Preparatory Hearing in Criminal Proceedings according to the Criminal Procedure Code of the Republic of Serbia from 2011

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Abstract:

During the recent years the criminal procedure law in Serbia is reformed with key aim of creating the normative basis for more efficient criminal proceedings, which would act as a foundation for the entitled right to trial within a reasonable time. With that purpose, in 2011. new Criminal Procedure Code is adopted, which, among many novelties, introduced the preparatory hearing in criminal proceedings. Goal of this stadium of poceedings is preparation of the main hearing, making it more organized, systematic and efficient, relieved from examination of unnecessary and unimportant evidences for subject-matter. However, it's questionable is it or would it fulfill the aims for which it was introduced in the first place and if its existence in criminal proceedings is necessary.

Key words: *Preparatory hearing, reform, efficiency.*

1. Introduction

Criminal Procedure Law in Serbia is undergoing reforms and the key aim is creating a normative basis for more efficient criminal proceedings, which would act as a foundation for the entitled right to trial within a reasonable time. Given goals are necessary to achieve, but they should not and must not act against the national legislation and relevant international instruments which guarantee freedoms and human rights generally.[1] Also, the key aim of these reforms is to harmonize legislation in Serbia with existing solutions in modern comparative criminal procedure law and

[1] Bejatović, S., (2015). Glavni pretres i njegov doprinos obezbeđenju suđenja u razumnom roku [The main hearing and its contribution to securing a trial within a reasonable time], In: S. Bejatović and I. Jovanović (editors), Glavni pretres i suđenje u razumnom roku, regionalna krivičnoprocesna zakonodavstva i iskustva u primeni, Beograd, Misija OEBS u Srbiji, pp. 10

present tendencies in modern legal science.[2] With this purpose, new Criminal Procedure Code from 2001. with its amendments has introduced significant changes in the criminal procedure legislation in Serbia. Finally, in 2011. Serbia has adopted new Criminal Procedure Code,[3] which introduced significant novelties in criminal procedure legislation.

One of the many new features in criminal proceedings is the introduction of the preparatory hearing. This step in criminal trial comes after the confirmation of indictments and its purpose is the preparation for the main hearing in order to increase efficiency of criminal proceedings and reduce the caseload the courts are dealing with. Main hearing is important stadium of the trial, where the criminal case is being discussed respectively about indictment of the prosecutor, defense of the accused, evidences and all the important factual and legal questions.[4] All these elements are the basis for judge's just and law-full decision, which is the main purpose of the criminal proceedings. Knowing the impact of the main hearing we can also see what is the importance of the preliminary hearing as the stadium which leads to it and whose purpose is to prepare it. Goal of this stadium is to bring systematic and oreder to the trial, by relieving from unnecessary and unimportant questions, to which, otherwise, the evidences wolud be presented. However, it's questionable if the installment of the preparatory hearing is achieving the targeted key aims of introducing it in the first place. Also, will this stadium of the proceedings increase efficiency of the trial, reduce the courts caseloads and entitle the right to trial within a reasonable time, is in question.

2. About the preparatory hearing

After receiving confirmed indictment and case documentation, president of the panel starts with preparation for the trial, which includes holding of the preparatory hearing, scheduling of the trial and making other decisions, related to the management of the proceeding.[5]

The reason for the introduction preparatory hearing in criminal proceeding is bringing the new concept of the trial, which is taking characteristics of adversarial trials, which is not so common for Serbian traditional criminal procedure.[6]

The point of the preparatory hearing is that the parties state their positions in relation to the subject-matter of the charges and also about their proposition of evidence by explaining the need for them to be examined at the trial. This is meant so that the judge can plan time, duration and course of the trial, and all that in order to his

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[2] Bejatović, S., (2014). ZKP Srbije iz 2011 – Kraj reforme ili samo jedan neuspešan korak procesa reforme? [CPC Serbian the 2011: End to reforms or just one unsuccessful step process of reform?], *Strani pravni život*, iss. 1, pp. 48

