, the offender may be punished more leniently[48].

According to the criminal legislation of the Republic of Serbia, guilt is an obligatory element of the general concept of a criminal offense, which is why the issue of criminal responsibility is reduced to the issue of guilt.[49] Guilt exists if the perpetrator was sane at the time of the act, and if they acted with intent (or out of negligence if it is explicitly provided by law in Article 22 of the Criminal Code), and they were aware or were obliged to be aware and could have been aware that their act is forbidden.[50] Guilt is tripartite; that is, it consists of sanity, intent or negligence, and awareness of unlawfulness or duty and possibility of said state of mind (Unrechtbewusstsein). If one of the three listed elements is missing, there is no guilt.

Because there is no criminal offense without culpability[51], in cases of grounds for excluding culpability, the Code prescribes that an act is not considered a criminal offense.

There is *no criminal offense* if a perpetrator was in a state of *mental incompetence*, that is, if they were unable to understand the significance of their act or unable to control their actions due to mental illness, temporary mental disorder, mental retardation, or other severe mental disorder (insanity) whereby a perpetrator of a criminal offense whose ability to understand the significance of their act or to control their actions was substantially diminished due to any of these conditions may be given a mitigated sentence (substantially diminished mental competence; in Article 23).

An act shall not be considered *a criminal offense* if it was a result of an unavoidable *mistake of fact*, which exists in cases in which the perpetrator was not required to avoid or could not have avoided a mistake in a particular circumstance that is a statutory element of the criminal offense, or regarding a particular circumstance that, had it existed, would have rendered such act lawful. However, if the perpetrator's mistake was due to negligence, they shall be guilty of a criminal offense committed by negligence if such an offense is provided by law[52]. Moreover, an act shall not be considered a criminal offense if it was done out of the unavoidable *mistake of law*, which exists

48 Article 21.

49 Criminal liability can be bestowed on a natural person who has committed an act that is defined by law as a criminal offense, unlawful, and committed with guilt. The criminal legislation of Serbia also envisages the criminal liability of legal entities (Law on Liability of Legal Entities for Criminal Offenses, Official Gazette of RS No. 97/2008). A legal entity may be liable for criminal offenses from a special part of the Criminal Code and other laws if the conditions for the liability of a legal entity provided by this law are met (Article 2). A legal entity is a domestic or foreign legal entity that is considered a legal entity under the positive law of the Republic. A legal entity is liable for a criminal offense committed by the responsible person within the scope of its activities or authorizations in order to benefit the legal entity. The liability of the legal entity referred to in Paragraph 1 of this Article exists even if the criminal offense is committed in favor of a legal entity by some other natural person acting under the supervision and control of said responsible person. The liability of a legal entity is based on the guilt of the responsible person.

50 Stojanović, 2020, p. 163.

51 Article 14 of the CC.

52 Article 28.

when the perpetrator was not required to be or could not be aware that their act was prohibited. However, a perpetrator who was unaware that an act was prohibited but should and could have known may be punished leniently[53].

The code regulates *complicity in the criminal offense*.

Co-perpetration exists if several persons jointly take *part* in the commission of a criminal offense through intent or negligence or by carrying out a jointly made decision, executed by another intentional act, significantly contributing to committing a criminal offense, and each is punished as prescribed by law for that offense[54].

Whoever intentionally *incites* another to commit a criminal offense is punished as prescribed by law for such an offense. Moreover, whoever intentionally incites another person to commit a criminal offense while attempting one is punishable by law and, if such an offense has not been attempted at all, is punished for the attempted criminal offense[55]. Anyone *aiding* another with an intent to commit a criminal offense is punished as prescribed by law or by a mitigated penalty for the criminal offense[56].

The Code sets forth limits to the culpability and punishment of accomplices: an accomplice is culpable for a criminal offense within the limits of their intent or negligence, and the inciter and abettor, within the limits of their intent. In this regard, the grounds that exclude the culpability of the perpetrator, in Articles 23, 28, and 29 hereof, do not exclude a criminal offense of co-perpetrators, inciters, or abettors if they are culpable[57]. Furthermore, if a criminal offense remains an attempt, the inciter and abettor are punished for the attempt. If an offender commits a lesser criminal offense compared with the one incited to or abetted and that would have been comprised in such an offense, the inciter and abettor are punished only for the criminal offense that was actually committed[58].

The Code contains special provisions on criminal liability for offenses committed through the media, in Articles 38–41.

The notion of guilt in criminal law should be distinguished from the notion of guilt in criminal procedure, in which guilt is a state of complete certainty that the defendant committed a crime based on established facts presented in accordance with the law, which is determined by a final court decision.

4.3. Sanctioning system

The system of sanctions in the Republic of Serbia includes four types of criminal sanctions: 1. Punishments, 2. Cautionary measures, 3. Security measures, and 4. Educational measures. The general purpose of prescription and imposing of criminal sanctions is to suppress acts that violate or endanger the values protected by criminal legislation. A criminal sanction may not be imposed on a person who has not turned

53 Article 29.
54 Article 33.
55 Article 34.
56 Article 35.
57 Article 36.
58 Article 37.

14 at the time of the commission of an offense. Rehabilitation measures and other criminal sanctions may be imposed on a juvenile under the conditions prescribed by a special law[59].

4.3.1. Punishment

Although the system of criminal sanctions is expanding through the reform of criminal legislation, punishment remains the most important criminal sanction. In addition to the general purpose of criminal sanctions, the Code explicitly defines the purpose of punishment:

1. to prevent an offender from committing criminal offenses and deter them from future commission of criminal offenses (special prevention)
2. to deter others from committing criminal offenses (general prevention)
3. to express social condemnation of the criminal offense, enhance moral strength, and reinforce the obligation to respect the law
4. to achieve justice and proportionality among the committed offense and the severity of the criminal sanction[60]

The types of punishment according to the Code are 1) Life sentence, 2) Imprisonment, 3) Fine, 4) Community service, and 5) Revocation of driver's license.[61] The Code differentiates between principal and secondary penalties in Article 44, stating that a life sentence and imprisonment may be pronounced only as principal sanctions, while a fine, community service, and revocation of a driver's license may be pronounced as both principal and secondary sanctions. If several sanctions are prescribed for a single criminal offense, only one can be pronounced as the principal sanction.

A *life sentence* may be pronounced, in exceptional cases, along with imprisonment, for the most severe criminal offenses and the most severe forms of severe criminal offenses. However, it cannot be pronounced for a person who, at the time of the commission of a criminal offense, is less than 21 years of age[62].

A *sentence of imprisonment* may not be less than 30 days or more than 20 years. A sentence of imprisonment referred to in paragraph 1 of this Article is pronounced in full years and months and, if less than six months, also in days. The court may punish a convicted person with imprisonment of up to one year or impose them to serve the sentence in terms that they shall not leave the living premises[63].

A *fine* may be determined and pronounced either in daily amounts[64] or a particular amount[65]. A fine for criminal offenses committed for gain may be pronounced as

59 Article 4.
60 Article 42.
61 Article 43.
62 Article 44a.
63 Article 45.
64 Article 49.
65 Article 50.

a secondary punishment even when not stipulated by law or when the law stipulates that the perpetrator may be punished with imprisonment or fine, and the court pronounces imprisonment as the principal punishment.

Community service may be imposed for criminal offenses punishable by imprisonment of up to three years or a fine, whereby community service is any socially beneficial work that does not offend human dignity and is not performed for profit. Community service cannot be shorter than 60 hours or longer than 360 hours. Community service shall last 60 hours over the course of one month and shall be performed during a period that cannot be shorter than one month or longer than six months[66].

The *revocation of a driver's license* may be issued to a perpetrator of an offense in whose commission or preparation a motor vehicle was used. The court determines the duration of the penalty, which cannot be less than one or longer than three years, calculated from the day the decision became final. The time spent in prison is not factored into this sentence[67].

4.3.2. Cautionary measures

Cautionary measures include a suspended sentence and judicial admonition. The purpose of a suspended sentence and judicial admonition is to avoid imposing a sentence for smaller criminal offenses on an offender who is guilty when it may be expected that an admonition with the threat of punishment (suspended sentence) or a caution alone (judicial admonition) will have a sufficient effect on the offender to deter them from further commission of criminal offenses[68].

