

Specialization of Criminal Justice in Dealing with Organized Crime and Juvenile Delinquency in the Republic of Serbia

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Purpose:

The subject-matter of this paper are certain forms of specialization of criminal courts in the Republic of Serbia in proceedings against organized crime as well as in juvenile proceedings due to the specificities of the offenders of these crimes. This paper addresses the issues related to the subject-matter jurisdiction of criminal courts and quantitative and qualitative composition of court panels. In addition, special attention is paid to the role of the court under the new Criminal Procedure Code adopted in Serbia in 2011, the principle of free evaluation of evidence, and reasonable need for certain forms of specialized criminal courts.

Design/Methods/Approach:

The author analyses the existing regulations related to the subject-matter jurisdiction of criminal courts, quantitative and qualitative composition of court panels, specialization of criminal justice and compliance with generally accepted legal standards. The concept of the paper is based on comparative method and, in this sense, the author analyses the existing legal standards in certain countries as good examples to indicate the feasibility of specialization of criminal courts in certain cases.

Findings:

The specificities of certain forms of crime, as well as the specificities of certain perpetrators require not only modification of criminal proceeding but also specialized criminal courts. This specialization includes possession of certain knowledge, skills and, above all, experience of professional judges and jurors participating in such proceedings. The need for specialized courts proved to be essential when it comes to criminal proceedings against organized crime, due to the specificity of the manifestation of this form of criminality, as well as the specificity of criminal procedure, which represents a kind of modification of general criminal procedure. Furthermore, when it comes to criminal proceedings against juveniles, specialization of criminal courts is primarily determined by characteristics of the perpetrators, i.e., minors. The justification of specialization of criminal courts in these procedures is reflected in criminal procedures conducted in effective, lawful, and professional manner.

Originality/Value:

The issue of judicial reform, organization, composition and specialization of criminal justice is a permanent issue, and yet professional and scientific works do not pay enough attention to it. For this reason, any coverage of this topic represents a contribution to this field of study. The results presented in this work are proposals *de lege ferenda* for improving the existing regulations related to this topic.

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Specializacija kazenskega pravosodja pri obvladovanju organizirane kriminalitete in mladoletniškega prestopništva v Republiki Srbiji**Namen prispevka:**

Tema prispevka je predstavitev določenih oblik specializacije kazenskih sodišč v Republiki Srbiji v postopkih proti organizirani kriminaliteti in postopkih zoper mladoletnike. V prispevku so obravnavana vprašanja v zvezi s pristojnostjo kazenskih sodišč ter kvantitativne in kvalitativne sestave porote. Hkrati je posebna pozornost namenjena vlogi sodišča v okviru novega Zakonika o kazenskem postopku, sprejetega v Srbiji leta 2011, načelu proste presoje dokazov in razumski potrebi po določenih reformah specializiranih kazenskih sodišč.

Metode:

Avtorica je analizirala obstoječe predpise, ki se navezujejo na pristojnost kazenskih sodišč, kvantitativno in kvalitativno sestavo porote ter specializacijo in skladnost kazenskega pravosodja s splošno sprejetimi pravnimi standardi. Koncept prispevka temelji na primerjalni metodi, s katero je avtorica analizirala dobre primere obstoječih pravnih standardov v nekaterih državah, ki kažejo na izvedljivost specializacije kazenskih sodišč.

Ugotovitve:

Posebnosti določenih oblik kriminalitete, kot tudi posebnosti nekaterih storilcev kaznivih dejanj, zahtevajo ne le spremembo kazenskega postopka, temveč tudi specializacijo kazenskih sodišč. Ta specializacija vključuje posedovanje določenega znanja, spretnosti in predvsem izkušnje poklicnih sodnikov in porotnikov, ki sodelujejo v teh postopkih. Potreba po specializiranih kazenskih sodiščih v primerih postopkov zoper organizirano kriminaliteto se je zaradi specifičnosti manifestacije te oblike kriminalitete in specifičnosti kazenskega postopka, ki predstavlja nekakšno spremembo splošnega kazenskega postopka, pokazala kot ključna. Poleg tega je specializacija kazenskega sodišča v primeru kazenskega postopka zoper mladoletnika določena na podlagi značilnosti storilca (mladoletnika). Upravičenost specializacije kazenskih sodišč v navedenih postopkih se odraža v samih kazenskih postopkih, ki se izvajajo v učinkovito, zakonito in strokovno.

