



GUIDE TO ECONOMIC CRIMINAL PROCEEDINGS: misdemeanors and economic offenses





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For the Publisher

Katarina Golubović

Prepared by

Katarina Golubović, attorney-at-law at the
Lawyers' Committee for Human Rights – YUCOM

Natalija Šolić, attorney-at-law at the
Lawyers' Committee for Human Rights – YUCOM

Katarina Toskić, legal advisor at the
Lawyers' Committee for Human Rights – YUCOM

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economic offenses



CONTENTS

| | |
|---|-----------|
| INTRODUCTION | 7 |
| What are misdemeanors and what are economic offences? | 8 |
| Who can be held responsible for an economic offense and who for a misdemeanor ? | 10 |
| How do I know if a procedure has been initiated and if it has, what type of it is it? | 11 |
| 1. MISDEMEANORS | 13 |
| 1.1 Initiating misdemeanor proceedings and misdemeanor order | 13 |
| 1.2. What sanctions can be imposed for a misdemeanor? | 14 |
| 1.2.1. What misdemeanor sanctions can be imposed on a legal entity, a responsible person within a legal entity, and what sanctions can be imposed on an entrepreneur? | 14 |
| 1.2.2. Penalties: prison sentence, work in the public interest and fine | 15 |
| 1.2.3. Protective measures: confiscation of objects, prohibition of a legal entity to perform certain activities and prohibition of a responsible person to perform certain tasks | 16 |
| 1.3. Forfeiture of property benefits | 17 |
| 1.4. How does the court decide on the sentence? | 17 |
| 1.4.1. What does it depend on whether the court will determine a lower or higher sentence? | 17 |
| 1.4.2. Exemption from punishment | 18 |
| 1.4.3. Mitigating circumstances | 18 |
| 1.5. The costs of misdemeanor proceedings | 19 |
| 1.6. Delivery | 19 |
| 1.6.1. Is it better if I refrain from receiving mail? | 20 |

| | | |
|-----------|--|-----------|
| 1.7. | Summons from the court..... | 21 |
| 1.7.1. | Who is obliged to appear before the court? | 21 |
| 1.8. | What does a court hearing look like?..... | 22 |
| 1.8.1. | What is important to say during the hearing? | 23 |
| 1.8.2. | Defense in written form | 23 |
| 1.9. | How does the court decide?..... | 24 |
| 1.9.1. | Proving claims. | 24 |
| 1.10. | Agreement on recognition of violations..... | 25 |
| 1.11. | Is the misdemeanor time-barred?..... | 26 |
| 1.12. | What types of decisions can the court make, and what if I am not satisfied with the court’s decision? | 28 |
| 1.12.1. | Appeal: Where can I file an appeal and what is the time frame for doing so? | 29 |
| 1.13. | Will I be summoned to a hearing before the Misdemeanor Appellate Court? | 32 |
| 1.14. | When is the court’s decision final and what does it mean? | 32 |
| 1.15. | To whom can I appeal the decision of the Misdemeanor Court of Appeal?... | 33 |
| 2. | ECONOMIC OFFENSES. | 34 |
| 2.1. | How does an economic offense occur?..... | 34 |
| 2.2. | What type of sanctions can be imposed? | 35 |
| 2.2.1. | What type of penalty can be imposed on me for committing an offense? | 35 |
| 2.2.2. | Conditional sentence: when the court imposes a conditional sentence? | 37 |
| 2.2.3. | Protective measures: what type of protective measures are there and when are they imposed? | 38 |
| 2.3. | Is the offense time-barred? | 39 |
| 2.4. | Costs | 40 |
| 2.5. | How do I know if proceedings have been initiated for an economic offense? | 40 |



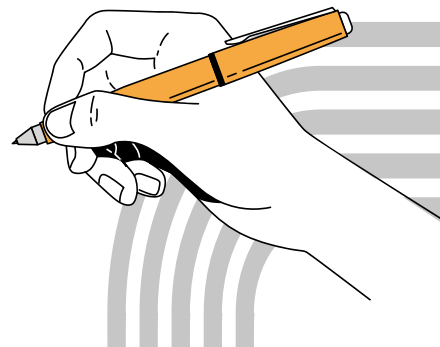
| | | |
|--------|---|----|
| 2.6. | Who should appear in the court? | 41 |
| 2.7. | When is it time to contact an attorney-at-law? | 41 |
| 2.7.1. | Does the director, in addition to the attorney, have to appear before the court? | 42 |
| 2.8. | Who initiates court proceedings? | 42 |
| 2.9. | What is the typical structure of court proceedings? | 42 |
| 2.9.1. | Summons from the court. | 42 |
| 2.9.2. | What are my rights before the court? | 43 |
| 2.9.3. | What is the typical procedure followed during a court hearing? | 44 |
| 2.10. | Termination of proceedings | 45 |
| 2.11. | How does the court decide? | 45 |
| 2.12. | Which court has jurisdiction over the appeal process and what is the specific timeframe within which I can initiate the appeal? | 46 |
| 2.13. | How does the second-instance court reach a decision? | 47 |
| 2.13. | The decision of the second-instance court has been issued | 48 |
| 2.14. | Extraordinary legal remedies: When can I use them? | 49 |
| 2.15. | Deprivation of property benefit from a legal entity | 49 |
| | Consequences of conviction in misdemeanor and economic offense proceedings | 50 |

INTRODUCTION

The aim of this Guide is to micro, small, and medium-sized enterprises become familiar with legal proceedings and provide answers to the questions they may have before addressing the court regarding misdemeanors and economic offenses. It enables them to have a more realistic and comprehensive understanding of the judicial processes before entering the proceedings. The Guide contains basic information about proceedings before the misdemeanor and commercial courts in Serbia; details about the costs of legal proceedings; key information and guidelines, as well as relevant templates.

The content and topics covered in the Guide were defined based on extensive consultations with representatives of the business and legal community, as well as the needs of the broader target audience. The Guide does not cover all topics that may be of interest to some micro, small, and medium enterprises. Additional topics may be included in future, considering the needs of the target audience.

The Guide uses simple legal language and a conversational style, addressing micro, small, and medium enterprises in the context of misdemeanors and economic offenses.



WHAT ARE **MISDEMEANORS** AND WHAT ARE **ECONOMIC** OFFENCES?

Every business requires knowledge of and compliance with certain regulations. Acting contrary to those regulations may lead to commission of *a criminal act, economic offense, or misdemeanor*.

Criminal acts represent serious violations of regulations that lead to severe consequences and are listed in the Criminal Code (with rare exceptions can be found in other laws).

Unlike criminal acts, *economic offenses* and *misdemeanors* represent minor violations of regulations. Additionally, they are not found in a single source, but rather scattered throughout various regulations that govern different areas of life and business.

Unlike misdemeanors, economic offenses specifically refer to economic and financial operations. Typically, economic offenses are more serious and carry higher penalties.

Some regulations apply to all enterprises, regardless of their field of business (such as the Law on Business Enterprises and the Law on Accounting). Other regulations are specific to particular industries, like the Catering Act, which applies to catering businesses. Compliance with the Rulebook on special sanitary conditions for catering businesses (like hair or beauty salons) can help prevent violations during sanitary inspections.

