

Nebica Petrović, PhD candidate
Faculty of Law for Commerce and Judiciary
University of Commerce Academy in Novi Sad
e-mail: nebicapetrovic30@gmail.com

THE RIGHT TO FAIR TRIAL IN CRIMINAL PROCEEDINGS

Abstract:

The right to a fair trial in criminal proceedings constitutes a fundamental human right safeguarded by international conventions as well as domestic legislation. This right entails a number of essential guarantees, including the right to a public hearing, the right to defense, the right to an impartial tribunal, and the right to legal assistance. The present paper explores the significance of fair trial guarantees for the preservation of legal certainty and the protection of human rights. The exposition will encompass key dimensions, including respect for due process, procedural safeguards, the transparency of judicial proceedings, and the rights of the accused. Practical illustrations will be provided through a comparative examination of the judicial systems within the neighboring jurisdictions of the Republic of Serbia and their respective approaches to the fair trial principle. In addition, the paper will address the challenges faced by judicial institutions in securing the effective realization of these rights. Ultimately, it will underscore the necessity of enhancing both the normative framework and its practical application so as to ensure that the right to a fair trial is fully upheld in all criminal proceedings.

Keywords: *right to a fair trial, criminal proceedings, judiciary, constitution, normative framework*

PRELIMINARY CONSIDERATIONS

The legal system of every state is grounded in predetermined legal norms. Yet, underlying and predating these norms are fundamental legal principles which constitute the foundation of law, from its very inception to contemporary developments. Among the most essential of these principles is the right to a fair trial, which affords equal legal and institutional protection to all actors within criminal proceedings. The initiation of criminal proceedings sets in motion the mechanism of criminal-law protection of fundamental social values (such as life, liberty, property, and health) which, as a corollary, necessarily results in the restriction of certain fundamental rights of the accused.¹

¹ The aforementioned values constitute a corpus of fundamental human rights protected under overarching international and regional legal instruments, including the Universal Declaration of Human Rights of 1948; the International Covenant on Civil and Political Rights of 1966; the International Covenant on Economic, Social and Cultural Rights of 1966; and the European Convention on Human Rights of 1950, among others. Thus, the right to physical integrity is safeguarded within criminal proceedings through the establishment of the criminal responsibility of the accused for violations committed against victims. Such proceedings are frequently adjudicated before the European Court of Human Rights in

At the core of modern democratic governance and the rule of law stand two fundamental principles: truth and justice. The attainment of these principles is conditioned by the consistent and responsible application of procedural law, within which the right to a fair trial functions as a pivotal instrument of fact-finding and, as such, constitutes the primary issue examined in this paper. Accordingly, the subject of the present research is the right to a fair trial in the Republic of Serbia. This right is a central legal principle enshrined in the normative framework, the exercise of which is, or ought to be, carried out in conformity with the powers and responsibilities prescribed by legal norms, which delineate the scope of authority, duties, and accountability. The consideration of the right to a fair trial, both in its substantive and procedural dimensions, entails the pursuit of multiple theoretical and practical objectives. These objectives establish the scientific foundation for sound practice of fair trial guarantees within criminal proceedings. Furthermore, the scholarly and societal justification of this research lies in the acquisition of new scientific knowledge, the enrichment of existing legal theory, and the creation of a scholarly basis for the further development of legal practice in the field of the right to a fair trial.² At the same time, the justification for examining the right to a fair trial is founded upon the verification and refinement of research methods, the application of methodological and theoretical approaches, and the careful selection of methods and procedures for the design and implementation of research instruments.

The results of this research are designed to contribute to a more thorough and timely evaluation of judicial practice concerning the right to a fair trial in criminal proceedings. This objective is further promoted through a comparative approach that incorporates legislative solutions elaborated within other criminal justice systems.

