

**NOTION AND BASIC CHARACTERISTICS OF FINE IN
CRIMINAL LAW OF SERBIA AND MONTENEGRO**

By

Dr. Dragan Jovasevic*

INTRODUCTORY REMARKS

In all contemporary States, in the structure of criminality, a crime against property is prevailing according to number of committed acts, their perpetrators, consequences, scope and the intensity of social danger, recidivism and other features as well. For suppression criminality of all kinds and the aspects of performance, included a crime against property, various social (primarily state) agencies at all social leveles have applied different measures, means and procedures. All of them could be divided into preventive and repressive ones. Criminal sanctions are special ones according to their significance, nature, contents, characteristics and effect.

Due to their character, at the same time they are repressive and forced ie it means to take away or to limit certain liberties and rights to the perpetrator of criminal acts. They are applied against his will on the basis of court' s decision in accordance with certain conditions and according to the procedure which is determined by law. The aim of all those measures is defined in many ways. Firs of all, their aim is to protect a society (ie its social values) from all forms of criminality (from all and aspects of injuring and endangering). Furthermore, a perpetrator is thwarted, generally or at least for a certain period of time, to commit criminal act again (the same or different one). Also, those sanctions have an educational influence on people in order not to violate regulations and commit criminal acts legal appliance of predicted repressive measures under the pretext of criminal sanction.

THE CHARACTERISTICS OF CRIMINALITY AGAINST PROPERTY

When we speak about suppression and prevention of crime against property (it has got a high position in a structure of modern criminality in general) , we have to point out its basic characteristics, because efficient and top-quality fight against the perpetrators of those acts, depends on them. As far as crimes against property are in question, a property of another person (physical and legal) is the object of attack. That property can be movable or immovable but it can be expressed as property rights and property interests. When these acts are in question, the most frequent are confiscating, adapting and obtaining – the aim is to provide for oneself or some other person a property profit or to make a damage.

For certain acts, the law has determined a special psycho element which is shown under pretext of greed. It represents¹ a motive which comprises of rootless and egoistic rush to obtain property profit at any rate. Such a greed appears as unique personal and psycho feature shaped as a purpose (in a sense of conscious and willing act directed towards a goal, which idea effects like internal driving force of every human activity). Finally, as the result of taken act, when a crime against property is in question, there is causing property damage, property rights or interests of passive subjekct (physical or legal person) on one hand and the same or bigger amount of obtained illegal property for perpetrator or some other person on the other hand.

Prescribing, pronouncing and carrying out all criminal sanctions have got prior aim ie to protect social welfare and values from all forms of injuring and endangering. In order to fulfil that task, criminal judical organs² apply appropriate forms and measures of criminal sanctions. Fighting crimes against property, tat social activity is primarily the appliance of specific criminal law measures and means which should be an answer to demands and needs of modern state (society), ie to be an adequate, efficient and legal answer to all items of such a criminal act. In a system of criminal law measures for fot proper reaction on form and aspects of crimes against property, the following measures are distinguished by their importance, contens, character, performance and nature :

- 1) a fine as only kind of property punishment in criminal law of Serbia and Montenegro system (prescribes in article 39. The Basic Criminal Code, former The Criminal Code of FR Yugoslavia³ and in article 39-40. The Criminal Code of Republic of Montenegro⁴ from 2003.),
- 2) a confiscation of property as property punishment only in criminal law in Republic of Serbia (precribed in article 39a. The Basic Criminal Code),
- 3) security measure of confiscation the object which are used or predicted for committing criminal act, ie which are originated by committing a criminal act (prescribed in article 69. The Basic Criminal Code and in article 75. The Criminal Code of Republic of Montenegro).

THE CONCEPT AND CHARACTERISTICS OF A FINE

A fine is the only property punishment in criminal law of Serbia and Montenegro and it has an early origin referring to the system of composition – it means that the perpetrator was obliged to pay a certain sum of money to damaged person or to his family as "compensation for a committed act" and in that way blood feud was practically avoided. Nowadays,a fine represents an independent criminal sanction ie paying a certain sum of money in the benefit of state. A fine is the most

* **Ph.D., Professor of Faculty of Law in Nis Serbia and Montenegro.**

¹ Bogdan Zlataric, Mirjan Damaška, Rečnik krivičnog prava i postupka, Zagreb, 1966. p.138 ; Dragan Jovašević, Leksikon krivičnog prava, Beograd, 2002. p. 212

² Dragan Jovašević, Komentar Krivičnog zakona SR Jugoslavije, Beograd, 2002. p. 12 ; Zoran Stojanović, Politika suzbijanja kriminaliteta, Novi Sad, 1991. p. 79-81

³ Ljubiša Jovanović, Dragan Jovašević, Krivično pravo, Opšti deo, Beograd, 2003. p.264-266

⁴ Official gazette of Republic of Montenegro, No. 70/2003

frequently pronounced criminal sanction. In FR Yugoslavia , the percentage of pronounced fines was 45 % of total number of pronounced criminal sanctions⁵.

The situation is similar in other countries too, today. This punishment is specially convenient for misdemeanours but it is also applied when offences of moderate level of intensity are in question⁶ . Mostly, it is pronounced for involuntary, primarily and situational acts and in some countries, it is so widely spread that it has completely put aside a punishment of arrest⁷ when misdemeanours and offences of moderate level of intensity are in question.

Except for a criminal code, a fine is extremely important sanction which is pronounced to perpetrators of other forms of offences – economy crimes and violations nevertheless who the perpetrator is – physical person , juristic person, responsible person in juristic person or an entrepreneur. A fine can be pronounced as a main or accessory punishment to the perpetrator of criminal act who is responsible for committed crime. Furthermore, it can be pronounced together with the punishment of imprisonment, under conditions prescribed by criminal code. A fine means the obligation of sentenced person to pay a certain sum of money to the benefit of state (ie its budget of Republic Serbia or budget of Republic of Montenegro). When a fine sentence has come into effect, there is obligatory relation between the perpetrator of criminal act and the state – the state is a creditor and the perpetrator is a debtor.

ESTIMATING A FINE

As a main punishment , a fine can be pronounced when it is alternatively predicted together with the prison punishment by criminal code, that is when the court has justified the pronouncing of this punishment by appliance the regulations about meting out and mitigating a prescribed prison punishment. As accessory , a fine can be pronounced in many cases :

- 1) when it is predicted by code together with a prison punishment for certain criminal act,
- 2) when it is not predicted by code at all for a certain criminal act but when that criminal act was committed with profit as a motive and
- 3) when a fine is predicted by code alternatively with a prison punishment for certain criminal act and in that case, the court pronounced both prescribed punishments.

