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THE REQUEST FOR THE PROTECTION OF LEGALITY** Theoretical And Practical Aspects

ABSTRACT: In this article, the author has examined an extraordinary legal remedy which is the last defence of legality, the request for the protection of legality in the positive criminal procedure legislation of the Republic of Serbia. The principle of legality is one of the foundational principles of the legal system, which also helps to achieve the basic purpose of criminal procedure, i.e., that no innocent person is convicted and that perpetrators are sentenced under the conditions prescribed by criminal law based on a legal and fairly conducted procedure (Article 1, paragraph 1 of the Criminal Procedure Code of the Republic of Serbia). In this manner, the request for the protection of legality, as an extraordinary legal remedy, gains in importance. The subject of the article is an analysis of the theoretical conceptions and positive law solutions in the criminal procedure legislation of the Republic of Serbia, as well as the application of the request for the protection of legality in practice, bearing in mind that the request for the protection of legality has undergone the most significant changes, some of which have raised contentious issues, and in such a situation judicial practice deserves special attention because it will play a key role.

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INTRODUCTION

The purpose of every criminal proceeding is to resolve the criminal matter which is the subject of the proceeding (*causa criminalis*), that is, the criminal offence which is the subject matter of the indictment and regarding which the criminal court needs to make a decision. The proceedings are composed of a succession of criminal-procedural activities by which authorized subjects perform their roles in the proceeding. The procedural effect of the criminal-procedural activities is reflected in the court decision which becomes final under specific conditions. In this manner, the subject matter of the proceeding is definitively resolved, given that the final decision creates a *res judicata*, which means that such a decision cannot be legally attacked by the criminal subjects, that is, that there is no possibility of relitigation on the matter which has been settled by a final decision (*ne bis in idem*).¹

However, centuries of judicial practice have demonstrated, not uncommon, deficiencies and mistakes in judgements, thus, there is a need for their removal via re-examination of judgements by higher courts, so, via legal remedies. A legal remedy is a type of procedural activity of opposition, which is founded on the will of an authorized person to request from a competent authority conducting proceedings, pursuant to the rules of the higher body, to examine, discuss and decide whether the decision by the lower authority of the proceedings is legal and correct; this makes it a corrective measure, that is, a mechanism for rectifying mistakes which were committed during the criminal proceedings and the decisions made therein and in that manner secure the most important rights and freedoms.² The justification for utilizing legal remedies is contained in the inevitability that the proceedings based on a legal remedy will come to a better conclusion, based on several factors: by requesting a legal remedy, a criminal case is brought before a higher instance, where judges with superior knowledge and experience and better objective working conditions re-examine the same subject matter, the decision is made by questioning more persons, etc.³

¹ Škulić, M. (2013). *Krivično procesno pravo*. Belgrade: Faculty of Law, University of Belgrade, 3–5.

² Škulić, M., Bugarski, T. (2015). *Krivično procesno pravo*. Belgrade: Faculty of Law, University of Belgrade, 491.

³ Bubalović, T. (2004). Pojam, opravdanje i cilj pravnih lijekova u krivičnom postupku. *Pravo i pravda*, no. 1–2/04, 156.

THE NOTION AND ATTRIBUTES OF THE REQUEST FOR THE PROTECTION OF LEGALITY

In the criminal procedure of the Republic of Serbia, the request for the protection of legality is an extraordinary legal remedy which has the purpose of protecting the legality of proceedings and the decisions made therein, that is, it is the main defence of the legality and constitutionality of the actions and decisions of judicial authorities.⁴ It is regulated by the Criminal Procedure Code of the Republic of Serbia.⁵

A request for the protection of legality attacks a final court decision or the proceedings which preceded its issuance due to an irregular application of law (*error in jure*), which can manifest as:

1. A violation of law (i.e. a misapplication of procedural or substantive law or a law which a decision of the Constitutional Court determined was not in compliance with the Constitution, a misapplication of the generally accepted rules of international law and ratified international treaties) or

2. A violation or deprivation of the human rights and freedoms of the defendant or other participant in a proceeding, guaranteed by the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, which was determined by the Constitutional Court or the European Court of Human Rights.⁶

The reason for the existence of the request for the protection of legality lies in the fact that there are certain court decisions against which ordinary legal remedies cannot be utilized, then, even when ordinary legal remedies can be utilized, the decision cannot be impugned due to any violation of procedural law but only due to more significant violations and, finally, when deciding on appeals, the court is bound by the reasons for the appeal and cannot correct every violation of law it comes across.⁷

By its nature, the request for the protection of legality is an extraordinary, devolutive, non-suspensive, incomplete and dual legal remedy in the criminal procedure law of the Republic of Serbia.

⁴ Bugarski, T. (2015). Zahtev za zaštitu zakonitosti. *Annals of the Faculty of Law in Novi Sad*, vol. 50, no. 1, 88.

⁵ The Criminal Procedure Code of the Republic of Serbia, *Official Gazette of the RS*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the CC and 62/2021 – decisions of the CC. Hereinafter: the CPC.

⁶ Milovanović, M. (2016). *Vanredni pravni lekovi u krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade, 222. (doctoral dissertation).

⁷ Vasiljević, T., Grubač, M. (2011). *Komentar Zakonika o krivičnom postupku*. Belgrade: *Official Gazette of the RS*, Faculty of Law, Union University in Belgrade, 12th edition, 945.

It is incomplete because the final decision is refuted due to a misapplication of law, that is, an incorrect application of a substantive or procedural law, but, as G. Ilić notes, under certain circumstances the request for the protection of legality also enables the examination of the facts, as the correct application of law depends on whether the facts in the proceeding were correctly and fully determined.⁸ However, given the new conception of the CPC, any stressing of the facts determined by a final judgement is now completely denied, regardless of how important or decisive they may be, as the new CPC no longer contains the norm which would enable the revocation of a final judgement because of “significant doubt in the truthfulness of the decisive facts.”⁹

It is of a devolutive nature, because it is decided on by a higher-instance court than the one which issued the final decision. This enables the fulfilment of the primary purpose of legal remedies, i.e. it provides control over the legality and correctness of issued court decisions.¹⁰

It is a non-suspensive legal remedy which does not affect the enforcement of the final court decision. However, the CPC prescribes that the Supreme Court of Cassation may, given the content of the request, determine that the enforcement of the final judgement be deferred or discontinued.