Izvirnost prispevka:

Vprašanje reforme pravosodja, organizacije, sestave in specializacije kazenskega pravosodja predstavlja večno perečo temo, ki pa ji strokovna in znanstvena dela ne posvečajo dovolj pozornosti. Posledično vsako delo, ki pokriva to temo, predstavlja prispevek na področju te študije. Rezultati, predstavljeni v tem delu, so predlogi *de lege ferenda* za izboljšanje obstoječih predpisov v zvezi s specializacijo kazenskega pravosodja.

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Ključne besede: sodišča, porota, specializacija, kazenski postopek, organizirana kriminaliteta, mladoletniki, Srbija

1 INTRODUCTION

The state holds the right which at the same time represents its duty to “[...] respond by virtue of criminal sanction to the breach of legal system made by criminal offence for the purpose of protecting the legal system, usually expressed by the formula that the state holds the right to file criminal charge and undertake all other pertaining acts against the perpetrator of the criminal offence” (Vasiljević, 1971: 1). The realization of these rights leads to the fact that the first function of the state related to the crime consists of prescribing criminal offences and sanctions, and is followed by the second function, also exclusively held by the state, of investigating through its authorities, i.e., courts, the existence and scope of criminal charge filed by the authorized prosecutor, excluding any private reaction to the committed criminal offence. Criminal justice system, when observed objectively and in its basic function, is a state activity with the purpose of applying criminal legislation in force to the case in question during the criminal procedure, and through the criminal courts (Vasiljević, 1971). Courts as one of the basic elements of criminal justice system represent the main subject-matter of this essay, particularly their specialization in the Republic of Serbia, with overview of some specific solutions in other countries.

The network of courts in the Republic of Serbia is based on the principle of unity of justice system (both civil and criminal), represented by the fact that judges are elected for the court they judge in, and not for judging in criminal or civil matters. The courts are state authorities, independent and autonomous in their work, performing one of the oldest state functions, the judicial function within which they have their jurisdiction. Judicial power is based on the principle of legality, which implies independence in their work. The principle of court independence finds its justification in social importance of judicial function, since courts protect the legal system and secure the rule of law, which may be accomplished only by means of a court, which is impartial both as to the parties and as to the subject-matter of the dispute (Grubač, 2009). There are numerous measures securing the independence of courts provided for this purpose (Grubač, 2009). Pursuant to the Constitution of the Republic of Serbia (2006) (hereinafter Constitution) „independence and autonomy of courts are the principles setting the general position for the frame status of the courts in constitutional system”

(Pajvančić, 2009: 189). Apart from these principles, the status of courts in Serbian constitutional system is determined by other principles such as: the principle of public hearing held before the court, principle of participation of judges and lay judges during the process, and existence of trial panels of judges.

Courts adjudicate in accordance with the Constitution (2006), laws, and other general acts specified by law, generally accepted rules of international law, and ratified international treaties (Law on Organization of Courts, 2008, 2009, 2010, 2011, 2013: Article 1, Paragraph 2). Judicial authority is also independent from legislative and executive authority (Law on Organization of Courts, 2008: Article 3, Paragraph 1). There are two types of courts in the Republic of Serbia (Constitution of the RS, 2006: Article 143): courts of general jurisdiction and courts of special jurisdiction, while the law regulates their foundation, organization, jurisdiction, structure, and composition. The Constitution (2006: Article 143, Paragraph 3) does not allow the foundation of provisional courts, courts-martial, or extraordinary courts. The courts of general jurisdiction are the following: basic courts, high courts, appellate courts, and the Supreme Court of Cassation, while the courts of special jurisdiction are: commercial courts, the Commercial Appellate Court, minor offences courts, the High Minor Offences Court, and the Administrative Court. The Supreme Court of Cassation is the court of the highest instance in the Republic of Serbia, with seat in Belgrade (Law on Organization of Courts, 2008, 2009, 2010, 2011, 2013: Article 11).

2 SUBJECT-MATTER JURISDICTION OF CRIMINAL COURTS

The right and duty of the court to adjudicate is established by the law and represents its jurisdiction, which may be subject-matter jurisdiction, territorial, and functional. Subject-matter jurisdiction and functional jurisdiction have been regulated by the Law on Organization of Courts (2008, 2009, 2010, 2011, 2013: Articles 22–31), while the Criminal Procedure Code contains the criteria for territorial jurisdiction (2011, 2012, 2013, 2014: Articles 23–29).