In the same way, a fine can be pronounced to perpetrator of plurality of criminal offences.

In general part of criminal law, a general minimum and a general maximum of a fine are determined, ie certain limits for court to mete out this kind of punishment. General law minimum of this punishment in Republic of Serbia is 1.000 dinars or in Republic of Montenegro is 200 EUR, while

⁵ Đorđe Đorđević, *Odmeravanje novčane kazne* , Jugoslovenska revija za kriminologiju i krivično pravo, Beograd, No. 3/1998. p. 102

⁶ Zoran Stojanović, *Krivično pravo, Opšti deo*, Beograd, 2000. p.265

⁷ W. Hassemer, *Einführung in die Grundlagen des Strafrechts*, 2. Auflage, Munchen, 1990. p. 298

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there are two general maximums. That is, a general maximum of a fine in Republic of Serbia is 200.000 dinars or in Republic of Montenegro is 20.000 EUR, but if criminal act is committed with a profit as a motive, then the court is authorized to pronounce a fine in Republic of Serbia up to 800.000 dinars or in Republic of Montenegro up to 100.000 EUR to such a perpetrator of criminal act. A both republic codes and auxiliary and additional codes as well, do not predict special minimum or special maximum of a fine for certain criminal act either once.

When meting out a fine, a court is obliged (considering the purpose of punishment in accordance with the regulation of article 41, The Basic Criminal Code or article 42, The Criminal code of the Republic of Montenegro) to take into account all extenuating and empeding circumstances and specially to consider the property condition of the perpetrator of criminal act. That is, the court should estimate his total property power – real estate, both incomes and outcomes (obligations)⁸.

Our practice has noted some cases of cumulative pronouncing a fine together with suspended sentence (as special kind of admonitory criminal sanctions). When a suspended prison sentence is pronounced to the defendant and at the same time, a fine as accessory punishment is pronounced, there is no possibility to condition the defendant to pay an accessory to pay an accessory sentence.

Considering the pronouncing a fine it is necessary to point out the regulation of article 50, The Basic Criminal Code and article 51, The Criminal Code of Montenegro. That is, according to these codes, a fine includes the time which the perpetrator spent in a custody and any other deprivation of freedom concerning the criminal act as well. Such a solution is justified by reasons of legal equity. In the same way, a pronounced fine includes a prison or a fine which the defendant served ie paid for committed economy crime or violation under condition that a criminal act (the sentence is pronounced for) includes by its characteristics and by characteristics of economy crime and violation even military-disciplinary violation in certain cases. Under such calculations, a day in custody, a day of deprivation of freedom, a day in prison and a fine of 200 dinars in Republic of Serbia and a fine of 40 EUR in Republic of Montenegro are equalized.

When the court is assured that it is justified and of legal equity to pronounce a fine to a defendant who is responsible for committed criminal act, the court will estimate a fine as a precise sum of money (fixed amount). At the same time, the court is obliged to determine the time of payment. This period of time cannot be shorter than 15 days nor longer than three mounths in both criminal codes in Serbia and Montenegro. As special solution is prescribed in article 40. The Criminal Code of Republic of Montenegro. This is a daily of fine. In this case, the court is saying a fine amount from 10 EUR to 1.000 EUR. The prepetrator is need to pay this amount in period from 10 to 360 days.

The court will determine the period of time for payment in accordance with the property possibilities of offender. Taking into consideration these circumstances, the court can allow payment on installments and in that case, the court must determine the number of installments, the amount of installments and the time of payment which cannot be longer than two years in Republic of Serbia or one year in Republic of Montenegro. All periods of time, the court has determined for

⁸ Ljubiša Jovanović, *Krivično pravo, Opšti deo*, Beograd, 1995,p.362

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paying a pronounced fine, have been calculated from the moment when the sentence has gone into effect (unless an appeal is submitted) ie from the moment when an effective sentence has been handed to the defended⁹ .

If defendant does not pay a fine during limited period of time, then a forced payment is present. In the case that it is not even then possible to collect total or partial sum of money, the pronounced fine has been changed for the prison punishment and 200 dinars in Republic of Serbia and 40 EUR in Republic of Montenegro of unpaid fine is calculated as a one day in prison. But, in this case, the prison punishment cannot be longer than six months .

We are going to point out one specific situation which is present at meting out a sentence for plurality of offences. That is, in such a situation, it is possible that the court in a cumulative way pronounces both prison punishment (as regular kind of sentence) and a fine simultaneously. In a case that the defended cannot voluntarily pay meted amount of a fine (total amount or partial one), and it is not possible to realize forced payment, the unpaid part a fine can be changed by prison punishment. It means that the defended has to serve two prison punishments in succesion, but they are still different by their nature and characteristics¹⁰ .

Taking into consideration the case when a fine for economy crime is pronounced and included into a fine which is pronounced to the defended under condition of objective and subjective identity, it is essential to point out the appropriate solutions which are present in our court practice¹¹ . If a sentence is pronounced , a prison punishment and a fine for criminal act and a fine for a violation, to a efended who is accused for both criminal acts and a violation, then the pronounced fine sentence for a violation should be included into pronounced fine for a criminal act nevertheless the fact that this sentence is pronounced as accessory one. However, if that punishment is bigger than a pronounced fine for a criminal act, then the part of appropriate punishment should be included into a fine and the rest into prison punishment.

When the court has sentenced the defended guilty and pronounced a fine for committed criminal act, and a fine for a violation is not included into that sentence (whose characteristics are included into committed act that he is pronounced guilty for and sentenced a fine), it does not represent an essential violation of criminal law because a separate resolution about calculating in punishment can be made.

THE WAYS OF A FINE ESTIMATION

Considering the ways of prescribing and estimating a fine , certain contemporary criminal laws have various systems:

⁹ Komentar Krivičnog zakona SR Jugoslavije, Beograd, 1995, p. 200-201

¹⁰ Bora Čejović, Krivično pravo u sudskoj praksi, Prva knjiga, Opšti deo, Beograd, 1985, p.273-274

¹¹ Vojislav Đurđić, Dragan Jovašević, Praktikum za krivično pravo, Knjiga prva, Opšti deo, Beograd, 2003, p. 257-261

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- 1) the system of fixed amounts in criminal laws : Italia, Swiserland, Bosnia and Hercegovina¹² ,
- 2) the system of days-a fine or the system of daily fine¹³ in criminal laws : Germany, Slovenia,
- 3) the system of average salaries in criminal laws : Russian federation, Croatia¹⁴,
- 4) the system of proportional estimation of a fine in criminal laws : Italia¹⁵.