Observing the request for the protection of legality from the perspective of the interests of the defendant, it can be submitted both for and against their interests, with the caveat that if the request for the protection of legality is adopted against the interest of the defendant, the legal situation of the defendant must not be changed, which is manifested in the issuing of a declarative judgement.

A dual legal remedy is one that can be submitted by both the republic public prosecutor and the defendant and their counsel, however, the defendant may do it only through their defence counsel. Authorizing the defence to submit the request is founded on the protection of the common interest, which is the basic purpose of the request for the protection of legality, as well as on the principle of conducting fair criminal proceedings, which prescribes the rule on the equality of the “weapons” at the disposal of the parties.¹¹

The request for the protection of legality has an extensive effect, that is, both protective properties for the defendant, *beneficium cohaesionis* (the

⁸ Ilić, G. (1975). Zahtev za zaštitu zakonitosti i činjenično stanje. *Bezbednost*, no. 5/97, 719–721.

⁹ Cvetković, B. (2013). Vanredni pravni lekovi i novi ZKP: Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena. *Meeting of the Serbian Association for Criminal Law and Practice*. Zlatibor, 199.

¹⁰ Grubač, M. (2009). *Krivično procesno pravo*. Belgrade: Službeni glasnik, 443.

¹¹ Škulić, M. (2015). Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku. *Advokatska kancelarija*, no. 6/2015, 17. Smederevo.

privilege of cohesion) and *reformation in peius* (a ban on a change for the worse). The justification for the institution of *beneficium cohaesionis* is found in the desire to prevent the unequal treatment of defendants in proceedings based on legal remedies, defendants which have been tried in the same proceedings for the same legal matter and are encompassed by the same judicial decision and are in the same legal situation, i.e., to accomplish the equality of all citizens under the law.¹²

The basic purpose of the prohibition for a shift for the worse for the defendant (the prohibition of *reformation in peius*) is to enable the defendant to freely and without any risk use their right to legal remedies; otherwise, they would be put into a situation where they were forced to choose between two equally disagreeable situation: to submit a motion for a legal remedy with the risk that they could worsen their position by the very remedy or to not submit a motion for a legal remedy, even when it would be founded, counting on the fact that the other party will not submit a motion for a legal remedy, so that the judicial decision will, at least, not be worse.¹³

THE ADMISSIBILITY OF SUBMISSION AND THE PERSONS AUTHORIZED TO SUBMIT A REQUEST FOR THE PROTECTION OF LEGALITY

In the framework of the general provisions which regulate the request for the protection of legality, under the title Admissibility of Submitting a Request, it is prescribed that a request is submitted against a final decision of a public prosecutor or a court or for a violation of the provisions of the procedure which preceded its issuance.¹⁴ Pursuant to the new conception of the criminal procedure, the request may be submitted not only against the final decision of a court, but also against the final decision of a public prosecutor.

The legal regulation only refers to a “decision”, so it may be asked whether the request may be submitted against every final judgement, ruling, or order? The CPC prescribes that orders by a public prosecutor are categorized as decisions.¹⁵ Does that mean that the republic public prosecutor can submit a request for the protection of legality against an order to conduct an investiga-

¹² Bejatović, S. (2008). *Krivično procesno pravo*. Belgrade: Službeni glasnik, 460.

¹³ Grubač, M. (2009). *Krivično procesno pravo*. Belgrade: Službeni glasnik, 441.

¹⁴ Art. 482 of the CPC.

¹⁵ Art. 269 of the CPC: “Decisions shall be issued in proceedings in the form of a judgment, ruling and order. A judgment shall be issued only by a court, and rulings and orders shall be issued also by other authorities conducting proceedings.”

tion, against which the CPC does not permit an appeal? Ilić and Škulić believe that it is more logical to permit an ordinary legal remedy against the decision to conduct an investigation and only then consider instituting an extraordinary legal remedy against the decision of the public prosecutor to initiate an investigation.¹⁶ Conversely, Vasiljević and Grubač believe that it is possible to submit a request for the protection of legality against the order because, even if we consider that the order cannot be encompassed by the phrase “final court decision”, it is definitive that it can be encompassed by the phrase “court procedure which preceded the final decision”, as the order is a procedural decision-making activity and proceedings are a collection of procedural activities, so the extraordinary legal remedy makes sense precisely when there is no ordinary legal remedy.¹⁷

The purpose of the request for the protection of legality is not exclusively to change a final decision, but can also lead to a determining judgement that does not go into the finality of the challenged decision. The legislator differentiated between situations where the submission of a request has certain time limitations and where it does not.¹⁸

The request for the protection of legality is not permitted against a decision by the republic public prosecutor that there is no grounds for submitting a request for the protection of legality delivered to a convicted person in the form of an announcement; this decision is a discretionary right of the republic public prosecutor and does not represent a final decision in the context of Art. 482, para. 1 of the CPC, so a request for the protection of legality against such a decision cannot be the subject matter of examination and determination before the Supreme Court of Cassation.¹⁹

¹⁶ Škulić, M., Ilić, G. (2012). *Novi Zakonik o krivičnom postupku Srbije: Reforma u stilu „jedan korak napred – dva nazad“*. Belgrade: The Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Serbian Association for Criminal Law and Practice, Faculty of Law, University of Belgrade, 147.

¹⁷ Vasiljević, T., Grubač, M. (2011). *Komentar Zakonika o krivičnom postupku*. Belgrade: *Official Gazette of the RS*, Faculty of Law, Union University in Belgrade, 12th edition, 946.

¹⁸ Ilić, G., Majić, M., Beljanski, S., Trešnjev, A. (2016). *Komentar Zakonika o krivičnom pravu*. Belgrade: Službeni glasnik, 9th edition, 1127.

¹⁹ *Ibid.*, 1127.

It is also the position of the Constitutional Court that an announcement by the Republic Public Prosecutor's Office that there are no grounds for submitting a request for the protection of legality does not, in any way, decide on constitutionally-guaranteed rights, but only on the fulfilment of the conditions for submitting an extraordinary legal remedy, which was, pursuant to Arts. 419 and 421 of the CPC/2001, exclusively the domain of the competent state body, thus the announcement does not represent an individual act against which an appeal can be submitted in the sense of Art. 170 of the Constitution. (Judgement of the Constitutional Court, UŽ 7529/13 from March 31, 2015).