Subject-matter jurisdiction represents the right and duty of a particular court to adjudicate certain criminal offence, and is divided into subject-matter jurisdiction of the courts of first instance, subject-matter jurisdiction of the courts of second instance, and subject-matter jurisdiction of the Supreme Court of Cassation. Basic courts adjudicate in the first instance in connection with criminal offences punishable by a fine or imprisonment of up to ten years and ten years prescribed as the principal penalty, unless some of these offences fall under the jurisdiction of another court. A high court in first instance adjudicates in connection with criminal offences punishable by imprisonment of more than ten years prescribed as the principal penalty and in juvenile criminal proceedings. In addition, a high court adjudicates in connection with criminal offences against humanity and other values protected by international law; criminal offences against the Army of Serbia; disclosure of state secrets; disclosure of official secrets; criminal offences prescribed by the law regulating secrecy of information; incitement to change the constitutional order by use of force; provoking national, racial, and religious hatred and intolerance, violation of territorial sovereignty; conspiracy

for anti-constitutional activity; damaging the reputation of the Republic of Serbia; damaging the reputation of a foreign state or an international organization; money laundering; violation of law by judges, public prosecutors or their deputies; endangerment of air traffic safety; murder in the heat of passion; rape; copulation with a powerless person; copulation by abuse of authority; abduction; trafficking in minors for the purpose of adoption; violent conduct at sports events; accepting bribes; abuse of position by a responsible person (Criminal Code, 2005, 2009, 2012, 2013, 2014: Article 234); misfeasance in public procurement (Criminal Code, 2005, 2009, 2012, 2013, 2014: Article 234a, Paragraph 3). A high court shall decide in the second instance on appeals against decisions taken by basic courts on imposing measures to secure presence of defendants and for criminal offences punishable by fine and imprisonment of up to five years (Law on Organization of Courts, 2008, 2009, 2010, 2011, 2013: Article 23, Paragraph 2).

Appellate courts decide on appeals against decisions of high courts and decisions of basic courts in criminal proceedings, unless a high court holds the jurisdiction to decide on the appeal concerned. The Supreme Court of Cassation decides on extraordinary legal remedies filed against decisions of courts of the Republic of Serbia and in other matters set forth by law.

3 NUMBER OF JUDGES AND COMPOSITION OF TRIAL PANELS

One of the highly important questions related to the organization and functioning of courts is the question referring to the number of judges and composition of trial panels. Pursuant to the Constitution of the Republic of Serbia (2006: Article 142, Paragraph 6), a court may adjudicate within the panel, while a single judge may adjudicate only in particular matters. Also, the Constitution (2006: Article 142, Paragraph 5) provides that the judges participate during the trials, but allows for the participation of lay judges, while the law regulates in detail in which courts and in which cases only professional judges shall participate, and in which lay judges shall sit alongside professional judges.

The Criminal Procedure Code (2011, 2012, 2013, 2014) provides that the sole judge adjudicates in summary proceedings (proceedings against adult perpetrators of criminal offences for which a fine or a term of imprisonment of up to eight years is prescribed as the principal penalty), fully justifiably extending the application of provisions regulating summary proceedings as compared to the Criminal Procedure Code (2011, 2012, 2013, 2014). However, the shortcoming of the Criminal Procedure Code (2011, 2012, 2013, 2014), displaying inconsistency with the very nature of summary proceedings, is the option of applying the provisions on summary proceedings before the Special Department of the Higher Court in Belgrade. This provision directly annuls the very purpose of these departments (Bejatović, 2013: 26). Furthermore, taking into consideration that the criminal charge by the private prosecutor is reserved only for lesser criminal offences, in which the facts of the case are usually simple and clear, there is no justification to proceed with these offences in regular, general procedure, which should be reserved only for serious criminal offences. This course of action creates a blockage and clogs the justice system. Therefore, it would be acceptable to provide that the

provisions on summary proceedings are also to be applied to criminal offences prosecuted by private prosecutors, and that summary proceeding may not be carried out for criminal offences prescribed by special laws which include the participation of the public prosecutor of special jurisdiction (Bugarski, 2013).

