DOI: 10.7251/GFP2313079K

UDC: 334.728(094.5):343.265.2(497.2)

Pregledni naučni rad

Datum prijema rada:
21. jun 2023.

Datum prihvatanja rada:
10. jul 2023.

Reform of Criminal Procedure Legislation in Bosnia and Herzegovina - Expectations, Reality and Perspectives

Abstract: In this paper, the attention is focused on the efficiency of the criminal procedure, with a special focus on the efficiency of the criminal process entities in terms of elucidating and solving a specific criminal matter. In connection with the above, the authors recognized and identified the key procedural problems related to the timely, efficient and legal detection and proof of the criminal act and guilt. Given that a significant period of time has passed since the last general reform of the criminal procedure legislation, sufficient for a critical analysis, a critical review of all phases of the criminal procedure was carried out with the intention of actualizing and problematizing certain legal solutions of a procedural nature (detective activity, investigation concept, standards evidence, evidentiary role of the prosecutor, drawing up/filing of the indictment, complexity of discovery and proof, etc.) on which the efficient and legal conduct and finalization of criminal proceedings directly depend. Also, modern forms of criminality, especially specific forms of organized crime, demand from the legislator the adequacy of the legal norm in terms of achieving a legitimate legal goal related to the effective and energetic fight against crime as a complex social phenomenon and achieving adequate results of criminal justice.

Key words: criminal procedure, criminal offense, efficiency, Bosnia and Herzegovina.

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1. INTRODUCTORY REMARKS

The reform of criminal procedural legislation in Bosnia and Herzegovina from 2003 resulted in the adoption and entry into force of "new" and now old laws on criminal procedure at all four levels of the exercise of authorities in Bosnia and Herzegovina, respecting the complex constitutional and legal structure of the state (state level, entity level: the Federation of BiH and the Republika Srpska, Brčko District of Bosnia and Herzegovina)[1]. A careful analysis of the legal text, i.e. legal pro-

[1] Criminal Procedure Code of Bosnia and Herzegovina. *Official*

visions, shows that the legislator, by accepting and adopting new legal solutions of procedural nature, paid special attention to the efficiency of the criminal procedure and the tendency to humanize the criminal procedure, i.e. the protection of fundamental human rights and freedoms. The new criminal procedure in Bosnia and Herzegovina includes continental law of mixed type and Anglo-Saxon, that is, Anglo-American law of the accusatory type.[2]

An efficient and legal institutional state (re)action to crime is practically impossible or unenforceable, without the adequacy of legal norm and, accordingly, the reform processes are a unique opportunity to comprehensively and versatile update, problematize, analyze and critically review the existing legal solutions regarding their adequacy, and encompass and consider all the needs and challenges in terms of consistent, efficient and energetic fight against crime. Modern criminal law starts from the fact that no one should be subjected to arbitrary punishment, and that the state may deprive or limit an individual's freedom or other important goods only in cases and in the manner provided by the law.[3] In addition, it should not be ignored or forgotten that the ways and means of operationalization of criminal activities, i.e. the execution of classical or traditional forms of crime, have been significantly modified and adapted to current political, economic, cultural, demographic and other conditions and specificities. The misuse of new achievements in all areas directly enables criminality to be one step ahead of the law enforcement authorities, which means that a continuous search for appropriate or proportionate legal solutions and answers that can meet expectations in terms of an efficient and energetic fight against crime, is necessary[4].