[3] The Criminal procedure Code, *Official Gazette od RS*, no 72/2011, 101/2012, 121/2012, 32/2013, 45/2013 and 55/2014, further in text: The Code

[4] Pavlović, Z., (2015). Krivično procesno pravo II, drugo dopunjeno izdanje [Criminal procedural law, second edition], Novi Sad, Univerzitet Privredna akademija u Novom Sadu, pp. 80

[5] Škulić, M., Ilić, G., (2012). Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], Beograd, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, pp. 67

[6] Škulić, M., (2013). Dominantne karakteristike osnovnih velikih krivičnoprocesnih sistema i njihov uticaj na reformu srpskog krivičnog postupka [The dominant characteristics of the major criminal procedure systems and their impact on the reform of the Serbian criminal procedure], *Crimen*, vol. IV, iss. 2, pp. 223

efficiency.[7] Purpose of this preliminary stadium is to limit parties freedom of proposing the new evicences in this phase of proceedings, so that they could notifie in advance and to uncover evidence for main hearing witch attempt to be examined at the trial and also to prevent manipulation with evidences.[8] Here, key aim is to prevent obstruction of proceeding. „By, this, it is possible for both parties to „show their hand" with evidences that they are planing to bring out on the main trial."[9]

Beside parties declaration about criminal case and evidence proposition, in this stadium the factual and legal question which will be the topic of trials discussion, are being determined as well as on other questions the court finds relevant for holding the trial. The president of the panel can make decision about discontinuing, joinder or severance of criminal proceedings, if there are conditions prescribed by law. He can also make a decision on a plea agreement which has been concluded before. If the defendant is in detention, ruling can be made to abolish or replace it with other milder measure.

The preparatory hearing is held before the president of the panel and the parties and the defense council, the injured party, legal representative and proxy of the prosecutor and injured party, and if needed a translator and an interpreter,[10] and they will be summoned to the preparatory hearing. It's held without presence of the public and in the summons for the preparatory hearing the parties will be notified that the main hearing may be held at this state of the proceeding. Provisions on the trial are applied accordingly to the preparatory hearing, unless specified otherwise by Code.[11]

2.1. Scheduling and holding a preparatory hearing

Prescribing the schedule of a preparatory hearing, legislator had in mind a need for an urgency when people who are in detention are in question. Thus, after reception of the confirmed indictment by the court, the president of the panel will schedule a preparatory hearing not later than 30 days, or 60 days counting from the date of reception of the confirmed indictment by the court, depending on if the defendant is in detention or is at liberty. If he doesn't schedule a preparatory hearing within the time limit, he needs to notify the president of the court, who will undertake measures for the preparatory hearing to be scheduled immediately. Therefore, this time limit is counting from the date of reception of the confirmed indictment by the court. The indictment is confirming after court has received it, delivered it to the parties and examined by the panel, so it would make more sense counting time limits form the date of reception of the confirmed indictment by the president of the panel,[12] whose duty is to schedule the preliminary hearing and not from the moment of the receiving it by the court.

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[7] Bejatović, S. Glavni pretres i njegov doprinos obezbeđenju suđenja u razumnom roku [The main hearing and its contribution to securing a trial within a reasonable time], pp. 20

[8] Škulić, M., Ilić, G., Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], pp. 67

[9] Bejatović, S. Glavni pretres i njegov doprinos obezbeđenju suđenja u razumnom roku [The main hearing and its contribution to securing a trial within a reasonable time], pp. 20

[10] Grubač, M., (2011). Nove ustanove i nova rešenja ZKP Srbije od 26.septembra 2011. godine [Serbain CPC from 26. september 2011. - The new institutions and solutions], *Pravni zapisi*, God. II, iss.2, pp. 498

[11] The Code, article 345.

[12] Škulić, M., Ilić, G., Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], pp. 145

Scheduling and holding preparatory hearing is a rule. However, legislator has predicted an exception to the rule according to the severity of the offence or scope of the penalty. Thus, scheduling a preparatory hearing is not necessary when an indictment has been filed in connection with a criminal offence punishable by a term of imprisonment up to twelve years and the president of the panel holds that holding a preparatory hearing is not necessary for as much collected evidence, the controversial factual and legal questions or the complexity of the case. In this case, he will issue an order scheduling a main trial.