In the case of a *suspended sentence*, the court determines a punishment for the offender and concurrently determines that it shall not be enforced, provided that the convicted person does not commit a new offense during a period set by the court, which may not be shorter than one or longer than five years (probationary period). In the case of a suspended sentence, the court may order that the penalty shall be enforced if the convicted person fails to restore the material gain acquired through committing the offense, fails to compensate damages caused by the offense, or fails to fulfill other obligations provided in provisions of criminal legislation. The court sets the time for fulfilling such obligations within the specified probationary period[69]. In Article 66, the Code sets requirements for pronouncing a suspended sentence.

4.3.3. Security measures

The purpose of security measures is to eliminate the circumstances or conditions that may have an impact on an offender to commit criminal offenses in the future[70], whereby the types of security measures are set out in Article 79.

66 Article 52.
67 Article 53.
68 Article 64.
69 Article 65.
70 Article 78.

The court shall order compulsory psychiatric treatment and confinement in a medical institution to an offender who committed a criminal offense in a state of substantially impaired mental capacity if, due to the committed offense and the state of mental disturbance, the court determines that there is a risk that the offender may commit a more serious criminal offense and that to eliminate this risk, they require medical treatment in such an institution[71]. However, to an offender who has committed an unlawful act provided under law as a criminal offense in a state of mental incapacity, if the court determines that danger exists that the offender may again commit an unlawful act provided under law as a criminal offense and that the treatment at liberty is sufficient to eliminate such a danger, the court orders *compulsory psychiatric treatment at liberty*[72]. The court shall order an offender to undergo compulsory treatment if that offender has committed a criminal offense *due to addiction to narcotics* and if there is a serious danger that they may continue committing criminal offenses due to this addiction[73]. The court orders compulsory treatment to an offender who has committed a criminal offense *due to alcohol abuse addiction* if there is a serious threat that they may continue committing offenses due to their addiction[74].

The court can prohibit an offender from *practicing a particular profession, activity, or all or certain duties* related to the disposition, use, management, or handling of another's property or taking care of that property if it is reasonably believed that the further exercise of that duty would be dangerous[75].

The court may order a *ban on driving a motor vehicle* for an offender who committed a criminal offense related to endangering road safety[76].

The *seizure of objects* may be executed on the object that was intended for or used to commit a criminal offense or that originates from the criminal offense when there is a danger that the object will be re-used to commit a criminal offense. The seizure can be performed if the act is required by the interests of general safety or due to moral reasons proving that the seizure of object is necessary[77].

The court may order *expulsion from the territory of Serbia* for a period of one to 10 years for a foreigner who committed a criminal offense[78].

In the case of conviction for a criminal offense committed by means of the media or resulting in the endangerment of individuals' life and health, where publishing of the judgement would be conductive to eliminating or diminishing such a danger, the court can decide to *publish the judgement* in the same media or other appropriate means, in full or in excerpt, at the expense of the offender[79].

71 Article 81.
72 Article 82.
73 Article 83.
74 Article 84.
75 Article 85.
76 Article 86.
77 Article 87.
78 Article 88.
79 Article 89.

The court can prohibit the offender *from converging with the victim,* prohibit *access to the area around the residence of the victim,* and *prohibit further harassment of or further communication with the victim* if further exercise of such actions of the offender can reasonably be considered to be dangerous for the victim[80].

The court may order a measure of prohibiting the offender of a criminal offense from *attending certain sports events* if the court deems it necessary in order to preserve public safety[81].

The court may issue a decision to terminate the security measure of prohibition of practicing professions, activity or duty, and prohibition of driving a motor vehicle after three years have passed from the day of enforcement thereof[82].

4.4. Special part of substantive criminal law

The Criminal Code regulates criminal offenses, categorized by common group protective object of acts in certain chapters: criminal offenses against life and limb (in Chapter 13), criminal offenses against the freedoms and rights of man and citizen (in Chapter 14), criminal offenses against electoral rights (in Chapter 15), criminal offenses against labor rights (in Chapter 16), criminal offenses against honor and reputation (in Chapter 17), sexual offenses (in Chapter 18), offenses relating to marriage and family (in Chapter 19), criminal offenses against intellectual property (in Chapter 20), offenses against property (in Chapter 21), offenses against economic interests (in Chapter 22), offenses against human health (in Chapter 23), criminal offenses against the environment (in Chapter 24), criminal offenses against general safety of people and property (in Chapter 25), criminal offenses against road traffic safety (in Chapter 26), criminal offenses against computer data security (in Chapter 27), criminal offenses against the constitutional order and security of the Republic of Serbia (in Chapter 28), criminal offenses against government authorities (in Chapter 29), criminal offenses against the judiciary (in Chapter 30), criminal offenses against public peace and order (in Chapter 31), offenses against legal instruments (in Chapter 32), criminal offenses against official duty (in Chapter 33), criminal offenses against humanity and other right guaranteed by international law (in Chapter 34) and criminal offenses against the army of Serbia (in Chapter 35).

By prescribing and applying the special part of criminal law, the protective function of criminal law is realized. The general part is applicable to all crimes regardless of whether they are prescribed in the CC. Therefore, while the Criminal Code is the basic source of a special part of criminal law, when it comes to criminal acts, there are also secondary sources of criminal law.

80 Article 89a.
81 Article 89b.
82 Article 90.

5. Main rules of criminal procedure

5.1. Basic subjects

The basic procedural subjects in criminal proceedings are those who perform basic procedural functions and whose existence is a precondition for the establishment, course, and termination of criminal proceedings. These subjects include the court, the authorized prosecutor, and the defendants.

The three main procedural functions are the judicial, prosecution, and defense functions. The judicial function is performed by the competent court. The prosecution function is performed by an authorized prosecutor, while the defense function is performed by the defendant, with the potential (or mandatory, in some cases) professional assistance of defense counsel.

In criminal procedure, the authorized prosecutor and the offender are referred to as parties.

In addition to the basic procedural subjects, secondary subjects also participate in criminal proceedings with certain rights and duties, including the injured party, a legal or natural person on whom a measure of confiscation of property gain and a guardianship authority should be imposed. In addition to these subjects, the subjects of the attached property claim may also appear in the criminal proceedings, as may other participants (e.g., the representative of the injured party, defense counsel, witnesses).

5.1.1. The court

The trial in criminal matters is entrusted to courts of general jurisdiction, specifically to criminal divisions therein. The Criminal Court does not exist as an organizationally separate and independent form of justice. Rather, it is a functional part of the court of general jurisdiction, participating in criminal proceedings in its various forms, where it performs the function of conducting proceedings and adjudicating criminal matters.[83]

The basic constitutional rule[84] is that the court judges in a panel, with a single judge judging only as an exception. A single judge in the first instance judges for criminal offenses punishable by a fine or imprisonment for up to eight years (abbreviated procedure), and the first instance court panel judges for criminal offenses punishable by over eight years of imprisonment (general criminal proceedings). In the first instance, a small (mixed) panel (one professional and two lay judges) judges for crimes punishable by eight to 20 years in prison, and a large (mixed) panel (two professional and three lay judges) judges for crimes punishable by 30–40 years in prison or life imprisonment.

In the first instance, a small (professional) panel (three professional judges) judges in proceedings for criminal offenses for which a special law stipulates that

83 Škulić, 2014, p. 90.
84 Article 142 Paragraph 6 of the Constitution.

the prosecutor's office has special competencies (organized crime, war crimes, high-tech crime). In the second and third instances, the court always judges as a panel composed exclusively of professional judges.

In the procedure against juvenile offenders, a small court panel (mixed) is used that is composed of a professional judge and two lay judges who are, as a rule, of the opposite sex. In the second instance, a small professional panel (three professional judges) judges, except when the proceedings are conducted at a hearing, in which case the large panel is mixed (two professional judges and three lay judges). In the procedure against juveniles, a professional judge must have special knowledge of children's rights and juvenile delinquency, and opposing judges are selected from the ranks of teachers, educators, and other professionals who have experience working with children and youth.

The rules on the territorial jurisdiction of the courts are prescribed in Articles 23-29 of the Code of Criminal Procedure. Criteria for determining the territorial jurisdiction of the court are envisaged in the CPC. The basic criterion is location where the crime was committed[85]. However, the CPC prescribes two subsidiary criteria: the defendant's temporary or permanent residence and the defendant's place of birth, arrest, or surrender. Special rules are envisaged for criminal offenses committed on domestic vessels or aircraft as well as for criminal offenses committed through means of public information.[86]

The functional competence of the court is determined by the phases and instances of criminal proceedings according to Article 22. As a result, in both the pre-investigation proceedings and the investigation, the judge for the preliminary proceedings adjudicates in cases specified in the Code — for example, they decide on ordering detention or a search of an apartment. The out-of-trial chamber decides on appeals against a judge's decisions for the preliminary proceedings, making decisions outside the main trial, etc.

