
A photograph of a typewriter with a sheet of paper inserted. The words "FINAL CHAPTER" are typed in a classic serif font on the paper. The typewriter is dark, and the paper is a light, textured color. The lighting is dramatic, with shadows cast across the typewriter and the paper.

FINAL CHAPTER

Commercial Offenses Trilogy Finale

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Chapter 3 - Commercial Offenses Trilogy Finale

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CHAPTER 3 – COMMERCIAL OFFENSES TRILOGY FINALE

Quite unexpectedly, 2023 has proven to be a pivotal year for our trilogy on commercial offenses, considering the anticipated surge in the number of commercial cases before the national Commercial Courts attributed to the announced expeditiousness of public prosecutors. In light of such circumstances, we once again urge our readers, if they have not already done so, to check out our [Chapter 1](#) - “A Commercial Offense – A Brief Review of an Unjustifiably Neglected Step Between a Misdemeanor and a Criminal Offense.”

The fate of the multitude of initiated commercial offense proceedings will unfold in the years to come, and this time, following the promise from [Chapter 2](#), we will delve into the proceeding upon ordinary and extraordinary legal remedies, as well as the three special proceedings governed by 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”) - for the Confiscation of Proceeds, for the Indemnification for Unjustifiable Conviction, and for the Expungement of Conviction and Termination of Security Measures or Legal Consequences of Conviction.

Before we delve into further details regarding the aforementioned proceedings, it is crucial to establish the distinction between ordinary and extraordinary legal remedies. While both legal tools serve the purpose of contesting judicial decisions, the crucial difference lies in the legal finality of these decisions.

ORDINARY LEGAL REMEDIES

UNDERSTANDING THE INSTITUTION OF THE APPEAL AND ITS PRACTICAL RANGES

In the upcoming lines, [our team will encompass the most crucial legal aspects](#) related to the appeal in commercial offense proceedings as the sole ordinary legal remedy and a constitutional right in the legal system of the Republic of Serbia. For the sake of simplification, this section outlines the practical aspects of the appeal process, offering a clear insight into its functioning in Serbia.

After a court renders a judgment in the first instance, authorized individuals have eight days to file an appeal. The first consideration for a defendant is that the act of filing delays the execution of the judgment.

Grounds for filing an appeal are outlined in the provisions of the Criminal Procedure Code (“Official Gazette of RS”, no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 - Decision CC and 62/2021 - Decision CC), hereinafter: “Procedure Code”) and include:

- Substantive violations of the provisions of Procedure Code.
- Violations of substantive law.
- Incorrect or incomplete findings of fact.
- Contesting the decision on sanctions and other decisions.

It is crucial to note that the appeal must be submitted in writing. The list of authorized persons includes the parties involved, the defense counsel, the injured party, and all individuals with ownership rights over confiscated items.

The public prosecutor can appeal not only against but also in favor of a corporate entity or an individual facing charges. Meanwhile, an injured party can appeal only regarding court expenses. If the Public Prosecutor assumes prosecution from the subsidiary prosecutor, the latter may file an appeal on all grounds contesting a judgment. Additionally, if the Public Prosecutor was absent at the main hearing, the injured party is entitled to file an appeal against a judgment in the capacity of the subsidiary prosecutor, regardless of whether the Public Prosecutor has filed an appeal.


A court of the second instance shall decide on an appeal in a chamber session exclusively. When ruling on an appeal against a judgment passed by a court of first instance, the parties shall be notified of a chamber session if the chamber's president or the chamber itself deems that the presence of the parties would help clarify matters.

Upon ruling, the court of the second instance may:

- Dismiss the appeal as untimely, inadmissible, or untidy.
- Reject the appeal as unfounded and uphold the first-instance judgment.
- Grant the appeal, set aside the first-instance judgment, and refer the case back to the court of first instance for re-trial.
- Grant the appeal and reverse the first-instance judgment.

Furthermore, a court of the second instance may reverse a decision by a court of first instance if it finds that the court of first instance has misjudged identity papers or evidence it has not presented itself and that its decision is based on that evidence.

The second instance court shall issue its judgment if, in the same case, a first-instance judgment has already been abolished.



**EXTRAORDINARY LEGAL REMEDIES –
A HANDY TOOL FOR CONTESTING FINAL JUDGMENTS IN COMMERCIAL OFFENSE PRO-
CEEDINGS**

Once the judgment attains the status of legal finality, it can only be contested through extraordinary legal remedies, namely the reopening of proceedings and a motion for the protection of legality.

REOPENING OF PROCEEDINGS

Given that the submission of a request for the protection of legality falls exclusively within the jurisdiction of the public prosecutor (details of which will be discussed later), in practical terms, requests for the repetition of proceedings are more prevalent. Therefore, we will dedicate this extraordinary legal remedy to a few additional lines.