The president of the panel will schedule a preparatory hearing in case if the public prosecutor, the defendant and his defense counsel have concluded a plea agreement in respect to certain counts of the indictment, for the part of the indictment non encompassed by the agreement.

In this stadium of proceedings, president of the panel determines that the files containing transcripts or information that may not be used in criminal proceedings, or that a court decision may not be based on it, will issue a ruling on their exclusion from the files. A special appeal is allowed against this ruling and after the ruling becomes final president of the panel needs to put them in the place under a separate sealed cover and to deliver them to the judge for the preliminary proceedings who will keep the excluded transcripts separate from other documents, and they may not be examined or used in the proceedings.

Preparatory hearing is not public. However, in the summons the parties will be advised that the main hearing may be held at the preparatory hearing. By the rules, the main hearing is public, which is not the case with preliminary hearing. The question is what would happen if preliminary hearing becomes main hearing, which is discretional right of the president of the panel and he may decide that. In that case, it would mean that the main hearing is going to be held without public or with „simulation" of public, even in those cases when public are not formally excluded from the main hearing,[13] which should be acceptable.

On a motion of the parties, president of the panel may order the files, objects or instruments held by the court or other state authority, if it's necessary to obtain for the preparatory hearing.

2.2.Process of the preliminary hearing

Preliminary hearing begins with examination of the conditions fulfilled for it's scheduling. In that manner, the president of the panel first checks whether all the persons summoned are present, and in event of the absence of any them, are there the conditions prescribed by the Code for holding this stadium of proceedings in their absence is fulfilled. Exceptionally, if the defendant is absent and he has been duly summoned and he doesn't justify his absence, president of the panel may decide that the preparatory hearing be held, if the defense council is present. This legislative solution fulfills the goal of the proceedings not stalling, but the question is if that is in the interest of the defendant, who needs to declare on the criminal case and to propose evidence for his claims, on which the main hearing course is much in depend on, thereby the result of it. Although there is predicted condition for holding a preparatory hearing in the absence of the defendant by the presence of the defense council, which is good solution,

[13] Ibid. pp. 70

it would still be meaningful that the defendant to be present on this hearing. Intent for introduction this phase in proceedings is preparation for main hearing, by declaration of the parties of criminal case in this stadium and that's all for determined all the facts that are going to be proven on the main trial.[14] This aim may be completely accomplished only if the both parties are present on the preparatory hearing.

After checking if all the persons summoned are present and if the conditions prescribed by Code for holding the preparatory hearing are fulfilled, the president of the panel will check personal data of the defendant, is he being on liberty or in detention, and if he is in detention and how long is in detention, and in case he was released before the filing of the indictment, information on the duration of detention.

After checking personal data of the defendant, if the injured party hasn't submitted a restitution claim, president of the panel will advise him about the right to submit this claim and the duties of proposing the evidence for it and about the right to propose a temporary measures to ensure the restitutional claim.[15] Afterwords, president of the panel decides about plea agreement concluded between the public prosecutor and the defendant, if it's concluded.

2.2.1. Deciding on plea agreement on preparatory hearing

According to the Code, it's possible for the public prosecutor and the defendant to conclude the plea agreement. The president of the panel is deciding on it at the preparatory hearing and the public prosecutor and the defendant will notify him if they had concluded the agreement after confirmation of the indictment. In this way, it's created the possibility for the completion of the proceedings by consensus of the parties in this early stadium of the proceedings[16] and that's in the interest of the defendant, the public prosecutor and the court as well. Thus, the defendant is avoiding partaking in long and arduous process, which is uncertain for him, and also could end with serious consequences in respect to those which could be in the agreement. In this manner, if the president of the panel accept the agreement, the judiciary is relieving caseload.