The request for the protection of legality can be submitted by the republic public prosecutor and the defendant and their counsel, but the defendant can only do it through their defence counsel.²⁰ The right of the defendant to submit a request for the protection of legality is significantly limited because the defendant is conditioned to do it exclusively through their counsel, which can bring into question the right of the defendant to effective access to a court, as every defendant that wishes to submit a request for the protection of legality must hire a defence attorney.²¹ Judicial practice also holds this position.²²

The issue of obligatory professional defence can be raised, i.e., providing an ex officio defence counsel in the proceedings based on a request for the protection of legality. However, the CPC currently in force does not regulate this issue, yet, it does list nine procedural situations wherein a defendant must have counsel and by which moment in time.²³ Per the position of the Supreme Court of Cassation, the listed provision clearly determine not only by which moment in time a defendant must have counsel in general but also an ex officio defence counsel. Given the legal provisions, an ex officio defence counsel is not a person authorized to submit a request for the protection of legality in favour of the defendant. The *ratio legis* of the legal solution is found in the need that before the highest court, during the procedure that discusses legal issues, the defence must be performed by a legally qualified person.²⁴

Conversely, the right of the republic public prosecutor to submit a request for the protection of legality is not limited in any way. Besides in the CPC, this right of the prosecutor is also indirectly regulated in the Constitution of the Republic of Serbia.²⁵ Pursuant to the CPC, the republic public prosecutor can submit a request for the protection of legality for any violation of law that is found in the final decision or in the proceedings preceding its issuance and without any temporal or other limitations, they can submit it for and against

²⁰ Art. 483, para. 1 of the CPC.

²¹ Škulić, M., Bugarski, T. (2015). *Krivično procesno pravo*. Belgrade: Faculty of Law, University of Belgrade, 528.

²² Ruling of the Supreme Court of Cassation, Kzz 987/15 from November 26, 2015.

“In cases where the defendant personally submitted a request for the protection of legality, to which they are not authorized by law but may do so exclusively through their counsel, the Supreme Court of Cassation finds that the request for the protection of legality of the defendant is impermissible.”

²³ Art. 74 of the CPC.

²⁴ Ilić, G. (2012). O zahtevu za zaštitu zakonitosti u krivičnom postupku. *Kaznena reakcija u Srbiji – Deo 2* (ed. Ignjatović, Đ.), 159.

²⁵ Constitution of the Republic of Serbia, *Official Gazette of the RS*, no. 98/2006.

In Art. 156, para. 1 it is stated that “The Public Prosecutor’s Office shall be an independent state body which shall prosecute the perpetrators of criminal offences and other punishable actions, and take measures in order to protect constitutionality and legality.”

the interest of the defendant, and they can submit it even after the defendant was given amnesty or a pardon or the statute of limitations has expired, or the defendant has died, or the sentences was served, the republic public prosecutor can even submit multiple request against the same final decision, but only if it is for a different violation of law.²⁶

The authorized persons can withdraw a submitted request for the protection of legality until the moment a court has made a decision on the request. Pursuant to a ruling of the Supreme Court of Cassation, when the authorized persons inform, in writing, the Supreme Court of Cassation that they are withdrawing a request for the protection of legality, the Court dismisses the request as impermissible by a ruling.²⁷

In accordance with the CPC in force, the persons authorized to submit a request for the protection of legality are the republic public prosecutor and the defendant, that is, their defence counsel, thus, the Supreme Court of Cassation has taken the position that other subjects to the proceedings (e.g., the injured party, proxy of the injured party, private prosecutor, etc.) do not have this authorization but can submit an initiative to the republic public prosecutor if they have an interest in submitting this request, in accordance with the constitutional right to put forward proposals to state bodies from Art. 56 of the Constitution of the Republic of Serbia.²⁸

REASONS FOR SUBMITTING A REQUEST FOR THE PROTECTION OF LEGALITY

Pursuant to Art. 485, para. 1 of the CPC, authorised persons can submit a request for the protection of legality if a final decision or a decision in the proceedings preceding its issuance:

1. violated the law;
2. applied a law which was by a decision of the Constitutional Court found not to comply with the Constitution, universally accepted principles of international law and ratified international agreements;
3. violated or denied a human right or freedom of a defendant or other participant in the proceedings guaranteed by the Constitution and the European

²⁶ Ilić, G. (2012). O zahtevu za zaštitu zakonitosti u krivičnom postupku. *Kaznena reakcija u Srbiji – Deo 2* (ed. Ignjatović, Đ.), 159.

²⁷ Ruling of the Supreme Court of Cassation, Kzz 1146/2014 from November 27, 2014.

²⁸ Ruling of the Supreme Court of Cassation, Kzz 212/2014 from March 26, 2014.

Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, as determined by a decision of the Constitutional Court or the European Court of Human Rights.

A request for the protection of legality, as an incomplete legal remedy, may be refuted only on a legal basis.

Violation of law

A violation of law as the reason for submitting a request for the protection of legality is defined in the CPC, where it is stated that a violation of law exists if a provision of criminal procedure was violated by a final decision or in the procedure which preceded its issuance or if the law was applied incorrectly to the finding of facts determined in the final decision.²⁹

It is considered that a law was violated if separately:

a) a final decision or the procedure preceding its issuance violated a provision of the criminal procedure or

b) a law was incorrectly applied to the finding of facts determined in the final decision.³⁰

In the context of this provision, law is any substantive or procedural law that was violated by a final decision or in the procedure preceding its issuance; both provisions of “primary” and “secondary” substantive and procedural legislation are included, as well as any other legal regulation that was applied during the criminal procedure or in the decision, thus, it can refer not only to provisions of a legal nature, but to other regulations whose application was necessary in the specific case from the perspective of substantive or procedural law.³¹

A “final decision” is a final judgement, ruling, or order, regardless of the fact whether the decision was made on the merits or was of a procedural nature.³²

“Decision in the procedure which preceded its issuance” refers to a decision made in the pre-investigatory and criminal proceedings.

