



# BAR ASSOCIATION OF SERBIA

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## 53<sup>RD</sup> EUROPEAN PRESIDENTS' CONFERENCE OF BARS AND LAW SOCIETIES

### REPORT OF THE BAR ASSOCIATION OF SERBIA ON ACTIVITIES AND THE STATUS OF THE LEGAL PROFESSION IN 2024

Dear colleagues,

The annual report of the Bar Association of Serbia (BAS) provides an overview of the main activities and challenges that have affected the functioning of the legal profession in the Republic of Serbia and its development since the last report.

In 2024 the attention of the BAS was focused on following topics:

#### 1. AMENDMENTS AND SUPPLEMENTS TO THE CRIMINAL CODE AND THE CRIMINAL PROCEDURE CODE

Last year's report indicated that amendments and supplements to the Criminal Code and the Criminal Procedure Code were announced for 2024 and that the BAS appointed its representatives to the Ministry of Justice's working groups responsible for preparing the Draft Law on Amendments and Supplements to the Criminal Code and the Draft Law on Amendments and Supplements to the Criminal Procedure Code. Representatives of the legal profession in the Working Group responsible for the preparation of the Draft Law on Amendments and Supplements to the Criminal Procedure Code actively participated in this working group throughout 2024. However, representatives of the legal profession in the Working Group responsible for the preparation of the Draft Law on Amendments and Supplements to the Criminal Code have not been invited to the meetings of this working group since 2022.

After the Ministry of Justice published the Draft Law on Amendments and Supplements to the Criminal Code and the Draft Law on Amendments and Supplements to the Criminal Procedure Code and determined that the public debate would last only one month, from October 1 to November 1, 2024, the BAS proposed that the public debate on these Draft Laws be extended until December 31, 2024, to allow the professional and academic community sufficient time to thoroughly examine the proposed amendments and provide constructive and useful suggestions. Although there was not enough time for a quality public debate, the BAS submitted its objections and proposals regarding the mentioned Draft Laws.

## **Draft Law on Amendments and Supplements to the Criminal Code**

First and foremost, the BAS emphasised its opposition to the tightening of penal policy, given that the proposed amendments prescribe harsher penalties for a large number of criminal offenses. The BAS pointed out that this would not reduce crime rates, as crime is a social phenomenon influenced by numerous and often intertwined causes. The only effective way to reduce crime to an acceptable rate is to establish a socio-economic system and prevention measures that eliminate these causes, ensuring that perpetrators of criminal offenses are detected and adequately sanctioned, rather than threatening excessively high penalties and repression. Among the specific objections and proposals submitted, the following stand out:

- Proposal to explicitly classify the murder of a lawyer<sup>1</sup> as a form of aggravated murder.
- Opposition to the removal of the criminal offense of "extortion of confession" as such decriminalisation would leave a wide range of actions used to extract statements from citizens outside the scope of criminal liability.
- Opposition to the removal of the criminal offense of "unauthorised disclosure of secret" and the introduction of criminal offense "unauthorised disclosure of professional secret," as the amendments broaden the scope of liability to penalise unauthorised disclosure of "personal or family life data" by lawyers, public notaries, public bailiffs, physicians or other professionals, instead of limiting it to the disclosure of a "secret," which is a more precise and restricted concept under the current provision.
- Opposition to the amendment of the criminal offense of "unauthorised wiretapping and recording," due to the potential for abuse in practice.
- Proposal to amend the legal description of the criminal offense of "unlicensed practice of law" to: "Anyone who unlawfully provides legal assistance, advertises or offers unauthorised provision of legal assistance, or intermediates in unauthorised provision of legal assistance shall be punished by a fine and imprisonment of up to three years."
- Criticism of the introduction of the criminal offense of "publishing materials advising on the commission of a criminal offense."

## **Draft Law on Amendments and Supplements to the Criminal Procedure Code**

The BAS also submitted objections to the Draft Law on Amendments and Supplements to the Criminal Procedure Code (CPC), highlighting problematic proposed amendments and suggesting corrections. The following stand out:

- Opposition to the removal of the part of Article 16, paragraph 1 of the CPC, which states that court decisions may not be based on evidence which is "in contradiction to the Constitution, CPC, other laws or generally accepted rules of international law and ratified international treaties." The proposed amendment removes a fundamental rule

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<sup>1</sup> Although the official translation of the Serbian word "advokat" is "attorney-at-law", the term "lawyer" is commonly used as a synonym and is more frequently applied.

of criminal procedure that prescribes that any evidence obtained in violation of constitutional and legal norms is illegal. This effectively dismantles the concept of illegal evidence creating a "compromise with illegality."

