




**Commercial Offences  
Proceeding, Sanctions and Statute of Limitations**

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## Commercial Offences - Proceeding, Sanctions and Statute of Limitations

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Authors: Milovan Bogdanovic, Senior Associate

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## Chapter 1 - A commercial offence – a brief review of an unjustifiably neglected step between a misdemeanour and a criminal offence

It's no secret that the thunderous development of information technologies, alternative financing methods and frequent commercial transactions have led to the situation that certain traditional legal practice areas are getting less attention or are completely neglected due to their rigidity and formality. During the previous months, we witnessed some valuable guidelines and articles written by our colleagues who have reviewed the comprehensive revolutionization of the system of the Republic of Serbia, [both in terms of the administrative aspect](#) and [in terms of the legislation](#) itself. We are sure that the future will bring even more perceptive articles from young experts who shall provide their knowledge to both domestic and foreign clients regarding most novelties in the legal system of the Republic of Serbia.

However, in order to maintain a balance in the eternal collision between modern and traditional legal professions, as well as a quality presentation of all the negative consequences that the conduct of a legal entity and a responsible person therein can produce, we consider it necessary to review a special type of offence, which, along with misdemeanours and criminal offences, forms the very basis of the Serbian penal law.

Hence, in the following lines of this article, we shall provide the most interesting aspects of the Commercial offences act (Official Gazette of the SFRY, Nos. 4/77, 36/77 (corrected version), 14/85, 10/86 (revised text), 74/87, 57/89 and 3/90, Official Gazette of the FRY, Nos. 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 64/2001 and Official Gazette of RS, No. 101/2005 (other law), hereinafter: "Law"), with emphasis on commercial offences as such and the proceeding itself.

## **Commercial Offence**

Pursuant to Article 2 paragraph 1 of Law, a commercial offence represents a socially harmful violation of regulations on economic or financial operations which has caused or may have caused graver consequences and which is defined as a commercial offence under the competent authority's relevant regulation. From the very legal definition of commercial offence, we can break down three basic characteristics of any commercial offence, which are:

- violation of economic or financial regulations.
- graver consequences have occurred or could occur.
- such violation must be defined as a commercial offence by the competent authorities.

Although some legal experts and critics define it as outdated, considering that it belongs to a not-so-small set of communist/socialist-era regulations and given that the last amendments were made back in 2005, the Law offers some rather interesting solutions in the sphere of general terms and principles governing the imposition of sanctions, the sanction system itself as well as the proceeding for establishing the liability of and imposing sanctions on offenders.

It is important to understand that Law represents an organic law ('lex generalis') in the sphere of commercial offences but at the same time, it doesn't offer the so-called "catalogue" of offences as the Criminal Code of the Republic of Serbia does.

Different commercial offences are stipulated under the provisions of other economic or financial regulations such as the Law on Mining and Geological Surveys, Law on Energy, Planning and Construction Act (with its recently announced amendments), Chemicals Act, Law on Prevention of Money Laundering and the Financing of Terrorism, Law on Strong Alcoholic beverages, etc.

Some might say that commercial offence legislature in Serbia represents a kind of hybrid solution or a "step between a misdemeanour and criminal offence" as in terms of prescribing punishable conducts, it uses the principles typical for misdemeanours, while in terms of the procedure itself and general institutions, it introduces the application of Criminal Procedure Code in terms of procedural rules and application of Criminal Code's provision in terms of substantive regulations.

### **The commercial offence proceeding and its main characteristics**

This means that the Public Prosecutor, as an independent state authority, is exclusively competent for the prosecution of commercial offenders and initiating the commercial offence proceeding before the competent court. However, this general rule comes with an exception provided in Article 50 of the Law stipulating that in case the Public Prosecutor does not institute a commercial offence proceeding or in case it decides not to prosecute, the injured party may institute or continue the proceeding, provided that it has submitted a motion for indemnification.

As far as the competence of the courts is concerned, in accordance with the rule stipulated under Article 27, paragraph 3 of Law on Organization of Courts, Commercial courts shall decide in the first instance on commercial offences, while the court in the territory where the accused legal entity has its registered seat shall have territorial jurisdiction.

### **Who can be liable for a commercial offence?**

Pursuant to Article 6 of the Law, a legal entity or the responsible person of a legal entity may be liable for a commercial offence. In accordance with the provisions of the Companies Act, a legal entity represents a subject conducting an activity with the aim of gaining profit while the Law prescribes that the responsible person is a subject within a legal entity entrusted with a specific range of tasks in the sphere of economic or financial operations.