The president of the panel may accept, dismiss or reject the plea agreement. If the agreement doesn't contain the data specified by the Code[17] or of a duly summoned defendant has not appeared and failed to justify his absence, the president of the panel will dismiss a plea agreement by a ruling. In other case, he will accept it if he establish that the defendant has knowingly and voluntarily confessed to the criminal offence or criminal offences which are the subject-matter of the charges, or if the defendant is aware of all the consequences of the concluded agreement, and it's a especially highlighted the consequences of the renouncing of right to trial and restriction of his right to file an appeal against the decision of the court based on the plea agreement, or if

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[14] Kos, D., (2009). Pripremno ročište kao model utvrđivanja spornog i oblikovanja dokaznih prijedloga stranaka u vezi s kontradiktornim ispitivanjem [Preparatory hearing as a model for determining disputed and designing parties evidence proposition related to contradictory examination], In: Novine u kaznenom zakonodavstvu – 2009, Inženjerski biro, (2016, November 11) Retrived from: http://crm4.demo.snt.hr/CustomPages/Static/HRV/Files/DKos_Pripremno-rociste_2009.pdf

[15] Škulić, M., (2015). Krivično procesno pravo, osmo izmenjeno i dopunjeno izdanje [Criminal procedural law, eighth edition], Beograd, Pravni fakultet Univerziteta u Beogradu, pp. 363

[16] Škulić, M., Ilić, G., Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], pp. 8

[17] The Code, article 314.

the other existing evidence are not run contrary to the defendant's confession on having committed the criminal offence and that the penalty of other criminal sanction or measure in respect of which the parties has reached agreement was proposed in line with criminal or other law. If the president of the panel accept the agreement, he will declare the defendant guilty by a judgment and he will also write in it the reasons which led him to accept the plea agreement. If he determines that the offence which is subject-matter of the charges is not a criminal offence and that the conditions for applying a security measure doesn't exist or that the statue if limitation for criminal prosecution has expired, or that the offence is covered by amnesty or pardon, or that the other circumstances exist which permanently preclude criminal prosecution, or there is insufficient evidence for a justified suspicion that the defendant committed the offence which is the subject-matter of the charges, he will reject a plea agreement by a ruling. In this case, when the ruling becomes final, president of the panel will destroy plea agreement and all documents related to it, in the presence of the judge who issued the ruling, and transcript of it it will be made. Next, the proceeding will be returned to the stage which preceded the conclusion of the plea agreement. The judge who issued the ruling may not participate in the further course of the proceedings. President of the panel will also reject a plea agreement by a ruling, in case of one or more of the conditions for accepting the agreement haven't been fulfilled. The decision of the court on the plea agreement is delivered to the public prosecutor, the defendant and his defense counsel and it's excluded the right to appeal on a ruling dismissing or rejecting the plea agreement. It is allowed to appeal against the ruling accepting the plea agreement for the existence the reasons for rejecting an agreement or if the judgment doesn't relate to the subject-matter of the agreement.

If the plea agreement relates to only some counts of the indictment, the proceedings for those offences will be separated in accordance with the laws and for the other counts of the indictment president of the panel will hold the preparatory hearing or will schedule the main hearing if the preparatory hearing is not scheduling.

With new legislation solutions is provided greater use of this institute, because concluding the plea agreement is now enabled for more criminal offences. Concluding this agreement is now allowed by the law, without limitation toward the seriousness of the criminal offence, while the previous legal solutions were limiting the conclusion of the plea agreement in this matter. Limiting factor was that this kind of the agreement was possible only for the criminal offences punishable by a term of imprisonment of up to twelve years. Although, there are many reasons in favor of this agreement, still it may be bad legal solution, because it allowed concluding the agreement on the serious criminal offences and for whom there is no justification for the offenders not to be judged or possibly that they could receive milder punishment or misuse this institute.