²⁹ Art. 485, para. 2 of the CPC.

³⁰ Škulić, M. (2015). *Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku. Advokatska kancelarija*, no. 6/2015, 2. Smederevo,

³¹ Vasiljević, T. (1981). *Sistem krivičnog procesnog prava SFRJ*, 3rd amended and revised edition. Belgrade: Savremena administracija, 666.

³² Vasiljević, T., Grubač, M. (2011). *Komentar Zakonika o krivičnom postupku*. Belgrade: *Official Gazette of the RS*, Faculty of Law, Union University in Belgrade, 12th edition, 920.

The republic public prosecutor can base a request for the protection of legality on any violation of procedural or substantive law, while, on the other hand, the right of the defendant to submit the request is limited to listed and defined violations of law made in first-instance proceedings or in the proceedings before a court of appeal.

The defendant may submit a request for the protection of legality only if two conditions are cumulatively met:

1. that the request was submitted within 30 days of the date when the final decision was delivered;

2. that they used an ordinary legal remedy against the decision. This condition is problematic in the theory of procedural law, i.e., whether the defendant must always use an ordinary legal remedy first, as when it comes to the decisions of public prosecutors, sometimes the ability to appeal is not prescribed, as, for example, is the case with the order to conduct an investigation.³³ However, precisely in situation when there are no ordinary legal remedies do extraordinary legal remedies serve their purpose.

The listed and defined violations of law regarding which the conditions mentioned must be cumulatively fulfilled include:

1. Violations of procedural law:

a) on mandatory defence (Art. 74 of the CPC)

b) substantive violations of the provisions of criminal procedure which refer to conditions that permanently preclude criminal prosecution - if the statute of limitations on criminal prosecution has expired, or prosecution is excluded due to an amnesty or pardon, or the matter has already been finally adjudicated, or there are other circumstances which permanently exclude criminal prosecution (Art. 438, para. 1, point 1 of the CPC);

c) on violating the rules on the mandatory recusal of a judge – if a judge or lay judge who should have been recused participated in the main hearing (Art. 438, para. 1, point 4 of the CPC);

d) the court violated provisions of criminal procedure in respect of the existence of charges of an authorized prosecutor, or authorization of the competent authority (Art. 438, para. 1, point 7 of the CPC);

e) the subject matter of the charges was not resolved in full (Art. 438, para. 1, point 8 of the CPC);

f) the judgment went beyond the scope of the charges (Art. 438, para. 1, point 9 of the CPC);

³³ Škulić, M. (2015). Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku. *Advokatska kancelarija*, no. 6/2015, 19. Smederevo.

g) the provision of Article 453 of this CPC was violated by the judgment – the prohibition on changing a judgment to the detriment of the defendant (Art. 438, para. 1, point 10 of the CPC);

h) if the judgment is based on evidence on which, under the provisions of this CPC, it may not be based, except if, in view of other evidence, it is obvious that the same judgment would have been issued even without that evidence (Art. 438, para. 2, point 1 of the CPC).

2. Violations of criminal law (Art. 439, paras. 1-3 of the CPC) exist if the criminal law was violated in respect of whether:

- the offence for which the defendant is prosecuted is a criminal offence;
- a law which cannot be applied was applied in respect of the criminal offence which is the subject matter of the charges;
- the law was violated by the decision on the criminal sanction or on the forfeiture of proceeds from crime or on a revocation of a release on probation (Art. 439, para. 3 of the CPC).

3. An incorrect decision on criminal sanctions and on other decisions (Art. 441, para. 3 of the CPC) regarding a decision on an awarded restitution claim or a decision on confiscation of assets deriving from a criminal offence (Art. 441, para.3 of the CPC) and a decision on the costs of criminal proceedings (Art. 441, para. 4 of the CPC).

From the formulation of the law it stems that the defendant and their counsel may submit a request for any reason for which this extraordinary legal instrument may otherwise be submitted, and only when one of the above-listed and defined reasons are considered do they need to submit the request within a certain timeframe, and that it is necessary for the defendant to have previously utilized an appeal against the decision they are refuting.³⁴ However, judicial practice interprets the legal text differently, i.e., the Supreme Court of Cassation has taken the position that the defendant may only submit a request for the protection of legality for the listed reasons.³⁵

According to Škulić, this opinion of the Supreme Court of Cassation is incorrect. This may have been the intention when the CPC was written but it is not stated in the legal text, pursuant to which both the defendant and their counsel may submit a request for the protection of legality for any reason for which this extraordinary legal measure may otherwise be submitted, just like

³⁴ Škulić, M. (2015). Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku. *Advokatska kancelarija*, no. 6/2015, 20. Smederevo.

³⁵ This variation is compared to the previous extraordinary legal remedy from the CPC from 2001, the request for the correction of a final judgment, which was exclusively to be used by the defence; prior to the CPC, the request was similarly named the request for the extraordinary re-examination of the final judgement.

the republic public prosecutor, and only when the request is based on one of the listed reasons do both previously mentioned conditions need to be cumulatively fulfilled.³⁶ However, there is another position, represented by G. Ilić and accepted by current judicial practice. By the provision which prescribes the conditions for the defendant for submitting the request for the protection of legality due to a violation of law (Art. 485, para. 4 of the CPC), the legislator limited the reasons for which the defendant may submit this extraordinary legal remedy.³⁷ Thus, the Supreme Court of Cassation took the position that a defendant may submit a request for the protection of legality due to a violation of law only for the listed reasons.³⁸

It is important that the specific violation of law for which the defendant is submitting the request for the protection of legality is chosen, as the court is not authorized to assess which violation the applicant had in mind when submitting the request based purely on the substantiation.³⁹ At first glance, it may seem like the active CPC has significantly expanded the possibility of changing a final decision by allowing defenders to submit a request for the protection of legality, however, the situation is the opposite in reality, as the CPC stipulates that the Supreme Court of Cassation should only decide on a request if it finds that it concerns an issue of importance for the correct or uniform application of the law.⁴⁰

This limiting rule is potentially in opposition to the provision of the Constitution of the RS which demands that judicial decisions be based on the law.⁴¹ It could be concluded that the new rule in the CPC differentiates between “less and more important unlawfulness” as it allows, contrary to the explicit constitutional norm, the existence of unlawful judicial decisions if the Supreme Court of Cassation, even at “first glance”, determines that the specific unlawfulness in the decision of a court is not of significance for the correct and uniform application of the law; the *ratio legis* for this limited decision-making regarding submitted requests lies in the attempt to prevent an overuse of the ability to submit this extraordinary legal remedy and an eventual overly “routine engagement of the Supreme Court of Cassation, as the highest court

³⁶ Škulić, M. (2015). Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku. *Advokatska kancelarija*, no. 6/2015. Smederevo, 20.