Whether an offense is classified as a misdemeanor or an economic offense depends on which regulation or provision was violated.



The Food Safety Law provides clear definitions for what constitutes a crime and a misdemeanor, specifically regulating the safe distribution of food and the responsibilities of those involved. Failure to comply with this law or acts that contradict it may result in the commission of a misdemeanor or an economic offence.

For example, the Food Safety Law defines an economic offense as the act of a legal entity placing unsafe food on the market, resulting in a fine ranging from 300,000 to 3,000,000 dinars.

Contrarily, the Food Safety Law stipulates that a legal entity will be deemed to have committed an offense if it fails to comply with the instructions for good production and hygiene practices, as well as the application of HACCP (*Hazard Analysis Critical Control Points*). Such a violation incurs a fine ranging from 150,000 to 1,000,000 dinars.

As economic offenses and misdemeanors are covered by various laws, it's essential for every enterprise to be acquainted with the regulations that apply to their business operations.

In addition to the regulations related to the field of business, it is possible for enterprises to commit offenses outlined in general laws that apply to all individuals, such as the Law on Road Traffic Safety (for instance, if a traffic offense occurs during business trip).

The procedure in which responsibility is determined and sanctions are imposed on offenders of misdemeanors is regulated by the Law on Misdemeanors, and on offenders of economic offences by the Law on Economic Offences. In everything that is not regulated by these laws, the Criminal Procedure Code applies.

WHO CAN BE HELD RESPONSIBLE FOR AN **ECONOMIC OFFENSE** AND WHO FOR A **MISDEMEANOR**?

As economic offenses relate to economic and financial operations, the following may be held responsible for them:

1. enterprises, and
2. their responsible persons.

Entrepreneurs cannot be held responsible for economic offences.

Regardless of the enterprise's responsibility, the violation can also be committed by the director or another person designated by the founding act as a representative (e.g., manager, procurator). The responsible person may commit an offence by their own action or by failing to supervise the actions of another natural person (e.g., employee). The violation of the responsible person is never implied but is always indicated by a separate provision, independent of the provision that imposes the violation of the enterprise.

However, in addition to the enterprise and the responsible person, natural persons (say, employees) can also be held responsible for violations.

Therefore, the following can be held responsible for a misdemeanor:

1. an enterprise (for example, a catering establishment if it does not issue an invoice for the service provided);
2. a responsible person in a legal entity (for example, if a responsible person in a forwarding enterprise orders a ride even though he knows that the driver did not have enough hours of rest);
3. natural person (for example, an employed driver using an official vehicle during a traffic violation).

The responsibility of these persons also differs in that the enterprise is responsible for the committed offense or misdemeanor with its own property, while the responsible person and natural person are responsible with their own, private property.



Offenders of misdemeanors and economic offenses (natural persons, responsible persons in an enterprise or enterprise itself) appear in the proceedings as “DEFENDANT”. The term “defendant” is used as a common name for the offender of a criminal offense, economic offense or misdemeanor.



It’s good to know! A foreign entrepreneur, a registered branch of an enterprise, a registered branch of a foreign enterprise, and a registered representative office of a foreign company cannot be held liable for a misdemeanor.

HOW DO I KNOW IF A PROCEDURE HAS BEEN INITIATED AND IF IT HAS, WHAT TYPE OF IT IS IT?

If you have committed a misdemeanor or economic offense, you can find out on the spot from an official who is authorized to carry out supervision, depending on the specific circumstances. However, it is not uncommon for these offenses to be discovered only when a summons arrives from the court.

For example, if an inspector detects a violation during an inspection or if a police officer stops you while committing a violation, they will inform you of the violation and ask you to sign a violation order or inspection report. In that case, you will be able to read what offense you are charged with and how you committed it.

On the other hand, if, for example, you have committed economic offense by failing to submit a regular annual financial report, you will most likely only find out that you are charged when you receive a summons from the Commercial Court. The summons will state that you are called as a defendant and that an economic offense has been committed.

As it is possible that you only find out about committing a misdemeanor or economic offense after receiving mail from the court, you can already have an idea of what it is just by looking at the envelope.

1. The **misdemeanor court** decides on misdemeanors.
2. The **commercial court** decides on economic offences.

The designation of the case, which is written on the first envelope sent by the court, differs between these two procedures. In misdemeanor proceedings, the designation is always **PR** in front of the case number, while in economic offenses, the case number is preceded by the designation **PK**.



1. MISDEMEANORS

1.1 Initiating misdemeanor proceedings and misdemeanor order

The committed misdemeanor does not necessarily mean that the offender will always be brought before the misdemeanor court. In some cases, a **misdemeanor order** is issued, which specifies the fine amount and provides a deadline of eight days for voluntary settlement. In such instances, there is an option to accept responsibility for the offense and pay the fine amount, or alternatively, to approach the court within eight days to request a judicial decision.

If you accept responsibility (by paying the fine amount or not submitting a request to the court within eight days), the misdemeanor proceedings will not be initiated, and it will be considered that you agree with the contents of the order. Payment of the fine amount concludes all matters related to the offense.

Only in a situation where the person does not believe that he/she has committed the offense specified in the order, and within eight days, submits a request to the misdemeanor court on their own initiative, will the court initiate proceedings to examine and decide whether the offense has occurred and whether the designated offender can be held responsible.



It's good to know! On the back of the misdemeanor order, you will find information about the possibility of initiating misdemeanor proceedings related to the matter and be warned about the consequences of inaction.

On the other hand, for certain misdemeanors, a misdemeanor order cannot be issued, and proceedings must be initiated before the misdemeanor court. In such cases, administrative bodies, authorized inspectors, public prosecutors, as well as organizations exercising public powers, will submit a **request to initiate misdemeanor proceedings** directly to the court. The court will then determine whether a misdemeanor has been committed and decide on the appropriate punishment for each specific case.

The request to initiate misdemeanor proceedings is submitted by the misdemeanor inspection within their jurisdiction for misdemeanor offenses, the tax administration for tax-related misdemeanors, the customs administration for customs-related misdemeanors, as well as other administrative bodies within their respective jurisdictions.

1.2. What sanctions can be imposed for a misdemeanor?

For each committed misdemeanor, one or more misdemeanor sanctions are imposed. They can be:

1. penalties:
 - ▶ prison sentence;
 - ▶ a fine;
 - ▶ work in the public interest;
2. a warning;
3. penalty points;
4. protective measures:
 - ▶ confiscation of objects;
 - ▶ prohibition of certain activities;
 - ▶ prohibition of a legal entity to perform certain activities;
 - ▶ prohibition of a responsible person to perform certain tasks;
 - ▶ prohibition of driving a motor vehicle;
 - ▶ making the verdict publicly known;
 - ▶ prohibition of participation in public procurement procedures.

1.2.1. *What misdemeanor sanctions can be imposed on a legal entity, a responsible person within a legal entity, and what sanctions can be imposed on an entrepreneur?*

1. On a legal entity, it can be imposed:
 - ▶ a fine, and
 - ▶ protective measures
2. On a responsible person in a legal entity, it can be imposed:
 - ▶ a fine;
 - ▶ prison sentence;
 - ▶ work in the public interest;
 - ▶ protective measures.