There is much criticism by the public experts if the field of legislature aboute this agreement, because the process of concluding it is not specified by the Code in detail. This act defines the contents of the agreement, but not the manner on how the agreement between the parties will be concluded and the rules of course of the process which preceded the conclusion of it, in terms of negotiating about signing the agreement. The Code only prescribe with the rules that when interrogating defendants, question that will be asked may not contain deception or be based on an assumption that he has admitted to something which he has not admitted, and they may not be leading. It is necessary for the confession of the defendant to be voluntarily and that he is need to be aware of all consequences of the concluded agreement. However, it's

questionable if the defendants confession is voluntarily and without deception and pressure. By presenting the consequences of the proceeding, the extent and scope of the criminal penalty will be suggested, in that case are questioning the voluntarily of the confession of the defendant and it's absence of deception and pressure and his free will.

Further, the problem is that the process of concluding the agreement is private, so there is no control of public which is contrary of the basic principles of the procedural law and fundamental human rights. Public is excluded from the preparatory hearing, on which is deciding about the plea agreement, and so the question is will the defendant have the ability to conscientiously, voluntarily and completely free confess the offence. Further, would the judge check this assumptions with sufficient attention and how is he going to check if the other evidences are in the opposite with confession of the defendant.

The public prosecutor and the defendant are making an agreement on the type, extent or scope of the penalty or other criminal sanction, beside confessions of the defendant. Problem of that kind of legal solution is is possibility of agreement the parties, who are only formaly equal, on the concluding the plea agreement by which the defendant is confessing committing the criminal offence and by which is making a decision on his criminal responsibility and the type, extent or scope of the penalty or other criminal sanction for that criminal offence. For that matter, the judge does not decide for criminal responsibility of the defendant in true sense. That is the result of a consensus of the parties and the judge is reduced to authorized person who is checking if all the conditions for concluding the agreement are fulfilled.[18] If the plea agreement contains scope of the penalty, judge is only to measure and give the criminal sanction within the scope. In this case, the question is how the judge is going to measure the sanction if he is not presented with the evidence about circumstances from which depends the decision on a penalty.[19]

It is the the judge's duty to check is the defendant confessed committing criminal offence knowingly and voluntarily and is he aware of all consequences of the agreement. He also checks are the other evidence in accordance with the confession of the defendant. Problem that may occur in practice is possible doubt if the judge is going to consider all the issues and details, how is he going to do that and with how much attention. The is a lot criticism of this legal solutions in the matter of the plea agreement, such as renouncing the right to appeal or insufficient protection of interest of the injured etc.[20] Numerous critics of the experts related this institute are not questioning it's importance and validity, they are meant to improve legal solutions, so they could be suitable for exercising and preventing possible abuse of this institute.[21]

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[18] Škulić, M., Ilić, G., Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], pp. 8 and 9

[19] Bejatović, S., (2015). Efikasnost krivičnog postupka kao međunarodni pravni standard i reforma krivičnog procesnog zakonodavstva Srbije (norma i praksa) [Efficiency of criminal procedure as international legal standard and reform of criminal procedure legislation of Serbia: Standard and practice], *NBP Žurnal za kriminalistiku i pravo*, Kriminalističko-policijska akademija, Beograd, vol. 20, iss. 2, pp. 40

[20] Ibid.

[21] Bejatović, S. (2013). Pojednostavljene forme postupanja kao bitno obeležje reformi krivičnog procesnog zakonodavstva zemalja regiona [Forms of Simplified Procedure – a Key Characteristic of Criminal Procedure Reforms in the Region], In: I. Jovanović and M. Stanisavljević (editors), Pojednostavljene forme postupanja u krivičnim stvarima, regionalna krivičnoprocesna zakonodavstva i iskustva u primeni, Beograd, Misija OEBS u Srbiji, pp. 17

2.3. Declaration of the parties on the charges and evidences and proposing new evidence

After the president of the panel decides on plea agreement, the parties will declare on the charges. By statements of the parties, public prosecutor and the defendant, starts the preparatory hearing in terms of contents.[22]

The public prosecutor quotes from the indictment the description of the act which meets the legal elements of a criminal offence and the legal qualification of the criminal offence and he presents the evidence for his claim. He may also propose the ruling a certain type and extent of criminal sanction. If the charges is filed by a subsidiary or private prosecutor, the president of the panel may summarize their contents. On this stadium of proceedings the public prosecutor have no need much to engage in analysis and explaining contents of the evidences, because he will do that on the main hearing. Also, the defendant should not focus on the proposed evidence by the prosecutor.[23] These action could start main defense of the defendant on the preliminary hearing, not on main hearing. If the injured party is present, he may submit a restitution claim and if isn't and he has submitted the claim, the president of the panel will read it out.