As the system of fixed amounts is accepted both in Serbia and Montenegro and in majority of criminal laws, we are going to point out its characteristics. The system or the method of fixed amounts is a classical way of prescribing and estimating a fine in a majority of modern criminal laws nowadays and which has been well-known applied for a long period of time (even in old Roman law and in Hammurabi code) According to this system, a fine has been prescribed in a determined and fixed amount or a general minimum and a general maximum are determined in a fixed way in the regulations of general part of criminal code. Besides this way of prescribing a fine, it is also pronounced as a fixed and determined sum of money and the defendant has to pay that sum during limited and sentenced period of time. Using this way of prescribing a fine, the property state of perpetrator of criminal act is of great importance.

The advantage of this system is in its simplicity, preciseness and legal equity because a fine, which the perpetrator has to pay, is determined as fixed amount and there is no need for further calculation, determination and leveling mainly connected with some certain securities (inflation) elements. This system is very convenient for the appliance of court practice and it is fully in accordance with the principle of legality of criminal act and punishment. But besides many advantages which have made this system the most frequent one, there are some disadvantages which are especially visible when the way of calculating fines is in question, specially under conditions of increased or extremely high inflation, when pronounced fixed amounts of money have become lower and even symbolic ones.

PERFORMING A FINE

Performing all criminal and other penal sanctions are under jurisdiction of republics – federal units. So, performing a fine in Republic of Serbia is determined by regulations of articles 176-181. in The Code of Performing Criminal Sanctions¹⁶. According to these regulations the decision, which determines the performing a fine, has been carried out officially by the court of origin jurisdiction

¹² Codice penale, Note richiami e indici a curadi, Sofo Borghese, Giudici del Tribunale di Milano, Milano, 1952 ; Schweizerisches Strafgesetzbuch Stand Am 1. April 1996., Bern, 1997 ; Zbirka Krivičnih (kaznenih) propisa Federacije Bosne i Hercegovine, Sarajevo, 1998

¹³ A. Schonke, A. Schroder, Strafgesetzbuch, Kommentar, Munchen, 1976 ; Kazenski zakonik Republike Slovenie, z uvodnimi komentari Boštjana Penka in Kladija Stroliga, Ljubljana, 1999

¹⁴ J.I. Skuratov, V.M. Lebedov, Kommentarii k Ugolovnomu kodeksu v Rossijskoj federaciji, Moskva, 1996; P. Veić, Novo hrvatsko kazneno pravo, Zagreb, 1999

¹⁵ Diritto penale, Parte generale e speciale, Simone, Napoli, 2004.

¹⁶ Dragan Jovašević, Komentar Zakona o izvršenju krivičnih sankcija Republike Srbije sa pratećim propisima i sudskom praksom i Zakon o izvršenju krivičnih sankcija Republike Crne Gore, Beograd, 2000, p. 134-140

and in accordance with The Code of Executive Proceedings. A fine has been collected by list and selling of movable property of defendant and when it is not enough, then real estate in on sale (under condition that defendant voluntarily does not meet his duties included into sentence and in a limited period of time). In a case that a fine cannot be collected in that way, the court in charge has been informed and then, the court has certain activities in order to replace a fine with a prison punishment – it was the issue of previous text.

When the costs of criminal proceedings and a fine have been collecting simultaneously, then the collection of criminal proceedings coast has got priority. In a case that because of collected fine the property of defendant is reduced to such extent that it is not possible to realize the property-law demand of a damaged person (demand for a compensation), then the demand has to be collected from a fine but mostly up the determined fine. The defendant has to pay the costs of forced fine collection. It is necessary to point out the fact that in accordance with the regulations of republic code about carrying out criminal sanctions, there is identical way of carrying out a fine which is pronounced for economy crime and economy offence.

Performing a fine in Republic of Montenegro is defined according to the regulations of articles 72-76. of The Code of Performing Criminal sanctions¹⁷ in almost the same way as it is performing the same punishment defined in Republic of Serbia. The same way is applied when pronounced fines are in question : to juristic person, to entrepreneur, to resposable one in a legal person or physical one for committed economy crime or economy offence. In that way, the problem of carrying out criminal sanctions is defined in unique way in Serbia and Montenegro in accordance with unique regulations and procedure which guarantee legality, equality of all in front of law and legal equity at full length.

FINAL REMARKS

To suppress various forms and aspects of crime generally, the society has got many different means, measures and procedures at its disposal. The criminal – law measures are among them and there are many forms in criminal law of Serbia and Montenegro. They are criminal sanctions but also other criminal- law measures sui generis. For preventing and suppressing a crime against property, among many social measures , a fine is distinguished ones by their significance, nature, contents , character and effect.

Although the issue here is primarily of forced retributitional measures which are applied on perpetrator of criminal offence because of committed act and against his will, it is not disputable that they have got preventive character (both from aspect of social and specially prevention and form the aspect of general or common prevention). Considering that the property rights and benefits ie property has been confiscated from the perpetrator of criminal act by applying these measures, (mostly movable property because of nature and character of pronounced measure) the society, by these sanctions, resist the perpetrators of crimes against the property in most efficient and most rational way. By applying these measures, there is an attempt to drive away impulses,

¹⁷ Službeni list Republike Crne Gore No. 25/94 i 29/94

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wishes and intentions of the perpetrator that, by committing criminal acts, he can enlarge his property or prevent its reduction.

So, these criminal-law measures affect on the perpetrator of criminal act in destimulating way and on people as well and clearly shows the determination of society that nobody can make profit of committing criminal acts, ie acting against the law. However, there is a frequent concept that preventing and suppressing all crimes and crimes against property, too cannot be efficiently conduct only by applying criminal sanctions. That is ,in that fight against the perpetrators of criminal acts (besides repressive measures we cannot deal with present level of social development) it is necessary to apply greatly various measures and means of general and special prevention at all levels ; these measures should be applied by not only judicial organs and not only state organs but by all social factors and an individual in a society as well.

Only, by unique, planned, systematic and continous activity of all those subjects in the country and aurrounding area, it is possible to accomplish a success in preventing and suppressing crime in general.