1. THE RIGHT TO A FAIR TRIAL IN THE DOMESTIC LEGAL SYSTEM

1.1. The Notion of Justice in Legal Doctrine

In defining the notion of a “fair trial,” it is necessary to take into account the fundamental provisions of the concept of “justice.” Justice constitutes a categorical legal notion from which derivative concepts of lesser scope and significance are drawn, such as

Strasbourg. These cases typically concern applications lodged by individuals against the Republic of Serbia on account of having suffered torture. See, for instance, the case of *Ali v. Serbia*, no. 4662/22, where the Court found violations of Article 3 (Prohibition of Torture), Article 3 (Extradition/Expulsion), and Article 34 (Individual Application).

2 In this regard, EU law abounds with legal instruments regulating the application of various principles aimed at establishing a fair balance in relation to the accused. Directive 2012/13/EU on the right to information in criminal proceedings was the second legal instrument adopted as part of the Stockholm Programme agenda for the enhanced protection of procedural rights of suspects and accused persons, on 22 May 2012. It was to be transposed into domestic law by 2 June 2014. This measure regulates the right of a suspect to be informed of his procedural rights, of the charges brought against him, and to have access to the case file and materials. Compared to the scope of the right of access to a lawyer provided for under the preceding Directive, the right to information has received less attention in judicial practice and practitioner training, although the Directive on the right to information clarifies these important safeguards. Nagy, A. I., Dornfeld, L. L. (2017). *The development of certain measures related to the right to a fair trial in the European Union as part of the Stockholm Programme*. Zbornik radova Pravnog fakulteta, 51(3-1), p. 867.

fairness, fair trial, due process, and other essential legal notions. When the term “justice” is employed in legal scholarship, most authors emphasize that it is exceedingly difficult to define, given the high degree of abstraction inherent in the concept itself, and even more so to articulate in practice, whether in the social or in the legal sphere. Nevertheless, within legal doctrine, the notion of justice may assume different meanings depending on the context in which it is examined. Thus, justice may be understood as adherence to truth, moral principles, and equality. Accordingly, several dimensions in which justice is manifested can be distinguished, namely:

1. Moral Justice, which encompasses the moral principles that determine the boundaries of what is right and just in the conduct of individuals as well as society as a whole.
2. Legal Justice, which encompasses the legal order and the set of norms that guarantee the equality of all persons before the law.
3. Social Justice, which encompasses the principle of equal treatment of all members of society.
4. Epistemic Justice, which encompasses respect for truth, accessibility of information, and fairness in the distribution and accessibility of knowledge.³

Although the term “justice” generically encompasses the notion of “fairness,” it is important to emphasize that fairness implies a broader social context. In common parlance, it has become entrenched as a lesser form of justice.⁴ Conversely, certain doctrinal positions maintain that **justice** is synonymous with **fairness**. In the *Legal Encyclopedia*, the concept of **equity** is assimilated to justice (fairness).⁵

The conceptual delineation of *justice* and *equity* necessarily implies the definitive determination of the notion of a *fair trial*. It should be emphasized that this notion derives from the concepts of justice, equity, dispute, adjudication, and court. A *fair trial* may be defined as a judicial proceeding conducted in a fair manner for all parties to the case, under identical and equal conditions, with identical and equal opportunities, encompassing the full range of standards inherent in the right to a fair trial. This applies to all types of proceedings (administrative, misdemeanor, criminal, civil, and others); however, by their very nature, the gravest consequences of unfair conduct of proceedings manifest themselves in the field of criminal law.⁶

3 According to: Mišić, M. (2025). *Insoluble Problems of Justice and Artificial Intelligence*. *Herald of the Bar Association of Vojvodina*, 97(1), 156–157.

4 In oral folk traditions, fairness is often defined as partially fulfilled justice. Moreover, some interpretations suggest that fairness may be characterized as a form of “consolatory justice.” “Love and justice, two biblical principles, are embodied in Prince Marko, the most renowned hero of Serbian epic poetry. In the poem *Uroš and the Mrnjavčević Brothers*, Marko’s mother, Jevrosima, implores him by the milk with which she nursed him to judge according to the justice of the true God.” Rajović, D. (2023). *Biblical Motifs in Epic Folk Songs about the Nemanjić Dynasty*. *Baština*, 60, p. 63.

5 *Legal Encyclopedia*. (1979). Belgrade: Contemporary Administration, p. 1037.