2. THE REFORM OF CRIMINAL PROCEDURE LEGISLATION FROM 2003 - BRIEF REVIEW

Observing the criminal procedure legislation in Bosnia and Herzegovina from this time distance, appreciating that two decades have passed since the last general (broad) reform of the criminal procedure legislation, it is possible to carry out a critical review and analysis regarding the adequacy of the legal norm in terms of the execution of the criminal procedure task by the competent criminal procedure subjects. In the process of criminal procedural legislation reforms within the territory of the former Yugoslavia, as part of

Gazette of Bosnia and Herzegovina, nos. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/5, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13 and 65/18; Criminal Procedure Code of the Federation of Bosnia and Herzegovina. *Official Gazette of the Federation of Bosnia and Herzegovina*, nos. 35/03, 37/03, 56/03, 78/04, 28/05, 55/06, 27/07, 53/07, 09/09, 12/10, 08/13, 59/14 and 74/20; Criminal Procedure Code of the Republika Srpska. *Official Gazette of the Republika Srpska,* nos. 53/12, 91/17, 66//18 and 15/21 and Criminal Procedure Code of Brčko District of Bosnia and Herzegovina. *Official Gazette*, nos. 10/03, 48/04, 06/05, 12/07, 14/07, 21/07, 27/14, 3/19 and 16/20.

[2] Simović, N. M., Simović, M. V., Govedarica, M. (2021). *Krivično procesno pravo, Uvod i opšti dio, šesto izmijenjeno i dopunjeno izdanje.* Istočno Sarajevo: Pravni fakultet, Univerziteta u Istočnom Sarajevu, 52.

[3] Stojanović, Z., Škulić, M., Delibašić, V. (2018). *Osnovi krivičnog prava, Krivično materijalno pravo, Knjiga I.* Beograd: JP Službeni glasnik, 22.

[4] Karović, S., Simović, M. M. (2020). Rasvjetljavanje i rješenje krivične stvari u krivičnom postupku Bosne i Hercegovine – raskol između normativnog i stvarnog. *Godišnjak Fakulteta pravnih nauka*, *10* (10). Banja Luka: Panevropski univerzitet „Apeiron", 209.

transitional changes, new procedural solutions specific to the Anglo-American concept of criminal procedure were accepted.[5]

Intensive reform processes of criminal legislation in Bosnia and Herzegovina, but also in the neighborhood and the region, over the last two decades resulted in the adoption and entry into force of the law on juveniles at the entity level (the Law on Protection and Treatment of Children and Juveniles in the Criminal Procedure of the Federation of Bosnia and Herzegovina[6] and the Law on the Protection and Treatment of Children and Juveniles in the Criminal Procedure of the Republika Srpska[7]) and at the level of Brčko District of Bosnia and Herzegovina – the Law on Protection and Treatment of Children and Juveniles in Criminal Procedure of Brčko District of Bosnia and Herzegovina[8], and in this way a new juvenile criminal legislation was established, so that this branch of law acquires its (partial) independence and autonomy given that no criminal law provisions at the level of Bosnia and Herzegovina have still not been separated into a special law relating to juveniles and their specific criminal legal position.[9] The question of what constitutes juvenile delinquency is not fully explained in the literature dealing with this problem, but this term usually refers to a special type of illegal behavior characterized by the violation of criminal law norms, incriminated as dangerous acts, for which the law prescribes appropriate sanctions according to the gravity of these acts.[10]

The focus of the reform process is the efficiency of the criminal procedure and the protection of human rights and freedoms, so the legislator's intention is to achieve or satisfy the necessary compatibility of the aforementioned components, appreciating the commitment of the state of Bosnia and Herzegovina to follow modern achievements recognized by the civilized world. There is no doubt that if a certain legal text corresponds to the modern requirements of the fight against crime, if its norms find adequate application in practice, if abuses of rights are reduced to minimal cases or attempts only, and if the organization and functioning of the police, court and prosecutor's office is adequate – not only that the role of criminal legislation in the fight against crime is greater, but it is also significantly more successful and *vice versa*.[11]

By analyzing legal provisions of valid procedural laws in Bosnia and Herzegovina and comparing them with the old law on criminal procedure, we notice numerous essential differences, i.e. novelties that, above all, relate to the concept (model) of the investigation and the different role of the subjects in the investigation, the prescription of special

[5] Karović, S. (2013). Tužilački koncept istrage u krivičnom procesnom zakonodavstvu Bosne i Hercegovine. In: *Zbornik radova Fakulteta pravnih nauka*, 4. Vitez: Sveučilište/Univerzitet „Vitez", 162.