3. On a natural person, it can be imposed:
 - ▶ a fine;
 - ▶ prison sentence;
 - ▶ work in the public interest;
 - ▶ warnings;
 - ▶ penalty points;
 - ▶ protective measures.

1.2.2. *Penalties: prison sentence, work in the public interest and fine*

Prison sentence is determined for a minimum of one to a maximum of sixty days.

Work in the public interest is unpaid work for the benefit of society that is not performed under coercion, does not offend human dignity and does not generate profit.

For one committed misdemeanor, the court can impose work in the public interest for a minimum of 20 hours and a maximum of 360 hours. When pronouncing and measuring this sentence, the court will consider the type of offense committed, person's age, physical and working ability, psychological characteristics and other special circumstances related to offender's personality.

A fine, in some cases, is imposed in a fixed amount, while in other cases, it is specified as a range from the minimum to the maximum amount that can be imposed for a given offense. The difference lies in the fact that when there is no fixed amount for the fine, an official submits a request to initiate misdemeanor proceedings, indicating that the case will be brought before the misdemeanor court. In such instances, the court assesses the appropriate fine for the offender based on the circumstances. Contrarily, for offenses with fixed fines, the official issues a **misdemeanor order** stating the exact amount of the fine and provides a deadline for payment.



EXAMPLE: If a catering enterprise fails to issue an invoice for the provided service, a fine ranging from 200,000 to 800,000 dinars is imposed. In this situation, the court considers all the circumstances and determines the specific amount of the fine within the prescribed range. The enterprise responsible for the offense will only learn the fine amount after completing the misdemeanor proceedings, specifically in the judgment. The payment deadline for the fine starts from that moment. On the other hand, if an enterprise fails to determine and ensure the standards of food, beverages, and other products it prepares and serves, the inspector who identifies this deficiency will issue a misdemeanor order. The order will oblige the enterprise to pay a specific amount of 50,000 dinars, and the payment deadline will begin from the date of issuance.

1.2.3. *Protective measures: confiscation of objects, prohibition of a legal entity to perform certain activities and prohibition of a responsible person to perform certain tasks*

Protective measures exist and are imposed to eliminate the conditions that enable or encourage the offender to commit new offenses. These measures are typically imposed in addition to the main sentence, rather than independently.

The **protective measure of object confiscation** can be imposed even when it is not specifically related to an offense. It is ordered when the offender unlawfully disposes of or destroys the object. If the object cannot be recovered, the judgment will determine that the offender must pay an amount corresponding to the value of the object.

A **protective measure that prohibits a legal entity to perform certain activities** can also be imposed, even if it is not specified in the regulations for a particular offense. This measure is applied to an enterprise when the continuation of certain activities would pose a risk to the life or health of individuals, be detrimental to the economic or financial operations of other legal entities, or have a negative impact on the overall economy. The measure involves prohibiting the production of certain products or the performance of specific activities in areas such as trade in goods, finance, and services. It can also include the prohibition of other specified activities. This measure can be imposed for a duration of up to six months within a three-year period.

The **prohibition of a responsible person to perform certain tasks** involves restricting the offender from carrying out the specific duties he/she was performing at the time of the violation, such as managerial duties or other designated tasks. This measure may apply to all or some of the responsibilities associated with the handling, management, use, or disposal of

entrusted property. The prohibition of the responsible person to perform certain tasks can be imposed for a duration ranging from six months to three years.

1.3. Forfeiture of property benefits

No one can retain the property benefit obtained through a misdemeanor, as the judgment that establishes the misdemeanor and its responsibility will also include the confiscation of the ill-gotten gains. During the misdemeanor proceedings, the court will determine whether any benefits were acquired through the committed misdemeanor. If such benefits are identified, including money, securities, valuables, or any other property obtained through the offense, they will be confiscated from the offender. In cases where confiscation is not feasible, the offender will be required to pay a monetary amount equivalent to the value of the acquired property benefit, as determined by the judgment.

1.4. How does the court decide on the sentence?

In most cases, the court has the possibility to choose between two or more types of penalties, as well as the amount of the penalty.



For example, for a misdemeanor committed by a travel agency in which the sales price of the service does not include all costs that are an integral part necessary for the realization of the trip, but has hidden costs, a fine of 200,000 to 800,000 dinars will be imposed.

Also, if the use of remotely controlled devices threatens the safety of citizens or violates public order and peace, the court can impose a fine of 50,000 to 150,000 dinars or a prison sentence of 30 to 60 days.

1.4.1. *What does it depend on whether the court will determine a lower or higher sentence?*

When a specific offense imposes an alternative sanction (such as a fine or a prison sentence) or a fine within a certain range (from 50,000 to 100,000 dinars), the court is responsible for assessing the appropriate punishment. In determining the sanction, the court takes into consideration all the circumstances that can influence whether the punishment will be

higher or lower, including the severity and consequences of the offense, the circumstances surrounding its commission, the level of responsibility of the offender, any previous convictions, the personal circumstances of the offender, and their behavior following the offense.

When deciding on the amount of the fine, the court will also consider the property status of the offender.



It's good to know! When weighing, the court cannot consider a previously imposed misdemeanor sanction as an aggravating circumstance if more than four years have passed from the day the decision became legally binding to the day a new one was passed.

In some circumstances, however, the court is given the opportunity to measure the punishment even below the imposed one, as well as to exempt the offender from the punishment.

1.4.2. *Exemption from punishment*

There are situations in which the court may acquit the offender of punishment, even though he/she is held responsible for the offense. This occurs when the offense was committed in self-defense or as a last resort. Additionally, if the consequences of the offense have already significantly affected the offender, further sentencing may not be deemed necessary.

Furthermore, if the offender, after committing the offense but before becoming aware of being the defendant, takes actions to mitigate the consequences or compensates for the damage caused, the court may decide to exempt them from punishment.

1.4.3. *Mitigating circumstances*

There are situations when the court can impose a fine smaller than the prescribed one. The law allows the court to act in this way if it determines that the offense did not cause more serious consequences and that there are mitigating circumstances that indicate that even a milder punishment achieves the purpose of punishment. In addition to the above, in the same situation the court can:

- ▶ impose a fine or community service instead of the prescribed prison sentence;
- ▶ instead of the prescribed prison sentence and fine, impose only one of them.

1.5. The costs of misdemeanor proceedings

The costs of misdemeanor proceedings include all expenses incurred from the initiation to the conclusion of the proceedings. This typically includes flat fees, attorney fees, expert witness fees, etc.

The obligation to pay these costs depends on the court's decision. If the court issues a guilty verdict the offender is responsible for covering the costs. If the court issues an acquittal or terminates misdemeanor proceedings through a decision, the costs of the misdemeanor proceedings are borne by the misdemeanor court.



It's good to know! When the court decides that the costs will be borne by the misdemeanor court, in order to claim the attorney's fees, it has to be submitted a request for the reimbursement of the attorney's fees and necessary expenses in written form within three months from the date of delivering the final decision.

1.6. Delivery

Documents in misdemeanor proceedings (such as court summons) are delivered via post-mail, authorized delivery services, court officials, or other authorities.