Although the sole judge in a procedure represents an exception to the rule that the court adjudicates in trial panel, it is important to note that, as per statistic data, summary proceeding in the Republic of Serbia is carried out in almost 2/3 of the total number of cases, meaning that the sole judge (who is always a professional judge) actually adjudicates in a much larger number of cases than does the trial panel.

The panel of judges proceeding in the first instance in regular, i.e. general proceedings (proceedings against adult perpetrators of criminal offences punishable by a term of imprisonment exceeding eight years prescribed as the principal penalty) may be set in the form of a small panel (consisting of three judges) and grand panel (consisting of five judges). The qualitative structure of court panels refers to structure of judges in panel itself, i.e., to professional judges and lay judges. The small panel (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 1, Item 1), consisting of one judge and two lay judges, adjudicates for criminal offences punishable by a term of imprisonment exceeding eight years and up to twenty years. The grand panel (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 1, Item 2), consisting of two judges and three lay judges, adjudicates in the first instance for criminal offences punishable by a term of imprisonment ranging from thirty to forty years.

The second instance court (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 2) adjudicates in panels consisting of three judges, unless the Criminal Procedure Code (2011, 2012, 2013, 2014) stipulates otherwise, and in panels consisting of five judges for criminal offences punishable by a term of imprisonment ranging from thirty to forty years and for criminal offences determined by separate laws as being within the jurisdiction of the prosecutor's office of special jurisdiction. The third instance court (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 3) adjudicates in panels consisting of three judges, unless the Criminal Procedure Code (2011, 2012, 2013, 2014) stipulates otherwise, and in panels consisting of five judges for criminal offences punishable by a term of imprisonment ranging from thirty to forty years and for criminal offences determined by separate laws as being within the jurisdiction of the prosecutor's office of special jurisdiction.

The Supreme Court of Cassation decides on requests for protecting legality in panels consisting of five judges (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 5).

Lay judges are citizens who participate in trials alongside professional judges, decide on factual and legal questions, and perform their judicial function temporarily. Although their participation in criminal proceedings, as a form of layman element, is kept until the present day, it is highly limited since they regularly participate in trials during the hearing in first instance procedure.

Every form of civil participation in criminal matter proceedings existing in criminal systems has its deficiencies alongside its advantages, but the fact is

that the impossibility to overcome the existing deficiencies is best illustrated by the tendency of introducing strictly professional courts. In this manner, the new Criminal Procedure Code of Montenegro (2009) provides that the trial panel shall consist solely of professional judges, i.e., it abrogates the institute of lay judges. Taking into consideration the role of lay judges in proceedings up to this moment, with their participation in trials contributing more to the illusion of convocational trial than being of any real influence on deciding upon criminal matters, it could be said that the legislator in Montenegro only verified the actual status and leading part of the professional judge as the chairman of the panel (Radulović, 2009: 84–85).

Based on the aforementioned, it is necessary to note that there is a difference between the composition of the court and its jurisdiction. While the subject-matter jurisdiction of the court defines the right and duty of a certain type of court to proceed in certain criminal matter (basic, higher, appellate court), the provisions on structure of the court define the composition and quality of judges and lay judges participating in certain trial panels of the certain court (Ilić, Majić, Beljanski, & Trešnjev, 2012: 113).

4 SPECIALIZATION OF THE CRIMINAL JUSTICE AUTHORITIES

Finding, proving and trial in cases of all forms of crime have their specific characteristics pertaining to the nature of criminal offences, manner in which they were committed (*modus operandi*), and attributes of perpetrators. All of these impose the need for specialization of the authorities conducting the procedure, primarily public prosecutor's office and court, but also police authorities and other participants in criminal proceedings.

The principle of division of authority secures the specialization of bodies in general, additionally provided by the establishment of necessary special mechanisms (procedures) and introduction of special conditions related to the election of judges and prosecutors. The procedure and conditions for the election of judges and prosecutors secure their abstract ability to perform their duties as a part of their jurisdiction. However, it is not enough, since the position of a judge and a prosecutor implies the need for permanent education during their service, imposed by the very nature of their work. Furthermore, the actual situation shows that, in addition to the aforementioned, criminal prosecution and adjudication for certain types of criminal offences demand from the judge and public prosecutor certain additional and special knowledge in certain areas necessary for successful performance of their work, which is why the principle of specialization of competent bodies has been introduced in some special proceedings. The actual specialization in the Republic of Serbia is usually reached after years of working experience in the areas of criminal law, which is considered the condition for the election of judges for cases of organized crime. The requirement for the election of judges in juvenile proceedings is particular knowledge in the area of children's rights and juvenile delinquency, the requirement for the election of judges in proceedings for offences related to high technology crimes is special knowledge in the area of information technologies, while the election of judges in proceedings

for war crimes requires knowledge and experience in the area of international humanitarian law and human rights.