[6] *Official Gazette of the Federation of Bosnia and Herzegovina*, no. 7/14.

[7] *Official Gazette of the Republika Srpska,* nos. 13/10, 63/11, 61/13.

[8] *Official Gazette of Brčko District of Bosnia and Herzegovina*, no. 53/11.

[9] Karović, S., Maloku, A., Shala, S. (2020). Maloljetničko krivično pravo u Bosni i Hercegovini sa osvrtom na krivičnopravni položaj i odgovornost maloljetnika. *Kriminalističke teme,* 1-2. Sarajevo: Fakultet za kriminalistiku, kriminologiju i sigurnosne studije, Univerzitet u Sarajevu, 111.

[10] Igrački, J., Ilijić, Lj. (2016). Kriminalitet maloljetnika – stanje u svijetu i Srbiji. *Strani pravni život, 60* (1), Beograd: Institut za uporedno pravo, 185-186.

[11] Bejatović, S. (2019). Krivično zakonodavstvo i funkcionisanje pravne države. In: *Krivično zakonodavstvo i funkcionisanje pravne države.* Trebinje: Srpsko udruženje za krivičnopravnu teoriju i praksu, Ministarstvo pravde Republike Srpske, Grad Trebinje, 14.

investigative actions in a new procedural form, simplified forms of procedure, different standards of proof, as well as other differences. However, to the question of the extent to which the expectations were actually realized in practice, as well as expected results of the criminal justice system, the response of the scientific and professional public is mostly negative, especially bearing in mind that Bosnia and Herzegovina cannot brag about any big or so-called „capital" cases, i.e. cases of organized crime and corruption that were elucidated and resolved. On the other hand, an unfavorable overall social environment and distrust of citizens in the competent authorities, subjects and law enforcement agencies is being created, which adversely affects the prevention of crime (general and specific/ special prevention).

3. DETECTION OF EXISTENCE OF CRIMINAL OFFENSES – „DARK NUMBER"

Detection of existence of criminal offenses is the primary or main activity of authorized officials who, by the nature of their duties and tasks, have a real possibility to gather certain initial information as well as to recognize and identify certain risky behaviors that indicate the existence of a certain criminal offense. When performing regular duties and tasks, authorized officials have the possibility to directly or indirectly gather certain information and, after establishing the grounds for suspicion, notify the competent prosecutor in order to undertake further activities under the supervision of the competent prosecutor[12]. In this phase of proceedings, i.e. before determining the existence of grounds for suspicion that a certain criminal offense has been committed, authorized officials act autonomously and independently, without the supervision of the prosecutor.

Regarding detection of existence of criminal offenses, it is necessary to emphasize the investigative role and function of the prosecutor. Therefore, the prosecutor does not act solely on the basis of notification of the existence of a criminal offense by the police or other law enforcement authorities, services and agencies, but by the nature of the prosecutor's function, he personally has a task referring to the detection of the existence of criminal offenses. The prosecutor, like all other citizens, is an active participant in the social processes and events that surround him in a certain local community, that is, the environment, and he personally, that is directly, has a real possibility to gather certain information about the existence of a criminal offense. On the other hand, due to the nature of the prosecutor's function, he also has the duty prescribed by law to detect the existence of criminal offenses. One of the essential problems related to the inadequate investigative activity of the police, i.e. authorized officials, is their (over)busyness in the investigation in connection with the implementation of numerous, extensive and complex criminal procedural actions by order of the prosecution and the court, so that they realistically do not have enough time, resources and capacity to devote themselves to the primary activity, i.e. detection of criminal offenses.