Documents intended for an enterprise are primarily mailed to its registered office address or the designated address for mail reception.

The mail is delivered to an authorized recipient (e.g., an employee at the reception desk), and if no such person is designated or present at that moment, the document will be mailed to any employee present in the recipient's business premises.

If a responsible person is charged with an offense, the document is mailed at his/her workplace. Only if he/she is not present there, the documents can be mailed to any other employee working for the same employer.

If delivery at the workplace or enterprise's registered office is not possible, the document will be mailed to the residential address of the sole entrepreneur or responsible person.

1.6.1. *Is it better if I refrain from receiving mail?*

If you choose to refrain from receiving or you reject the postmail, the law establishes a procedure by which the mail will be considered delivered. The outcome remains the same: despite buying some time, it will be presumed that you have received the mail and are fully aware of its contents.

If an entrepreneur or responsible person fails to receive mail at any deliverable address, the delivery person will leave a notice in the mailbox indicating that there is a document to be picked up or the notice will be attached to the door. From that day onwards, a 15-day period begins for the document to be collected from the court. If the document is not collected within this timeframe, it will be posted on the notice board for additional eight days. On the ninth day, the document will be removed from the notice board and considered delivered.



IMPORTANT! The summons for the defendant's hearing, including the provision of a written defense, the summons for witness hearings, and decisions with appeal deadlines, are to be delivered in person. If the defendant hires an attorney-at-law, decisions with appeal deadlines are exclusively delivered to the attorney.

When the presence of the offender is necessary and he/she does not respond, or when it is not possible to personally serve a court summons and it is evident from the circumstances that the defendant is intentionally avoiding receiving the summons, the court will order his/her presence. This rule also applies to the representative of the enterprise when the enterprise itself is the offender. In such cases, the offender or the person representing the enterprise will be forcibly brought by police officers.

If the offender does not respond, and the court determines that the presence of the offender is not necessary, it will make a decision even without a hearing, based on the evidence available to it.



It's good to know! If you intentionally avoid receiving a summons from the court, it will not be considered that you have not received it. Instead, after all the deadlines for receiving written documents in court have passed, it will be deemed that you have been properly summoned. Since deadlines are calculated from the moment of delivery (e.g., the deadline for filing an appeal), there is a risk that you may not be aware of when these deadlines expire. Moreover, you may not have the opportunity to review the contents of the letter to raise any reasonable objections. Considering these factors, receiving mail directly is a safer option.

1.7. Summons from the court

You will be notified that misdemeanor proceedings have been initiated against you when you receive a summons from the misdemeanor court.

The court summons will be accompanied by a request for the initiation of misdemeanor proceedings, which will outline the specific misdemeanor you are charged with, provide a description of the alleged action, propose evidence, and more. In some cases, relevant documentation may also be included as evidence in the proceedings. If such documents have not been submitted, you have the right to request an inspection prior to the hearing.

In the summons, the court will provide you with information regarding your rights and obligations as a defendant. These include your right to legal representation, the right to exercise your defense by remaining silent, the right to submit a written defense, as well as the obligation to respond to the court summons to avoid being forcibly brought in, among others.

1.7.1. *Who is obliged to appear before the court?*

In misdemeanor proceedings, the enterprise, as the offender, is represented by an authorized person. This can be a legal representative, such as the director, or another person authorized to act on behalf of the enterprise in court. The situation becomes clearer when the violation is committed by an entrepreneur or a responsible person, as they bear personal responsibility for the offense in their capacity as offenders.



It's good to know! An enterprise representative cannot be held accountable as the responsible person in misdemeanor proceedings for the same offense (unless he/she is the only authorized representative of the legal entity). Additionally, he/she cannot serve as a witness or an attorney in the same matter.

If the enterprise fails to designate a representative, it may be subject to a fine.

1.7.1.1. *Is it enough to hire an attorney-at-law?*

It is important to differ between situations where the attorney can attend proceedings on behalf of the responsible offender (director, entrepreneur, responsible person...) and situations where the summoned person must appear in person, with or without an attorney.

When the offender is summoned for hearing, he/she has to appear in person. However, in other situations, the attorney can attend on behalf of the offender or accompany him/her, considering his/her interests and rights.

1.7.1.2. *What should I do if circumstances prevent me from responding to a court summons?*

If you are unable to respond to a court summons, it is important to inform the court promptly and in an organized manner. This can be done by providing appropriate evidence that supports your inability to attend, such as a doctor's certificate or a business trip order. By doing so, you can prevent the court from ordering your compulsory appearance or deciding without hearing your perspective on the matter.

1.8. **What does a court hearing look like?**

Before the hearing, the judge will verify your identity by examining your identification card. When the representative of the enterprise is called to testify, he/she will be asked about the enterprise's name, headquarters, his/her personal name and role within the enterprise, including his/her job responsibilities. Additionally, he/she will be asked to provide business account numbers, Tax Identification Number (TIN), registration number, and whether the enterprise has any previous convictions for criminal offenses, economic offenses, or misdemeanors.

At the start of the hearing, the court will inform you about the details of the misdemeanor charges, including the certain offense you are accused of, the time and manner in which it

allegedly occurred. Following this, you will be asked if you understand the charges and if you feel responsible for them. It is important for you to clearly express whether or not you accept responsibility for the accusations.

During this process, the judge will explain your rights, particularly your right to legal representation. They will also provide information on how you can present your defense, either orally on the record or in written form.

1.8.1. *What is important to say during the hearing?*

If you choose to present your defense orally on the record, it is essential to provide the judge with a comprehensive account of the circumstances surrounding the offense. You should also present any evidence that supports your claims and contradicts the allegations stated in the motion to initiate the misdemeanor proceedings.

Furthermore, the court may inquire about various aspects of your personal and family life that could influence the sentencing process.



For example, various factors can influence the imposition of a lower fine, such as your employment status, income level, previous misdemeanor record, responsibilities as a single parent, or the support you provide to a sick individual.

Your testimony given during the hearing will be recorded in the minutes. Upon conclusion, the judge will provide you with a copy of the minutes for review and signature. If you believe that crucial details have been omitted or inaccurately recorded, you have the right to request your objections to be documented as a complaint.

1.8.2. *Defense in written form*

Instead of a hearing, the defense can be given in written form.

Written defense entails providing a comprehensive written statement in which you address all the circumstances pertaining to the accusations against you. You should describe the incident from your perspective and include supporting evidence for your claims, along with any proposed measures for their consideration. The written defense document must be signed by either the entrepreneur, the responsible person, or the enterprise's representative.

1.9. How does the court decide?

How will the judge determine whom to believe? Assuming both sides are confident in their claims, how will the judge decide the outcome of the case? In situations where the matter at hand is purely a legal question, such as determining whether an action constitutes a violation and there is no dispute regarding how it occurred, the judge will rely on the legal knowledge and provide a reasoned judgment.

However, in cases where the dispute revolves around the occurrence of an action or omission constituting a violation, and whether the accused is indeed guilty, the court must delve into the specific circumstances surrounding the incident. When one party asserts one version of events while the other maintains a different account, it becomes necessary to establish the truth through evidence. Each party must present evidence to support their claims.