Special departments or panels have been adjoined to certain courts, such as those specialized for adjudicating certain categories of perpetrators (special department for juvenile proceedings in higher courts), or those specialized for adjudicating perpetrators of particular criminal offences (special department of the Higher Court in Belgrade for organized crime, special department of the Higher Court in Belgrade for high technology crime, War Crime Chamber).

The conditions for the election of judges have been set by the Law on Judges (2008, 2009, 2010, 2012, 2013: Articles 43–45) as follows (general conditions): a citizen of the Republic of Serbia who meets general requirements for the employment in state bodies, who is a law school graduate, who has passed the bar exam and possesses necessary qualifications (possessing theoretical and practical knowledge necessary for performing judicial function), competence (possessing skills that enable efficient use of specific legal knowledge in dealing with cases) and worthiness (ethical characteristics that a judge should possess, and conduct in accordance with such characteristics). The required professional experience for the judge of higher court is six years in legal profession, and ten years for the judge of the Appellate Court. The law itself sets forth moral characteristics of a judge which should include: honesty, thoroughness, diligence, fairness, dignity, perseverance, esteem, and conduct in compliance with these characteristics, upholding the dignity of a judge on duty and off duty; the awareness of social responsibility; preserving independence and impartiality; reliability and dignity on duty and off duty, as well as taking the responsibility for internal organization and positive public image of the judiciary. The High Judicial Council sets the criteria and standards for the assessment of qualification, competence and moral character.

The Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other Severe Criminal Offenses (2002, 2003, 2004, 2005, 2009, 2011, 2013: Article 13) established the special department at the Higher Court in Belgrade for dealing with criminal cases under the Article 2 of this Law (criminal offences of organized crimes, criminal offence of murder of top government officials, criminal offences against official duty, criminal offence of abuse of official position, criminal offence of terrorism, criminal offence of money laundering, criminal offences against government authorities, and other listed criminal offences). A special department is managed by the President of the Special Department of the Higher Court who is appointed for a period of four years by the President of the Higher Court in Belgrade from among judges assigned to the special department of the Higher Court. The President of the Special Department of the Higher Court must meet requirements and have at least 10 years of professional experience in the field of criminal law. The President of the Higher Court in Belgrade assigns judges to the special department of the Higher Court for a period of six years, provided their written consent and the compliance with the requirement of having at least eight years of professional experience in the field of criminal law. Apart from provisions of the Law on Judges (2008, 2009, 2010, 2012, 2013), the High Judicial Council may send

a judge from another court to the special department of the Higher Court, for a period of six years, provided his/her written consent and the compliance with the requirement of having at least eight years of experience.

According to Article 14 of the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other Severe Criminal Offenses (2002, 2003, 2004, 2005, 2009, 2011, 2013), a special department is established within the Appellate Court in Belgrade for dealing with criminal cases under the provisions of this law. The President of the Special Department of the Appellate Court manages the aforementioned department. The President of the Special Department of the Appellate Court is appointed by the President of the Appellate Court in Belgrade from among the judges assigned to the Special Department of the Appellate Court for the period of four years with their written consent and with at least 12 years of professional experience in the field of criminal law.

The President of the Appellate Court in Belgrade assigns judges to the special department of the Appellate Court for the period of six years, with their written consent and the requirement of having at least ten years of professional experience in the field of criminal law. As an exception to this rule, it is predicted that the High Judicial Council may send a judge from another court to the Special Department of the Appellate Court for a period of six years, with his/her written consent and the requirement of having at least 10 years of professional experience in the field of criminal law. It is interesting, for example, that Bulgaria does not require fulfilment of special conditions for the appointment of judges to the special court for organized crime (Yordanova & Markov, 2012: 130–131).