Either a single judge or a panel adjudicates at the main trial. A single judge adjudicates in the first instance for criminal offenses punishable by a fine or a term of imprisonment of up to eight years. Regarding composition of trial panels, the rules are set forth in Article 21 of CPC.

5.1.2. Authorized prosecutor

The authorized prosecutors under the CPC are the following: a) the public prosecutor (who conducts criminal prosecution ex officio); b) the private prosecutor (who conducts criminal prosecution in relation to private lawsuits); c) the injured party as a prosecutor; 4) the so-called subsidiary prosecutor (when a public prosecutor declares that they are abandoning prosecution[87], they can be replaced by a subsidiary prosecutor under the conditions prescribed by the CPC)

85 Article 23 of the CPC.
86 See Articles 24–27 of the CPC.
87 Article 52 of the CPC.

Public prosecutor — The basic right and the basic duty of a public prosecutor is to prosecute the perpetrators of criminal offenses. Based on Article 43 Paragraph 2 of the CPC, in the case of criminal offenses prosecutable ex officio, the public prosecutor is authorized to 1) manage pre-investigation proceedings, 2) decide to defer or not undertake criminal prosecution, 3) conduct investigations, 4) conclude plea agreements and agreements on giving testimony, 5) file and represent an indictment before a competent court, 6) abandon charges, 7) file appeals against court decisions that are not final and submit extraordinary legal remedies against final court decisions, and 8) conduct other actions when specified by the Code.

Subsidiary prosecutor — One of the basic rights of the injured party is the right to a subsidiary lawsuit. The basic condition for exercising this right is that the public prosecutor waives the criminal prosecution from the moment of the confirmation of the indictment in the general criminal procedure[88], that is, from the moment of the determination of the main trial or hearing for imposing a criminal sanction[89].

If the public prosecutor withdraws from the criminal prosecution before the stated procedural moments, the injured party then has only the right to object directly to the higher public prosecutor in accordance with Article 51 of the CPC. If, after the indictment is confirmed, the public prosecutor declares that they are dismissing charges, the court asks the injured party whether they wish to assume criminal prosecution and represent accusation. If the injured party is not present, the court shall notify them within eight days that the public prosecutor dismissed the charges and advise them that they may declare whether they wish to assume criminal prosecution and represent accusation. The injured party is required to immediately, or within eight days of receiving the notice and advice, declare whether they wish to assume criminal prosecution and represent accusation; if they have not been notified, they must do so within three months of the date on which the public prosecutor stated that they are dismissing the charges.

Should the injured party declare that they shall assume criminal prosecution, the court shall resume the trial or schedule the main hearing. If the injured party does not declare themselves within the time limit or declares that they do not wish to assume criminal prosecution, the court shall issue a ruling discontinuing the proceedings or a judgment dismissing the charges. If the injured party is not present at the preparatory or main hearing and was duly summoned or could not be served the summoning invitation because of a failure to notify the court of a change in permanent or temporary residence, it shall be presumed that they do not wish to assume the prosecution and the court.

An injured party as a subsidiary prosecutor is entitled by Article 58 to 1) represent accusation in accordance with the provisions of this Code, 2) submit a motion and evidence for realizing a restitution claim and a motion for interim measures to secure it, 3) retain a proxy from among attorneys, 4) request the appointment of a proxy,

88 Article 52 of the CPC.
89 Article 497 of the CPC.

and 5) perform other actions provided for by the Code. In addition to these rights, a subsidiary prosecutor also exercises the rights of the public prosecutor, except for those that the public prosecutor has in their capacity as a state authority. However, in the proceedings conducted on the basis of charges brought by a subsidiary prosecutor, the public prosecutor shall be entitled to assume criminal prosecution and representation of the prosecution no later than the end of the main hearing[90].

Private prosecutor — A private prosecutor conducts criminal prosecution only for criminal offenses prosecuted in relation to private lawsuits. A private lawsuit is filed within three months from the day when the injured party discovered the criminal act and the suspect[91]. Private prosecutors are entitled by Article 64 to 1) bring and represent a private lawsuit, 2) submit a motion and evidence to realize a restitution claim as well as a motion for interim measures to secure it, 3) retain a proxy from among attorneys, and 4) undertake other actions provided for by the Code.

In addition to the rights referred to in paragraph 1 of this Article, a private prosecutor shall have the rights to which public prosecutors are entitled, except for those they exercise in their capacity as state authorities.

5.1.3. Defendant

The defendant is the basic procedural subject and party in the criminal proceedings, and they perform the function of defense.

The defendant is entitled by Article 68 CPC 1) to be informed in the shortest possible time, and always prior to the first interrogation, in detail and in a language they understand of the charges against them, the nature and grounds of the accusation, and that everything they say may be used as evidence in proceedings; 2) not to say anything, to refrain from answering a certain question, to present their defense freely, to admit or not admit their culpability; 3) to defend themselves on their own or with the professional assistance of defense counsel, in accordance with the provisions of this Code; 4) to have defense counsel attend the interrogation; 5) to be taken before a court in the shortest possible time and to be tried in an impartial and fair manner and in a reasonable timeframe; 6) to read immediately, prior to the interrogation, the criminal complaint, the crime scene report, and the findings and opinions of expert witnesses; 7) to be given sufficient time and opportunity to prepare their defense; 8) to examine the documents contained in the case file and objects serving as evidence; 9) to collect evidence for their own defense; 10) to state their position in relation to all of the facts and evidence against them and to present facts and evidence in their favor, to question witnesses for the prosecution, and to demand that witnesses for the defense be questioned in their presence under the same conditions as the witnesses for the prosecution; 11) to make use of legal instruments and legal remedies; and 12) to perform other actions provided for by the CPC.

90 Article 62.
91 Article 53 Paragraph 2 of the CPC.

On the other side, a defendant has only two duties: 1) to respond to summons from the authority conducting proceedings and 2) to notify the authority conducting proceedings of the change in their temporary or permanent residence or of their intention to change their temporary or permanent residence.

A defendant may choose and authorize with a power of attorney one or several defense attorneys (maximum 5). However, in several cases, a defendant must have defense counsel (mandatory defense, in Article 74). If, in the cases referred to in Article 74, no defense counsel is chosen or the defendant is left without defense counsel during the criminal proceedings, the public prosecutor or the president of the court before which the proceedings are being conducted shall issue a ruling appointing ex officio defense counsel for the remainder of the proceedings according to the order on the roster of attorneys provided by the competent bar association (ex officio defense counsel, in Article 76). The Code prescribes defense counsel's rights in Article 71 and duties in Article 72.

5.2. General principles of criminal procedure

The basic principles of criminal procedure can be classified according to different criteria. Thus, in the theory of criminal procedural law, the principles are divided into principles related to the function of criminal prosecution, principles related to the function of the trial, and principles related to all three procedural functions.[92] In addition, they can be divided into principles of criminal prosecution, evidentiary principles, principles of criminal proceedings, principles of court decisions, and principles of the purpose and basic manner of conducting criminal proceedings.[93]

Although there are numerous procedural principles, the most important are the principle of formality of criminal prosecution, the principle of legality, the principle of opportunity, the principle of mutability, the principle of in dubio pro reo, and the principle of bis in idem.

Other principles include the principle of immediacy, the principle of free evaluation of evidence, the principle of deliberation, the principle of orality, the principle of publicity, the principle of majority decision-making of the court, the principle of free conviction of the body, the principle of remedy, and the principle of fair trial.

The right of state bodies to prosecute perpetrators of criminal acts in the public interest is derived from the state's right to punishment, regardless of whether it is required by a person whose personal or property right has been violated or endangered by a criminal act (the injured party). In terms of *the principle of formality of criminal prosecution*, the public prosecutor, as the competent state body, has *the right* to undertake criminal prosecution ex officio, regardless of the position of the injured party, including if the injured party objects.