For instance, if the Serbian Business Registers Agency (APR) initiates proceedings based on their records indicating that an enterprise failed to record a change within the legal time-frame, while the enterprise insists that they did comply, the court can only decide by examining the presented evidence, such as scrutinizing relevant documents.

1.9.1. *Proving claims*

In the aforementioned example, where you are charged with a misdemeanor for failing to notify the Serbian Business Registers Agency (APR) within eight days of the reported changes, it is essential not only to claim that you have done so but also to provide evidence to support your claim. For instance, you can attach a confirmation of sending that demonstrates the date and confirms the timely notification to the Agency.

The evidence that can be proposed and presented in misdemeanor proceedings includes:

- ▶ Testimony;
- ▶ Scrutinizing relevant documents;
- ▶ Investigation;
- ▶ Expert opinion.

During the court hearing or in the written defense, it is crucial to propose the presentation of evidence for any claim that is not common knowledge or undisputed. The court will then consider and decide which proposed evidence should be presented.

Testimony can be proposed when a specific witness can provide firsthand accounts of what they saw or heard, which is crucial in proving your claims.

Scrutinizing relevant documents is often used as a means of proof in business cases, although not every document qualifies as proof. Public documents, such as excerpts from public books or authority certificates, hold probative value.

Investigation is proposed when the judge's personal and direct observation is necessary to establish or clarify important facts in the proceedings. This is commonly applied in traffic violation cases.

An expert opinion is sought when determining or evaluating an important fact requires the expertise of a professional who possesses specialized knowledge that the court does not possess, such as a financial expert.

You can refer to *the Guide to the Law on Misdemeanors* written by Dr. Sanja Strugar, a judge of the Misdemeanor Court in Novi Sad, to gain more comprehensive knowledge about evidence, the evidentiary procedure, and how the court evaluates and considers evidence.

1.10. Agreement on recognition of violations

When misdemeanor proceedings have already been initiated, there is a possibility to reach an agreement with the other party, who initiated the proceedings, regarding the outcome (sanction).

Entering into an agreement can be advantageous as it expedites the procedure and reduces costs compared to a court hearing. Additionally, an agreement can result in a lower penalty than the minimum prescribed for the violation and may even prevent the imposition of certain protective measures mandated by law.

The parties involved in the proceedings, namely the applicant and the offender (with the possibility of an attorney being present), reach an agreement.

The agreement must include the following elements: an acknowledgment of the offense committed and the corresponding sanction, a statement from the applicant indicating their waiver of misdemeanor prosecution, an agreement regarding damages and incurred costs, and a statement indicating the waiver of the right to appeal by all parties involved.

When finalizing the agreement and determining the amount of the fine, it is possible to go below the prescribed minimum for that specific offense, but not below the general minimum. The general minimum is:

- ▶ 5.000 dinars for a natural person or responsible person;
- ▶ 10.000 dinars for an entrepreneur;
- ▶ 50.000 dinars for enterprise.

After reaching an agreement, the drafted agreement is submitted to the competent court.

The court will review the agreement to ensure its compliance with the law, including verifying if the offender is aware of the consequences and voluntarily waiving the right to trial and appeal. If the court determines that the agreement does not meet legal requirements, it will reject the agreement and proceed with the regular procedure. Conversely, if the agreement is deemed lawful, the court will issue a judgment approving the agreement. This judgment confirms the offender's responsibility and imposes the agreed-upon sentence.



It's important to know! An agreement on the recognition of a misdemeanor cannot be reached for cases where a misdemeanor order has already been issued.

1.11. Is the misdemeanor time-barred?

A misdemeanor can be subject to statute of limitations, and the time limits vary depending on the specific misdemeanor.

It is important to understand that there are both prescribed limitation periods and prescribed absolute limitation periods. For example, a limitation period may be set at one year, while the absolute limitation period is typically twice as long, usually two years. It is worth noting that the limitation period is interrupted by any action taken by the court to initiate and proceed with the procedure. This distinction between relative and absolute limitation periods is crucial in their application.

EXAMPLE: If the statute of limitations for initiating and conducting the procedure is one year from the date of the offense committed, with an absolute term of two years, in practice it may be as follows:

If you committed a misdemeanor on September 15, 2021, and the court sent you a summons as the first action related to the misdemeanor on November 30, 2022, the initiation of the misdemeanor proceedings would be time-barred. This is because the court did not take any action to initiate the procedure within the required timeframe.

However, if the court summoned you twice before September 16, 2022, regardless of whether you responded or not, the initiation of the misdemeanor proceedings would not be considered time-barred. This is because the court took actions to conduct the procedure, interrupting the one-year period. Each summons restarts the time period. It is important to note that the court must conclude the procedure within two years from the date the offense was committed, or else the absolute statute of limitations for conducting the procedure will apply. In the example given, the procedure must be concluded with a final judgment by September 16, 2023.

In accordance with that, the prescribed limitation periods serve as reminders for the court to act. These periods are shorter and are interrupted by each action taken by the court, starting again and leading to a time-barred situation only if the court fails to take any action regarding the proceedings.

On the other hand, absolute limitation periods are longer because they continue to run regardless of whether the court is actively involved or not. They set a deadline within which the court must conclude the proceedings in any case.

In addition to the application of relative and absolute statute of limitations, there is a difference between:

1. Statute of limitations for the initiation of misdemeanor proceedings
 2. Obsolescence of proceedings;
 3. Statute of limitations for the execution of penalty/protective measures
- 1) The statute of limitations for conducting proceedings refers to the time limit prescribed by law, beyond which the court is prohibited from initiating the proceedings. In misdemeanor cases, **if one year has elapsed since the offense had been committed**, the initiation of proceedings is prohibited. Additionally, the initiation becomes statute-barred when twice the

time required for the statute of limitations has passed in the specific case (known as the absolute statute of limitations).



It's important to know! For misdemeanors in specific areas such as customs, foreign trade, foreign exchange operations, public revenue and finance, public procurement, trade in goods and services, environment, prevention of corruption, and air traffic, longer statutes of limitations may be prescribed. For instance, the statute of limitations may extend to three or five years.

- 2) The concept of obsolescence of proceedings implies that the proceedings cannot be conducted indefinitely. When the statute of limitations for conducting the proceedings expires, it means that the court is obligated to halt the proceedings. The limitation periods for conducting the procedure are identical to the periods for initiating the procedure.
- 3) The statute of limitations for the execution of penalty and protective measures signifies that once it expires, the sanction, even if imposed, will not be enforced. This deadline is set at **one year from the day the decision becomes legally binding**, and in any case, when twice the amount of time required for the execution of the penalty and protective measures (two years) has elapsed.

1.12. What types of decisions can the court make, and what if I am not satisfied with the court's decision?

The misdemeanor proceedings conclude with the issuance of a verdict or a decision to suspend the misdemeanor proceedings (for example, if the statute of limitations for conducting the procedure has expired).

With a verdict, the court can:

1. Find the defendant responsible (render a guilty verdict);
2. Absolve the defendant from responsibility (deliver an acquittal).

1.12.1. *Appeal: Where can I file an appeal and what is the time frame for doing so?*

If you believe that the court has made an incorrect decision or has not appropriately determined the penalty, the only way to rectify this decision is by filing an appeal with the **Misdemeanor Appellate Court**.