The defendant also has right to declare on the charges, after the president of the panel have advised him about his rights and duties. At this stadium of proceedings, declaration of the defendant is very important. He has the opportunity to declare on the indictment and to challenge the claims made in the charges. It's very important that the defendant understands what he's charged of and also that he understands all the parts of the indictment, because it's substantially what parts is he going to make indisputable at this stadium of the proceedings. It's important which part of the indictment he is challenging and for what reasons. Consequences of his declaration on the charges on the preparatory hearing may be substantial, because at the trial it is going to be examined only on evidences connected to the part of indictment which has been challenged. The president of the panel has duty to caution the defendant about that. Problem with this legal solution is that it can occur that the defendant may mistakenly or because of carelessness, ignorance or incomprehension do not challenge the indictment or parts of it and that may affect the process of the main hearing and decision making as well. This may causes disastrous consequences for the defendant. He may be without defense counsel, semi-literate, unaware of knowing what challenging the claims made in the charges mean. Further, he may be unaware of consequences of challenging the charges at this stadium of proceedings and inability to do that later at the main hearing. The same case is with the awareness of consequences of inability proposing the evidence at main hearing, which he knew about on preparatory hearing.[24] It may not expect form layman, who is defending without defense counsel, to specify which part of the indictment he is challenging and for what reasons. This also extends to explaining the proposed evidence that he intends to examine at the trial. This is because he has no

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[22] Škulić, M., Krivično procesno pravo, Osmo izmenjeno i dopunjeno izdanje [Criminal procedural law, eighth edition], pp. 363

[23] Krstić, Z. (2015). Pripremno ročište i efikasnost glavnog pretresa [Preparatory hearing and the efficiency of the main hearing], In: S. Bejatović and I. Jovanović (editors), Glavni pretres i suđenje u razumnom roku, regionalna krivičnoprocesna zakonodavstva i iskustva u primeni, Beograd, Misija OEBS u Srbiji, pp. 161

[24] Škulić, M., Ilić, G. Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], pp. 68

knowledge of criminal and criminal procedural law which is needed, like public prosecutor or defense counsel, and that puts him in unequal position in regard to the prosecutor.[25] Further, the result from such legal concept is presumption of accuracy of the indictment, because at the trial will be examined only evidence connected to the part of the indictment which has been challenged. Beside numerous reasons for which the defendant may not be challenging the indictment, the question is what will happen if the defendant remains silent. So, his right to defends himself with silence and the right to change his defense tactics during the proceedings are questioned.[26] "If they are not challenging anything, that means that the public prosecutor do no need to prove anything and the main hearing becomes practically unnecessary and the conviction "guaranteed"."[27] This legal solution disputes the presumption of innocence.[28] Finally, it is prescribed by the Code that the burden of proving is on the prosecutor.[29]

If co-defendant has confessed to a certain counts of the indictment which are related to the other co-defendant who has challenged them, the main hearing will be held for both of them and then will be issued as a rule a single judgment.