The proceedings ended by a final judgment or a final ruling on a commercial offense rendered in summary proceedings may be reopened.

The reasons for the proceedings reopening are stipulated under the provisions of both Procedure Code and Law. Proceedings concluded with a final judgment may be reopened only to the benefit of the defendant even if, in addition to the cases provided for by Procedure Code, the proceedings may also be reopened if it is established that the responsible person convicted of an economic offense has been validly convicted of the same act in criminal proceedings.

A request to reopen criminal proceedings must specify the reason for such request and the evidence substantiating the facts on which the request is founded. If the request does not contain these data, the court shall instruct the applicant to amend the request with a written submission within a certain time limit.

In terms of competence, the panel of the court of the first instance shall decide on a request to reopen the proceedings. In deciding on the request, a judge who took part in rendering the judgment in the earlier proceedings, shall not be a member of the panel. If the court learns of the existence of a reason to reopen criminal proceedings, it shall notify thereof the defendant, or the person authorized to submit a request on behalf of the defendant.

COURT'S ACTIONS UPON THE FILED REQUEST FOR REOPENING THE PROCEEDINGS

The court shall dismiss a request to reopen criminal proceedings in the event it has procedural flaws stipulated under the provisions of the Procedure code.

If the court does not dismiss a request to reopen proceedings, it shall deliver a copy of the request to the opposing party, which is entitled to respond to the request within eight days.

Once the court receives the response to the request, or when the time limit for a response expires, the president of the panel may order an examination of the facts and acquisition of the evidence cited in the request and the response to the request.

The court may reject or grant the request by allowing the reopening of the proceedings. In a decision granting the request and allowing proceedings to be reopened, the court shall order the new main hearing.

Last but not least, it should be noted that in the new proceedings, conducted based on a decision allowing a reopening of criminal proceedings, the court is not bound by any decision issued in the criminal proceedings conducted earlier.

MOTION FOR THE PROTECTION OF LEGALITY

Following the provisions of Law, the competent Public Prosecutor may file ***a motion for the protection of legality*** against a final court decision violating Law or regulation on an economic offense, as well as against the court proceedings held before the final court decision.

The quoted provision of Law has sparked a lot of debate in judicial practice, considering that it regulates the circle of individuals authorized to submit this extraordinary legal remedy differently from the Procedure Act.

As a reminder, the Procedure Act, whose corresponding application in the commercial offense proceeding is introduced by Law, stipulates that requests for the protection of legality can be submitted by the Republic Public Prosecutor, the accused, and the defense counsel.

Having in mind that the circle of individuals authorized to submit requests for the protection of legality is determined by the provisions of the law, in this specific case, there is no corresponding application of the Procedure Act's provisions.

Therefore, the competent public prosecutor is exclusively competent to submit this extraordinary legal remedy. Such a standpoint has been represented both in the judicial practice of first-instance Commercial Courts and in the practice of the Commercial Appellate Court and the Supreme Court of the Republic of Serbia.

We will highlight the ***Decision of the Supreme Court of Cassation of the Republic of Serbia (now the Supreme Court of the Republic of Serbia) no. Kzz P 10/2022 from August 20, 2022***, states the following: “...from the cited regulations, it follows that, about the applicable general provisions of the criminal procedure, the Law on Commercial Offenses, which applies in proceedings for commercial offenses, determines a different circle of persons authorized to submit requests for the protection of legality. Therefore, in proceedings for commercial offenses, there will not be a corresponding application of the provision of Article 483, paragraph 1, of the Criminal Procedure Code in connection with Article 56 of the Law on Commercial Offenses. Instead, concerning the authorization to submit requests for the protection of legality, the provision of Article 130 of the Law on Commercial Offenses is applied.”

As far as grounds for filing the request are concerned, the authorized subject can submit it if, by a final decision or decision in the procedure that preceded its issuance:

- A law was violated.
- A law was applied, which, according to a decision by the Constitutional Court, was found not to comply with the Constitution, universally accepted principles of international law, and ratified international agreements.”
- A human right or freedom of a defendant or other participant in proceedings guaranteed by the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Additional Protocols was violated or denied, as determined by a decision of the Constitutional Court or the European Court of Human Rights.

For sake of the clarification, a violation of law within the meaning of the above-quoted provision exists if a provision of a procedure law was violated by a final decision or in the procedure that preceded its issuance, or if the law was applied incorrectly to the finding of fact determined in the final decision.

A request for the protection of legality for the reasons set forth in points 2 and 3, may be submitted within three months of the date when the person was served the decision of the Constitutional Court or the European Court of Human Rights.

A defendant may submit a request for the protection of legality in connection with violations of the Procedure Code (specific violations prescribed by the provisions of the Law) committed during the first-instance proceedings and the proceedings before the appellate court, within 30 days from the day of the delivery of the final decision, provided that he/she has used an ordinary legal remedy against that decision.