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A FEW THOUGHTS ABOUT THE NEW SUPPORTING CHARACTERS
OF CRIMINAL PROCEDURE

By

DR. CSABA FENYVESI*

New supporting participants of criminal procedure

In the new Code of Criminal Procedure of July 1st, 2003 the classic legal cast, the attorney-lawyer-judge has significantly been changed. It appears on the one hand in the differentiation of the activities of the judge; in the separation and operation of the judge as a judging judge, an investigating judge and a judge of appeal only; on the other hand with the preference of the coercion of a lawyer. From now on there are not only obligatory defense cases and thus lawyers exercising a defense monopoly (defenders), or legal representatives of the aggrieved party – in most of the cases also lawyers- operating in criminal cases, but the lawyers representing the additional private plaintiff and the witness also align. The latter belong to the group of facilitators according to the law, thus I intend to begin the examination and interpretation (and no more) of their legal status.

A) The groups of the facilitators

The name “facilitators” is a collective expression for the supporting participants of criminal procedure, although most of them participated in criminal procedure before July 2003, as well. They can be divided into three groups with regard to the person to be helped:

1. Facilitators of the defendant
2. Facilitators for the witness
3. Facilitators of others defined by law

This basic division can be seen in the wording of the law, too: § 59. The facilitators exercise activities defined by this act in the interest of the defendant, the witness and others defined by law. However, only with the help of legal interpretation can we conclude who the members of these groups are. According to my views, they are

ad 1. Facilitators of the defendant: legal representatives (in the case of juvenile defendants), relatives, spouse, and who deposits the caution money instead of him or her and the consular representative of a foreign country (in the case of a defendant of foreign nationality).

ad 2. Facilitators of the witness: first of all the lawyer or public organization assisting him or her (Code of Criminal Procedure § 58. section (3), and § 26 points c) and e) of the Act CLVI of 1997), legal representative or caretaker(in the case of witness under the age of 14), relatives determined by him or her (Code of Criminal Procedure § 86 section (29)), public guardianship authority (for legal appointment or agreement to the hearing as witness in the case of collusion of interest between the

* Ph.D., Reader (associate professor), Criminal Procedure Department, Law Faculty of University Pécs

witness of partial ability due to mental or other state and his or her legal representative) (§ 86. section (2)).

ad 3. Facilitators of others defined by law: those who represent the interests of people involved in a coercive measure (home raid, confiscation).

The facilitators can exercise procedural rights only in the interest of those whom they assist to. The facilitators are not representatives, thus their rights cannot be deduced from the rights of the assisted people, but they act on the basis of own rights. We can observe a more detailed explanation of legal status in the case of the lawyer of the witness, whereas in the case of the others there is fairly any regulation of legal status making up a separate section of the law. From time to time they may have rights and obligations referring to the procedural actions.

With regard to its guaranteeing importance, its fairly broad appearance in life and its separate procedural rights, I believe it would have been of more use to regulate the rights of the lawyer of the witness in an outstanding, separate and unified section that to scatter them among the facilitators' rights and throughout the act

B) Legal status of the lawyer of the witness

By placing it among the facilitators (§ 59) has established the legal base, and the practical need the real base for the justification of a participant possessing legal knowledge and similar to the defender in professionalism. Originating from the prohibition of self-accusation (today a basic provision) the operation of a consultant assisting the witness is a constitutional guarantee for the avoidance of any undesired status changes, the defense of rights of a witness unaware of his or her rights and the importance of the factual questions in criminal procedure, for the avoidance of secondary victimization. Its implication has been facilitated by historical events, too as the institution is an important motion and guarantee of the strengthening of witness protection.

That is the reason why –according to my views- it would have been reasonable to involve the lawyer of the witness in the subject circle of personal protection (Code of Criminal Procedure § 98) and expand the possibility of personal protection to him ore her, as well.

§ 80. An authorized lawyer can act in the interest of the witness if the witness considers it necessary to be sufficiently educated about his or her rights. The witness shall be notified of this in the summons- as the law states. It is obvious from the wording that the participation of the facilitator in the proceedings depends on the decision of the witness. However, we cannot state that it exclusively depends on his or her will, as – in the case of a witness less than 14 years of age and thus, of incomplete legal capacity- the legal representative or the relative appointed by the person to be heard can also authorize a lawyer(Code of Criminal Procedure § 86, section (2)). Nevertheless, it is certain that no authority can officially authorize a lawyer for the witness and cannot do it on his or her plea, too as there is no such value (legal subject or principle) in his or her case that would be worth to be financially supported by the state in any way, by advancing the money, for instance.

On the other hand, the legislative has altered the legal status of the lawyer of the witness in such a way that the information is to be or should be carried out by the authorities. In this respect this legal status is to be considered as of secondary nature. It is namely the issue of the duty – of primary

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nature- of the authority that obliges every prosecuting authority to “educate” all participants without a legal representative on their rights and liabilities. It would be more correct to use the versions of the wording “enlightening” or “information” (widely applied in the American practice) carrying the same meaning, instead of the above expression mirroring a notion of superiority and signaling off-hand treatment. Here I would like to mention that in case the authorities would truly fulfill their duties in practice, there would not be any other activity left for the lawyer of the witness as controlling. (As in the case of the thorough official application of material defense only holding the defense speech is left to the lawyer of the defendant).

The duty of the lawyer is to continuously inform, and counsel his or her authorizer (plaintiff or witness) of all of his or her rights and liabilities. Thus, and also by his or her presence – especially in the case of a child or juvenile witness or a witness of limited sound of mind- the lawyer can relax and calm down the anxiety and tension of the witness as a “ mini defender”. The counseling should possibly take place before the acts of the authorities in a thorough manner as during the course of the interrogation the lawyer can only consult his or her client of witness status in special cases(as a defender) , which can be disturbing and hindering. In my opinion, during the course of the interrogation it is possible to ask such realistic questions that the witness could not with the help of the lawyer previously prepare for. At this time, the possibility of a short consultation should be awarded and the interrogation can be interrupted or terminated for the time.

The cases of the denial of testimony can lay in the focus of legal enlightening as they can originate from the status of a relative of the witness and from the avoidance of self-accusation.

Apart from the right of information there are only a few rights that the lawyer of the witness can claim. Among them is the right of presence in the case of the interrogation of the witness in any part of the criminal procedure. The lawyer can “accompany” him or her; however, he or she cannot influence the testimony of the witness. The right of presence also applies in the case of the interrogation of a witness through a close-chained telecommunication network, or the interrogation of a witness younger, than 14 years by the investigating judge. Here I wish to underline the fact that the lawyer is strictly bound by the official secrecy, even in the case of sharing the office or the law-firm with the lawyer of the defendant. The lawyer of the witness cannot supply any information (data) about the facts of the interrogation or about the person of the witness to his or her colleague and to anybody, as well. On the basis of his or her rather formal presence this authority seems to serve the prevention of possible abuse of authority by the investigating and other authorities and the relaxation of the witness in a strange environment of authority, not particularly desirable to him or her. The practical fact of the rare appearance of the lawyer of the witness seems to verify this.