6 “The specificity of addressing justice within criminal procedural law is analogous to that in substantive criminal law, since the term *justice* is nowhere explicitly mentioned in statutory texts. Nevertheless, as a fundamental social value, it permeates the criminal process. Criminal procedural law is a branch of law in which the state has a particularly strong interest to ensure precision, clarity, and comprehensive regulation. Consequently, in criminal proceedings it is not possible to find *equity* (unlike in other types of proceedings) as a formal source of law. It is not even mentioned as a corrective criterion (which must

In the context of examining the concepts of **justice, equity, fairness**, and related notions, it is important to highlight yet another, equally significant aspect. This concerns the issue of fair social balance, understood as the antithesis of social imbalance manifested through unlawful conduct by the individual, the collective, or, ultimately, the state itself. Social imbalance is reflected in unjust conduct, understood as behavior contrary to law — in particular, to unwritten law. However, the subjective perception of injustice may come into conflict with what is prescribed by the constitution and the statutory laws of a given state.⁷

1.2. Constitutional Guarantees of the Right to a Fair Trial in the Republic of Serbia

Until the adoption of the Constitution of the Republic of Serbia in 2006, the institute of the right to a fair trial had not been adequately regulated in our legal system, and consequently, there existed no appropriate mechanism for safeguarding the right to a trial within a reasonable time.⁸ Pursuant to Article 32 of the Constitution, a provision is established concerning the right to a fair trial, which stipulates *that every individual shall have the right to a fair and public hearing within a reasonable time before an independent, impartial, and lawfully established tribunal, which shall determine his or her rights and obligations, the merits of any criminal charge giving rise to the proceedings, as well as the charges brought against him or her.* Furthermore, every person shall be guaranteed⁹ *The right to a free interpreter shall be guaranteed to any person who does not speak or understand the language officially used in the court, as well as the right to a free sign language interpreter if the person is blind, deaf, or mute. The public may be excluded from the entirety of court proceedings, or from a part thereof, solely for the purpose of protecting the interests of national security, public order, and morals in a democratic society, as well as for the protection of the interests of minors or the privacy of participants in the proceedings, in accordance with the law.* In this manner, the Serbian constitution-maker has *de jure* established an appropriate legal framework for the practical application of the right to a fair trial (*de facto*).

In procedural terms, jurisdiction for the protection of the right to a fair trial in the Republic of Serbia lies with the ordinary courts and, ultimately, with the Constitutional Court as the final judicial authority. The ordinary courts assess alleged violations of this right primarily from the standpoint of procedural irregularities, whereas the Constitutional Court, when addressing infringements of constitutional rights, delivers decisions on the merits. An examination of judicial practice in the Republic of Serbia indicates that European standards concerning the right to a fair trial are seldom invoked as a legal basis under (Article 6. Paragraph 1.), of the European Convention on Human Rights, with courts

guide the work of the court) to prevent potential abuses and injustices that may arise from the application of justice insufficiently regulated by law. For this reason, criminal proceedings are grounded in a notion of justice of a special and latent scope."Sepi, R. (1995). *Justice, Equity in Criminal Law, or How Far is it from Ius to Iustum in Criminal Law. Annals of the Faculty of Law in Belgrade*, 43(5), p. 570.

7 Trajković, M., & Drakić, D. (2025). *The Limited Domain of Just Balance in the Legal Order. Proceedings of the Faculty of Law in Novi Sad*, 59(1), p. 90.

8 *Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia*, No. 98/2006, with amendments No. 115/2021.