However, there are certain exceptions to the principle of formality: 1) private lawsuit, 2) subsidiary lawsuit, 3) criminal acts that are prosecuted ex officio but at

92 On principles and their classification, see Brkić and Bugarski, 2020, pp. 31–51.
93 See Škulić, 2014, pp. 50–90.

the injured party's motion for criminal prosecution. The motion of the injured party is a condition not only for initiating but also for conducting criminal proceedings in all phases. These are criminal offenses that are prosecuted ex officio but, due to some of their specifics, and due to the lack of dominant public interest that they are always prosecuted without exception, the injured party is given a specific right to their procedural expressed will in the form of proposals for criminal prosecution conditions for the initiation and conduct of criminal proceedings.[94] The motion for criminal prosecution of the injured party[95] shall be submitted to the competent public prosecutor within three months of the date when the injured party learned of the criminal offense and the suspect[96]. The injured party may abandon a motion for criminal prosecution via a statement made to the public prosecutor or the court where the criminal proceedings are being conducted or by the conclusion of the main hearing at the latest. In such a case, the injured party forfeits the right to submit the motion anew[97].

Unlike private and subsidiary lawsuits, which are conducted in accordance with the dispositive principle, the prosecution does not depend on the will of the public prosecutor, as the public prosecution must occur when certain prescribed conditions are met. Namely, the *principle of legality of criminal prosecution* implies that criminal prosecution does not depend on the personal will of the public prosecutor. Essentially, this principle implies that the public prosecutor *is obliged* to undertake criminal prosecution when the factual and legal conditions provided by law are met.

Factual conditions refer to the existence of a certain degree of suspicion that a criminal offense has been committed or that a certain person has committed a criminal offense. Legal conditions refer to the possibility of bringing the suspect's action under a certain criminal offense for an offense for which they are prosecuted ex officio. In some cases, the approval of the competent state body or the proposal of the person prosecuted is required for prosecution. The public prosecutor undertakes criminal prosecution by issuing an appropriate act depending on the procedural form, which may be an order to conduct an investigation[98], an immediate indictment[99], an indictment in summary proceedings[100], or an indictment with a request to hold a criminal sanctions hearing[101].

The principle of legality obliges the public prosecutor to prosecute not only when initiating criminal proceedings but also for the entire duration of criminal proceedings. Therefore, the public prosecutor may withdraw from criminal prosecution during criminal proceedings if the legal conditions for criminal prosecution cease to exist.

94 Ibid., p. 117.
95 Article 6 Paragraph 2 of the CPC.
96 Article 53.
97 Article 54.
98 Article 296.
99 Article 331 Paragraph 5.
100 Article 495.
101 Article 512.

The principle of opportunity is a departure from the principle of legality. In accordance with this principle, the public prosecutor has the discretionary right to decide not to prosecute if, despite the fulfillment of the real and legal conditions, they assess that this is not expedient in the specific case. After fulfilling the legal conditions, in the sense of *the principle of opportunity of criminal prosecution*, the public prosecutor is obliged to undertake criminal prosecution when all legal conditions are met *and if it is expedient in this case*. In such cases, the public prosecutor may decide to defer criminal prosecution or not to undertake it, under conditions regulated by the Code, in Article 6, Paragraph 3.

The core of the principle of opportunity is the discretionary assessment of the public prosecutor; thus, in that sense, it represents a deviation from the principle of legality. Namely, it is a matter of deferring criminal prosecution and dismissal of a criminal complaint after a suspect Europa certain obligations determined by law (conditional opportunity, in Article 283) as well as dismissal of a criminal complaint without prior Europa of obligations by the suspect (unconditional opportunity, in Article 284, Paragraph 3).

Based on the *principle of mutability of criminal prosecution*, the authorized prosecutor has *the right to withdraw* from criminal prosecution during criminal proceedings. Neither the court nor the defendants can oppose the statements of the authorized prosecutor that they are giving up the prosecution. The principle of mutability applies to all authorized prosecutors. The resignation of a private and subsidiary prosecutor may be explicit or tacit[102], while the resignation of a public prosecutor must be explicit, whereby a distinction is made between the waiver of prosecution[103] and the waiver of charges[104].

If the public prosecutor withdraws from the criminal prosecution, the injured party has the right to a subsidiary lawsuit under the conditions prescribed by law. Namely, in terms of Article 51, if, in connection with a criminal offense prosecutable ex officio, the public prosecutor dismisses a criminal complaint, discontinues the investigation, or abandons criminal prosecution until the indictment is confirmed, the persecutor notifies the injured party thereof within eight days and advises the party that they shall be entitled to submit an objection to the immediately higher public prosecutor. The injured party is entitled to submit an objection within eight days of receiving the notification and advice. If the injured party has not been notified, they are entitled to submit an objection within three months of the date on which the public prosecutor dismissed the complaint, discontinued the investigation, or abandoned criminal prosecution. In this case, within 15 days of receiving the objection, an immediately higher public prosecutor denies or upholds the objection via a ruling against which an appeal or objection shall not be allowed. By the ruling upholding the objection, the public prosecutor issues a compulsory

102 Article 61.
103 Article 51.
104 Article 49.

instruction to the competent public prosecutor to conduct or resume criminal prosecution.

In terms of Article 49, the public prosecutor may withdraw charges 1) from the moment of confirmation of the indictment until the conclusion of the main hearing or 2) at a hearing before a second-instance court in accordance with Article 450 Paragraph 5 of this Code. In this case, the injured party shall be entitled to assume criminal prosecution[105] .

Because by withdrawing from the criminal prosecution, the criminal proceedings remain without an authorized prosecutor in terms of the indictment principle, the criminal proceedings ends. In that case, the court makes a decision to suspend the procedure, decides to reject the private lawsuit (before the main trial), or issues a judgment rejecting the accusation (at the main trial). Although these are non-meritorious decisions, they are covered by the principle of ne bis in idem, such that the same person can no longer be prosecuted for the same crime.

The principle of *ne bis in idem* is proclaimed in Article 34 Paragraph 4 of the Constitution as well as in Article 4 of the CPC, so no one can be prosecuted in connection with a criminal offense for which they have been acquitted or convicted by a final decision of a court, for which the indictment has been denied by a final decision, or when the proceedings have been discontinued by a final decision. A possible attempt to initiate criminal proceedings in an already finalized criminal case is prevented by noting the objection of the adjudicated matter (res judicata).

5.3. Stages of criminal procedure

According to the criminal procedure legislation of the Republic of Serbia, there is one general criminal procedure and several special criminal procedures (of which the procedure against juveniles is regulated by a special law, while all others are regulated by the CPC).

The general criminal procedure is intended for the trial of adult perpetrators of criminal offenses for which a prison sentence of over eight years is prescribed. In Serbian criminal procedural law, the general form of criminal procedure[106] has

105 Article 52.

106 The Serbian CPC makes a difference between initiation of criminal prosecution (Article 5 paragraph 2) and initiation of Criminal Proceedings (Article 7). Criminal prosecution is initiated 1) by the first action of the public prosecutor or authorized police personnel based on a request of a public prosecutor, undertaken in accordance with the Code for the purpose of investigating the grounds for suspicion that a criminal offense has been committed or that a certain person has committed a criminal offense; or 2) by the submission of private prosecution. Criminal proceedings are instituted 1) by the issuance of an order on undertaking an investigation (Article 296), 2) by the confirmation of an indictment not preceded by an investigation (Article 341 Paragraph 1), 3) by the issuance of a ruling ordering detention before submitting a motion to indict in summary proceedings (Article 498 paragraph 2), 4) by scheduling a main hearing or a hearing for pronouncing a criminal sanction in summary proceedings (Article 504 Paragraph 1, Article 514 Paragraph 1 and Article 515 Paragraph 1), or 5) by scheduling a main hearing in proceedings for pronouncing a security measure of compulsory psychiatric treatment (Article 523).

two stages: preliminary (pre-trial) proceedings and main proceedings. The pre-trial procedure can have two phases: the investigation phase[107] and the indicting phase[108]. The main procedure consists of the first instance procedure and the procedure for legal remedies. The stages of the first instance procedure are preparation for the main trial, the main trial, and the passing of the verdict. Remedies can be regular or extraordinary. Criminal proceedings do not necessarily have to pass through all stages and phases. Thus, for example, they can be suspended in the investigation phase, in which case there are no further procedural stages. The procedure does not have to go through the phase of legal remedies if none of the authorized persons has stated the legal remedy. The stated stages and phases are characteristic of the general form of criminal procedure.