- Opposition to the amendment of Article 15, paragraph 4 of the CPC, which expands the court's right to intervene in the evidentiary procedure and establishes the duty of the court to determine the so-called "material truth" at the main hearing. Until now, the law prescribed an adversarial (party-driven) concept of the main hearing with a corrective role for the court, whereas the new provision "widely opens the door" to a creative role that, in most cases, manifests as assistance to the public prosecutor in remedying procedural shortcomings under the pretext that the material truth must be established.
- Proposal to amend Article 406, item 5 of the CPC, as it allows the reading of the statement of a co-defendant whom the defendant has never examined, which has become common practice despite violating the right to a defense. A final judgment based on a plea agreement cannot serve as evidence of facts and circumstances related to the criminal offense and guilt of another person, as the *inter partes* nature of the agreement excludes its application beyond the parties involved in the agreement.
- It was pointed out that it is unacceptable for every audio/visual recording of the defendant to be admissible as evidence regardless of how it was obtained, because when accepting evidence, the method of its acquisition must be reviewed to ensure its admissibility.
- It was pointed out that partial presentation of evidence – recordings, without the consent of the parties, as well as granting the court the authority to determine the essential content of the evidence, is impermissible.

At the end of November 2024, only part of the amendments proposed in the Draft Law on Amendments and Supplements to the Criminal Code was adopted without debate, excluding those addressed by the BAS. Given the domestic expert community's proposals to extend the public debate, after consultations with the European Commission, the Ministry of Justice decided that the public debate on the proposed amendments and supplements to the Criminal Code and the Criminal Procedure Code would continue throughout 2025.

## 2. LAW ON SERVICES

In the Draft Law on Services submitted by the Ministry of Internal and Foreign Trade to the BAS in May 2024, compared to the previous Proposed Law on Services that was withdrawn from parliamentary procedure, an amendment was added in Article 3, paragraph 2, stating: "The provisions of this law do not apply to the legal profession as an independent and autonomous service of providing legal assistance, which is fully regulated by the regulations on the legal profession." This change is the result of an agreed stance between the representatives of the BAS and the Ministry of Trade, Tourism, and Telecommunications, stating that the text of the Draft Law on Services will be clarified in such a way that the alignment with the provisions of Directive 2006/123/EC of the European Parliament and Council of December 12, 2006 on services in the internal market, will occur exclusively within

the laws regulating the legal profession, in which the representatives of the legal profession will actively participate. However, the BAS raised objections pointing out ambiguities and potential issues in the Draft, specifically regarding the accuracy of the provisions concerning the application of the Law.

The biggest issue arises in Article 3, paragraph 3, of the Draft, which stipulates that the provisions of this law, among other things, do not apply to the field of criminal law (point 6) and labour relations (point 5). This provision raises doubts that, by regulating in this way, the application of the Law is excluded only in certain areas of law, but not all, and at the same time leaves room for unregulated actions of various entities in Republic of Serbia who are already providing legal assistance without authorisation. Furthermore, after accession of Republic of Serbia to the European Union, this Law would allow citizens of EEA member states, as well as legal entities based in EEA countries, to provide legal assistance, which is unacceptable for the legal profession.

This normative solution is in contradiction not only with Article 67, paragraph 2 of the Constitution of the Republic of Serbia, which stipulates that the legal profession is an independent and autonomous service of providing legal assistance, and Article 3 of the Law on the Legal Profession, which prescribes the same, but also with the Services Directive (Article 1, paragraphs 5 and 6) which served as the main framework regulation for the text of the Draft, aiming to align the laws of the Republic of Serbia with European Union regulations on the provision of services. Therefore, the BAS emphasised the need to redefine Article 3, paragraph 3, points 5) and 6) of the Draft in order to align with the Services Directive and to add a specific provision clearly stating that the law does not apply to the provision of legal assistance to individuals and legal entities, which would prevent any doubts and legal gaps.

The Law on Services was adopted at the end of November 2024 without taking into account the objections raised by the BAS.