§ 85. *After the interrogation (the lawyer of the witness) can observe the protocol registered about the interrogation and can submit his or her comments in a written or verbal form.* The content of the comment cannot be narrowed to the correctness or incorrectness of the facts contained by the protocol. Furthermore, in my opinion it also can reflect the fact whether any procedural rule has been violated, whether any (material or procedural) violation of law has been committed by the authorities. It would have been more practical to ensure (de lege ferenda) an authority of legal remedies to the lawyer regarding the official decision about the legality of the denial of testimony, as this is the central aim of his or her activities as mentioned before.

The lawyer cannot always submit his or her comments on the spot. Although there is a prescription in the investigation about the preparation of the protocol at the time of the investigating activity (NYER- Nyomozási együttes rendelet, see as 23/2003.(VI: 24.) BM-IM (Order of Ministers of Home and of Military Affairs) joint decree about the detailed provisions of investigation, § 94. (1)), this is not the case in the judicial section of the proceeding. The lawyer can only exercise this right after the legal deadline of putting a decision into written form or after the official notification. At the same time, the lawyer can request correction and addition, too, however, only with respect of the testimony of the witness counseled and assisted by him or her.

On the basis of the current legal rules, the right of the lawyer to a copy of the documents seems to be questionable, as § 70/ A. section (7) of the Code of Criminal procedure and the 10/2003. (V.6.), IM-BM-PM (Order of Ministers of Justice, of Home and of Financial Affairs) joint decree only mentions the witness or the victim witness, but not the lawyer of the witness. According to my views this only happened due to inappropriate legal editing as when the right to copies of documents is open to the witness, it would be unreasonable to deny it from the assisting professional who was and was allowed to be present at the interrogation. On the other hand, the lawyer of the witness has a right to request the correction of and addition to the protocol and he or she can exercise this right at the best way if he or she is in possession of the protocol (a copy of the protocol) itself.

The right to observation of and to a copy of the protocol is alive, even if the lawyer was not present at the actual interrogation or procedural act; however, this right only encompasses the testimony of his or her client or witness, and nothing else. This is to be applied in every section of the proceeding including the protocols of the trials in court, too.

The expression of “mini defender”,¹ is especially appropriate for the lawyer of the witness as the institution is similar to the defender (counseling, relationship of trust) in status; however, it is only a minor similarity. The lawyer of the witness cannot exercise the right of initiative and the right of questioning. When regarding its status in material law, we can sense that- similar to the plaintiff and the additional private prosecutor- the legal regulations relating to it are scattered through the code. The lawyer can, in addition to the former, exercise the following rights:

- can request the confidential treatment of the data of the witness (§ 96 section (1));
- can request the confidential treatment of the section of findings of the expert opinion regarding the witness (§ 108, section (7));
- can request an incident or declaration during the investigation to be taken into protocol (§ 166, section (6)), the same can be requested during the trial in court (§ 251, section (3));
- can be present at the interrogation of endangered or specially protected witness (§ 213, section (1) and (2));
- can be present in the interrogation room at the interrogation through close-aim telecommunication network (§ 244/B, section (1)) , etc.;

¹ Mentioned by Flórián TREMMEL. In: Fenyvesi Csaba-Herke Csongor-Tremmel Flórián: Új magyar büntetőeljárás. (New Hungarian Criminal Procedure) Dialóg Campus Kiadó, Budapest-Pécs, 2004. 196-197. pp.

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- can request the initiation of interrogation of endangered or specially protected witness from the prosecuting attorney (§ 207, section(3)).

The functions of the two status (lawyer of the witness, defender) can naturally not be mixed up as they are incompatible with each other. The lawyer of the witness cannot become defender in the same case and vice versa (Code of Criminal procedure § 45, section (2) point b)). However, it can happen that that an arrested defendant is interrogated as a witness in a different case and in this case he has the right to a lawyer, too. The person of the lawyer can be the same – as we are dealing with a different case- as the person of the defender.

I would like to note that the actions of the lawyer of the witness – similarly to those of the defender- can carry such practical advantages as the strengthening of the duty of appearance, the being within call and finally the witnessing discipline in the witness that serves the interests of the entire criminal investigation and justice after all.

As a general notion of criminal procedure, what is a right on the one side is a liability on the other. Thus, the right of presence is and can be ensured by the authorities by informing the witness in the summoning letter about his or her right to authorize a lawyer. The authorities have to ensure the presence of the lawyer by notifying him or her about the interrogation of the witness, if his or her person is known to the authorities or has already submitted his or her letter of authorization (he or she does not have to be summoned as his or her presence is not indispensable). This is valid for the entire course of proceedings, and thus, for the trial, as well. The absence of the lawyer cannot hinder the interrogation except if the summoning letter to the witness was not in conformity with the law or it did not contain the information about the right of authorization. In this case the witness can truly refer to his or her right to consult a lawyer beforehand. As the interrogation of a witness can also happen as an urgent investigating action where no written summons is common, the authorities do not miss a preliminary action. In such a case, the person to be interrogated as witness has to be notified at the beginning of the interrogation, which –according to my opinion- has now the right to consult a lawyer and can refer to his or her right of necessitating legal assistance guaranteed by the procedural act. Thus, the denial of testimony in this case will not be of unfounded nature.

As with regard to the witness not only interrogation, but many other proving acts can occur, by this I mean the interrogation at the scene (with correct forensic terminology local inquiry), trial to prove, presentation for recognition, examinations with the use of polygraph, confrontation, inspection where there is a need for the presence of the witness in question, the lawyer has to be notified of these acts and the witness has to be informed of his or her right of authorization in these summons, as well.

As a last thought: After all, I also can state that independent from the existence of the lawyer the liability of notification of the authorities continuously exists. This fact – apart from its realization in life- has to significantly appear in the protocols and reports.