³⁷ Ruling of the Supreme Court of Cassation, app. no. Kzz OK2/2012 from March 1, 2012.

³⁸ Ruling of the Supreme Court of Cassation, app. no. Kzz OK12/2012 from May 5, 2012.

³⁹ Cited according to Ilić, G., Majić, M., Beljanski, S., Trešnjev, A. (2016). *Komentar Zakonika o krivičnom postupku*, 9th edition. Belgrade, 1126.

⁴⁰ Art. 486, para. 2 of the CPC.

⁴¹ Art. 145, para. 2 of the Constitution of the Republic of Serbia.

in the Republic.”⁴² This does not only potentiality go against the Constitution but is in opposition to legal logic, as such a mechanism necessitates that the Supreme Court of Cassation, at the very start and without carrying out legal proceedings, assess the (non)existence of reasons that are listed in a specific request for the protection of legality, determine that there is an applicable violation of law but that it does not have a sufficient degree of relevancy, i.e., that it is not of significance for the correct and uniform application of law. In light of this legal regulation that refers to the limited ruling on a request for the protection of legality, Škulić finds that a more correct name for this extraordinary legal remedy should be *request for the uniform application of laws and the correct application of law*.⁴³

Application of unconstitutional laws⁴⁴

The CPC stipulates that a request for the protection of legality may be submitted if in a final decision or the proceedings preceding its issuance a law was applied which was by a decision of the Constitutional Court found not to comply with the Constitution, generally accepted principles of international law and ratified international agreements.⁴⁵ This refers to an assessment of the constitutionality of a law that was conducted after a specific provision of substantive or procedural law was applied in a final decision or in the proceedings preceding its issuance.⁴⁶

⁴² Škulić, M. (2015). *Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku*. *Advokatska kancelarija*, no. 6/2015, 20. Smederevo.

⁴³ *Ibid.*

⁴⁴ The application of an unconstitutional law as the reason for submitting an extraordinary legal remedy existed in prior criminal procedure law, first in Art. 411 of the CPC from 1976, named “request for changing the final decision of the court with regards to Art. 388, para. 3 of the Constitution of the SFRY or appropriate provisions of republic or provincial constitutions”; it continued its existence in the CPC from 2001 in Art. 414, under the name “request for changing the final court decision based on the decision of the Constitutional Court.” These solutions referred to special cases of repeating proceedings to which general provisions for repeating criminal proceedings were applied. In the CPC from 2006, this reason was one of the grounds for repeating proceedings, while the creators of the CPC from 2011 regulated it within the framework of reasons for submitting a request for the protection of legality. The author believes that the current solution is a good one, as this case is primarily a legal issue, while also keeping in mind the very purpose of the request for the protection of legality.

⁴⁵ Art. 485, para. 1, point 2 of the CPC.

⁴⁶ Ilić, G., Majić, M., Beljanski, S., Trešnjev, A. (2016). *Komentar Zakonika o krivičnom postupku*. Belgrade: *Official Gazette of the RS*, 9th edition, 1133.

It is important to note that the Law on the Constitutional Court⁴⁷ prescribes:

“Everyone whose right has been violated by a final or legally-binding individual act, adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law is entitled to demand from the competent authority a revision of that individual act, in accordance with the rules of procedure in which the individual act was passed.”⁴⁸

The same Article, in para. 2, stipulates that

“Proposals for revision of a final or legally-binding individual act adopted on the basis of a law or other general act determined by a decision of the Constitutional Court not to be in compliance with the Constitution, generally accepted rules of international law, ratified international agreements or law may be submitted within six months from the date of the publication of the decision in the Official Gazette of the Republic of Serbia, unless more than two years have passed between the delivery of the individual act and the submittal of the proposal or initiative for initiating a procedure.”

Unlike para. 1 of this Article which is complementary with the CPC, para. 2 is not complementary with the provision of the CPC which stipulates that a request for the protection of legality due to an application of an unconstitutional law may be submitted within three months of the day when the authorized person was delivered a decision of the Constitutional Court or the European Court for Human Rights. Pursuant to the rule that *lex specialis derogat legi generali*, primacy should be given to the CPC.⁴⁹

⁴⁷ Law on the Constitutional Court, *Official Gazette of the RS*, no. 109/2007, 99/2011, 18/2013 – decision of the CC, 103/2015 and 40/2015 – other law.

⁴⁸ Art. 61, para. 1 of the Law on the Constitutional Court.

⁴⁹ Milovanović, M. (2016). *Vanredni pravni lekovi u krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade, 233. (doctoral dissertation).

Violation or denial of a human right or freedom of a defendant or other participant in proceedings guaranteed by the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, as determined by a decision of the Constitutional Court or the European Court of Human Rights

A request for the protection of legality may also be submitted if a final decision or a decision in the proceedings preceding its issuance violated or denied a human right or freedom of a defendant or another participant in the proceedings guaranteed by the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols, and the violation or denial was determined by a decision of the Constitutional Court or the European Court of Human Rights.⁵⁰

A necessary condition for submitting a request for the protection of legality on this basis is a decision of the Constitutional Court based on a constitutional appeal or a decision of the European Court of Human Rights based on an application.⁵¹

The passive subject of rights and freedoms is the defendant or another participant in the proceedings (so, a witness, forensic expert, expert witness, interpreter, etc.), where the violation or denial of their rights resulted as a consequence of any procedural activity of the body conducting the proceedings (these are investigatory activities, procedural enforcement, decision-making activities, and conducting the proceedings).⁵²

It is considered that this reason for submitting a request for the protection of legality is not faulty, but that this provision can be criticized because it is phrased as an absolutely significant violation of the provisions of criminal procedure instead of a relatively significant violation; it is not logical that every violation or denial of human rights in criminal proceedings should automatically lead to annulling a final decision, such an outcome should come about only if there is a causal link between the violation committed and the judicial decision made, that is, if a violation or denial of human rights would affect the lawfulness and accuracy of the decision-making.⁵³ This is a badly phrased reason in the legal-technical sense, as such a violation need not be the

⁵⁰ Art. 485, para. 1, point 3 of the CPC.