According to the Law on Organization and Competences of Government Authorities Combating Cybercrime (2005, 2009: Articles 10 and 11), the Higher Court in Belgrade shall have competent jurisdiction to proceed within the territory of the Republic of Serbia as the court of first instance in the following criminal offences: criminal offences against the security of computer data set forth in the Criminal Code (2005, 2009, 2012, 2013, 2014: Article 3); criminal offences against intellectual property, property, economy and legal instruments, where computers, computer systems, computer data and products thereof in hard or electronic form appear as objects or means of committing a criminal offence, if the number of copies of authors' works exceeds 2,000 or the resulting material damage exceeds the amount of RSD 1,000,000, and criminal offences against freedom and rights of man and citizen, sexual freedoms, public order and constitutional order, and security of the Republic of Serbia, which, due to the manner in which they are committed or means used, may be considered cybercrime offences, in accordance with. The Appellate Court in Belgrade shall have competent jurisdiction to proceed in the second instance. The Higher Court in Belgrade established the Cybercrime Department to proceed in cases involving high technology criminal offences. The judges are assigned to the Department by the President of the Higher Court in Belgrade, from among the judges of this court, with their written consent, for the period of two years, which may be extended by the decision of the President of the Higher Court in Belgrade and with written consent of the person assigned. According to Law on Organization and Competences of Government

Authorities Combating Cybercrime (2005, 2009: Article 12), preference shall be given to judges who possess special knowledge in the field of information technologies. The president of the Higher Court in Belgrade may also assign to the Department other judges seconded to the court, with their consent. According to the Law on Organization and Competences of the Government Authorities in War Crimes Proceedings (2003: Articles 9 and 10), the Higher court in Belgrade (Department for War Crimes) shall have competent jurisdiction to proceed as the court of first instance in cases involving criminal offences against humanity and international law and criminal offences predicted in Article 5 of the Statute of the International Criminal Tribunal for the Former Yugoslavia (Law on Organization and Competences of the Government Authorities in War Crimes Proceedings, 2003: Article 2), whereas the Appellate Court in Belgrade shall have the competent jurisdiction to proceed in the second instance. The president of the court appoints judges to the department for war crimes from among the judges assigned to this court, with their consent, for a period of four years. The president of the Court may also assign to the Department other judges seconded to the court, provided their consent. It should also be mentioned that the Law on Organization and Competences of the Government Authorities in War Crimes Proceedings (2003: Article 5, Paragraph 3) does not provide for such a requirement of having years of experience in criminal matters for the judge or the prosecutor, and in the process of election or appointment of prosecutors in these cases the advantage is given to people with knowledge and experience in the field of international humanitarian law and human rights.

As for the specialization of judicial authorities in the proceeding against juveniles according to the Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles (2005: Articles 42–45), first instance proceedings against a juvenile are conducted before a juvenile judge and juvenile court bench. The juvenile bench in the first instance court is comprised of a juvenile judge and two lay judges of different sex as a rule. Juvenile judge presides the bench. Juvenile bench of the higher court, comprised of three judges shall have second instance jurisdiction. It is established by work allocation schedule of that court. When juvenile bench sits in trial, it shall be comprised of two judges and three lay judges.

A juvenile judge and juvenile bench judges must be persons who have acquired special qualifications in the field of children's rights and juvenile delinquency. Lay judges are elected from the ranks of teachers, professors, educators, and other qualified persons experienced in work with children and youth. In addition to factual, specialization of the juvenile judge also has a formal character, meaning that the appropriate official confirms that a specific judge meets the requirements to act as a judge for the juvenile, and this rule applies to other official actors proceeding against juveniles (public prosecutor for juveniles and juvenile officer), as well as to a professional person acting as a juvenile attorney (Škulić, 2011: 91).

In continental Europe countries, whose law is built upon the Roman legal tradition of the Justinian period, professionalism in the performance of judicial functions has the longest history and tradition, and only modalities of judicial professionalism differ from each other (Simović, 2001: 55). The principle of professionalism of the court in criminal cases of organized crime, war crimes and

cybercrime applies without exception in Serbia, and only professional judges may enter the court panels. *Ratio legis* of this solution, which is an exception to the general rule, is in the nature of the criminal offence and the person against whom the proceeding is conducted, and therefore it is to be considered that professional judges are more suitable to proceed in these trials because the people who might act as lay judges in such cases may not show the required degree of resilience to potential problems and possible pressures that such actions might bring. In addition to that, court panels in the first and second instance are determined in some other ways. First instance courts adjudicate in panels consisting of three judges for criminal offences determined by separate laws as being within the jurisdiction of the prosecutor's office of special jurisdiction (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 1, Item 3), while second instance courts adjudicate in panels consisting of five judges entered by invitation (Criminal Procedure Code, 2011, 2012, 2013, 2014: Article 21, Paragraph 2, Item 2).