**LEGAL NATURE, IMPORTANCE AND THE RELATION TO
OTHER BRANCHES OF LAW**

By

Dr. Dragan Jovašević*

INTRODUCTION REMARKS

There are various interpretations of this notion in criminal law theory in Serbia and Montenegro¹. For instance, the international criminal law is determined as a set of rules of international community of states or contracts between certain states by which the international criminal acts and penalties for their perpetrators are established in order to protect international relations (international peace and security of mankind).²

There is a similar opinion according to which the international criminal law is a set of rules and regulations contained in the documents of the international community and contracts concluded between certain countries by which the international criminal acts and penalties are established in order to preserve the international peace and security of mankind, as well as a set of rules which provide for the conditions for international legal aid referring to the application of penalties to the crime perpetrators.³

In theory we can also find a definition of international criminal law as an entirety of criminal law norms referring to international relations.⁴ There is also an interesting definition according to which the international criminal law includes both the international legal aspects of criminal law and criminal law aspects of public international law.⁵

According to such definitions of the notion of the international criminal law, it follows that it has the below mentioned characteristics. It consists of two set of rules:

(1) The first set is made of rules, which establish the international criminal offences. Here we can distinguish two kinds of criminal offences. The first kind covers the conduct breaching the international contracts, agreements or guarantees and in this way disturbing or endangering peace between nations and the security of mankind or breaching war rules and practices and maltreatment of war prisoners, the wounded, the sick, shipwrecked persons and civilians, or the conduct

* **Ph.D., Professor on Faculty of Law in Nis Serbia and Montenegro**

¹ Radulović D., *Medjunarodno krivično pravo*, Podgorica, 1999 ; Stojanović Z., *Medjunarodno krivično pravo*, Beograd, 2002.; Djurdjić V., Jovašević D., *Medjunarodno krivično pravo*, Beograd, 2003.

² Čejović, B., *Krivično pravo, Opšti deo*, Beograd, 2002, p. 51-52; Radovanović, M., *Krivično pravo, Opšti deo*, Beograd, 1975. p. 10

³ Jovanović, Lj., Jovašević, D., *Krivično pravo, Opšti deo*, Beograd, 2002, p. 24-25

⁴ B. Zlatarić, op. cit., p. 24

⁵ Stojanović, Z., *Medjunarodno krivično pravo*, Beograd, 2002, p. 3

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destroying biological, economic, cultural and other conditions necessary for the existence of a nation or national, racial, religious or ethnic group.

The second kind includes all remaining international crimes breaching or endangering values protected by the international criminal law (offences related to narcotics, prostitution, pornography, piracy, hijacking, terrorism, hostage taking, and other).

(2) The second set consists of the rules by which the conflicts regarding spatial validity of criminal laws of various countries are settled and the rules regarding the international legal aid related to the extradition of crime perpetrators to countries on whose territories they committed crimes for pronouncing or execution of penalties :

1) The source of these rules is in the international legal documents. Here we distinguish the universal documents of the international community which are therefore yielded within or under the wing of the UN, and then the documents of regional organizations (such as the Council of Europe) or the contracts concluded between two or more countries.

2) These are the legal rules, which do not have statutory character, so unlike the national criminal law that is the statutory law, here we do not have a statutory law although one of the basic principles of the international criminal law is the principle of legality.

3) The rules refer both to material and proceedings law. There are certain rules, which only partially determine certain issues or institutes of international criminal law, but there are also rules (Roman Statute of the International Criminal Court) which completely establish the field of this branch of law.

4) Some of the rules which have the international character are applied directly to concrete cases where crimes were committed and to their perpetrators through the practices of the International Court of Justice of the Hague for former SFR Yugoslavia or other ad hoc tribunales as : the Court for Rwanda, the Court for Sierra Leone, the Court for East Timor and the Special Court for Iraq and some only in case and when certain countries incorporate them in their national criminal legislation after ratification (for instance, the Convention on the laundry, search, seizure or confiscation of illegally gained income or UN Convention against transnational organized crime from 2000. year).

The notion of the international criminal law very often means a set of international documents, which is binding for the states, which accepted them to incorporate certain conducts qualified as crimes in their respective criminal legislations. According to such opinions, there are two kinds of international crimes – in narrow or broad sense.

In narrow sense, these are the crimes contained in the sentences of Nuremberg (1946) and Tokyo (1948) courts: crimes against peace, crimes against humankind and war crimes. In a broader sense, it is any conduct, which the international community would like to suppress on the national level:

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crimes related to narcotics, trafficking in white slaves, weapons, nuclear substances, pornography and prostitution, hijacking, and similar.⁶

Therefore, the international criminal law, which referred to settling of conflicts of spatial validity of criminal laws and international legal aid, becomes the international criminal law, which refers to establishing of international crimes and penalties for their perpetrators. Considering the tendencies expressed during recent years in the field of international law in general, it can be assumed that the content of such an understood international criminal law will be extended further.

After the Roman Statute of the International Criminal Court came into force it can be said that the international criminal law is a system of legal rules determined by this Statute establishing international crimes, basic penal responsibility and penal system for the perpetrators as well as the proceedings before the international criminal court and the rules contained in the national criminal legislation determining basics and conditions for international criminal legal aid.⁷

But taking into account that in the majority of countries today there is a large number of the same or very similar crimes with the same type and range of prescribed penalties, that a great number of the institutes of criminal law in general refers to crimes, complicity, the system of criminal liability, and that the penal system which is unified to a great extent, the theory raised a question of unification of criminal legislation which would lead to the creation of such a criminal law which would be binding for all or at least the majority of countries and their citizens. This would in a specific manner bring about the idea of the international criminal law, which would be uniform and generally applied for the whole human and social community.

This concept, however, could not be brought to life at this level of mankind development, first of all due to the differences in socio-economic and political systems and legal system of certain countries (although there are certain shifts, for instance regarding the construction of criminal law of European union or European criminal law), and in addition to this due to the differences in opinions, degree of development, tradition, culture, criminal policy and other. This is why we talk less about a complex and thorough international criminal law and insist more that certain socially dangerous acts of the international character be established as punishable in all countries.

Therefore, the unification of criminal legislation under present conditions of development of international community is not realistic. This however does not mean that the cooperation among countries cannot and should not be established which would include building of certain general principles and rules of criminal law. It should also take into account that the legislations of some countries (such as Germany, France or Great Britain) have considerable influence on the development of criminal legislations of other countries (there is a great influence of Anglo-Saxon precedent criminal law in the countries of former Commonwealth).

LEGAL NATURE OF THE INTERNATIONAL CRIMINAL LAW

⁶ Stojanović, Z., *Krivično pravo, Opšti deo*, Beograd, 2001, p. 33

⁷ Jovašević, D., *Leksikon krivičnog prava*, Beograd, 2002, p. 275-276

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The international criminal law is a new branch of law with a not so long a history as criminal law, which originated along with the creation of state and law. Having an origin within the development of criminal law, it tends more and more explicitly to become a separate field and finally an independent branch of law. This tendency for separation of this field into a special entity is increasingly obvious and the reason for this is the rapid development of international relations.⁸

Since it originated within the criminal, but also within the public international law (primarily within international war or humanitarian law) and under their wing, and since it deals with criminal offences as a kind of public law offences, there is not still a uniform view of the nature of this branch of law in legal theory. When trying to resolve this issue, we can distinguish three different views⁹.