⁵¹ Milovanović, M. (2016). *Vanredni pravni lekovi u krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade, 219. (doctoral dissertation).

⁵² Ilić, G., Majić, M., Beljanski, S., Trešnjev, A. (2016). Komentar Zakonika o krivičnom postupku. Belgrade: *Official Gazette of the RS*, 9th edition, 1133.

⁵³ Brkić, S. (2013). *Krivično procesno pravo II*. Novi Sad: Faculty of Law, University of Novi Sad, 219.

basis for any change to a final decision, but it is, above all, a basis for damage compensation, which the decisions of the European Court of Human Rights deal with as a rule.⁵⁴

THE TIMEFRAME FOR SUBMITTING A REQUEST FOR THE PROTECTION OF LEGALITY

The request for the protection of legality is an extraordinary legal remedy of a mixed nature, that is, submitting a request for the protection of legality is not tied to a time limit except in two cases.

The first case when submitting a request for the protection of legality is tied to a time limit is due to the listed and defined violations of the CPC committed during a first-instance proceeding and in proceedings before a court of appeal.⁵⁵ In this case, the republic public prosecutor may submit a request without temporal limitations, while the defence only has this right within 30 days of the date when the final decision was delivered and only under the condition that it had used an ordinary legal remedy against the decision.

The other case refers to submitting a request for the protection of legality as a result of the application of a law which does not comply with international treaties, as it was determined by a decision of the Constitutional Court, or as a result of a violation or denial of a human right or freedom of the defendant or other participant in the proceeding that is guaranteed by the Constitution or the European Convention for Human Rights and Fundamental Freedoms and its Additional Protocols, as determined by a decision of the Constitutional Court or the European Court of Human Rights. In this case, the time limit for submitting the request is three months from the date when the person was delivered the decision of the Constitutional Court or the European Court of Human Rights.

THE CONTENT OF A REQUEST FOR THE PROTECTION OF LEGALITY

The content of a request for the protection of legality is prescribed by the CPC.⁵⁶ First, the reason for the submission must be specified. If the request is

⁵⁴ Škulić, M. (2013). *Osnovne novine u krivičnom procesnom pravu Srbije*. Belgrade: Faculty of Law, University of Belgrade, 187.

⁵⁵ Art. 485, para. 1, point 1 of the CPC.

⁵⁶ Art. 484 of the CPC.

submitted because a law was applied that a decision of the Constitutional Court determined was not in compliance with international treaties or because a violation or denial of rights or freedoms of the defendant or other participant in the proceedings guaranteed by the Constitution and the European Convention occurred, and that was determined by a decision of the Constitutional Court or the European Court of Human Rights, that decision of the Constitutional Court or European Court of Human Rights must be delivered. The named elements are considered obligatory elements of a request for the protection of legality. If a request does not contain the prescribed elements, the Supreme Court of Cassation, sitting in a panel, shall dismiss the request by a ruling.⁵⁷

The provisions of the CPC do not mention other elements that a request should contain. However, it is undisputable that they are: the selection of the court before which the request is submitted, the name of the court and the number of the decision against which the request is submitted, a substantiation of the reasons for submission and a proposition for the Supreme Court of Cassation.

THE PROCEDURE DUE TO A REQUEST FOR THE PROTECTION OF LEGALITY

The CPC currently in force does not contain a provision referring to whom a request for the protection of legality is submitted, but the general rule for the submission of legal remedies stipulates that it should be the court or the public prosecutor's office whose final decision is being challenged. This is supported by the principle of efficiency, as the documents necessary for the Supreme Court of Cassation to make a decision are found at the court or public prosecutor's office against whose decision this extraordinary legal remedy was submitted.⁵⁸ However, it has become absolute practice that the court competent for deciding on a request for the protection of legality should be the one to receive the submission, i.e., the Supreme Court of Cassation.

The Supreme Court of Cassation decides on a request in a panel composed of five judges and it is obligated to decide on the request within six months, as well as to deliver its decision with the files to the public prosecutor, first-instance or appellate court no later than six months from the date when the request was submitted.⁵⁹ The time limit is of an instructional nature.

⁵⁷ Art. 487, para. 1, point 3 of the CPC.

⁵⁸ Ilić, G., Majić, M., Beljanski, S., Trešnjev, A. (2016). *Komentar Zakonika o krivičnom postupku*. Belgrade: *Official Gazette of the RS*, 9th edition, 1137.

⁵⁹ Art. 488, para. 4 of the CPC.

The CPC contains a criticised provision relating to the request for the protection of legality which stipulates that the Supreme Court of Cassation does not always decide on a request for the protection of legality that is submitted due to a violation of law, but only if it finds it to be a question relating to the correct or uniform application of law.⁶⁰ There is a position that it would be better to prescribe an obligation of the Court to decide on a request if the violation harmed the defendant, regardless of the significance of the violation committed.⁶¹

The proceedings due to a request for the protection of legality have two stages:

1. deciding on the formal admissibility of the request for the protection of legality;
2. deciding on the merits of the request for the protection of legality.

The procedure begins with assessing the formal admissibility, i.e., the Supreme Court of Cassation, sitting in a panel, will dismiss a request for the protection of legality by a ruling if⁶²:

1. It was not submitted within three months of the date when the person was delivered the decision of the Constitutional Court or the European Court of Human Rights that determined that the law applied does not comply, as determined by a decision of the Constitutional Court, with the generally accepted rules of international law or ratified international treaties, or the decision that determined a violation or denial of a human right or freedom of the defendant or other participant in the proceedings guaranteed by the Constitution or the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols. In this case, the republic public prosecutor may submit a request without a time limit, while the defence may do this within 30 days from the date when they were delivered the final decision and only under the condition that they had used an ordinary legal remedy against the decision.