In addition to the general form, the CPC also prescribes special forms, which differ from the general form in terms of having a special procedural structure. Hence, Serbian law includes an abbreviated procedure in which there is no investigation. The most important special criminal procedure is the abbreviated procedure, which is most widely used in practice,[109] and which is intended for the trial of adult perpetrators of crimes punishable by a fine or imprisonment for up to and including 8 years.

The specificity of the procedural structure of special criminal procedural forms may be based on the omission of certain procedural stages or phases (special simplified criminal procedural forms; the procedure for imposing security measures of mandatory psychiatric treatment) or significant modification of the existing ones (juvenile criminal proceedings).[110]

5.3.1. The pre-investigation procedure

The investigation is preceded by a pre-investigation procedure[111], which is not an integral part of the criminal procedure. The pre-investigation procedure includes the activity of reporting, detecting, and clarifying criminal acts and identifying the perpetrators, with the aim of enabling the public prosecutor to initiate criminal proceedings. This activity presupposes the grounds for suspicion that a criminal offense has been committed that is prosecuted ex officio.

The public prosecutor leads the pre-investigation proceedings, and for the purpose of exercising this authority, they undertake necessary actions aimed at prosecuting the perpetrators of criminal offenses. Apart from the public prosecutor, who is the head of the pre-trial procedure, the bodies of the procedure are: the police, who bear the greatest burden of this part of the procedure, and the pre-trial judge, who decides only on restricting the fundamental rights and freedoms of the suspect against whom the proceedings are conducted (e.g., issuing an order of detention, issuing an order for search, issuing an order to conduct special evidentiary actions).

107 Articles 295–312.
108 Articles 331–343.
109 Almost 2/3 of the procedures are conducted according to the rules on abbreviated procedure.
110 Brkić, 2010, pp. 287–288.
111 Articles 280–294 of the CPC.

Whether criminal proceedings will be initiated depends on the results of the pre-investigation procedure. This procedure is administratively criminalistic, and most of the actions undertaken by the police have a legal basis in the Law on Police.

5.3.1.1. Possibilities of diversion

Diversionary proceedings, that is, alternative out-of-court forms, which aim to relieve the criminal justice system, represent a type of substitute for criminal proceedings and criminal sanctions with more efficient and humane measures against the perpetrator.

The search for less coercive means of combating crime has led to various alternatives to prosecution and procedure, relying on informal social control institutions, aimed primarily at alleviating tensions arising from conflict between perpetrators and the environment and that offer a better response to victim expectations, do not produce stigmatizing effects, better meet the requirements of resocialization, and minimize the role of criminal justice, thus contributing to the rationalization.[112]

There are two groups of diversionary proceedings in Serbian law: those against adults (conditional postponement of criminal prosecution under Article 236 of the CPC, introduced in 2001) and those against minors (non-initiation of criminal proceedings conditioned on execution of educational orders, introduced in 2005).

In the course of pre-investigation, the possibility of deferring criminal prosecution is prescribed in Article 283. It is a matter of conditional opportunity, that is, conditional postponement of criminal prosecution for certain criminal acts if the suspect accepts and Europae the obligations provided by law.

The public prosecutor may defer criminal prosecution for criminal offenses punishable by a fine or a term of imprisonment of up to five years if the suspect accepts one or more of the following obligations: 1) to rectify the detrimental consequence caused by the commission of the criminal offense or indemnify the damage caused, 2) to pay a certain amount of money to the account allocated for the payment of public revenues to be used for humanitarian or other public purposes, 3) to perform certain community service or humanitarian work, 4) to fulfill maintenance obligations that have come due, 5) to submit to an alcohol or drug treatment program, 6) to submit to psychosocial treatment for the purpose of eliminating the causes of violent conduct, and 7) to fulfill an obligation or observe a restriction determined by a final court decision.

In the order deferring criminal prosecution, the public prosecutor shall determine a time limit not exceeding one year during which the suspect must fulfill the obligations undertaken. Oversight of the fulfillment of obligations is performed by an officer of the authority in charge of the execution of criminal sanctions in accordance with the regulation issued by the minister responsible for the judiciary.

If the suspect fulfills the obligation within the prescribed time limit, the public prosecutor dismisses the criminal complaint by a ruling and notifies the injured party thereof, whereby the provision of Article 51 Paragraph 2 is not to be applied.

112 Brkić, 2010, p. 292.

Funds item 2 of this Article is granted to the humanitarian organizations, funds, public institutions or other legal entities, and natural persons upon conducted public tender, which shall be announced by the ministry competent for the judiciary. The public tender is conducted by the committee formed by the minister competent for the judiciary. The committee may, at the request of a natural person and without administering public tender, propose that the funds be granted for the purpose of treatment of a child abroad, unless such funds were provided in the Republic Health Insurance Fund. The administration of the public competition, the criteria for the allocation of funds, and the composition and mode of operation of the committee shall be governed by the act of the ministry competent for the judiciary. The decision on the allocation of funds is rendered by the government.

Article 284 Paragraph 3 regulates the unconditional opportunity. In the case of criminal offenses punishable by a term of imprisonment of up to three years, the public prosecutor may dismiss a criminal complaint if the suspect, as a result of genuine remorse, has prevented the occurrence of damage or has already indemnified the damage in full and if the circumstances of the case are such that the public prosecutor finds that pronouncing a criminal sanction would not be fair. In this case, the provision of Article 51 Paragraph 2 does not apply.

5.3.2. Stage 1 of the criminal procedure: The preliminary (pre-trial) proceedings

5.3.2.1. The investigation phase

The investigation is the first phase of the general criminal procedure conducted by the public prosecutor. This is the greatest novelty introduced by the CPC in 2011 because until then the investigation was led by an investigating judge.

The public prosecutor, who is the body of the procedure at this stage, opens the investigation with an order when there are grounds for suspicion that a criminal offense has been committed ex officio or that a certain person is the perpetrator of the criminal offense. An investigation is underway against an adult perpetrator of a criminal offense prosecuted ex officio. The person against whom the investigation is being conducted because there are grounds for suspicion that they committed the crime they are charged with is termed a suspect. However, an investigation can also be conducted against an unknown perpetrator.

An investigation may be initiated against a specific person for whom there are grounds for suspicion that they have committed a criminal offense or against an unknown perpetrator when there are grounds for suspicion that a criminal offense has been committed.

The aim of the investigation is to collect evidence and data necessary for deciding whether to file an indictment or discontinue proceedings, evidence necessary for establishing the identity of the perpetrator, evidence for which there is risk that it could not be repeated at the main hearing or that its examination would be hampered, and other evidence that could be of benefit to the proceedings

and the examination of which, in view of the circumstances of the case, proves appropriate[113].

An investigation is initiated via an order issued by the competent public prosecutor before or immediately after the first evidentiary action undertaken by the public prosecutor or the police in the pre-investigation proceedings but not later than 30 days after the public prosecutor was notified of the first evidentiary action undertaken by the police[114]. The investigation is conducted by the competent public prosecutor, and they need assistance from the police (forensic, analytical, etc.) or other state authorities in connection with the conduct of the investigation. The latter are required to provide such assistance at their request[115]. Moreover, the public prosecutor may refer conduct of certain evidentiary actions to the police[116].

The CPC specifically regulates the suspect and other participants attending evidentiary actions, the gathering of evidence and other materials by the defense, undertaking evidentiary actions for the benefit of the defense, and becoming acquainted with collected evidence.[117] The CPC defines the differences among suspending an investigation, discontinuing an investigation, and concluding an investigation.[118]

Upon determining that the subject matter of the investigation has been sufficiently clarified, the public prosecutor issues an order on the conclusion of the investigation that will be delivered to the suspect and their defense counsel, if there is one, and notifies the injured party regarding the conclusion of the investigation[119]. If the public prosecutor does not conclude an investigation against a suspect within six months, or within one year in relation to a criminal offense under the jurisdiction of the public prosecutor's office of special jurisdiction year according to a separate law, the persecutor is required to notify the immediately superior public prosecutor of the reasons due to which the investigation has not been concluded[120].

5.3.2.2. The indicting phase

The indicting phase is the second phase of the previous stage of criminal proceedings. It consists of raising and judicial control of the indictment, which requires the court to determine the main trial at which a person, against whom there is a justified suspicion that they have committed a criminal offense, will be tried. As a rule, the indictment is preceded by an investigation, but there may be an exception (direct indictment), and sometimes. it must be filed (shortened procedure) without investigation. As a rule, the indictment is filed before the main trial, but as an exception, it can be stated at the main trial itself.