Proposing the evidence comes after declaration of the parties. Both of them have right to propose the evidence for their claims, which they are intend to present at the trial, and they have to explain the proposal. Also, the injured party have this right for his claims. Each party will state its position on the proposals of the opposing party and the injured party. It's important for each party to prepare for this stadium of proceedings, as the evidence known to them, but not proposed at that time without justified reasons, will not be examined later at the trial. They will be advided about this matter in the summons to the preparatory hearing. Therefor, this is the last moment for them to propose the evidence which they consider important for their claims and which are known to them at that time and which they have the ability to present. It can be concluded that the defendant and his counsel are going to propose the evidence at the preliminary hearing, without the intent to propose at that time, because of the limited ability for doing that later in the trial.[30] "Imposed extortion evidence by the Code can not in any way determine that is in the harmony with defendants right not to prove his innocence or with standard that the burden on proof is on the prosecutor."[31] The question remains: which are the justified reasons on witch the court will assess in each specific case. Meaning of this limitation, is preventing the possible abuse of the of right proposing the evidence, which would lead to obstruction of proceedings.[32] Exception has been provided in the case of new evidence, whose examination can be proposed

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[25] Tripalo, D., Đurđević, Z., (2011). Predlaganje dokaza [Presenting the evidence], *Hrvatski ljetopis za kazneno pravo i praksu* (Zagreb), vol. 18, iss. 2/2011, pp. 482

[26] Krstić, Z. op. cit. pp. 162

[27] Škulić, M., Ilić, G., (2012). Novi Zakonik o krivičnom postupku Srbije – Reforma u stilu „jedan korak napred – dva koraka nazad" [New Serbian Criminal procedure Code – reform in style „one step forward – two steps back"], Beograd, Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije, pp. 123

[28] Škulić, M., Ilić, G., Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], pp. 68

[29] The Code, article 15.

[30] Đurđić, V., (2015). Perspektiva novog modela krivičnog postupka Srbije [A perspective of new form of criminal proceeding], *NBP Žurnal za kriminalistiku i pravo*, Kriminalističko-policijska akademija, Beograd, vol. 20, br. 2, pp. 84

[31] Ibid.

[32] Pavlović, Z., op. cit. pp. 83

until the end of the main hearing. Even though, the key aim of the reform is efficiency of the proceedings, with the aim of exercise of the right to trial within a reasonable time, still the express trial doesn't always mean efficient trial. The proceeding that ends quickly may be unfair and that's not and shouldn't be the aim which democratic state tends to.[33]

Thus, courts decision will depend of parties proving initiative. The court must be sure of the certainty of each of the decisive facts. If some of them doesn't have substantial evidence to make sure of its existence, court may not investigate and collect evidence of its existence. In that manner, court's degree of certainty only depends on parties evidences. This also imposes an obligation to the court to investigate sureness of every fact determine with certainty, but that doesn't mean an obligation for court to fully and truthfully determines finding facts. Courts assurance in certainty of the facts share destiny of the intentions of the parties and their ability to prove the truth.[34] Exceptionally, the court, ex officio, may order to examine the additional evidence, but not in the aim of determining the truth, but to eliminate contradictions and ambiguities presented in the evidence.[35] "Hence, instead of having parties prove facts on which the punishment in favor of public interest is based, it's civilizational that that the state to relies on independent, impartial and competent state authority, such is the court. Changing the new process Code and bringing back principle of truth into the criminal proceedings, but also to establish a balance between principal duty of prosecutor to carry the burden of proving and proving initiative of the court, should be approached with this in mind. Obviously, the legislators has been motivated by the idea of increasing the efficiency of proceedings, without keeping the guarantee of human rights in criminal proceedings in sight."[36]

If the defendant confesses to having committed the criminal offence at a preparatory hearing, state authority is obliged to collect the evidences on the defendant and criminal offence, if there is a doubt in the truth of the confession, if it's contradictory, unclear and or it's in opposite with other evidence. In this respect, proposing the evidence for the trial will be limited and also it would be limited to the evidence on which depends the decision on the type and extent of the criminal sanction.[37]

President of the panel is deciding on the parties evidence proposal. He does not have to accept every evidence proposal of the parties. He can reject ones that he consider illegal, but he has an obligation to justify his ruling. If he considere that the proposal is aimed at proving the facts that are not the subject-matter or that they are refers to the fact that are not proving or which examination is obviously aimed at delaying the proceedings, he can do the same.