2. It is impermissible.⁶³ A request is impermissible against a decision on the protection of legality or a violation of provisions of the procedure before the Supreme Court of Cassation which preceded its issuance or if it was submitted by an unauthorized person or if the defendant submitted the request through their counsel but for reasons which are not explicitly stated in the CPC;

⁶⁰ Art. 486, para. 2 of the CPC.

⁶¹ Škulić, M., Ilić, G. (2012). *Novi Zakonik o krivičnom postupku Srbije: Reforma u stilu „jedan korak napred – dva nazad“*. Belgrade, 148.

⁶² Art. 487 of the CPC.

⁶³ Art. 482, para. 2 of the CPC, Art. 483 of the CPC and Art. 485, para. 4 of the CPC.

3. It does not contain the prescribed content, i.e., if the reason for submission was not stated or a decision of the Constitutional Court or the European Court of Human Rights was not delivered in cases where it is obligatory⁶⁴;

4. It is submitted due to a violation of law that is not significant for the correct or uniform application of law.

A decision on the dismissal of a request for the protection of legality is to be delivered in the form of a ruling and it does not need to contain a substantiation.⁶⁵ However, since the begging of the application of the current CPC, all rulings of the Supreme Court of Cassation contain a substantiation, which indicates that the practice of the Supreme Court of Cassation complies with the right to a substantiated court decision from Art. 6, para. 1 of the European Convention on Human Rights.⁶⁶ An appeal against a ruling dismissing a request for the protection of legality is not allowed.⁶⁷

In case the Supreme Court of Cassation does not dismiss a request for the protection of legality, the reporting judge will deliver it to the public prosecutor or defence counsel.⁶⁸ It is not prescribed that the defendant should be present at the session of the Supreme Court of Cassation where the ruling is to be decided, while it is permitted for the public prosecutor and defence counsel, under the condition that the Supreme Court of Cassation finds it to be of importance for making the decision.⁶⁹

If the Supreme Court of Cassation finds that the reasons for which it made a decision in favour of the defendant exist for another a co-defendant in respect of whom no request for the protection of legality was submitted, it shall act ex officio as if such a request did exist.⁷⁰ Regarding a request submitted by a the public prosecutor, the Supreme Court of Cassation can refute or amend the disputed decision only in favour of the defendant, due to the effects of the *ne bis in idem* principle; regarding a request for the protection of legality submitted by a defendant through their defence counsel, it is accepted that a final decision cannot be changed to the detriment of the defendant.⁷¹

Further, in case the Supreme Court of Cassation does not dismiss a request, it begins an assessment of the merits in the form of a court panel (Art.

⁶⁴ Art. 484 of the CPC.

⁶⁵ Art. 487, para. 2 of the CPC.

⁶⁶ Bugarski, T. (2016). *Zahtev za zaštitu zakonitosti*. *Annals of the Faculty of Law in Novi Sad*. Novi Sad, 101.

⁶⁷ Art. 465, para. 5 of the CPC.

⁶⁸ Art. 488, para. 1 of the CPC.

⁶⁹ Art. 488, para. 2 of the CPC.

⁷⁰ Art. 489, para. 2 of the CPC.

⁷¹ Milovanović, M. (2016). *Vanredni pravni lekovi u krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade, 258. (doctoral dissertation).

487 of the CPC) and it may bring forth a judgment that adopts or dismisses the request for the protection of legality.

The Supreme Court of Cassation shall dismiss a request for the protection of legality by a judgement as unfounded if it determines that the reason which the applicant refers to in the request does not exist.

The Supreme Court of Cassation shall grant a request for the protection of legality by a judgement. In accordance with the nature of the violation, the judgement shall⁷²:

1. abolish in full or in part the first-instance decision and a decision issued in proceedings based on an ordinary legal remedy, or only the decision issued in proceedings based on an ordinary legal remedy and return the case for a new decision to the authority conducting the proceedings or for trial by a first-instance court or an appellate court, where it may order that new proceedings be held before a completely changed panel;

2. reverse in full or in part the first-instance decision and the decision issued in ordinary legal remedy proceedings or only the decision issued in ordinary legal remedy proceedings;

3. limit itself to establishing a violation of the law. This type of situation represents a case where the Court shall issue a declarative decision that determines a violation of the law but does not challenge the final decision; this happens when a request for the protection of legality is granted but which may damage the position of the defendant.⁷³

If the body that conducted the proceedings based on an ordinary legal remedy was not authorized, pursuant to the provisions of the CPC, to rectify a violation which was committed in the challenged decision or the proceedings preceding its issuance and the Supreme Court of Cassation, upon granting the request for the protection of legality which was submitted in favour of the defendant, finds the request to be well-founded and that to remove the committed violation of the law the decision needs to be abolished or reversed, it will abolish or reverse the decision issued in the proceeding based on the ordinary legal remedy, even if such a decision did not violate the law.⁷⁴ This is a legal-technical activity that enables an intervention by the Supreme Court of Cassation in a first-instance decision even when a second-instance court had done so, if the second-instance court did not have the appropriate authorization.⁷⁵

⁷² Art. 492, para. 1 of the CPC.

⁷³ Škulić, M. (2015). *Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku*. *Advokatska kancelarija*, no. 6/2015, 6. Smederevo.

⁷⁴ Art. 492, para. 2 of the CPC.

⁷⁵ Škulić, M. (2011). *Komentar Zakonika o krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade, 1150.

In case a final judgement is abolished and the case is returned for readjudication, the grounds will be the earlier indictment or the part of it which was abolished and the court is obligated to conduct all procedural activities and to examine the issues which were noted by the Supreme Court of Cassation. Additionally, the parties may present new facts and submit new evidence and the court is prohibited from changing the judgement to the detriment of the defendant while issuing the new judgement.⁷⁶

CONCLUSION

The criminal procedure legislature reform in Serbia has caused the request for the protection of legality to undergo the greatest changes, some of which raise contentious issues which have been pointed out in this paper. The legal regulation of the request for the protection of legality in the CPC contains certain legal voids and ambiguities, thus, it is desirable to institute certain amendments.