113 Article 295 Paragraph 2 of the CPC.
114 Article 296 Paragraph 2.
115 Article 298 Paragraph 4.
116 Article 299 Paragraph 4.
117 Articles 300–303.
118 See Articles 307, 308 and 310.
119 Article 310 Paragraph 1.
120 Article 310 Paragraph 2.

The indicting phase consists of two sub-phases: filing an indictment[121] and examining the indictment[122].

Filing an indictment. The public prosecutor files an indictment when there is justified suspicion that a certain person has committed a criminal offense, within 15 days of the date on which the investigation was concluded. In particularly complex cases, this time limit may be extended by another 30 days upon authorization by the immediately superior public prosecutor. In summary, the rule is that the public prosecutor files an indictment after the investigation. However, if the data collected regarding the criminal offense and the perpetrator provide sufficient grounds for filing charges, an indictment may be filed even without an investigation being conducted[123].

The indictment is submitted to the panel[124] of the competent court, which examines whether the indictment has been composed correctly[125]. If an indictment is properly composed, the president of the panel delivers it to the defendant[126], who is entitled to submit a written response within eight days of its the delivery[127].

Examining the Indictment. Rather than the former regular control of the indictment regarding the defendant's objections and an exceptional one at the request of the presiding judge, the CPC introduced one form of judicial control of the indictment, which is conducted ex officio in each case. The panel examines every indictment within 15 days from the expiry of the time limit for submitting a response to the indictment. The panel may reach various decisions when examining an indictment. When the panel determines that better clarification of the state of the matter is required to assess whether the indictment is justified, it may order a supplemental investigation, an investigation to be conducted, or certain evidence to be collected[128]. The panel may also decide by a ruling that the charges are unfounded and that the criminal proceedings are being terminated[129], may reject the charges via a ruling[130], or may confirm the indictment through a ruling[131].

5.3.3. Stage 2 of the criminal procedure: The main procedure

The main procedure is the second stage of the criminal procedure in which the trial is conducted in the true sense of the word. The main procedure can be divided into two phases: the first-instance procedure and the procedure for legal remedies proceedings.

121 Article 331.
122 Article 337.
123 Article 331 Paragraph 5.
124 Article 21 Paragraph 4.
125 Article 332.
126 Articles 333.
127 Article 336.
128 Article 337 Paragraph 3.
129 Article 338.
130 Article 339.
131 Article 341.

5.3.3.1. The first-instance procedure

Proceedings before the first instance court constitute the central part of the main proceedings because, as a rule, the evidence is directly adduced in during this process, and the verdict is judged. This procedure begins with confirmation of the indictment and ends with the delivery of the first instance verdict. This phase has three subphases: preparations for the main hearing[132], the main hearing[133], and the rendering of the decision, pronouncing, and proclaiming the judgment, rendering the judgment in writing, and its delivery[134].

Preparations for the main hearing. The preparation for the main trial is the first phase of the first instance main procedure, which includes all procedural actions from the confirmation of the indictment to the beginning of the main trial.

The president of the panel begins preparations for the main hearing immediately after receiving the confirmed indictment and the case file. The aim of this phase is to enable the beginning and uninterrupted course of the main trial. In this phase, a preparatory hearing is held[135] , the main trial is scheduled, parties and other persons are summoned to the main hearing, and other decisions related to the management of the procedure are made. This part of the procedure is led by the president of the panel before whom the main trial will be held. As a rule, no appeal is allowed against their decisions at this point in the procedure.

At the preparatory hearing, the parties state their positions in relation to the subject-matter of the charges, explain the evidence that will be examined at the main hearing, and propose new evidence in addition to determining the factual and legal questions that will be the subject-matter of discussion at the main hearing. A decision shall be rendered on a plea agreement, on detention, and on discontinuing criminal proceedings as well as on other questions the court finds to be of relevance for holding a main hearing[136].

The president of the panel issues an order before the conclusion of the preparatory hearing, designating the date, hour, and location of the main hearing. If no preparatory hearing was held[137], the president of the panel schedules a main hearing within 30 days at the latest if the defendant is in detention or within 60 days if the defendant is free, counting from the date of reception of the confirmed indictment by the court[138].

Main hearing. The main trial is the central phase of the first-instance criminal proceedings, the aim of which is to try in the true sense of the word.

132 Articles 344–361.
133 Articles 362–415.
134 Articles 418–431.
135 Articles 345–352.
136 Article 344 Paragraph 1.
137 Article 346 Paragraph 3.
138 Article 353.

During the main trial, various procedural actions are taken. The most important are the actions of proving and deciding because the goal of the main trial is, as a rule, the direct presentation of evidence and basing the appropriate court decision on them. At the main trial, the principles of immediacy, orality, contradiction, and publicity are realized.

The CPC prescribes the preconditions for holding the main hearing, which are reduced to the presence of necessary persons, and regulates the consequences of the absence of the prosecutor, the defendant, defense counsel, and a witness, expert witness, or professional consultant.[139]

The course of the main hearing is regulated in Articles 385–415. The *main hearing commences* with the issuance of a ruling on the holding of the main hearing. After prior verification and advice for the defendant on their rights and duties, *the presentation of the charge* and defendant's plea follow.[140] Following the presentation of the charges and the defendant's declaration, the parties and defense council are called to present opening statements unless they have stated their positions and proposed evidence at the preparatory hearing[141].

After that, *evidentiary proceedings commence*[142] . The parties, defense counsel, and the injured party may, until the conclusion of the main hearing, propose that new evidence be examined and may repeat motions that were previously denied[143]. The order of examining the evidence is regulated in Article 396. Moreover, the CPC contains explicit rules on the presentation of the defense, questioning the defendant, the presence of a witness, expert witness, or professional consultant at the examination of evidence; cautioning a witness, expert witness, or professional consultant; examining a witness, expert witness, or professional consultant; presenting written expert findings and opinions, examining evidence away from the main hearing; inspecting the content of documents and recordings; inspecting the content of testimony transcripts; and excluding unlawful evidence.[144]

After examining the final item of evidence, the president of the panel asks the parties, defense counsel, and the injured party whether they have any proposals to amend the evidentiary proceedings. If no one proposes an amendment of the evidentiary proceedings or if the motion is denied, and the panel fails to order any evidence examination, the president of the panel declares the *evidentiary proceedings concluded* [145].

The CPC envisages the possibility of *altering an indictment or filing a new one* and *amending the indictment*. Following the alteration of the indictment, the filing of a new

139 Articles 377–384.
140 Articles 385, 389, 391, 392.
141 Article 393.
142 Articles 394–407.
143 Article 395 Paragraph 1.
144 Articles 397–398, 400–407.
145 Article 408.

indictment, or an amendment of the indictment, the parties and defense counsel may propose supplementing the evidentiary proceedings.[146]

Upon declaring the evidentiary proceedings concluded, the president of the panel shall call upon the prosecutor to make their *closing argument* first, followed by the injured party or their legal representative or proxy, who is then followed by defense counsel and, finally, the defendant.[147] (). The content of the closing arguments is prescribed in Article 413. After the closing arguments have been made, the panel may decide to *resume the evidentiary proceedings* for the purpose of examining additional evidence[148].

If the panel decides not to resume evidentiary proceedings after the closing arguments, the president of the panel declares *the conclusion of the main hearing*[149].

Rendering a decision, pronouncing and proclaiming the judgment, and rendering the judgment in writing and delivery. After announcing that the main hearing has been concluded, the panel retires for deliberation and voting for the purpose of rendering a decision. During the deliberation and voting, the panel may decide to re-open the main hearing and resume the evidentiary proceedings for the purpose of examining additional evidence[150].

If it does not re-open the main hearing, the court *pronounces a judgment* [151]. This judgment may 1) reject the charges (a rejecting judgment), 2) pronounce the defendant not guilty of the charges (an acquittal), or 3) pronounce the defendant guilty (a conviction in Article 421).

The court pronounces *a rejecting judgment* if 1) in the period from the commencement until the conclusion of the main hearing, the prosecutor abandoned the charges, or the injured party abandoned their motion to prosecute; 2) the defendant has already been convicted with a final judgment for the same criminal offense, if they have been acquitted of the charges, or if the charges against them were rejected with a final judgment or the proceedings against them were discontinued by the final decision of the court; 3) the defendant has been released from criminal prosecution by an act of amnesty or a pardon, or prosecution cannot be undertaken due to the expiration of the statute of limitations or other circumstances permanently excluding prosecution[152].