In democratically governed countries of the world, citizens also have a very significant investigative role, which is manifested in timely reporting of criminal offenses to the competent authorities (police, prosecutor's office, etc.). Citizens are involved in the prevention process as conscientious and responsible members of a specific local community

12 Detaljnije vidjeti član 218 Zakona o krivičnom postupku Bosne i Hercegovine koji se odnosi na nadzor tužioca nad radom ovlašćenih službenih lica.

who, through their actions and partnership relations with authorities, entities and law enforcement agencies, contribute significantly to prevention and detection of crime.

4. PROSECUTION (POLICE) AND INVESTIGATION CONCEPT OF INVESTIGATION - COMPARATIVE ASPECT

One of the novelties is the concept of investigation, which, with the adoption of new laws on criminal procedure, underwent significant, i.e. radical changes, before all appreciating the changed roles and jurisdictions of criminal procedure entities in terms of initiating and conducting the investigation. The laws on criminal procedure in Bosnia and Herzegovina recognize the prosecutor as the only authorized authority in terms of initiating and conducting an investigation, which is why this concept of investigation is called the prosecutor's concept of investigation in scientific and professional literature. The competent prosecutor autonomously and independently carries out a prosecutorial assessment and makes a decision on issuing an order to conduct an investigation, if the initial information collected indicates the existence of grounds for suspicion that a certain criminal offense has been committed. Analyzing the list of basic terms of the law on criminal procedure, it is noted that the legislator did not prescribe the meaning of the term grounds for suspicion, which certainly points to a justified and purposeful need to prescribe the meaning of this term during future interventions by the legislator, in order to ensure its proper understanding and adequate application.

The role of the court in the prosecutor's concept of investigation is passive, given that all investigative and evidentiary activities in terms of detecting and proving criminal offenses are entrusted to the prosecutor, who has a managerial and supervisory role over the work of authorized officials. The role of the court mainly refers to the controlling role in the investigation of the work of the prosecutor and authorized officials in the context of the protection of fundamental human rights and freedoms, which is practically operationalized through the function and role of the judge for preliminary proceedings, who is in charge of issuing orders for the application of certain criminal procedural actions (certain general actions of proof and special investigative actions). In addition to the aforementioned role of the judge for the preliminary proceedings, his role in the investigation also refers to providing evidence of the court.

5. (IN)ADEQUATE CONTROLLING ROLE OF THE COURT OVER THE WORK OF THE PROSECUTOR DURING THE INVESTIGATION

The assessment and decision-making on the investigation is carried out by the competent prosecutor without any obligation to inform the court or to obtain certain consent (approval). In this sense, by the nature of the matter, an essential question is imposed and raised: does the prosecutor have too broad powers or absolutely dominant role in the investigation, given that he independently and autonomously makes a decision and issues an order to conduct the investigation, without any controlling role of the court. The court does not actually know that a specific investigation has been initiated and that it is being conducted against an unknown or known person, until the moment of receiving a reasoned proposal, or more precisely, a request from the competent prosecutor for conducting certain criminal procedural actions, before all of certain general actions for which it is necessary to obtain court order as well as for the application of special investigative actions.

Given that the court does not exercise judicial control over the work of the prosecutor in relation to the correctness and legality of the prosecutor's assessment and decision-making, i.e. the order to conduct the investigation, there is a real possibility of the existence of certain legal anomalies, irregularities, deficiencies, selective application of the law, but also of different forms of arbitrariness and abuse by the prosecutor. The situation is identical when it comes to the suspension of the investigation when the competent prosecutor, also autonomously and independently, makes a prosecutorial assessment and makes a decision to suspend the investigation.

In addition to the above stated, taking into account that the court does not effectuate control over the work of the competent prosecutor in the investigation, it is unacceptable that the prosecutor does not issue an order to conduct the investigation in a timely manner, but does it subsequently, that is, after certain criminal procedural actions are conducted. Namely, it is unacceptable that after the certain general actions of proof are conducted, and even after conduct of special investigative actions that directly encroach on fundamental human rights and freedoms, an order to conduct an investigation is issued subsequently. Therefore, the order to conduct an investigation is the first or initial act of the prosecutor, which is followed by the implementation of certain, that is, adequate criminal procedural actions (general evidentiary actions, special investigative actions).