9 The term "guaranteed" must be understood in the sense that this right already exists, deriving from the inherent human rights of every individual, while its recognition within our constitutional and statutory provisions serves merely as legal verification. Upon these foundations rests, in fact, the entire legal architecture of human rights.

instead relying predominantly on Article 32 of the Constitution.¹⁰ Such a state of affairs is clearly reflected in the jurisprudence of the Supreme Court of Cassation, which in its judgments expressly relies on the human rights enshrined in the Constitution. A pertinent illustration may be drawn from a case in which the Supreme Court of Cassation, *while exercising its competence to review a judicial decision in an administrative dispute, underscored that the applicant both in the statement of claim and reiterated in the request for review had meticulously identified procedural irregularities and breaches of law relating to decisive facts essential for the adoption of a correct and lawful judgment, which the Administrative Court was under a duty to examine. By failing to do so, the Administrative Court, in the assessment of the Supreme Court, violated the applicant's right to a reasoned judgment, constituting an integral component of the right to a fair trial as guaranteed under Article 32 paragraph 1 of the Constitution of the Republic of Serbia. In accordance with that constitutional provision, courts, state authorities, and other entities vested with public powers are, inter alia, obliged to provide adequate reasoning for their decisions.*¹¹

1.3. Challenges in the Realization of the Right to a Fair Trial in the Republic of Serbia

The standards underpinning the right to a fair trial are generally categorized into pre-trial rights and rights applicable during the trial itself. Pre-trial rights encompass, inter alia, the right to liberty, the right of detainees to be informed, the right to legal defense, and the right to trial within a reasonable time. In contrast, the set of fair trial guarantees operative during judicial proceedings includes the right to equality before the court and the law, the right to trial before a competent, independent, impartial, and legally constituted tribunal, the right to a fair hearing, the right to a public hearing, and the right to be presumed innocent.¹²

Our Constitution stipulates *that everyone has the right to an independent, impartial, and legally established court, which shall conduct a fair and public hearing within a reasonable time and decide on their rights and obligations, the merits of the suspicion that led to the initiation of proceedings, as well as on the charges brought against them (Article 32, paragraph 1).* The protection of the right to a fair trial and judicial remedy, when judicial proceedings are unduly prolonged and extend over many years, necessitates recognition of the crucial standard of the “right to trial within a reasonable time,” which represents a cornerstone of every legal order, irrespective of the courts’ caseload burden. It should be emphasized that this standard is duly observed in criminal proceedings, while it receives considerably less recognition in civil proceedings. In other words, the procedural scope of the application of

10 “Contemporary constitutional law, which has placed human rights at the core of constitutional values, engages and affects the ordinary individual to a far greater extent. Owing in particular to the widespread use of the constitutional complaint before the Constitutional Court, it has become an integral part of legal and social everyday life. Constitutional law has thus been ‘brought down to earth’ and has begun to permeate the daily existence of individuals.” Petrov, V. (2025). *Is Constitutional Law Still Relevant Today? Archives for Legal and Social Sciences*, 120(2), p. 16.

11 Supreme Court of Cassation, Uzp 166/10, Judgment of 10 February 2012.

12 It is important to emphasize that the presumption of innocence must be respected even after the delivery of an acquittal. In this manner, the presumption extends its effect to potential future criminal proceedings as well. In this regard, the European Court of Human Rights, in *Sekanina v. Austria*, held that once an acquittal has become final, it is impermissible for domestic courts to continue expressing doubts as to the guilt of the person who has been acquitted. (Tosić, D. (2012). *The Presumption of Innocence in Our Law and in the Case-Law of the European Court of Human Rights. Glasnik Advokatske komore Vojvodine*, 84(10), p. 673).

the “right to a fair trial” must be carefully considered, since any form of its generalization may be questionable.¹³

In the legal system of the Republic of Serbia, until 2013, apart from the constitutional complaint, the right to a trial within a reasonable time was not protected.¹⁴ Due to such circumstances, numerous cases have been brought before the European Court of Human Rights on the grounds of violations of the right to a trial within a reasonable time, many of which the Republic of Serbia has lost. In this regard, one may refer to the extensive case law of the European Court of Human Rights in proceedings conducted against the Republic of Serbia. Although the judgments concern different forms of violations of human rights as prescribed by the European Convention on Human Rights, a considerable number of cases relate to the applicants’ allegation that the right to a fair trial, that is, to legal certainty, had been infringed. In one of the cases, the European Court of Human Rights “found that the applicant had referred to only one different final judgment, which had not been subject to examination either by the Supreme Court of Cassation or by the Constitutional Court.” It follows that the applicant failed to demonstrate that there existed profound and long-standing divergences in the case-law of the highest domestic court which could be considered contrary to the principle of legal certainty.¹⁵