A judgment acquitting the defendant of the charges shall be pronounced by the court if 1) the offense with which they were charged is not a criminal offense, and the necessary conditions for applying a security measure do not exist; or 2) it

146 Articles 409–411.
147 Article 412.
148 Article 414.
149 Article 415 Paragraph 1.
150 Article 415 paragraphs 2–3.
151 Article 418 paragraph 1.
152 Article 422.

was not proved that the defendant had committed the criminal offense they were charged with[153].

After the court has pronounced the judgment, the president of the panel immediately *proclaims it.* However, if the court is unable to pronounce the judgment on the same day following the conclusion of the main hearing, it can postpone the proclamation of the judgment by no longer than three days and, in particularly complex cases, by no longer than eight days, and it can determine the time and place for the proclamation of the judgment.

In the presence of the parties, their legal representatives, proxies, and defense counsel, the president of the panel publicly reads out the summary judgment and briefly relates the reasons for the judgment. After proclaiming the judgment, the president of the panel advises the parties on their right to appeal as well as their right to respond to an appeal. The judgment that has been proclaimed *is rendered in writing and delivered* within 15 days of the date of its proclamation and, in cases for which, under a special law, the prosecutor's office of special jurisdiction is responsible, within 30 days of the date of the proclamation. In particularly complex cases, the president of the panel may ask the president of the court to determine a time limit within which the judgment shall be rendered in writing and delivered [154].

The CPC explicitly regulates the contents of a judgment prepared in writing in Article 428, allowing the lack of rationale or partial rationale of a judgment in some cases in Article 429.

5.3.3.2. The procedure for legal remedies

The right to a legal remedy against a decision determining a right, duty, or clear legal interest is a constitutional right guaranteed by Article 36 Paragraph 2 of the Constitution of the Republic of Serbia. With regard to criminal procedure, according to the CPC, there are three ordinary and two extraordinary legal remedies.

Ordinary legal remedies. Ordinary legal remedies are legal remedies that challenge an illegal or incorrect court decision (judgment or ruling) before it becomes final. These remedies include the following: a) appeal against a first-instance judgment, b) appeal against a second-instance judgment, and c) appeal against a ruling[155].

An appeal against the first-instance judgment is a regular, suspended, devolutionary, and time-bound legal remedy, which can be stated on a legal and factual basis by authorized persons[156]. An appeal may be filed in connection with 1) substantive violations of the provisions of criminal procedure, 2) violations of criminal law, 3) incorrect or incomplete finding of a fact, or 4) the decision on criminal sanctions and other decisions.[157] The CPC regulates appellate proceedings in Articles 442–454 and decisions of the court of second instance in Articles 455–462.

153 Article 423.
154 Articles 426–427.
155 Articles 432–469.
156 Articles 432–433.
157 Articles 438–441.

An appeal against a second-instance judgment is an exception to the rule that no legal remedy can be filed against second-instance final judgments. In this way, this remedy enables a trial in the third instance. An appeal may only be filed against a judgment by which the court of second instance reversed a first-instance judgment that acquitted the defendant of the charges and pronounced a judgment finding the defendant guilty. An appellate court adjudicates an appeal against a judgment of a court of second instance pursuant to the provisions of the Code applicable to second-instance proceedings. Mutatis mutandis application of provisions on procedure before a court of second instance are envisaged.

An appeal against a ruling is a regular legal remedy that enables an authorized person to challenge the correctness and legality of the decision of the body of the procedure (court, public prosecutor, and police). Mutatis mutandis application of provisions on an appeal against a first-instance judgment are envisaged in Article 468.

Extraordinary legal remedies. Extraordinary legal remedies represent exceptions to the principle of ne bis in idem. According to the CPC, there are two extraordinary legal remedies: a) a request to reopen criminal proceedings[158] and b) a request for the protection of legality[159].

A request to reopen criminal proceedings is an extraordinary legal remedy enabling the criminal proceedings concluded by a final judgment to be reopened at the request of an authorized person[160] under the conditions stipulated in the Code. The request is a non-evolving, non-suspensive, and temporally unbound legal remedy. Criminal proceedings concluded with the final judgment may be repeated only to the benefit of the defendant if there are reasons to reopen criminal proceedings as envisaged in Article 473. Reopening, that is, the re-examination of a criminal case and reopening of criminal proceedings, under this extraordinary legal remedy is possible only on a factual basis, when the factual situation that needs to be removed has been erroneously or incompletely established.

A request for the protection of legality is an extraordinary legal remedy that represents an instrument that ensures the rule of law and represents the main barrier to the illegality and unconstitutionality of the actions and decisions of the judiciary. This is a devolving, incomplete, and non-suspensive legal remedy that can be filed against all final decisions in both pre-investigation and criminal proceedings. In addition to final decisions, this legal remedy can also be challenged in proceedings that preceded the decision-making process[161]. A request for the protection of legality may be submitted only by the Republic Public Prosecutor, the defendant, and their defense counsel, that is, the defendant through their defense counsel[162], if, by the final decision or decision in the procedure that preceded its issuance, reasons envisaged in Article 485 occur.

158 Articles 470–481.
159 Articles 482–494.
160 Article 471.
161 Article 482.
162 Article 483.

The Supreme Court of Cassation decides on a request for the protection of legality. However, this court shall decide on a request for the protection of legality submitted in connection with a violation of the law[163] only if it finds that it concerns an issue of importance for correct or uniform application of the law[164].

6. Main features of sanctions execution

According to the valid Criminal Code, the following punishments can be imposed on the perpetrator: 1) life imprisonment, 2) imprisonment, 3) fine, 4) work in the public interest, and 5) revocation of the driver's license.

Although imprisonment is usually served in a penitentiary, there is one exception. Namely, the rule that convicted persons serve a prison sentence exclusively in penitentiary institutions in the Republic of Serbia has not been valid for a long time. Imprisonment can also be executed on the premises where the convict lives. Such a solution was introduced into the Criminal Code in 2009 — so-called house arrest. If the perpetrator is sentenced to up to one year in prison, the court may determine that this sentence will be executed by the convict serving it on the premises where they live upon consideration of certain factors: the perpetrator's personality, their previous life, their behavior after the crime, their degree of guilt, and other circumstances under which they committed the act. Therefore, they can expect that the purpose of punishment will be achieved through this approach as well. A warning measure (court reprimand or suspended sentence) can be imposed on the perpetrator of the criminal offense rather than a punishment.

Positive legal solutions can be considered modern because they provide a framework for the concept of reintegration of criminals into the social environment, which the legislature has opted for.

Bylaws elaborate, concretize, and operationalize the solutions given in the law, determine certain procedures and conditions for the realization of some of the solutions given in the law or prescribed by law, and regulate other issues important for the functioning of the prison system, such as the system of execution of criminal sanctions and execution of non-institutional sanctions and measures.

6.1. Prison institutions

Regarding prisons, there are more than 30 penitentiaries in the Republic of Serbia, which are of different types. However, all penitentiaries have in common that they are filled through their accommodation facilities. On average, there are 8,500 persons deprived of liberty in institutions for the execution of institutional sanctions, of which 5,800 are convicted, 1,800 are detained, 320 were punished via misdemeanor

163 Article 485 Paragraph 1 Item 1.
164 Article 486.

proceedings, 170 are executing a measure of being sent to a correctional facility, 50 are detained juveniles, 180 are convicted, and 80 are detained women.[165]

6.2. Rights of convicted persons

Under the current regulations, the greatest attention is paid to the rights of convicted persons while serving a prison sentence. In such a circumstance, all convicted persons are guaranteed basic rights, and if the convict is well served, the government can also obtain special rights.

The rights of convicted persons have evolved over the last few decades, so today, it can be said that the rights of convicted persons in the Republic of Serbia are at an enviable level. A convict (according to the LECS) who is serving a prison sentence has basic rights, namely 1) the right to humane treatment; 2) the right to accommodation; 3) the right to free time; 4) the right to hygiene; 5) the right to food and drinking water; 6) the right to clothing, underwear, and footwear; 7) the right to submit submissions; 8) the right to correspond; 9) the right to telephone conversations; 10) the right to legal aid; 11) the right to visit and stay in a special room; 12) the right to receive packages; 13) the right to receive remittances; 14) the right to work and rights based on work; 15) the right to healthcare; 16) the right to information; 17) the right to education; 18) the right to exercise religious rights; and 19) the right to a petition, complaint, appeal, and judicial protection. If the convicted behaves well, the government can ensure special rights, such as extended right to receive packages, the number of visits permitted, and the circle of persons who can visit.