5 SPECIALIZED CRIMINAL COURTS - PRO AND CONTRA GROUNDS FOR THEIR ESTABLISHMENT AND SOME COMPARATIVE EXAMPLES OF SPECIALIZED CRIMINAL COURTS

When it comes to specialized criminal courts, and also bearing in mind the specialization of the prosecutor's office, there are different opposing views as to the feasibility of their foundation in theory. One of the reasons one may state as an argument against such establishment is the following: the selection of judges and prosecutors in those cases significantly narrows to a very limited number, and therefore they eventually become close to each other and the atmosphere of objectivity and impartiality disappears, as well as their professional detachment (Altbeker, 2003). Some believe that working in specialized courts causes the acting judges and prosecutors to become strictly skilled, one may say experts in a certain field, and therefore the quality of their work may decline over the time because they deal only with a narrow field of law and their knowledge gets restricted to one limited field of criminal law (Zimmer, 2009). The reasons against the establishment of specialized courts are, among others, judicial isolation in terms of tightness for cooperation with other state authorities, especially courts; public access is limited because these courts are primarily established in major cities and each attendance to these proceedings for all other citizens who do not live in major cities is thus limited because it requires additional time and costs; it creates narrowly focused professional groups (Zimmer, 2009).

Nevertheless, all of the reasons speaking against the establishment of specialized courts have their counter-arguments. Accordingly, it is rather logical that the circle of judges and prosecutors acting in proceedings before specialized courts is narrow, because additional conditions are set for their election in order to obtain the required quality to proceed in certain criminal matters. Their mutual cooperation does not exclude fair and objective acting in the proceeding due to their legal obligation, while a high level of professionalism that is required from them can only be a guarantee of their independence, excluding any form of influence on their actions.

It is highly debatable whether judges and prosecutors improve themselves and deal with only a narrow field of the law or if, on the contrary, their work in specialized courts, for example a court for organized crime, requires their specialization in the widest range of legal areas, which is why one may not talk about the decline of their professional quality.

Specialized courts are not isolated in any way because they cooperate with a broad range of not only legal but also other state authorities. Law regulates this cooperation, but it is necessary to point out that the law emphasizes every aspect of communication and cooperation of all government authorities with specialized judicial authorities. Mutual cooperation between courts is common and it is mostly conducted with regard to specific criminal matters, but there are also other forms of cooperation between courts such as conferences, seminars, professional training, and so on.

Public access is nowadays provided through various forms of media, thus providing for indirect general public, due to the fact that the media, as a rule, broadcast to the public all major trials, and especially those conducted before specialized courts.

Creating narrowly focused professional groups, such as lawyers, for example, cannot be an argument against the foundation of specialized courts, because of providing the necessary high quality of the defence which is also required in these proceedings, and, moreover, these groups must be open so that all interested lawyers could have access to them.

In addition to the aforementioned arguments, there are other reasons that speak in favour of the establishment of specialized criminal courts. The efficiency is the main reason for their establishment, in the sense that it ensures making quality decisions due to the fact that they are made by the experts in the field of criminal law, procedures take less time, and, owing to the skills of acting judges, enough space is created within regular courts of general jurisdiction for timely and quality proceeding in criminal matters within their jurisdiction. Apart from the efficiency, which comes first, the establishment of specialized courts affects harmonization of judicial practice within its jurisdiction, while the system becomes more flexible and adjusts quicker and easier to the needs of the practices, and so on (Zimmer, 2009).