The solution which has caused much discussion among the professional public is the authorization of the Supreme Court of Cassation to decide on a request only if the question is of significance for the correct and uniform application of law. A better solution would be for the Court to always decide on a request for the protection legally if a violation of law was committed to the detriment of the defendant, given that the principles of truth and fairness are more important values than the principle of correct and unified application of law.⁷⁷

Further, the solution from the CPC prescribes that a defendant may exclusively submit a request through their counsel, however, I believe that it is necessary to prescribe the possibility of granting an ex officio defence counsel in proceedings based on a request for the protection of legality in certain situations.

To continue, given that a request for the protection of legality may be submitted against final judgements, rulings and orders, it is necessary to prescribe the possibility of deferring or discontinuing final rulings and orders, and not only, as it is regulated in Art. 488, para. 3 of the CPC, talk about the potential effect of a request for the protection of legality to defer or discontinue the execution of a final judgement. Consequently, this provision should be changed accordingly.

⁷⁶ Art. 494 of the CPC.

⁷⁷ Milovanović, M. (2016). *Vanredni pravni lekovi u krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade, 311. (doctoral dissertation).

Certain modification should also be done in the segment of the CPC that regulates how the new main hearing is to be conducted, as the CPC currently in force only mentions the situation when a final judgement is abolished but does not mention a final ruling. Having in mind that returning a case to re-adjudication may also happen after abolishing a final ruling corresponding to a judgement, I believe that the provision should be changed accordingly.

To remove ambiguity, the phrasing of Art. 485, para. 1 of the CPC should be amended, which ties the reasons for submitting a request for the protection of legality to a decision in the proceedings preceding the issuance of a final decision, and which is of a narrower scope than Art. 482, para. 1 of the CPC, which prescribes that a request may be submitted for violations of the provisions of the procedure which preceded the issuance of a final decision. Accordingly, the provision of Art. 485, para. 1 should be amended in the sense of violations of provisions of the procedure.

From the examination of this extraordinary legal remedy, the request for the protection of legality, in the criminal procedure of the Republic of Serbia, it can be concluded that the regulation of this remedy is comparable to the standards of the existing solutions found in the foremost states of the continental legal system; thus, with certain corrections, it can adequately fulfil the purpose of the criminal procedure, i.e., solving the *causa criminalis*. Additionally, a rich judicial practice, both in a qualitative and quantitative sense, should provide answers to many contentious questions over time and remove potential ambiguities, but judicial practice should also be very cautious, given that this is an extraordinary legal remedy which is the last line of defence for the legality of decisions and actions in a criminal procedure.

BIBLIOGRAPHY

- Bejatović, S. (2008). *Krivično procesno pravo*. Belgrade: Službeni glasnik.
- Brkić, S. (2013). *Krivično procesno pravo II*. Novi Sad: Faculty of Law, University of Novi Sad.
- Bubalović, T. (2004). Pojam, opravdanje i cilj pravnih lijekova u krivičnom postupku. *Pravo i pravda* (no. 1–2/04), 156.
- Bugarski, T. (2015). Zahtev za zaštitu zakonitosti. *Annals of the Faculty of Law in Novi Sad*, vol. 50, no. 1.
- Cvetković, B. (2013). Vanredni pravni lekovi i novi ZKP: Nova rešenja u kaznenom zakonodavstvu Srbije i njihova praktična primena, *Meeting of the Serbian Association for Criminal Law and Practice*. Zlatibor, 199.
- Grubač, M. (2009). *Krivično procesno pravo*. Belgrade: Službeni glasnik, 443.
- Ilić, G. (1975). Zahtev za zaštitu zakonitosti i činjenično stanje. *Bezbednost*, no. 5/97.

- Ilić, G., Majić, M., Beljanski, S., Trešnjev, A. (2016). *Komentar Zakonika o krivičnom pravu*. Belgrade: Službeni glasnik, 9th edition.
- Milovanović, M. (2016). *Vanredni pravni lekovi u krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade. (doctoral dissertation).
- Škulić, M. (2011). *Komentar Zakonika o krivičnom postupku*. Belgrade: Faculty of Law, University of Belgrade.
- Škulić, M. (2013). *Krivično procesno pravo*. Belgrade: Faculty of Law, University of Belgrade.
- Škulić, M. (2013). *Osnovne novine u krivičnom procesnom pravu Srbije*. Belgrade: Faculty of Law, University of Belgrade.
- Škulić, M. (2015). *Zahtev za zaštitu zakonitosti u novom Zakonu o krivičnom postupku*, *Advokatska kancelarija*, Smederevo, no. 6/2015.
- Škulić, M., Bugarski, T. (2015). *Krivično procesno pravo*. Belgrade: Faculty of Law, University of Belgrade, 491.
- Škulić, M., Ilić, G. (2012). *Novi Zakonik o krivičnom postupku Srbije: Reforma u stilu „jedan korak napred – dva nazad“*. Belgrade: The Association of Public Prosecutors and Deputy Public Prosecutors of Serbia, Serbian Association for Criminal Law and Practice, Faculty of Law, University of Belgrade, 147.
- Vasiljević, T. (1981). *Sistem krivičnog procesnog prava SFRJ*, 3rd amended and revised edition. Belgrade: Savremena administracija.
- Vasiljević, T., Grubač, M. (2011). *Komentar Zakonika o krivičnom postupku*. Belgrade: *Official Gazette of the RS*, Faculty of Law, Union University in Belgrade, 12th edition.

Legal acts

- Law on the Constitutional Court, *Official Gazette of the RS*, no. 109/2007, 99/2011, 18/2013 – decision of the CC, 103/2015 and 40/2015 – other law.
- The Criminal Procedure Code of the Republic of Serbia, *Official Gazette of the RS*, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision of the CC and 62/2021 – decisions of the CC.
- Constitution of the Republic of Serbia, *Official Gazette of the RS*, no. 98/2006.

Case law

- Ruling of the Supreme Court of Cassation, Kzz 1146/2014 from November 27, 2014.
- Ruling of the Supreme Court of Cassation, Kzz 212/2014 from March 26, 2014.
- Ruling of the Supreme Court of Cassation, app. no. Kzz OK12/2012 from May 5, 2012.
- Ruling of the Supreme Court of Cassation, app. no. Kzz OK2/2012 from March 1, 2012.