

EU STANDARDS AND THE PROTECTION OF DEFENDANTS RIGHTS DURING INVESTIGATION: THE EVOLVING ROLE OF THE PROSECUTOR IN SERBIA

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INTRODUCTION

The protection of defendants' rights constitutes a fundamental element of the rule of law and a core component of the European Union (EU) legal framework. Within the context of Serbia's EU accession process, particular emphasis has been placed on aligning national legislation and practice with EU standards governing procedural safeguards in criminal proceedings.¹ These standards aim to ensure fair trial guarantees, equality of arms, and effective access to justice, especially during the early stages of criminal proceedings, where the risk of rights violations is most pronounced (Matić Bošković, 2022, p. 169).

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¹ Interim Benchmark for Chapter 23: Serbia improves alignment with the EU *acquis* and international standards regarding procedural safeguards. In particular: Serbia adopts a new Law on Legal Aid and establishes a well-resourced legal aid system. Serbia amends its legislation (including the Criminal Procedure Code) so as to align it with the EU *acquis* on procedural rights and on victim's rights.

EU LEGAL FRAMEWORK ON PROCEDURAL SAFEGUARDS

The EU *acquis* in the field of procedural rights is primarily defined through a series of directives establishing minimum standards for the protection of suspects and accused persons. These include Directive 2013/48/EU on the right of access to a lawyer,² Directive 2012/13/EU on the right to information,³ Directive 2010/64/EU on the right to interpretation and translation,⁴ and Directive (EU) 2016/343 on the presumption of innocence.⁵ Collectively, these instruments aim to strengthen the procedural position of defendants and ensure the effective exercise of defence rights throughout criminal proceedings.

In the framework of Chapter 23 - Judiciary and Fundamental Rights, Serbia has committed to aligning its legal system with these standards, especially the Criminal Procedure Code. Although significant legislative progress has been achieved, including the adoption of relevant reforms and strategic documents, the European Commission has repeatedly noted that the legal framework remains only partially aligned, particularly in relation to the practical implementation of procedural safeguards.

TRANSFORMATION OF THE INVESTIGATIVE MODEL IN SERBIA

A central reform in Serbia's criminal justice system has been the transition from a judge-led to a prosecutor-led investigation in 2013 (Škulić, Ilić, 2012). This structural shift reflects broader European trends aimed at enhancing efficiency and streamlining criminal proceedings.

² Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

³ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

⁴ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings.

⁵ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings.

However, it also entails a fundamental redefinition of the role of the public prosecutor.

In the prosecutor-led model, the prosecutor assumes a dual function: directing the investigation and safeguarding procedural rights. This duality raises important normative and practical questions, particularly in systems where prosecutorial independence and institutional safeguards remain under development. The absence of an independent investigative judge as a guarantor of rights places increased responsibility on the prosecutor to ensure compliance with fundamental procedural guarantees.

KEY PROCEDURAL RIGHTS IN THE INVESTIGATIVE PHASE

Right to Information

The right to information represents a cornerstone of effective defence. Although Serbian law formally guarantees that suspects must be informed of their rights and the nature of the accusations, implementation remains inconsistent. The absence of a standardized “Letter of Rights,” as envisaged by EU Directive 2012/13/EU, contributes to variability in practice and may undermine the effective exercise of defence rights.

Right of Access to a Lawyer

Early access to legal counsel is essential for safeguarding other procedural rights. While this right is recognized within the Serbian legal framework, practical challenges persist, particularly during police questioning in the pre-investigative phase. Limitations in ensuring timely access to defence counsel may disproportionately affect vulnerable individuals and undermine the fairness of proceedings.

Access to Case Materials and Evidence

The principle of equality of arms requires that the defence has adequate access to case materials. Although the Criminal Procedure Code provides for this right, prosecutorial practice often involves restrictive interpretations during the investigative phase. Such limitations hinder the preparation of an effective defence and raise concerns regarding compliance with EU standards.

Presumption of Innocence

The presumption of innocence is a fundamental procedural guarantee that must be respected throughout criminal proceedings. In practice, however, this principle is frequently challenged, particularly in high-profile cases where media coverage and public statements by officials may prejudice the outcome of proceedings. These dynamics place additional pressure on prosecutors and risk compromising their impartiality.

INSTITUTIONAL AND PRACTICAL CHALLENGES

The effective implementation of procedural safeguards is closely linked to the broader institutional context. In Serbia, several systemic challenges affect the realization of defendants' rights. These include insufficient coordination between police and prosecutors, divergent practices among prosecutorial offices, and limited effectiveness of mechanisms for challenging procedural irregularities (Ilić, Matić Bošković, 2019, p. 281).