Specialized courts are characteristic of judicial systems in many countries, although their jurisdiction and functions vary from one country to another (Zimmer, 2009). Courts for juvenile offenders exist in the form of traditional type of specialized courts in comparative law, and therefore special rules of procedure are applied within these courts with regard to their characteristics (age, level of psychological and physical development, etc.). Contemporary forms of highly sophisticated crime, such as organized crime, certainly require modification of the form of general criminal procedure, besides the additional requirements for the acting judges in the sense that they must possess necessary experience in criminal matters and an extra particular knowledge in certain area. Naturally, judges as well as prosecutors and lawyers in those criminal matters must possess necessary knowledge and skills to be able to proceed in such cases. For example, there are the following public prosecutor's offices of special jurisdiction in Serbia:

public prosecution for organized crime and public prosecution for war crimes. They were established within the territory of the Republic of Serbia with a seat in Belgrade. Special requirements for their election, such as ten years of experience in legal profession after passing the bar exam, are regulated by the Law on Public Prosecution (2008, 2009, 2010, 2011, 2012, 2013: Article 77); attorneys at law are, in the case of professional mandatory defence, assigned from the list of lawyers submitted by the Bar Association. It is important to mention that the Bar Association is obliged to enter the date of the attorney's entry into the register of lawyers, and in addition, while composing the list, the Bar takes into account the fact that the practical and professional work of lawyers in the field of criminal law can presume the effectiveness of the defence. Besides that, one should note that according to Article 17, Paragraph 1 of the Law on Legal Profession (2011), an attorney is obliged to continuously acquire and improve knowledge and skills necessary for professional, independent, autonomous, effective, and ethical practice of law, in accordance with the programme of professional development adopted by the Bar. According to Article 73, Paragraph 2 of the Criminal Procedure Code (2011, 2012, 2013, 2014), in proceedings related to criminal offences punishable by a term of imprisonment of ten or more years, only an attorney with at least five years of experience as an attorney, or an attorney who was a judge, public prosecutor or deputy public prosecutor for at least five years, may act as a defence counsel. The amendments to the Criminal Procedure Code made in 2013 abolished those provisions and introduced a new provision of the Article 73, Paragraph 2, stating that: "In proceedings for criminal offences punishable by imprisonment up to five years, an attorney might be replaced by his apprentice at law." The need for specialization in dealing with those cases finds its justification in great danger connected with those criminal offences, as well as the specificities of their perpetrators, although the number of those criminal cases is significantly lower compared to other criminal cases.

On the other hand, specialized courts are established in connection with criminal offences, which, according to statistics, appear mostly as subjects in criminal proceedings such as economic offences, like in South Africa, for example (Altbeker, 2003). Specialized courts for drugs exist in the USA. At the federal level, specialized courts in criminal matters in the United States are courts for narcotics and juvenile courts, and in addition to those, there are some other specialized courts dealing with administrative, i.e., civil matters such as: courts for family relations, tax courts, courts for land issues, courts for the environment, and so on (Zimmer, 2009). The first court was formed in Florida in 1989 as a result of poor or zero results in achieving the purposes of criminal proceedings in fighting criminal offences related to drugs. The establishment of these courts was aimed at teamwork and continuous operation of all the authorities involved in the procedure, in order to choose the best approach to the treatment of offenders, treatment monitoring, and subsequently, assistance to the offender in terms of re-socialization with regard to employment, working conditions, residence, and so on.

In comparative law one should also mention the specialization of courts dealing with environmental issues. Although the number of criminal cases

related to the environment could not be the reason for the establishment of these courts, the importance of primary object of protection within environmental crime nevertheless brought to their establishment.

6 FINAL CONSIDERATIONS

Bearing in mind specific characteristics of individual forms of criminality, as well as the characteristics of the offenders, the need for specialization of, primarily, relevant judicial authorities, but also the police and other authorities appearing in criminal proceedings, emerged in practice. This specialization of relevant judicial and police authorities involves the acquisition of additional, specific knowledge and skills acquired most efficiently through organized training (courses, seminars, conferences, panels), exchange of experiences with prosecutors from other states, following relevant regulations and scientific and technical literature in this area. In addition to gaining in-depth knowledge in specific areas, professional training should include learning and development of juridical skills, solving case studies and simulations of certain procedural actions, partially or as a whole. Furthermore, cooperation and exchange of experiences with judicial authorities of other countries are extremely important.

In this way, it undoubtedly contributes to the quality of criminal justice system, and it is also important to note that the specialization is required in cases of international legal assistance in criminal matters related to certain offences. Although there are no international legal standards pertaining to the specialization of judicial authorities, a clear trend of specialization of judicial and police authorities occurs in comparative law, and it is fully justified.

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