2. THE RIGHT TO A FAIR TRIAL IN THE COUNTRIES IN THE IMMEDIATE VICINITY OF THE REPUBLIC OF SERBIA

2.1. The right to a fair trial in the Republic of Croatia

Since 1990, the Constitution of the Republic of Croatia has undergone several amendments, which, in that context, also affected the right to a fair trial, that is, the European standards of fairness. The Constitution of the Republic of Croatia of 1990 established that *international treaties concluded and ratified in accordance with the Constitution and duly published form part of the internal legal order of the Republic, and, by their legal force, take precedence over statutes. Their provisions may be amended or repealed only under the conditions and in the manner stipulated therein, or in accordance with the general rules of international*

13 “In view of this, an efficient criminal proceeding may be regarded only as one in which, within a realistically short period from its initiation to its conclusion, and with full respect for the legality of its conduct, a proper and lawful final judicial decision has been rendered.” Bejatović, S. (2015). *The Efficiency of Criminal Proceedings as an International Legal Standard and the Reform of Serbian Criminal Procedural Legislation – Norm and Practice*. Nauka, Bezbednost, Policija, 20(2), p. 28.

14 “In general, it is difficult to precisely determine the scope of the Constitutional Court’s authority, and thereby the reach of constitutional rights in this area of constitutional judicial review. Nevertheless, it is beyond doubt that the focus of constitutional review of judicial decisions must be on the interpretation and legal position adopted, or that ought to have been adopted, by the ordinary court concerning the meaning of fundamental rights, their normative scope, and their limits. Constitutional intervention would be warranted in cases where interpretative errors of the ordinary courts are of such a nature that they essentially constitute a violation, denial, or substantial deprivation of a constitutionally guaranteed right.” Rajović, N. (2019). *The Limits of Constitutional Court Review of Judicial Power – Some Open Questions*. Collection of Papers of the Faculty of Law in Niš, 58(82), p. 211.

15 “Application no. 18415/20 Božidar Minić v. Serbia. Strasbourg: European Court of Human Rights, p. 13. Source: <https://www.zastupnik.gov.rs> (10 June 2025).”

law.¹⁶ The Constitution does not provide precise explanations regarding the alignment of international human rights with constitutional provisions, taking into account the jurisdiction of the Constitutional Court and the courts that were in force at the time of the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms.¹⁷

The provisions of the current Constitution of the Republic of Croatia, including subsequent amendments and supplements, provide sufficient grounds for the view that international human rights are protected, and that European standards relating to fairness and the right to a fair trial have been incorporated. Moreover, by the constitutional amendments of 2000, the right to a fair trial was established as a constitutional category, stipulating that everyone *has the right to an independent and impartial tribunal established by law to decide fairly and within a reasonable time on his rights and obligations, or on any suspicion or accusation of a criminal offence*.¹⁸

By the constitutional amendments in Croatia in 2010, the application of European standards of fairness was enabled, as international treaties were also recognized as a source of judicial decisions. In 2010, the Constitutional Court of Croatia established that the guarantees of the right to a fair trial, pursuant to Article 29 item 1 of the Constitution, also apply to judicial proceedings before the Administrative Court, which is provided for in Article 19 paragraph 2 of the Constitution of Croatia.¹⁹ Furthermore, „the Constitutional Court is of the opinion that it cannot replace the legal views of the courts with its own views, except where the decisions of the courts reveal any form of arbitrariness in decision-making, are, in its opinion, insufficiently reasoned, or fail to refer to the relevant judicial practice. Therefore, in cases of extradition of accused persons to other states, the Constitutional Court will not engage in reviewing the legal position of the court if it considers that the accused in the other state will not be „flagrantly denied the right to a fair trial”.²⁰

According to Uzelac, the right to a fair trial is the most important procedural human right, which in the Croatian legal system is regulated by constitutional and statutory provisions, as well as by ratified international conventions.²¹ He states that, among all violations of human rights, the most frequent is the violation of the right under Article 6 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, namely the violation of the right to a fair trial.