At this point, special attention should be paid to a right of convicts that is prescribed by the Criminal Code and that can be realized only in the procedure of serving a prison sentence: the conditional release. A convict who has served two-thirds of their sentence shall be conditionally released from serving the sentence if they have improved in such a way that they can reasonably be expected to behave well at liberty and especially not to serve the sentence until commit a new crime. Conditional release is only a possibility, and whether the convict will be released on parole depends on the court's decision. In assessing whether a convicted person will be released on parole, their conduct while serving their sentence, their fulfillment of work obligations, their working ability, and other circumstances indicating that the convicted person will not commit a new criminal offense during their conditional release are taken into account. According to the Criminal Code, a convict who has been punished twice for serious disciplinary offenses while serving a sentence and whose benefits have been withdrawn cannot be released on parole.

6.3. Resocialization of convicts

According to valid regulations, the resocialization of the convict is carried out from the day when the convict started serving the prison sentence until they serve the

165 See the annual report on the work of the Administration for the Execution of Institutional Sanctions for 2006.

sentence in full. All persons employed in the prison take part, but it is primarily the responsibility of the treatment service, which assesses individual needs, capacity for change, and the convict's risk degree, determines and implements an individualized program of action, and applies methods and procedures, achieving individual prevention. The treatment service determines the treatment program for the convict, coordinates the work of other services and other participants in the implementation of the program, and performs other tasks determined by the LECS. The treatment of the convict includes the application of all planned activities—planned methods, techniques, and procedures undertaken with the aim that the convict adopts a socially acceptable value system and masters the skills for successful inclusion in the community so as not to commit crimes in the future.

It should also be noted that if necessary, the convict is provided with assistance even after release from prison. This assistance depends on the needs of the convict and is reflected, for example, in providing assistance with finding accommodation and food, providing assistance with exercising the right to health and social protection, giving advice on reconciling family relations, providing support and assistance in finding employment and completing schooling, and vocational training. This assistance is necessary to facilitate the convict's free integration into a new life based on respect for social norms and values. Otherwise, the institutional treatment and rehabilitation of the convicted person may be in question.

To harmonize this area with international standards and eliminate shortcomings in the functioning of the execution of criminal sanctions, the process of reforming executive criminal legislation and the implementation of positive practical solutions from regulated systems is underway. One shortcoming of positive legal solutions regarding the execution of a prison sentence is reflected in their inconsistency with the basic principles of the execution of a prison sentence as provided by international documents, such as the European Prison Rules.[166] A large number of returnees in the RS return to committing crimes after serving their prison sentence, which calls into question the realization of the purpose of the prison sentence, including the resocialization of convicts. The reasons should be sought in the conditions in which convicts serve their prison sentences and the assistance provided to them after their release from prison.

In recent decades, the prevailing view is that the institutional execution of criminal sanctions does not affect crime prevention as expected. The causes may be found in failed resocialization and the more dominant influence of negative informal prison structure on prisoners, but also in the inability of prison as an institution to change criminal behavior.[167]

166 Savet Evrope and Stojanović, 2006.
167 Stevanović, 2015.

7. Comparison with relevant EU documents and main international trends

Intensive reforms of criminal legislation in the Republic of Serbia began at the beginning of the 21st century. Namely, the criminal procedure legislation began introducing reforms after the adoption of the Criminal Procedure Code in 2001 and the criminal substantive legislation a few years later, after the adoption of the Criminal Code in 2006. Although the interventions of legislators in the field of criminal law have been very intensive, both quantitatively and qualitatively, over the last two decades, the same trend is noticeable in other European countries, even those that traditionally have stable criminal legislation. The European Union has shown a clear intention to unify the criminal law of member states.

The development of criminal legislation is, on the one hand, conditioned by the harmonization of criminal legislation with the law and standards of the European Union, while, on the other hand, the legislature is guided by other reasons. No matter how much one strives for stable criminal legislation, one cannot deny the dynamic character of crime, the intensity of which is accompanied by social, political, economic, and other changes that have accelerated in the modern world.

With regard to the amendments to the Criminal Code, which included both the general and the special parts, the intensification of criminal repression and the increase in the number of criminal acts is evident. Amendments to the Criminal Code via a special part in 2009 were at the forefront of tougher penalties. However, they also pronounced criminalization, that is, prescribed new crimes, mainly in those areas where criminal law shows its inefficiency and where existing incriminations are not applied or where efforts are made to fully and, as is pointed out in the theory, uncritically fulfill the obligations assumed by signing certain international conventions.[168]

Amendments from 2012 introduced new criminal offenses, such as competing for the outcome of a competition[169], criminal offense in the form of office abuse[170], criminal abuse offense in connection with public procurement[171], and criminal terrorism offenses[172]. The most important amendments from 2016 concern crimes against the economy and new crimes that are a consequence of harmonization with the Istanbul Convention. Due to compliance with this convention, several new crimes were introduced (female genital mutilation, persecution, sexual harassment, and forced marriage). An alignment was also made with the International Convention for the Protection of All Persons from Enforced Disappearance, which Serbia ratified in 2011[173] via EU Framework Decision 2008/913 / JHA of November 28, 2008, on

168 Delić, 2014, p. 198. See also Ristivojević, 2009.
169 Article 208b of the CC.
170 Article 234.
171 Article 234a.
172 Articles 391a, 391b, 391g, and 393a.
173 Official Gazette of RS — International Agreements, No. 1/11.

the fight against certain forms and expressions of racism and xenophobia through criminal law.

Regarding criminal procedure legislation, the reforms began with the adoption of the Criminal Procedure Code in 2001 and its various amendments (as many as eight), following the adoption of a completely new Criminal Procedure Code in 2006 (the implementation of which was twice delayed until it was completely repealed), and the adoption of the Criminal Procedure Code in 2011 (which has already been amended eight times thus far). The CPC from 2011 is undoubtedly the biggest radical turn in the regulation of criminal procedure compared to previous regulations, particularly considering that this Code introduces procedural mechanisms that are completely atypical, not only for the previous criminal procedure system that had existed for decades in Serbia but also for most countries in continental Europe. The current CPC has caused a number of problems in practice since the beginning of its implementation. As some theorists note, the reform of the criminal procedure in Serbia has been ongoing for too long, and unfortunately, it is characterized by extreme inconsistency and "wandering."[174]

Nonetheless, the reform of this Code is required due to the need for its harmonization with the RS Constitution and removal of a large number of solutions that have been rightly sharply criticized in theory and practice. Moreover, further reform is needed to harmonize criminal procedure legislation with relevant EU acts.[175]

In this regard, one of the biggest challenges is compliance with relevant EU directives and framework decisions on the rights of suspects or the accused and the concept, rights, and protection of victims of crime as well as with other relevant international agreements. It is also necessary to improve the efficiency of the procedure, particularly related to the delivery of letters, the recording of trials, and discipline during the procedure, taking into account the standards of the European Union as well as the practice of the European Court of Human Rights and the Constitutional Court of the RS.[176]

The efforts toward further harmonization are confirmed by the work of the two current working groups formed within the Ministry of Justice in 2021 with the task to amend the Criminal Code and the Criminal Procedure Code.

8. Conclusion

The criminal legislation of the Republic of Serbia has a legal tradition of almost a century. Going through its development, today, it has reached the level of modern criminal justice systems, which is largely in line with generally accepted international

174 Škulić, 2011, p. 121.
175 On the reform of the criminal procedure legislation of Serbia, see Škulić, 2011, pp. 54–125.
176 Turanjanin, Kolaković Bojović and Batričević, 2018, p. 19.

legal standards that ensure effective legislation while protecting and ensuring basic human rights.

Having in mind the trend of harmonization of criminal law regulations at the level of the European Union as well as harmonization with relevant EU acts, the Republic of Serbia, as an EU candidate country, has made progress, primarily in the field of criminal substantive law. Regarding criminal procedure law, substantial changes may be Europaea, both for the stated reasons and for the reason of poor legal solutions in the valid CPC. The reform of criminal legislation continues with the active participation of the scientific and professional public. However, regardless of the perceived needs for further development and reforms, Serbia's criminal legislation is in no way less developed compared to the criminal legislation of most European countries.

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