2.4. Deciding on other questions

At the the preparatory hearing, the president of the panel may decide on defendants detention. With consent of the parties, he can abolish or replace it with more

[33] Škulić, M., Ilić, G. Novi Zakonik o krivičnom postupku Srbije, Kako je propala reforma - Šta da se radi? [New Serbian Criminal procedure Code – How is failed reform and what to do?], pp. 13

[34] Đurđić, V., op. cit. pp. 79

[35] Ibid., pp. 80

[36] Ibid., pp. 81

[37] The Code, article 88. and 350. paragraph 3.

lenient measure by a ruling, and appeal it's not allowed. Therefore, at the preparatory hearing this measure can be replaced only in the interest of the defendant.[38]

At this stadium of the proceedings, the president of the panel also may decide discontinuing criminal proceedings. Thus, he will discontinue proceedings by a ruling if he determines that the prosecutor has desisted from the charges or the injured party from the motion to prosecute or that the defendant has already been convicted for the same criminal offence or acquitted of the charges with a final decision, or that the charges against him have been rejected with a final decision, or the proceedings against him have been discontinued with final decision. The same will be in the case that he determines that the defendant has been relieved from prosecution by an act of amnesty or pardon, or if criminal prosecution can not be undertaken due to expiry of the statute of limitations or other circumstances permanently excluding it. The prosecutor may appeal against this ruling and in that case the panel will decides on it.

If the president of the panel finds that the main hearing can take place, according to proposed evidences and legal question that will be subject-matter at the trial, he will issue an order on holding the trial. Before the conclusion of the preparatory hearing, president of the panel will issue an order designating the date, hour and place of holding the trial.

Conclusion

Key aim of introducing the preparatory hearing in criminal proceeding is to allow the court to prepare for main hearing, by concentrating of the proposed evidences and restricting parties freedom to propose new evidence at the main hearing and having them declare on the indictment and proposed evidences at this early stadium of proceedings, with relieving the main hearing of presenting unnecessary and unimporatant evidences for the subject-matter.

It seems that the preparatory hearing, when it's optional, in the practice is holding rare, and that the way of it's implementation, in many cases, are not in accordance with intentions of the legislator.[39] It happend, in many cases, that the court summones the parties to the main hearing, and then he delays it, so the witnesses and experts could be examined, but they could be questioned on the same day as the defendant. The same is in the case if parties or defense councel do not appear on the hearng, although there are legal solutions for violating process dicipline. [40] Thus, instead of more efficient proceedings, in practice, this is possible and it happens that the preparatory hearing is producing the opposite effects, such as prolongation of the proceedings and creating unnecessary and higher costs. It can be seen that the Serbian criminal procedure legslation currently is not in the function of the key aims of the reform as a whole, or the creating the normative basis for efficiant criminal proceedings, as the presupposition of realizeing the right to trial within the responsable time, with respect of human rights guaranteed with national and international legislation.

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[38] Škulić, M., (2013). Osnovne novine u krivičnom procesnom pravu Srbije, Novi Zakonik o kivičnom postupku iz 2011. godine [Basic novelty in Serbian criminal procedural law, New Criminal procedure Code from 2011.], Beograd, Pravni fakultet Univerziteta u Beogradu, pp. 129

[39] Krstić, Z. op. cit. pp. 154

[40] Ibid., pp. 163

In Serbian professional public, taking into account all the peculiarities of preparatory hearing, it is present point that this stadium is usless for its complication, and becouse of this, it is not in the function of efficincy of criminal proceedings, which is the key aim of its introductioning.[41] Fast proccedings is not always efficiant one, and swiftness must not be detrimental to making right and legal decision. The preparatory hearing, instead of making the trial more efficient, it's making the opposite, so in practice leads to unnecessary delay in proceedings. This is why the part of the professional public stand for its suspension and finding the other way for make criminal proceedings more efficinat and for entitle to trial within in a reposnsible time, which would not be at the expense of making right and lawful decision and which would be put into practice.

It's necessary to continue working on the process of the reforming criminal procedure legislation, in terms of solving current problems, including the question of exsistence and maintenance of preparatory hearing in criminal proceedings.[42]

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