### **3. IMPROVEMENT OF INTERNATIONAL COOPERATION**

The BAS is a full member of the International Association of Lawyers (UIA), actively participating in the work of the Governing and Executive Boards, as well as the annual congresses, through its national representative, who was appointed in December 2023. The former national representative was elected as the Deputy Director of the UIA for collective members. A member of the Managing Board of the BAS, who was appointed by the UIA president as an advisor to the president for a one-year term in 2023, has been re-elected for another one-year term in November 2024. Throughout her term, she was highly active within the Human Rights Commission and the Committee on Women's Rights at the UIA. The UIA organised a successful seminar on artificial intelligence, digitalisation, and data protection, which took place in Novi Sad, Serbia, in September 2024. This event was held in collaboration with the BAS, the Bar Association of Vojvodina, and the Faculty of Law at the University of Novi Sad. It is also important to highlight that the UIA provided support to the BAS during the crisis period for the legal profession in the Republic of Serbia, particularly regarding the ongoing suspension of lawyers' work.

The BAS is a full member of the International Bar Association (IBA), but it has not yet appointed its new national representative.

The BAS actively participated in the work of the CCBE and the CCBE's PECO Committee through a representative who was elected at the end of 2023, holding the status of an associate member.

Over the past year, a series of activities led to the signing of an agreement for the Republic of Serbia's accession to the Academy of European Law (ERA) in June 2024, making the Republic of Serbia a member (patron) of ERA. So far, the BAS has had excellent cooperation with ERA in the field of lawyer education.

Additionally, the BAS has signed an affiliation agreement with the International Criminal Court Bar Association (ICCBA), headquartered in The Hague. The agreement was approved by the BAS Managing Board in May 2024.

#### **4. SUSPENSION OF LAWYERS' WORK**

After the tragedy that occurred in Novi Sad on November 1, 2024, when 15 people lost their lives due to the collapse of a canopy at the main railway station, protests began in the Republic of Serbia, led by students who blocked universities nationwide. Their demands presented to the state encouraged many professions, including the legal profession, to suspend their work. In December 2024, all bar associations within the BAS, as well as the BAS itself, made decisions to suspend the work of lawyers. The Managing Board of the BAS initially decided on December 5, 2024, to suspend the work of all lawyers in the Republic of Serbia for one day, on December 11, 2024, for the following reasons: 1. Due to the illegal adoption and passing of laws without adequate participation from the legal profession; 2. Due to selective prosecution of those responsible for the tragedy in Novi Sad and selective prosecution of the participants in the Novi Sad protests; 3. Due to the systematic and prolonged interference of the executive branch in the judiciary and the violation of the principle of separation of powers in a democratic society.

As the state remained silent on the students' demands and the erosion of the rule of law became even more pronounced, the Assembly of the BAS, as the highest body of the BAS, at an extraordinary session held on January 18, 2025, decided to completely suspend the work of all lawyers in the Republic of Serbia for a period of 7 days with the reason cited as support for and alignment with the students' demands. This session of the BAS Assembly triggered inappropriate and unacceptable statements from the President of the Republic of Serbia, who referred to the legitimate representatives of the legal profession in the BAS Assembly as "mob" and suggested the possibility that the legal profession may no longer have a say in the enrollment of its members in the future. The BAS condemned these statements not only because they significantly tarnish the reputation of the legal profession, but also because they represent a gross violation of the Constitution of the Republic of Serbia, considering that the President of the Republic does not have the authority to make decisions in this matter.

The Assembly of the BAS, at a new extraordinary session held on February 2, 2025, made a decision to suspend work of all lawyers in the Republic of Serbia for a period of 30 days, as well as a decision to submit requests for the resignation or dismissal of the Minister of Justice in the Government of the Republic of Serbia, the Minister of the Interior in the Government of the Republic of Serbia, the President of the Constitutional Court, the President of the Supreme Court, the Supreme Public Prosecutor, the President of the High Court Council, and the President of the High Prosecutorial Council. The Assembly of the BAS made this decision due to the continued interference of the executive branch in the judiciary, which manifested through threats to the legal profession by removing public authority from bar associations. Additionally, the executive branch incited an attack on students, and the courts were under pressure to make decisions in line with the interests of the executive branch.

The legal profession in the Republic of Serbia is now facing great challenges, in a time when its core values are under threat. The suspension of work continues as a response to this aggression, but the fight for the rule of law and the preservation of the independence of the legal profession will not cease. In these difficult times, Serbian lawyers remain brave and dedicated to their role as guardians and defenders of justice and freedom.

**PRESIDENT OF THE BAR  
ASSOCIATION OF SERBIA**

**Veljko Delibašić, PhD, attorney-at-law**

