

The New Serbian Criminal Procedure Code

Although Serbia is not a member of the EU the admission procedure is speeding up as all political barriers have been removed. Due to its geographical position, Serbia is a very important country for transnational crime prevention and therefore there was a striving need for a more efficient criminal procedure code.

In a nutshell, the new code is a shift from inquisitorial towards adversarial system.

The shift was assisted/initiated by the DOJ OPDAT – the Criminal Division of the Department of Justice formed in 1991 in response to the growing threat of international crime. OPDAT states that its mission is to assist prosecutors and judicial personnel in other countries to develop and sustain effective criminal justice institutions.

I. Reasons for adoption

The old system was very ineffective i.e. the trials lasted for years (with indefinite adjournments of the hearings), the rights of defence were not at acceptable level and the legal aid system practically did not exist.

II. Main Features

- The investigative phase is conducted solely by the prosecution. The powers of the court i.e. investigative judge are only to monitor this pre-trial phase;
- The court has no duty to examine evidence *proprio motu* – the court examines evidence upon motions by the parties;
- The new code is supposed to strengthen the rights of defence by emphasizing the equality of arms principle derived from the ECtHR – *Disclosure* – the prosecution is required to enable a defendant who has been questioned and his defence counsel to examine case file documents and view objects which will be used as evidence;
- The defence may collect evidence and materials, i.e. take witness testimonies, depositions, enter private premises or areas which are not open to the public (of course with the consent of the holder);
- At the main hearing the opposing party has the right to cross-examine the witnesses, or experts;
- Legal aid provisions – only for 3 years imprisonment or higher sentence offences - currently the draft of the new legal aid legislation is in the pipeline, which shall probably set aside this provision and remove the 3 year limit.

III. Conclusion

The adoption of the new code with modern and more efficient procedures - many borrowed from adversarial procedure – should secure the transparency, clarity of roles for justice-sector actors and overall fairness of process. The new code might become an effective tool for the prosecution whereby it could also strengthen the rights of defence. However, the practical scope of the application is yet to be seen.