You have a period of **eight days to file an appeal from the day you received the court decision you are appealing against to**. The judgment itself, specifically the section titled “Instruction on Legal Remedy”, will provide you with information about your right to file an appeal, including the time frame and the court to which you should submit it.



It's important to know! If you fail to submit an appeal within the specified deadline or submit it after the deadline, it will be presumed that you agree with the court's decision, and any subsequent appeal will not be considered. Filing an appeal is a prerequisite for seeking recourse in other courts, such as the European Court of Human Rights, at a later stage.

When drafting an appeal, it is essential to consider the following:

1. Clearly indicate the designation of the decision being appealed.
2. State the reasons for your dissatisfaction with the decision.
3. Ensure that the appeal is signed.

While it is not a strict rule that new facts and evidence can be presented in an appeal, the law does provide the opportunity to include them in certain circumstances where it was not justifiable to present them earlier in the proceedings. For instance, if a witness subsequently appears or a document becomes available, which objectively was not accessible until that moment.



It's important to know! A properly filed appeal delays the execution of the decision.

Link: PR 000/22

For
Misdemeanor Appellate Court in Belgrade
Across
Misdemeanor Court in Belgrade

DEFENDANT: "KAFIDŽONA" Ltd. WITH HEADQUARTERS IN BELGRADE, at 5, Knez Mihailova Street, ID number: 000000, PIB: 000000, represented by a legal representative – director Milan Miković

Based on Article 258 of the Law on Misdemeanors, I submit in a timely manner

APPEAL

- Due to the violation of the rules of procedure
- Due to an incorrectly established factual situation
- Due to incorrect application of substantive law

Explanation

On January 16, 2023, the defendant "KAFIDŽONA" Ltd., based in Belgrade, received the verdict from the Misdemeanor Court in Belgrade (PR 000/22) dated 12/29/2022. According to the verdict, the defendant was found liable for the offense under Article 89, paragraph 1, item 3, and was fined 700,000 dinars. The offense was committed on January 1, 2022, at 16:05 at their bar located at 5, Knez Mihailova Street, where they failed to issue an invoice for the service provided, which included two espresso coffees and one lemonade.

The defendant alleges that the first-instance court violated procedural rules by unjustifiably rejecting their request to present video evidence from the surveillance camera of the enterprise "ICE BON" Ltd., located in the bar adjacent to the defendant's. The video footage would demonstrate that the defendant's employee only delayed issuing the bill for a few minutes while changing the paper tape on the cash register. During the hearing, the defendant timely informed the court about having received information from Marko Marković, the director of "ICE BON", stating that the enterprise's surveillance cameras captured the entire incident from a close range.

The court's refusal to present the evidence led to an incomplete and inaccurate determination of the factual circumstances, which subsequently affected the application of the penal provisions.

Specifically, the court based its judgment solely on the record and testimony of the tourist inspector who happened to be present at the scene. The inspector observed that the service was provided without an accompanying invoice and promptly recorded the incident. When questioned about the issue, the inspector simply replied, "Explain that to the court", without making any effort to verify whether a new tape had been installed and other invoices were issued simultaneously.

Naime, sud je zasnovao presudu na zapisniku i iskazu turističkog inspektora koji se zatekao na licu mesta i koji je primetio da je usluga izvršena a da zajedno s njom, tačnije u isto vreme, nije izdat račun, te je odmah napravio zapisnik. Kada mu je predloženo u čemu je nastao problem, inspektor je samo izjavio: „To objasnite sudu“, ne želeći da se lično uveri u postavljenu novu traku i da su ostali računi izdati istovremeno.

Evidence: Verdict of the Misdemeanor Court in Belgrade PR 000/22 from December 29, 2022, in the case files

During the hearing and in subsequent written correspondence, the defendant informed the Misdemeanor Court that the enterprise "ICE BON" would provide the requested footage upon the court's request. However, the defendant also stated that the enterprise was unwilling to directly hand over the recording to an individual in order to safeguard the privacy of its clients. Surprisingly, the court dismissed the defendant's proposal to officially request the recording without providing any explanation for its decision.

Evidence:

- Minutes from the main hearing from June 17, 2022, in the case files
- Letter from the defendant dated September 3, 2022, in the case file

Based on the aforementioned circumstances, the defendant suggests that the Misdemeanor Appellate Court overturn the appeal verdict of the Misdemeanor Court in Belgrade, case number PR 000/22 dated 12/29/2022, and instruct the lower court to present all pertinent evidence to ensure a comprehensive and accurate determination of the factual circumstances.

In Belgrade, January 23, 2023

signature of the representative

1.13. Will I be summoned to a hearing before the Misdemeanor Appellate Court?

When the Misdemeanor Appellate Court receives the appeal and case files, a session is scheduled with a panel comprising three judges. After reviewing the case and examining the appeal, the judges deliberate and vote on the decision to be rendered. Typically, the offender will not be summoned to appear in court, as the judges base their decision on the case file, including presented evidence and hearing minutes. However, if further clarification is deemed necessary or the judges consider it important to hold a hearing, they may decide to do so. In such a scenario, you will receive a court summons.

The deliberations and voting process is not open to the public and only the judges and the court recorder are present during the decision-making proceedings.

1.14. When is the court's decision final and what does it mean?

The Misdemeanor Appellate Court has the authority to take the following actions:

- 1) Reject the appeal, for example, if it is filed after the appeal deadline has expired.
- 2) Reject the appeal as unfounded and **uphold the first-instance decision**, if the Appellate Court believes that the initial court made a correct decision.
- 3) Accept the appeal and **modify the first-instance decision**. In this case, the Misdemeanor Appellate Court becomes responsible for making the final decision, as it deems the initial decision to be incorrect.
- 4) Grant the appeal, **nullify the decision**, and **return the case to the first instance court for a new decision**. This occurs if the Appellate Court believes that the court did not adequately establish the factual situation and that further actions should be taken.

If the Misdemeanor Appellate Court overturns the verdict and orders the case to be re-considered by the misdemeanor court, it means that the misdemeanor court must reopen the trial and present additional evidence as directed by the second-instance court. Consequently, you will undergo a new trial before the misdemeanor court, providing you with another opportunity to file an appeal against the decision reached in that process. The Misdemeanor Appellate Court can only remand the case for reconsideration once, which

implies that in any subsequent appeal, the Court can only uphold or modify the initial decision. Once the Misdemeanor Appellate Court's decision is rendered, it becomes final, and the decision that resolves the case becomes legally binding.

This implies that, ONCE THE DEADLINE FOR VOLUNTARY FULFILLMENT OF THE SANCTION HAS PASSED, IT CAN BE ENFORCED THROUGH COERCIVE MEASURES.

1.15. To whom can I appeal the decision of the Misdemeanor Court of Appeal?

If you are unsatisfied with the decision of the Misdemeanor Appellate Court made on appeal, it can also be reviewed **under special conditions**. In that case, we are referring to extraordinary legal remedies that are filed against a final verdict.