Regarding the correct and lawful application of special investigative actions, it is necessary to emphasize that the judge for the preliminary proceedings, after deciding on the request of the competent prosecutor, or more precisely after issuing an order on the application of the special investigative actions, does not have effective judicial control over the application until the end, i.e. the prescribed time limit when the application ends, given that during the application of the special investigative action itself the prosecution does not inform the competent court about the dynamics, course and results. Bearing in mind the above stated, there is a real and purposeful need for the intervention of the legislator, in order to prescribe the duty of timely reporting on the application of certain special investigative action.

6. INDICTMENT PROCEDURE THROUGH THE PRISM OF CONFIRMATION OF THE INDICTMENT AND (IN)ADEQUACY OF JUDICIAL CONTROL

After conducting certain investigative and evidentiary activities, i.e. adequate criminal procedural actions and completion of the investigation, as the first stage of the preliminary procedure, the competent prosecutor, taking into account the results of the investigation that are manifested and based on the quality, scope and sufficiency of lawfully collected evidence, makes a prosecutorial assessment as to whether in each specific criminal case there is a reasonable doubt as an evidentiary standard of substantive and legal nature necessary for preparing the indictment, that is the indictment procedure – raising and confirmation of the indictment.

The indictment, as a procedural act of the prosecutor, by which a specific criminal matter is presented to the court, must satisfy restrictive legal requirements of a formal and substantive nature. In order for the main trial, that is the trial before the criminal court, to begin based on the indictment, the indictment must first pass judicial control and after

examination of its merits, it must be accepted and confirmed[13]. What is very important to emphasize is that the very act of confirming the indictment by the judge for preliminary hearing and presentation of certain criminal matter in the true sense before the court, represents satisfaction of a higher degree of doubt (reasonable doubt) about the existence of certain criminal offense and guilt in relation to the accused person.

Accordingly, the control role of the judge for preliminary hearing in connection with the confirmation of the indictment and enabling the presentation of certain criminal matter before the court is of essential importance in the context of the proper and legal clarification and resolution of a certain criminal matter. The effectiveness of criminal prosecution, detection and prosecution of perpetrators of criminal offenses must be observed through the prism of the correct and lawful drafting of the indictment by the competent prosecutor, but also the realization of an adequate control role of the court, which is realized through the function of the judge for preliminary hearing.

One of the procedural issues related to the proper and adequate drafting of the indictment is the institute of previous objections - as a form of judicial control. However, the accused and his defense attorney can submit this institute only after the judge for preliminary hearing confirms the indictment. Given that the judge for preliminary hearing acted and decided on the confirmation of the indictment, the question arises of the purposefulness of submitting previous objections, considering that the judge for preliminary hearing decides on the previous objections.

7. COMPLEXITY OF ESTABLISHING/PROVING OF CRIMINAL OFFENSE AND GUILT DURING THE MAIN PROCEEDINGS (MAIN TRIAL – EVIDENTIARY PROCEEDINGS)

After conducting the investigation and the indictment procedure, the preliminary procedure ends, which is followed by the main procedure, i.e. the next procedural phase, which is the main trial, in which a specific criminal matter is presented to the court, in the true sense, with the aim of its versatile and comprehensive clarification and resolution – by undertaking certain criminal procedural actions by competent criminal procedural subjects. The purpose of proof in criminal proceedings is to learn materially and procedurally legally relevant facts, based on which the court will then independently, or in connection with the established facts which are the result of its own observations - make the correct decision[14].