Moreover, the hierarchical structure of the prosecution service may limit the effectiveness of internal accountability mechanisms (Ilić, Matić Bošković, 2019, p. 281). Combined with external pressures, including political influence and media scrutiny, these factors create a complex environment in which prosecutors must operate.

THE EVOLVING ROLE OF THE PROSECUTOR

The transition to a prosecutor-led investigation has fundamentally reshaped the position of the public prosecutor within the Serbian criminal justice system. Traditionally perceived primarily as a party to the proceedings representing the interests of the state, the prosecutor now assumes a significantly broader and more complex role. In addition to directing investigative activities, the prosecutor is expected to act as a guarantor of legality and a key actor in safeguarding the procedural rights of suspects and accused persons.

This dual role introduces an inherent tension between efficiency and fairness. On the one hand, prosecutors are tasked with ensuring the effective investigation and prosecution of criminal offences, which may incentivize a results-oriented approach. On the other hand, they are obliged to uphold fundamental rights, including the presumption of

innocence, the right to defence, and the principle of equality of arms. The reconciliation of these functions requires not only a strong normative framework but also a high level of professional integrity and institutional support.

From a normative perspective, the Criminal Procedure Code assigns prosecutors a central role in the investigative phase, including the authority to direct police actions, collect evidence, and decide on the initiation and conduct of proceedings. However, this concentration of powers is not always accompanied by sufficiently robust safeguards to ensure impartiality. Unlike systems with an independent investigative judge, the Serbian model relies heavily on the prosecutor's own commitment to legality and fairness, as well as on internal and external oversight mechanisms, which may not always be effective in practice.

A key aspect of the evolving role of the prosecutor relates to the protection of defendants' rights in the early stages of the procedure. It is during police questioning, evidence collection, and initial detention decisions that the risk of rights violations is highest. In this context, the prosecutor must actively ensure that suspects are informed of their rights, have timely access to legal counsel, and are not subjected to coercion or undue pressure. This requires proactive engagement with the police and effective supervision of their activities, which remains a challenge in practice due to institutional fragmentation and differing lines of accountability.

Furthermore, the prosecutor's role extends to ensuring the fairness of the evidentiary process. EU standards and the European Court of Human Rights (ECtHR) jurisprudence emphasize that the prosecution has a duty not only to present incriminating evidence but also to disclose exculpatory material. In the Serbian context, however, concerns have been raised regarding restrictive access to case files during the investigative phase, which may undermine the ability of the defence to effectively challenge the prosecution's case.

The issue of prosecutorial impartiality is further complicated by the broader institutional environment. Despite recent constitutional and legislative reforms aimed at strengthening prosecutorial independence, risks of undue influence, whether political, hierarchical, or media-driven, persist. Public statements by officials, as well as intense media scrutiny in high-profile cases, may create pressure on prosecutors to act in a manner that prioritizes public perception over strict adherence to

procedural guarantees. In such circumstances, the prosecutor's role as an impartial arbiter of legality becomes particularly difficult to maintain.

Another important dimension of the evolving prosecutorial role concerns the increasing use of simplified procedures, such as plea agreements. While these mechanisms contribute to procedural efficiency, their use in the early stages of the investigation raises concerns regarding voluntariness, transparency, and the protection of defendants' rights. Prosecutors must therefore exercise particular caution to ensure that such agreements are not concluded under coercive circumstances or without adequate legal safeguards.

The effectiveness of the prosecutor in fulfilling these expanded responsibilities depends significantly on institutional capacity and professional training. The complexity of EU procedural standards, combined with the practical challenges of their implementation, necessitates continuous training and specialization. Prosecutors must be equipped with the knowledge and skills to identify and respond to potential violations of procedural rights, as well as to manage interactions with other actors in the criminal justice system.

The evolving role of the prosecutor in Serbia reflects a broader shift towards a model in which prosecutors are central actors in both the efficiency and fairness of criminal proceedings. However, the successful realization of this role depends on the development of strong institutional safeguards, effective oversight mechanisms, and a professional culture that prioritizes the protection of fundamental rights alongside the pursuit of justice.

CONCLUSION

Serbia has made notable progress in aligning its legal framework with EU standards on procedural safeguards. Further alignment is expected through the amendments to the Criminal Procedure Code which is in the process and expected to be adopted in 2026. However, significant challenges remain in ensuring their effective implementation during the investigative phase. The prosecutor-led model of investigation places increased responsibility on prosecutors to balance the objectives of efficiency and fairness.

Strengthening the independence, accountability, and capacity of the prosecution service is therefore essential for ensuring compliance with

EU standards. Future reforms should focus not only on legislative alignment but also on improving institutional practices, enhancing coordination among stakeholders, and ensuring consistent application of procedural rights. Only through such comprehensive measures can the protection of defendants' rights be fully realized in practice.

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