The extraordinary legal remedies available in misdemeanor proceedings are as follows:

1. Request to repeat the misdemeanor proceedings (for example, if it is later discovered that the document used as evidence was falsified).
2. Request for the protection of legality (this can only be submitted by the Republic [Supreme] Public Prosecutor within three months from the date of delivery of the final verdict).

EMERGENCY LEGAL REMEDIES DO NOT HALT THE EXECUTION OF THE SANCTION. Therefore, even if you initiate one of the mentioned procedures, the court retains the right to proceed with the execution of the verdict.

2. ECONOMIC OFFENSES

2.1. How does an economic offense occur?

An economic offense can be caused by the actions of an enterprise or a responsible person, as well as by the failure to fulfill a legally prescribed obligation. It is important to note that not every such behavior leads to an economic offense. However, regulations pertaining to economic or financial operations clearly define the omissions that constitute an economic offense.



It's important to know! Entrepreneurs are not covered by the Law on Economic Offences, which means that they cannot be held responsible for offences.

It has already been mentioned that economic offenses are addressed in various regulations and are not consolidated in one place. Therefore, it is advisable to familiarize yourself with the laws and other relevant acts pertaining to your enterprise and the specific activities you engage in before conducting business.

Some of the regulations that cover economic offenses include the Law on Accounting, the Law on Prevention of Money Laundering and Financing of Terrorism, the Law on Planning and Construction, the Law on Energy, the Law on the Capital Market, the Law on Environmental Protection, and others.

The largest number of committed economic offenses is in the area of accounting and financial operations. The practice of the commercial court shows that the most common case is the failure to submit regular annual financial reports or declarations of inactivity for the last financial year.

The procedure in which responsibility is determined and sanctions are imposed on offenders of economic offences is regulated by the Law on Economic Offences. The Criminal Procedure Code applies to everything that is not specifically regulated by this law.

2.2. What type of sanctions can be imposed?

Imposed sanctions for economic offenses are:

1. penalty;
2. conditional sentence; and
3. protective measures.

2.2.1. *What type of penalty can be imposed on me for committing an offense?*

The only penalty imposed for economic offenses is a **fine**.

The smallest fine that can be imposed on an enterprise is 10,000 dinars, and the largest is 3,000,000 dinars. Similarly, the smallest fine for a responsible person is 2,000 dinars, and the largest is 200,000 dinars. Within this framework, the law establishes specific ranges of penalties for various economic offences.



EXAMPLE: If an enterprise fails to prepare accounting documents in accordance with the Law on Accounting, it may face a fine ranging from 100,000 to 3,000,000 dinars. Similarly, the person responsible for the same act may be fined between 20,000 and 150,000 dinars.



It's good to know! While the Law on Economic Offenses does not explicitly provide for a prison sentence, there is a possibility that the responsible person, if convicted and sentenced to a fine, may end up in prison if he/she fails to pay the fine within the specified legal timeframe. The duration of this term is determined in the judgment and typically ranges from a minimum of 15 days to a maximum of three months.

2.2.1.1. *How does the court decide whether the sentence will be lower or higher?*

When determining the penalty, the court will impose a penalty within the legally prescribed ranges, taking into account all the circumstances that influence the penalty to be higher or lower (aggravating and mitigating circumstances).

In the example we are providing, we wonder how the court will decide whether the fine will amount to 100,000 dinars, 3,000,000 dinars, or some amount in between, like 650,000 dinars.

In order to make a decision, the court first examines whether an economic offense has been committed by the person alleged to have committed the offense, and only after that determines the amount of the fine. It accomplishes this by having the obligation to examine the circumstances under which the economic offense was committed, the consequences that occurred, the economic strength of the enterprise, whether the enterprise had previously committed economic offenses, and more.



EXAMPLE: Due to the circumstances under which the economic offense was committed, the court will not impose the same monetary penalty on a small enterprise that has just been established in a small town by a younger person (e.g. a tailor shop) and whose first business it is, and who committed the offense without the intention to cause any significant consequences. The court would impose a different penalty on a well-established enterprise that has been operating for many years, has a large number of employees, and has been generating substantial profits for an extended period. The court would make the aforementioned decision because a fine of 500,000 dinars would not impact a larger enterprise to the same extent that a fine of 100,000 dinars would impact the aforementioned small enterprise, even though the latter is five times smaller.

2.2.1.2. *Can the court impose a higher sentence than prescribed?*

Although there is a prescribed penalty in the form of a minimum and maximum for every economic offence that the court can impose, it can still be increased up to twice the maximum amount of the stipulated penalty, specifically if the offender has been involved in what is known as *multiple recidivism*.

A **multiple recidivism** occurs if:

1. **an enterprise** has already been convicted at least twice for the same or similar economic offenses with fines exceeding 20,000 dinars, and if no more than five years have passed since the last legally imposed fine;
2. **a person responsible** for the same or similar economic offenses has already been sentenced to a fine exceeding 4,000 dinars at least twice, and if no more than five years have passed since the last sentence served.

When deciding whether to increase the penalty, the court will take into account the circumstances under which the economic offense was committed and the severity of the consequences arose from it.

2.2.1.3. *Can the court impose a sentence lower than the prescribed minimum sentence?*

The law provides for a special mitigating circumstance that allows the court to reduce the penalty for the enterprise or even exempt it from the penalty. In the first case, the court may impose a sentence below the prescribed minimum, and in the second case, the court may find the enterprise guilty but release it from the sentence.

This possibility exists if the responsible person discovered and reported the economic offense or if the economic offense was discovered and reported by the employees of that enterprise.

2.2.2. *Conditional sentence: when the court imposes a conditional sentence?*



EXAMPLE: A fine in the amount of 15,000 dinars is imposed on the defendant enterprise XY, and at the same time, it is determined that the fine will not be enforced if the defendant enterprise XY does not commit a new economic offense within the one-year period of verification.

As we can see from the example, a conditional sentence implies that the court will declare the person guilty and impose a penalty (in this case, a fine in the amount of 15,000 dinars), but will also determine that the sentence will not be carried out on the condition that the person does not commit a new offense within a certain period of time (in our example, one year).

This means that if the court imposes a fine and a conditional sentence, the offender of the economic offence will not be obliged to pay the fine if he/she does not commit a new offence within the specified period.

If, however, the offender commits a new offense during the inspection, the court will revoke the conditional sentence and decide on the amount of the single penalty for both offenses committed.

2.2.3. *Protective measures: what type of protective measures are there and when are they imposed?*

In addition to a fine, the court may impose one or more of the following protective measures on the offender of an economic offense:

- ▶ public announcement of the verdict;
- ▶ confiscation of objects;
- ▶ prohibition of a legal entity to engage in certain economic activity;
- ▶ prohibition of a responsible person to perform certain tasks.

The court may **impose the measure of public announcement of the verdict** if it deems it beneficial for the public to be acquainted with the verdict, particularly if the public announcement of the verdict would help eliminate threats to people's life or health, ensure traffic safety or protect other economic interests.

The court may impose **a measure of confiscating objects** that were used or intended for committing an economic offense or that resulted from executing an economic offense, on both the enterprise and the responsible person.