It is crucial to understand that a foreign legal entity or the responsible person shall be liable for a commercial offence if a foreign legal entity has a representative office in the territory of the Republic of Serbia or if the commercial offence was committed with its means of transportation unless otherwise provided by the regulation defining the commercial offence in question.

## **Sanctions**

Another in a series of specifics of the procedure is reflected in the type of sanctions themselves. The law prescribes penalties, a suspended sentence and security measures as only sanctions.

When it comes to penalties, as the most severe sanctions, Article 17 of the Law stipulates that only a fine may be imposed for a commercial offence. The minimum fine that may be prescribed for a legal entity is RSD 10,000 (ca. EUR 80) while the maximum fine can go as high as RSD 3,000,000 (ca. EUR 25,000), while for the responsible person the fine ranges from RSD 2,000 (ca. EUR 18) to RSD 200,000 (ca. EUR 1750).

The court may impose a suspended sentence on a legal entity and the responsible person for the committed commercial offence as well. This means that the court may impose a fine of up to RSD 20,000 (ca. EUR 175) for a legal entity, and up to RSD 4,000 (ca. EUR 35) for the responsible person of a legal entity, under the condition that the fine shall not be executed if the convicted entity during the period determined by the court (a so-called time of verification), does not commit a new commercial offence, i.e. if the responsible person does not commit a criminal offence that includes all the characteristics of a commercial offence.







On the other hand, the following security measures may be imposed for commercial offences:

- **publication of a judgement** - the court shall impose the security measure of publication of a judgement if it finds it useful to inform the public regarding the judgement, specifically if the publication of the judgement would help eliminate a threat to people's lives or health or would help protect the security of trade or other economic interests.
- **confiscation of objects** - objects which have been used or were intended for the commission of a commercial offence, or which arose from the commission of a commercial offence, may be confiscated from the legal entity or the responsible person therein.
- **prohibiting a legal entity from conducting a specific commercial activity** represents a security measure consisting of banning a legal entity from conducting a specific economic activity and the court shall imply the ban on the production of specific products or the ban on the conduct of specific transactions in commodity and service trade and other economic transactions as well. A judgement imposing that measure shall specify the economic activity the legal entity is banned from conducting.



- **prohibiting the responsible person from executing specific duties - banning the responsible person from executing specific duties shall imply that they shall be banned from executing the duty they were performing at the time of the commission of a commercial offence, from holding a management position in the sphere of economic or financial operations and from performing specific tasks, either all or some of the duties related to the management, use, administration or handling of social assets or to their safekeeping.**

Although Law does not prescribe imprisonment as such, there is a possibility that such a sentence might be imposed on a responsible person of a legal entity. This is possible if the responsible person sentenced to a fine does not pay it within the legal term. In that case, the court shall replace the fine with a prison sentence, but this time, in accordance with a provision contained in Article 193 of the Law on Execution of Criminal Sanctions.

## **Statute of Limitations**

On the list of the most important issues for the proper defence before the official initiation and during the procedure itself is the statute of limitations. It is regulated in detail by Articles 37-40 of Law and the main reason for its importance for the defendant lies in a simple fact – if the time frame set forth under Law regarding the prosecution or enforcement of the penalty expires, the court shall be obliged to discontinue the proceeding.

The statute of limitations on prosecution shall expire three (3) years after the date of the commission of a commercial offence. As an exception paragraph 2 of the same article provides that the statute of limitations on prosecution for commercial offences committed in the sphere of foreign trade, foreign exchange and customs operations shall expire five (5) years after the day of the commission of a commercial offence. Finally, when it comes to enforcement of a penalty, the statute of limitations offence shall expire three (3) years after the day of the finality of a decision imposing the penalty at hand.

### **Final thoughts**

Although there is an obvious need for modernization of the Law, especially in terms of abandoning socialist and post-socialist wording, we've tried to present the most interesting aspects of commercial offence's sphere with an aim of overall better understanding. It is an undoubtedly complex field where "outdated" provisions sometimes collide with the corresponding application of somewhat modernized criminal codes. However, with the professional help of an expert, both domestic and foreign legal entities and their responsible persons should not have any unnecessary problems in case a criminal offence proceeding is initiated against them.

In the following weeks, our team shall analyze specifics of the first-instance commercial offence proceeding (chapter II) and proceedings upon legal remedies – both ordinary and extraordinary ones (chapter III), so make sure to stay with us.

JPM | PARTNERS

8a Vladimira Popovića,

DELTA HOUSE, V Floor

11070 Belgrade, Serbia

T: + 381/11/207-6850

E: [office@jpm.law](mailto:office@jpm.law)

[www.jpm.law](http://www.jpm.law)