The main hearing or the main trial is the most important stage of the criminal procedure in which, based on the presented evidence and their assessment, the facts relevant to making a decision should be determined and, ultimately, a decision should be made[15]. After confirming the indictment by the court, more precisely by the judge for preliminary hearing,

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[13] Bubalović, T., Pivić, N. (2018). Sadržaj i pravni učinak optužnice kao najvažnijeg akta tužioca u krivičnom postupku. In: *Krivično zakonodavstvo i funkcinisanje pravne države.* Trebinje: Srpsko udruženje za krivičnopravnu teoriju i praksu, Ministarstvo pravde Republike Srpske, Grad Trebinje, 14.

[14] Halilović, H. (2010). *Predmeti i tragovi kao izvor saznanja o odlučnim činjenicama u krivičnom postupku.* Sarajevo: Fakultet za kriminalistiku, kriminologiju i sigurnosne studuje, Univerzitet u Sarajevu, 52.

[15] Halilović, H. (2019). *Krivično procesno pravo, Knjiga druga: Uvod i temeljni pojmovi.* Sarajevo: Fakultet za kriminalistiku, kriminologiju i sigurnosne studuje, Univerzitet u Sarajevu, 30.

the right to defense is exercised in full capacity, so that the indictment, including collected evidence, is critically reviewed in relation to the fulfillment of restrictive legal requirements and consistent application of the law. A special aspect of the review of the indictment and collected evidence is manifested in whether the said evidence was obtained in a lawful manner, taking into account that the doctrine (the concept) of the absolute exclusion of illegal evidence from the file is accepted in the criminal procedure legislation of BiH.

It is not disputed that even in the main proceedings, i.e. evidentiary proceedings, as the central stage of the main trial, the evidentiary role, i.e. the burden of proof is on the competent prosecutor, but in this procedural phase the competent prosecutor is not dominant (sovereign) as was the case in the preliminary proceedings (investigation and accusation procedure). However, on the other hand, the realization of substantive and formal defense implies practical operationalization of the catalog of legally prescribed rights and universal guarantees of the accused person in criminal proceedings, so that in this procedural phase the principle of contradiction is expressed in the full sense of the word. The essence of the adversarial principle refers to versatile and comprehensive perception and review of a certain criminal matter, during which the two opposing parties, the prosecution and the defense, essentially try to convince the court of the existence or non-existence of criminal offense and the guilt of the accused person.

In the Anglo-Saxon legal tradition, more precisely in the criminal procedural systems that follow the aforementioned legal tradition, the term „beyond reasonable doubt" is used, which is increasingly used in scientific and professional literature in Bosnia and Herzegovina and the surrounding area. The standard „beyond a reasonable doubt" specifically means that the state of affairs has been sufficiently determined and clarified by the competent criminal procedural entities, and that there is the only reasonable conclusion about the existence of criminal offense and guilt in relation to the accused person. In addition, through the realization of substantive and formal defense in this procedural phase, the function of defense is realized through refuting, that is, contesting the allegations of the prosecution, with special attention to the legality of collected evidence, but also with a clearly expressed intention to fully or partially release the accused person of the punishment, possibly, a lesser one in the end.

However, by analyzing the structure of the criminal procedure, especially appreciating the prescribed competences of the criminal procedure entities, we noticed that the evidentiary role of the court in the criminal procedure is passive, and that the evidentiary procedure is a dispute between two opposing parties, the competent prosecutor on the one hand and the accused person on the other hand, that is, his defense attorney, who carries out a formal defense. In the main proceedings (main trial/evidentiary proceedings), the qualitative component of the indictment comes is expressed, more precisely, legally obtained evidence on which the indictment is based. By presenting evidence, the competent prosecutor tries to convince the court of the guilt of the accused person for the specific criminal offense. In the evidentiary procedure, as key and most substantial part of the main trial, appropriate procedural actions are undertaken, which provide answers to all the questions of substantive and procedural nature in order to make a decision on the criminal matter (criminal offense, guilt and criminal sanction)[16].

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[16] Simović, N. M., Simović, M. V., Govedarica, M. (2021). *Krivično procesno pravo II (Krivično procesno pravo - Posebni dio), peto izmijenjeno i dopunjeno izdanje.* Istočno Sarajevo: Pravni fakultet, Univerzitet u Istočnom Sarajevu, 87.