2.2. The right to a fair trial in the Republic of Bosnia and Herzegovina

The right to a fair trial is guaranteed by the Constitution of Bosnia and Herzegovina in Article II/3(e), in civil and criminal matters. According to the standards of the right to

16 Constitution of the Republic of Croatia, Official Gazette of the Republic of Croatia, No. 56/90–5/14.

17 European Convention for the Protection of Human Rights and Fundamental Freedoms, Official Gazette – International Treaties of the Republic of Croatia, No. 18/97

18 See: Article 29 paragraph 1 of the Constitution.

19 Constitutional Court of the Republic of Croatia, U-III-1001/07. Official Gazette of the Republic of Croatia, No. 90/10.”

20 Anić, M. (2021). Fair trial in the decisions of the Constitutional Court of the Republic of Croatia with special reference to the prohibition of arbitration proceedings. ZPR, 10(1), p. 96.

21 Uzelac, A. (2010). The right to a fair trial in civil cases: new case-law of the European Court of Human Rights and its impact on Croatian law and practice. Collected Papers of the Faculty of Law in Zagreb, 60(1), p. 102.

a fair trial set forth in Article II/3(e) of the Constitution of Bosnia and Herzegovina and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, every decision must be rendered by an independent and impartial tribunal established by law. The court must function independently of the political and executive authorities and base its decisions on its free assessment, the facts, and the appropriate legal grounds. Judicial impartiality means that the court must not be burdened with prejudices regarding the decision it renders, nor may it be influenced by external information or any other form of pressure; rather, it must base its opinion exclusively on what has been presented at trial.

A fair trial rests upon several standards of fairness, such as the right of access to a court, the principles of orality and adversarial proceedings, the delivery of a decision within a reasonable time, among others. The adversarial nature of the proceedings represents one of the most important standards of the right to a fair trial. In accordance with the statutory provisions on criminal procedure, the accused must be guaranteed the opportunity to contest all facts and evidence adduced against him, as well as to submit any facts and evidence in support of his defence.²²

An illustrative example of the right to defence may be found in a court case in Bosnia and Herzegovina, which points to the application of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The fact that several defendants in the proceedings were represented by the same chosen defence counsel, notwithstanding that their statements made in the preliminary proceedings suggested a potential conflict of interest, does not in itself amount to a violation of their right to defence within the broader framework of the right to a fair trial guaranteed under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The reasoning of the decision provides: 'Pursuant to Article 68 paragraph 1 of the Criminal Procedure Code..., multiple defendants may be represented by a common defence counsel, provided that this is not contrary to the interests of their defence. The defendants chose a common defence counsel, and their defences presented at the main hearing were not conflicting but fully aligned.

Moreover, the defendants, as well as their defence counsel, were acquainted with and fully aware of the content of their statements given during the investigation, as well as the statements of witnesses and all other evidence collected in the course of the investigation, and they clearly considered that the concept of their defences at the trial hearing was not thereby called into question. The defendants' counsel is a lawyer by profession, with many years of experience and unquestionable expertise in the field of criminal law. It was therefore reasonable to expect that the counsel, who as a rule resolves a conflict of interest by withdrawing from the defence of one of the accused, would have acted accordingly had this been in the interest of the defendants. "Since the defence counsel did not act in such a manner, judicial intervention in this respect could, in the present case, be regarded as an unjustified interference with matters pertaining to the defence itself. This was equally clear to the counsel, as was the fact that the issue of the existence of a conflict of interest cannot be conditionally raised before the court, nor can it be expected that the court should provide an advance assessment of specific evidentiary material.

22 Article 6 paragraph 2 of the Criminal Procedure Code of Bosnia and Herzegovina, Official Gazette of BiH, No. 3/03–65/18; Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina, Official Gazette of the Brčko District of BiH, No. 34/13 – consolidated text –16/20; Criminal Procedure Code of the Republic of Srpska, Official Gazette of RS, No. 53/12–15/21; Criminal Procedure Code of the Federation of Bosnia and Herzegovina, Official Gazette of FBiH, No. 35/03–74/20.