According to the first view, the international criminal law does not have legal independence and status as a branch of law but it is an integral part of public international law. The truth is that these two branches have been developing together for a long time but a separate kind of offence law developed within the international public law and under its wing, which determines criminal offences, system of penalties for their perpetrators and liability and culpability for the crimes committed.

The source of this branch of law is in the international legal documents – contracts between certain countries or conventions brought about within international organizations. Since these conventions and contracts are binding only for those countries that have accepted them (signed and ratified them), they are not binding for other countries that have not accepted them, so that it cannot be concluded that there is a unique basis of the international criminal law.

This was the reason to deprive the international criminal law of independent existence and to consider it an integral part of criminal law (or broader penal law in general) which can be national and international, material, procedural and executive. In other words, we cannot think of this branch of law without general terms and institutes which exist within the criminal law (notion and elements of criminal offence, stages in crime commitment, bases for the exclusion of the existence of a criminal offence, notion and elements of the state of mind and guilt, system of penalties, bases for the exclusion of guilt and culpability).

We are of the opinion that although this is a recent branch of law (which originated within the public international law on the basis of the existence of certain international legal sources and within criminal law so that it can be said that it is a hybrid or eclectic branch of law), it still represents a special, independent branch of law and not only the means to divide one branch of law within a broader one into juvenile, white-collar, military or official criminal law.

⁸ Čejović, B., op. cit. str. 51; Zlatarić, B.-Damaška, M., *Rječnik krivičnog prava i postupka*, Zagreb, 1966, str. 60-161; Djurdjić, V. – Jovašević., D., *Medjunarodno krivično pravo*, Beograd, 2003, str. 3-14

⁹ Stojanović Z., *Medjunarodno krivično pravo*, Beograd, 2002., p. 9-11

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All these divisions are made for purely practical, utilitarian reasons while the international criminal law can be considered as a separate branch of law that establishes the subject of study in a systematic manner due to the following reasons :

- 1) efficient application of legal norms requires certain specialization and systematization of notions and institutes of a certain field;
- 2) it has been generally accepted that there are both theoretical and practical interests for a more thorough study of this branch of law;
- 3) there are enough regulations in this field, especially after the Roman Statute of the International Criminal Court and the Statute of ad hoc Tribunal (for former Yugoslavia, Sierra Leone, East Timor, Rwanda and Iraq) came into force;
- 4) for the first time the Roman Statute represents a systematic code of international criminal law complete with the regulations of the general and special material law and procedural law;
- 5) this branch of law has acquired ‘civil rights’ through the practice of Nuremberg and Tokyo Military courts, the Hague Court , Tribunal for Rwanda , Tribunal for East Timor, Tribunal for Sierra Leone and finally The Iraqi Special Tribunal , which means that this branch of law has been brought to life by the practical use of its regulations, by prescribing, pronouncing and execution of penalties for the international criminal offences and against their perpetrators.

THE RELATION OF INTERNATIONAL CRIMINAL LAW AND OTHER BRANCHES OF LAW

Although many of the above mentioned reasons support the claim that the international criminal law is in fact an independent branch of law which has its specific subject and the manner of regulation, it is at the same time a part of a unique legal system not only of a national legislation of a certain country, but of the whole international community as well.

Considering a number of similarities of this branch of law with other familiar branches, primarily those within which it originated, it is necessary to determine the relation of the international criminal law and:

- 1) public international law,
- 2) international war law,
- 3) criminal and criminal proceedings law,
- 4) international humanitarian law and
- 5) private international law.

International criminal law and public international law

Public international law¹⁰ is a set of international legal regulations, which administer the relations between certain states and between states and international organizations in the field of international relations. It is a branch of public law, which deals with the relations between certain states both in peace and in war.

This means that the international war law originated within and under the wing of this branch of law, or in other words the law of armed conflicts, as well as the international humanitarian law. It should be pointed out that in legal theory there are still various opinions when determining the legal nature of the international criminal law. One of these views determines the international criminal law as an integral part of public international law, using even the term public international criminal law for this branch.

Both branches, however, have their origin in international legal documents (contracts, agreements, conventions) at universal, regional and bilateral level, they both have precedence in application in relation to the national legislation, the authority of their application is based on legal arguments, power of logic and public opinion, and not on coercive, retribution norms.

International criminal law and international war law

International war law¹¹ is a set of legal regulations of the international character, which govern the relations between certain countries, other subjects in the international community and international organizations during the state of war or armed conflict. Considering that war is forbidden by a number of international legal documents, although there are still many armed conflicts (after World War II there were dozens of them on all continents) this law today is also called the law of armed conflicts.

Since this branch of law has its sources in the international legal documents as the international criminal law and that it governs the conduct of certain participants in armed conflicts, it is necessary to point out some differences of this branch of law comparing to the international criminal law. Compared to the war law which contains enacting and forbidding norms complete with the penalties of international legal character (for instance, reprisals, self-defense, compensation for war damage) the criminal law contains the rules of conduct which are forbidden and are subject to penalties pronounced by a special body – criminal court.

This criminal law punishes primarily individuals, natural persons by personal penalties while the war law provides for the penalties for legal persons, primarily a certain country. Finally, by breaching the norms of the international war law the individuals in countries become perpetrators of crimes against humanity and international law (which have blank character since their commitment

¹⁰ Avramov, S. – Kreća, M., *Medjunarodno javno pravo*, Beograd, 1981, str. 14; Janković, B. – Radivojević, Z., *Medjunarodno javno pravo*, Niš, 2002, str. 3 i dalje

¹¹ Perazić, G., *Medjunarodno ratno pravo*, Beograd, 1986, str. 16-19; Janković, B., *Osnovi medjunarodnog prava*, Sarajevo, 1960, str. 12-14; Radojković, M., *Rat i medjunarodno pravo*, Beograd, 1947, str. 3-12

is exactly a conduct contrary to the norms of international war law providing for the certain conduct as allowed or forbidden during the state of war or armed conflicts).

International criminal law and national criminal law

Criminal law is a system of legal regulations of a certain country, which prescribes a system of criminal offences, penalties for their perpetrators and bases and conditions of criminal liability and culpability¹². The norms of national law also cover the spatial validity of criminal law, the application of the institute of extradition and asylum, and contain certain international criminal offences incriminated based on acceptance of certain obligations from the international legal documents.