8. CONCLUSION

Given that two decades have passed since the last general reform of the criminal procedural legislation in Bosnia and Herzegovina, it is possible to carry out a versatile and comprehensive critical analysis regarding the review of adopted or accepted legal solutions of a procedural nature and regarding their adequacy, purposefulness and expediency in terms of timely, efficient and legal detection and proof of criminal offenses and guilt. The intention of the authors is to point out to certain legal solutions that require the intervention of the legislator, and which, by its nature, need to be modified and adapted to real investigative and evidentiary needs, respecting the individual human rights and fundamental freedoms, i.e. the catalog of rights and universal guarantees of the suspect, i.e. accused persons in criminal proceedings. In addition, a very important investigative-evidentiary role of authorized officials in the investigation is emphasized, whereas it is necessary to emphasize their adequate professional training, that is, their profiling and specialization.

The paper articulates and addresses the component of the efficiency of the criminal procedure, but also the tendency of humanizing the modern criminal procedure, which is manifested and operationalized through the consistent application of the catalog of rights and universal guarantees of the suspect or accused person in the criminal proceedings. In this sense, specific forms of organized crime and corruption, due to their destructive component, deserve special attention and interest from the scientific, professional and general public. Special attention is focused on the evidentiary procedure, that is, the investigation and the accusation procedure, given that the presentation of the criminal matter and bringing of the accused before the court (the main proceedings) depend on the aforementioned procedural stages.

In addition to the above, the focus of the authors' interest is the indictment procedure as the second procedural stage of the preliminary proceedings, as well as proper preparation, drafting and rising of the indictment by the competent prosecutor, then the institution of previous objections after the confirmation of the indictment and its purposefulness and effectiveness, including adequate judicial control in terms of meeting the restrictive legal requirements, which is manifested at this stage through the actions of the judge for the preliminary hearing. In addition, special attention is focused on the complexity of establishing, that is, proving the existence of a criminal offense and guilt in the main proceedings (main trial - evidentiary proceedings), as well as the criminal procedural relationship between the main procedural entities in terms of elucidating and resolving a specific criminal matter and making a correct and lawful court decisions.

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Reforma krivičnog procesnog zakonodavstva u Bosni i Hercegovini - očekivanja, stvarnost i perspektive

Rezime: U ovom radu pažnja je usmjerena na efikasnost krivičnog postupka sa posebnim osvrtom na efikasnost krivičnoprocesnih subjekata na planu rasvjetljavanja i rješenja konkretne krivične stvari. U vezi navedenog, autori su prepoznali i identifikovali ključne procesne probleme koji se odnose na blagovremeno, efikasno i zakonito otkrivanje i dokazivanje krivičnog djela i krivice. S obzirom na to da je od zadnje opšte reforme krivičnoprocesnog zakonodavstva do danas protekao značajan vremenski period dovoljan za kritičku analizu, ostvaren je kritički osvrt na sve faze krivičnog postupka sa intencijom aktueliziranja i problematiziranja određenih zakonskih rješenja procesne prirode (otkrivačka djelatnost, koncept istrage, standardi dokazivanja, dokazna uloga tužioca, sačinjavanje/podizanje optužnice, kompleksnost otkrivanja i dokazivanja i dr.) od kojih neposredno zavisi efikasno i zakonito vođenje i okonačnje krivičnog postupka. Takođe, savremeni oblici kriminaliteta, posebno specifični oblici organizovanog kriminala, od zakonodavca zahtijevaju adekvatnost zakonske norme na planu ostvarivanja legitimnog zakonskog cilja koji se odnosi na efikasnu i energičnu borbu protiv kriminaliteta kao složene društvene pojave, te postizanja adekvatnih rezultata krivičnog pravosuđa.

Ključne riječi: krivični postupak, krivično djelo, efikasnost, Bosna i Hercegovina.

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