Taking this into consideration, together with the defence strategy of both defendants at the trial hearing, this court finds that there was no violation of Article 68 paragraph 1 of the Criminal Procedure Code which was, or could have been, of relevance for the lawful and proper rendering of the first-instance judgment. Moreover, at all stages of the criminal proceedings, both during the investigation and at the trial hearing, the first-instance court fully respected and ensured the defendants' exercise of all rights to which they were entitled in the proceedings, in accordance with the provisions of the Criminal Procedure Code and the highest standards of international law. Prior to questioning, the defendants were duly and timely informed by the court that they had the right to respond to all allegations of the indictment, but were not obliged to present their defences; that they had the right to choose their counsel; that they could present facts and propose evidence in their favour; as well as of all other rights enabling the exercise of both substantive and procedural defence, which rights the defendants indeed exercised. Throughout both the investigation and the trial hearing, the defendants gave their statements in the presence of their chosen defence counsel, attended the examination of witnesses and expert witnesses, and were afforded the opportunity to question them, as well as to comment on each other's statements and on their own prior statements. This was not contested in the appeal submitted by the defendants' counsel, but it convinced this court that the defendants' rights of defence had been fully observed and that they had been guaranteed a fair trial in the present criminal proceedings, in accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms²³.

CONCLUDING REMARKS

The attainment of truth, justice, and fairness as fundamental principles of contemporary society is necessarily conditioned by the right to a fair trial. The right to a fair trial constitutes an important instrument of acquiring knowledge in the legal process. At the same time, it serves as both a source and a determinant, and, in a certain sense, as a guiding factor of legal procedure. Therefore, a fair procedure for all parties in judicial proceedings, under identical and equal conditions and with identical and equal opportunities, encompasses all the standards of the right to a fair trial. Based on the conducted analysis, we have ascertained that the idea of law, the rule of law, and fair trial in the Serbian state-building tradition can be traced back to the time of the Nemanjić dynasty, from the Typikon of Saint Sava and Dušan's Code, through the First and Second Serbian Uprisings, and continuing into the twenty-first century.

The rights preceding the trial encompass the right to liberty, the rights of detainees to information, the right to defence, and the right to trial within a reasonable time. The right to liberty is a fundamental human right, and any deprivation of liberty is permissible only in a manner prescribed by law.

The rights at trial include: the right to equality before the court and the law, the right to be tried before a competent, independent, impartial, and legally established court, the right to a fair hearing, the right to a public hearing, and the presumption of innocence. The legislative practice to date has not fully contributed to the advancement of the principles of the right to a fair trial. Slowly and hesitantly, our courts render decisions in cases of violations of the rule on trial within a reasonable time, which represents one of the legal postulates of European Union law, yet such decisions remain exceedingly rare. We hope

23 Judgment of the District Court in Banja Luka, No. 011-0-KŽ-07-000 008, of 15 February 2007.

that, in this and other cases alike, the Serbian legislator will find effective ways to ensure the fullest realization of the principles of a fair trial. It is therefore imperative that the legislation of the Republic of Serbia be harmonized with European standards more resolutely and expeditiously, without awaiting formal accession to the European Union.



Небица Петровић, докторанд

*Правни факултет за привреду и правосудје у Новом Саду
Универзитет Привредна академија у Новом Саду
e-mail: nebicapetrovic30@gmail.com*

ПРАВО НА ПРАВИЧНО СУЂЕЊЕ У КРИВИЧНОМ ПОСТУПКУ

Апстракт:

Право на правично суђење у кривичном поступку је основно људско право које је гарантовано међународним конвенцијама, као и националним законодавствима. Ово право обухвата низ елемената, укључујући право на јавно суђење, право на одбрану, право на непристрасност судије, као и право на правну помоћ. У оквиру овог рада истраживаће се значај правичног суђења за очување правне сигурности и заштиту људских права. Излагање ће обухватити кључне аспекте, као што су поштовање, процедура, транспарентност суђења и права оптужених. Анализираће се практични случајеви кроз сагледавање правосудних система у околним државама Републике Србије и њихових приступа овом принципу. Такође ће бити размотрени изазови са којима се сусрећу правосудни системи у обезбеђивању ових права. На крају, биће наглашена потреба за унапређењем законских оквира у пракси како би се осигурало да право на правично суђење буде у потпуности остварено у свим кривичним поступцима.