Supreme Court of the Republic of Serbia is competent to decide upon the request and it can either dismiss the request for procedural reasons, reject the request, or grant the request.

By granting the request, the Supreme Court can:

- abolish the first-instance decision and a decision issued in ordinary legal remedy proceedings, or only the decision issued in ordinary legal remedy proceedings in full or in part, and send the case for new proceedings, where it may order those new proceedings be held before a completely changed panel;
- reverse in full or in part the first-instance decision and the decision issued in ordinary legal remedy proceedings or only the decision issued in ordinary legal remedy proceedings;
- limit itself to establishing a violation of the law.

3 SPECIAL PROCEEDINGS GOVERNED BY LAW

1. *Proceedings for the Confiscation of Proceeds*

If the accused legal entity ceased to exist before or after the institution of proceedings, at the Public Prosecutor's request, the proceedings shall be conducted against the legal entity succeeding the legal entity that ceased to exist but only concerning the confiscation of the proceeds obtained by the commission of a commercial offense.

The proceeds may only be confiscated in an amount equaling the value of the assets taken over from the accused.

2. *Proceedings for the Indemnification for Unjustifiable Conviction*

The general rule stipulated under the law is that a legal entity or the responsible person unjustifiably convicted in commercial offenses proceedings shall be entitled to indemnification.

The law does not offer any complex regulation regarding this matter, but it prescribes the corresponding application of Procedure's Code provisions.

As was the case earlier in the text, we will cover this matter in more detail considering that it arises a lot more often in practice.

Defining an unjustifiably convicted person is of crucial importance for clients to understand their rights in case such a scenario happens to them. It is an entity declared guilty and subjected to a sanction by a final decision, or initially convicted but later granted a remission of penalty if, upon seeking an extraordinary legal remedy, new proceedings result in a final decision, charges are rejected conclusively, or the case concludes with a final acquittal.

The aforementioned entity will not be entitled to damage compensation if:

1. The conviction was deliberately caused through a false confession or other means unless coerced.
2. Proceedings were terminated or charges were rejected due to the subsidiary prosecutor, private prosecutor waiving prosecution, or the injured party abandoning their motion, and such abandonment resulted from an agreement with the defendant.

In cases involving a conviction for concurrent criminal offenses, the right to seek damage compensation may also extend to individual criminal offenses meeting the necessary criteria.

When it comes to the proceeding for exercising the right in question, it's of critical importance to understand that, before an unjustifiably convicted person files a lawsuit against the Republic of Serbia for compensation of damages, it must submit the request to the ministry in charge of judicial affairs to settle on the existence of damage and the type and amount of compensation.

If such a claim is not accepted or the Ministry's commission does not rule on the claim within three months of the date when it was submitted, an unjustifiably convicted person may file with the competent court damage compensation lawsuit.

- **Proceedings for the Expungement of Conviction and Termination of Security Measures or Legal Consequences of Conviction**

The court of first instance, entrusted with maintaining pertinent records shall render a decision concerning the expungement of a conviction or a suspended sentence upon the application of the convicted party.

Prior to pronouncing a judgment on the expungement of a conviction, requisite examinations shall be undertaken. This involves the meticulous collection of data to ascertain whether the accused individual is facing trial for another commercial offense committed before the expiration of the stipulated timeframe for expunging the conviction. The expunged conviction shall not be incorporated into any certificate issued based on the official records.

The convicted party is obligated to submit a formal petition to the court of first instance, the same court that imposed the security measure or conviction resulting in legal consequences, seeking the termination of said security measure or legal consequence impacting the execution of specific duties.

Upon completing the essential inquiries into the relevant circumstances, the aforementioned court will render a decision within a judicial panel comprised of three judges. Both the petitioner and the Public Prosecutor, acting on behalf of the court of first instance, retain the right to appeal the decision of said court to a court of second instance. In the event that a petition is dismissed, the filing of a subsequent petition is permissible only after the lapse of two years following the finality of the ruling that rejected the preceding petition.

THE TRILOGY FINALE

Navigating through commercial offense proceedings represented a magnificent legal journey and as our trilogy concludes, we hope to have effectively communicated this nuance of penal law in the Republic of Serbia, bringing our readers closer to this vital subject. [Our commitment to providing insightful and comprehensive legal support](#) and content remains steadfast, and we trust that this trilogy serves as a valuable resource for our readers and clients alike.

Considering that this segment of Serbian penal legislation undoubtedly needs a touch of modernization and will continue to evolve, we pledge to keep our current and future clients informed and engaged, offering clarity on emerging legislation, procedural changes, and significant judicial decisions.

Our goal to provide a valuable resource extends beyond this trilogy, and we encourage our readers and clients to reach out to our team with any legal inquiries.

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