On the contrary, the international criminal law does not have a source in the law (it is not considered a statutory law). Its source is in the regulations contained in the international documents or contracts concluded between certain countries. It incriminated the international criminal offences in a narrow and broad sense, and these are the offences having a foreign element. This law determines the bases for criminal liability (excluding the existence of command responsibility or the responsibility of a superior) and culpability in the same way as it is done by the national criminal law.

The theory points out that the relation between these two branches can be considered in two ways: in peace and during the state of war. During the state of war, the regulations of the international criminal law are applied directly to perpetrators of the international criminal offences. Therefore, in that case the international criminal law has precedence and supremacy over national (internal) criminal law. In peace, on the contrary, the national criminal law has precedence.

The international criminal law in peace can be applied only when and if a certain country incorporates the system of international criminal offences into national legislation and provides for the penalties for their perpetrators, and the basis for these incriminations is in the regulations of the international law. In this way, the international criminal law regulations are applied and implemented in peace through the norms of national criminal law.

International criminal law and national criminal proceeding law

Criminal proceedings law regulates criminal proceedings before national criminal court where penal responsibility is established and certain penalty pronounced to the perpetrator of a crime determined by the law¹³. However, national criminal proceedings law contains also certain institutes of international criminal law such as the regulations on proceedings for international legal aid and

¹² Jovašević D., *Leksikon krivičnog prava*, Beograd, 2002 ; Jovanović LJ., Jovašević D., *Krivično pravo , Opšti deo*, Beograd, 2002. ; Jovašević D., *Komentar Krivičnog zakona SR Jugoslavije*, Beograd, 2002 ; Stojanović Z., *Krivično pravo, Opšti deo*, Beograd, 2000,

¹³ Grubač M., *Krivično procesno pravo*, Beograd, 2004. p.14-16; Đurđić V., *Krivično procesno pravo*, Niš, 1998. p. 8-10; Stevanović Č. Milošević M., *Krivično procesno pravo*, Beograd, 1997.p.5-8

execution of international contracts in criminal law issues, proceedings for the extradition of the accused and convicted persons, proceedings for issuing of arrest warrant and notice as well as the execution of a foreign court decision.

International criminal law and international humanitarian law

The international humanitarian law¹⁴ is a set of legal regulations contained in the documents of the international community, which aim to protect unnecessary destruction and victims of war destruction and armed conflicts, i.e. to humanize war as an ultimately inhuman means of politics. The Geneva and Hague conventions are the bases of the humanitarian law determining a number of rules and conducts by the warring parties towards civilians (non-fighters), the sick, the wounded, the ship-wreckers, medical corps and religious personnel and the prisoners of war.

Breaching the rules of the international humanitarian law, which offers protection to certain categories of people, actually means the existence of international crimes against humanity and international law. This means that the humanitarian law offers the basis for the incrimination of culpable conduct in the form of criminal offences for which national legislations provide penalties after the acceptance of appropriate international legal documents and by which the norms of humanitarian law are practically incorporated in and become an integral part of national legislation of a country.

International criminal law and private international law

Private international law¹⁵ is a branch of national legal system, which legally regulates private legal relations with international feature. This is not an international law (in the sense of its source) but a branch of national legislation, which regulates certain issues with a foreign element such as relations, states and capabilities of natural and legal persons (such as family, proprietary, obligation, hereditary, commercial, working relations) where the subject, object, rights and obligations are related to two or more countries.

It follows from the subject of this branch of law that it actually deals with civil law relations having a foreign element, while the international criminal law deals with public law – criminal law relations with a foreign element (international criminal offence).

SYSTEM OF INTERNATIONAL CRIMINAL LAW

Although the international criminal law represents a unique branch of positive law, it can be divided according to various criteria and we therefore distinguish several divisions of this branch of law.

¹⁴ Vučinić, Z., *Medjunarodno ratno i humanitarno pravo*, Beograd, 2001, str. 4-21

¹⁵ Ročkomanović, M., *Medjunarodno privatno pravo*, Beograd, 2000, str. 4 ; Stanivuković M., Živković M., *Medjunarodno privatno pravo*, Beograd, 2004. p.5-8

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The main division of the international criminal law is into material, proceedings and executive law.

Material law represents a system of legal regulations, which determine the notion, and characteristics of international criminal offence, system of penalties and bases and conditions for establishing of penal responsibility and culpability. It can be implemented and manifested only through proceedings law.

Namely, the international criminal proceedings law determines the notion and types of proceedings subjects, guidelines, architecture and the course of criminal proceedings before the international courts.

The international criminal executive law determines the procedure, manner and conditions for the execution of penalties pronounced by the international criminal court.

Material international criminal law can further be divided into the general and special, where these two parts are mutually connected and dependent on each other.

Within the international criminal law, we can distinguish the law having its source in the international documents and the law having its source in the national legal regulations. Within the latter law, we can distinguish the regulations contained in the Basic Criminal Code (former Criminal Law of FR Yugoslavia¹⁶), other federal regulations in the field of accessory and additional criminal law and regulations contained in the Criminal Proceedings Code.¹⁷

FINAL REMARKS

Following two and a half century long historical development a new branch of penal law – the international criminal law – has finally grew up at the beginning of 21st century. This branch of law has formally acquired ‘civil rights’ when the Roman Statute of the permanent International Criminal Court in the Hague came into force in the middle of 2003.

It is namely the law which analogue to other branches of positive penal law determines the notion and elements of international criminal offences (aggression, crimes against humanity, genocide and war crimes), stages of their commitment, forms of complicity, notion and characteristics of penal responsibility, as well as a system of penalties (material law) and the notion and features of proceedings subjects: prosecution and courts, the course and architecture of criminal proceedings (procedural part).

¹⁶ On the basis of Art. 64 of Constitutional Charter of Serbia and Montenegro Union and Art. 20 of Law on implementation of constitutional charger, the federal regulations of former FR Yugoslavia are applied as regulations of Serbia and Montenegro (Official Gazette of Serbia and Montenegro no. 1/2003)

¹⁷ Official Gazette of FRY No. 70/2001 , 68/2002 and 59/2003

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By pronouncing sentences and execution of penalties to perpetrators of international crimes within Nurnberg and Tokyo courts, as well as by ad hoc tribunals, the norms of the international criminal law came into life in court practice. This has created not only theoretical and legal but also practical bases for establishing and further implementation of the international criminal law and this paper presents its basic notions, features and characteristics.

Further development of national criminal laws and unification of many general and basic institutes of criminal law create bases for final establishment of transnational criminal law, which would include all, or at least the majority of contemporary civilization by its implementation.

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