Кључне речи: право на правично суђење, кривични поступак, суд, устав, закони.

LITERATURE

1. Anić, M. (2021). Fair trial in the decisions of the Constitutional Court of the Republic of Croatia with special reference to the prohibition of arbitration proceedings. *ZPR*, 10(1), 91–111.
2. Bejatović, S. (2015). The efficiency of criminal proceedings as an international legal standard and the reform of Serbia's criminal procedural legislation – norm and practice. *Science, Security, Police*, 20(2), 27–53.
3. Mišić, M. (2025). Insoluble problems of justice and artificial intelligence. *Journal of the Bar Association of Vojvodina*, 97(1), 152–209.
4. Nagy, A. I., & Dornfeld, L. L. (2017). The development of certain measures related to the right to a fair trial in the European Union as part of the Stockholm Programme.

- Collected Papers of the Faculty of Law*, 51(3-1), 865–879.
5. Petrov, V. (2025). Is constitutional law still relevant today? *Archive for Legal and Social Sciences*, 120(2), 9–23.
 6. *Legal Encyclopedia*. (1979). Belgrade: Contemporary Administration.
 7. Rajović, D. (2023). Biblical motifs in folk epic poems about the Nemanjić dynasty. *Heritage*, 60, 57–68.
 8. Sepi, R. (1995). Justice, fairness in criminal law, or how far it is from *ius* to *iustum* in criminal law. *Annals of the Faculty of Law in Belgrade*, 43(5), 562–574.
 9. Rajović, N. (2019). The limits of constitutional court review of the judiciary – some open questions. *Collected Papers of the Faculty of Law in Niš*, 58(82), 207–218.
 10. Tošić, D. (2012). The presumption of innocence in our law and in the case law of the European Court of Human Rights. *Journal of the Bar Association of Vojvodina*, 84(10), 658–676.
 11. Trajković, M., & Drakić, D. (2025). The limited domain of fair balance in the legal order. *Collected Papers of the Faculty of Law in Novi Sad*, 59(1), 85–100.
 12. Uzelac, A. (2010). The right to a fair trial in civil cases: new case law of the European Court of Human Rights and its impact on Croatian law and practice. *Collected Papers of the Faculty of Law in Zagreb*, 60(1), 101–148.

Legal provisions and judicial decisions

1. Constitution of the Republic of Serbia, Official Gazette of the RS, Nos. 98/06 and 115/21.
2. Supreme Court of Cassation, Uzp 166/10, judgment of 10 February 2012.
3. Constitution of the Republic of Croatia, *Official Gazette of the RC*, Nos. 56/90–5/14.
4. Application no. 18415/20 Božidar Minić v. Serbia. Strasbourg: European Court of Human Rights. Source: <https://www.zastupnik.gov.rs> (10 June 2025).
5. European Convention for the Protection of Human Rights and Fundamental Freedoms, *Official Gazette – International Treaties of the RC*, No. 18/97.
6. Constitutional Court of the Republic of Croatia, U-III-1001/07. *Official Gazette of the RC*, No. 90/10.
7. Criminal Procedure Code of Bosnia and Herzegovina, *Official Gazette of BiH*, Nos. 3/03–65/18.
8. Criminal Procedure Code of the Brčko District of Bosnia and Herzegovina, *Official Gazette of the Brčko District of BiH*, Nos. 34/13 – consolidated text – 16/20.
9. Criminal Procedure Code of the Republic of Srpska, *Official Gazette of RS*, Nos. 53/12–15/21. Criminal Procedure Code of the Federation of Bosnia and Herzegovina, *Official Gazette of FBiH*, Nos. 35/03–74/20.
10. Пресуда Окружног суда у Бањалуци број 011-0-КЖ-07-000 008 од 15.фебруара 2007. године.