

EUROPEAN CRIMINAL BAR ASSOCIATION – VILNIUS 23 APRIL 2016  
INQUISITORIAL VS ADVERSARY PROCEEDINGS - PANEL

***SHIFT TOWARDS ADVERSARIAL SYSTEM - FACT FINDING***

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- The shift was initiated via bilateral assistance program of Criminal Division of the US Department of Justice – Office of Overseas Prosecutorial Development Assistance and Training (OPDAT);
- The shift has encountered a strong opposition from the majority of the Serbia's legal community and has been seen as interfering with its legal tradition.

**Pre-Trial Phase (Investigation and Indictment)**

The role of the court, is limited to monitoring the pre-trial phase (and relevant evidentiary actions) and to subsequently reviewing the indictment filed by the prosecution whereby it can terminate proceedings/reject charges or confirm them.

**Main Hearing**

Under the old Inquisitorial Code, the court and the public authorities participating in criminal proceedings were required to truthfully and fully establish the facts essential for rendering a lawful decision. Accordingly, the court and public authorities were required to afford equal treatment in examining and establishing both incriminating and exculpatory facts.

The new Adversarial Code explicitly states that the burden of proof lies on the prosecutor and that the court examines evidence upon motions by the parties, whereby it has no duty to examine evidence *proprio motu*.

*Production of Additional Evidence*

However, the court may order a production of additional evidence, or, exceptionally, order examination of such evidence, if it finds that the evidence that has been examined is: (i) contradictory or unclear, and (ii) finds such action necessary in order to comprehensively examine the subject matter of the evidentiary action.

This new feature has raised numerous uncertainties as to which particular situations enable the court to take this course of action, but nevertheless should not, be used to support the prosecution case by ordering the production of new additional evidence.

On the other hand, the court may at any time during the examination of the accused and witnesses put any question it deems appropriate, thus seriously undermining its rather passive role under the new Adversarial Code. This is used extensively by judges used to inquisitorial tradition *inter alia* to avoid the quashing of judgements by the appeals court due to incorrect/incomplete fact finding.

As it currently stands, the practical shift from inquisitorial towards adversarial system is far from over.

## Vladimir Hrle



Vladimir has worked with international and domestic clients, advising them on various procedural law matters. Vladimir advised clients in economic and corporate criminal law cases and provided representation in such matters. He also counselled and represented clients before courts and arbitration proceedings in Serbia and abroad.

Prior to establishing Hrle Attorneys, Vladimir worked with the law firms Schoenherr and Karanovic-Nikolic, and was actively involved in two high profile cases before the UN court (ICTY) in The Hague. Vladimir started his career with Dragoslav Cetković, an esteemed defence attorney in 2005.

Vladimir authored numerous legal publications and did academic research at Amsterdam University on Corporate Criminal Liability.

Vladimir is a member of the Serbian Bar Association and the European Criminal Bar Association (Anti-Corruption in Europe WG). He is active in the Balkans Regional Rule of Law Network of the American Bar Association (founding member), European Criminal Justice Observatory (deputy chair) and Fair Trails International. He also co-heads the business crime practice group of the Roxin Alliance (partner of the World Bank's Global Forum on Law, Justice and Development) and cooperates as a consultant with the International Finance Corporation of the World Bank Group.

Vladimir is a certified trainer of the Council of Europe's Human Rights Education for Legal Professionals Programme, with the aim to ensure a high quality of further training on the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights for legal professionals.

Vladimir received his law degree from Belgrade University and holds an LL.M. degree from University of Amsterdam. He authored several publications on business crime and did academic research at Amsterdam University on Corporate Criminal Liability under the mentorship of late Professor Bert Swart.

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