A protective **measure that prohibits a legal entity from engaging in a certain economic activity** (such as the production of certain products) can be imposed if the continuation of certain activities would pose a risk to the life or health of individuals, be detrimental to the economic or financial operations. The court can impose this measure for a period of six months to ten years, which starts from the day the judgment becomes final.

The court may **impose a prohibition of a responsible person to perform certain tasks** (e.g., managerial duties in financial operations) if it is determined that the responsible person misused his/her position to commit an economic offence or if his/her continued performance of such duties would pose a danger. This measure can also be imposed by the court for a period of six months to ten years, which starts from the day the judgment becomes final.



It's good to know! The court can only impose the protective measures of public announcement of the verdict and confiscation of objects to the offender of the economic offence, along with a conditional sentence.

2.3. Is the offense time-barred?

We explained what exactly the statute of limitations means and when the moment is it starts counting from in Chapter 11. Is the offense within the statute of limitations? The rest of the text shows the limitation periods that are applied during the procedures initiated due to economic offenses.

1. The statute of limitations for prosecuting economic offenses (initiation and implementation of court proceedings) is triggered when **three years** have passed from the date of committing the economic offense.

For economic offences in the field of foreign trade, foreign exchange and customs operations, the statute of limitations for prosecution begins when five years have passed from the day of the committing the economic offense.

2. Statute of limitations for execution of the sanction
 - ▶ the statute of limitations for the execution of a penalty for an economic offense occurs when **three years** have passed since the date of the decision by which that penalty was imposed.
 - ▶ the statute of limitations for the enforcement of the protective measure of the public announcement of the verdict occurs when six months have passed, and the protective measure of confiscation of objects occurs when **three years** have passed from the date of the finality of judgments by which that protective measure was imposed.
 - ▶ the statute of limitations for the enforcement of protective measures, which prohibit a legal entity from engaging in a certain economic activity and a prohibition of a responsible person to perform certain tasks, occurs when the duration for which those measures were imposed has passed.
3. In any case, the prosecution and enforcement of the penalty for an economic offense expire when **six years** have passed. In such a scenario, the prosecution or execution of the sentence will be suspended – **an ABSOLUTE STATUTE OF LIMITATION.**

Since the statute of limitations for economic offenses in the field of foreign trade, foreign exchange, and customs operations differs and amounts to five years from the date of committing the economic offense, the absolute statute of limitations also differs and amounts to twice as much – **10 years**. The prosecution and execution of the punishment for these economic offenses, if not earlier, will be suspended after 10 years from the date of the offense, when the absolute statute of limitations begins.

2.4. Costs

The costs of the procedure consist of all expenses incurred on the occasion of the procedure from its initiation to its completion. These include costs for witnesses, experts, expert advisors, translators, interpreters, and investigators, as well as attorneys' fees and other related expenses.

In each judgment or decision corresponding to the case, the court will determine who will bear the costs of the proceedings and their amount.

When the court finds the offender guilty, the judgment will specify that they are obliged to compensate the costs of the criminal proceedings. On the other hand, when the criminal proceedings are suspended, the charges are rejected, or the offender is acquitted, the costs are borne by the court.

2.5. How do I know if proceedings have been initiated for an economic offense?

Proceedings for economic offenses take place before the commercial court.

You will find out if proceedings are being conducted against you as a responsible person or against your enterprise through the summons issued by the prosecutor's office. The summons will provide information about the time, place, and the capacity in which you are summoned, as well as the specific offense you are charged with.

If you miss this initial summons, you will receive further information through a summons sent by the commercial court. Along with the summons, the court will provide you with details about your rights and duties.

2.6. Who should appear in the court?

The court summons itself will indicate who is obliged to respond, as well as the consequences of not complying with the summons. For the enterprise, a representative or legal representative appears in the proceedings, typically a director or another person authorized by law or an enterprise decision to represent the enterprise before the court. This representative is responsible for responding to the summons.

The entrepreneur, director, manager, or other authorized individuals can represent the enterprise before the court and other authorities.

If a power of attorney is used to represent the enterprise before the court, the authorization must be clearly stated in the power of attorney, which must be registered in the appropriate registry (such as the Serbian Business Registers Agency).



It's good to know! The representative of the defendant legal entity cannot be the responsible person against whom proceedings are being conducted for the same economic offense if he/she indicates that he/she acted on the orders of another responsible person or the legal entity's management body.

2.7. When is it time to contact an attorney-at-law?

The presence of an attorney in proceedings before the commercial court regarding economic offenses is not mandatory. However, it is always advisable to consult with an attorney before initiating the procedure. This will ensure that you are aware of what to expect during the proceedings, how to present your defense, which evidence to propose (and what evidence is relevant), and other relevant information.

When the proceedings involve both the enterprise and the responsible person, they may choose to have a joint attorney in the proceedings only if it is in their best interest.

2.7.1. *Does the director, in addition to the attorney, have to appear before the court?*

In addition to the hired attorney, the person representing the enterprise before the court is obligated to appear when required by the court, particularly during the first hearing. After being heard, the defendant person is no longer obligated to attend the trial. However, the defendant certainly has the right to do so, and it is preferable if it could contribute to a stronger defense.

2.8. Who initiates court proceedings?

Any natural or legal person who knows that an economic offense has been committed can apply for an economic offense, which initiates the procedure. In practice, these are most often state bodies, organizations, inspections, citizen associations, and less frequently individuals.

The procedure for economic offenses is initiated by the public prosecutor based on application or information, and in some cases, it can also be initiated by the injured party.

If the public prosecutor determines that the report or the collected information and data do not provide sufficient grounds for proceedings before the court, they will propose that the court conduct investigative actions to determine whether there is enough evidence to indicate that a person or enterprise has committed an economic offense.

Once the judge agrees with the proposal and undertakes specific investigative actions, they will submit all the files to the public prosecutor, who will make the final decision on whether to initiate proceedings before the court or reject the application.

2.9. What is the typical structure of court proceedings?

2.9.1. *Summons from the court*

The court will summon you in written form. You will receive a letter from the competent commercial court with the code PK and the case number. The court summons will include

the date, time, location, and courtroom number where you should appear. It will also specify the capacity in which you are being called, usually as a defendant.

The summon will state some basic rights and obligations of the responsible person and the enterprise, for example:

- ▶ the responsible person and the representative of the enterprise are required to appear in person. If they fail to appear without a valid justification, the court may order their compulsory presence;
- ▶ you have the right to a defense attorney, but his/her presence in economic offense proceedings is not mandatory. Therefore, even if the defense attorney fails to appear after being duly summoned, the hearing will proceed;
- ▶ the responsible person is obligated to bring a certificate of the average of all incomes;
- ▶ the procedure can proceed without the properly invited representative of the enterprise only if he/she has already been questioned in that procedure;
- ▶ you have to bring all the documentation you refer to in your statement or defense (evidence) to the hearing.



IMPORTANT! If it is necessary to summon a representative of the enterprise, and the court is unaware of his/her identity, it will request the enterprise to designate a representative. Failure to comply with the court order may result in a fine of up to RSD 10,000 imposed on the enterprise. If a representative is still not appointed after the initial fine, any subsequent non-compliance with the court's order may incur a fine of up to 20,000 dinars on the enterprise.

2.9.2. *What are my rights before the court?*

At the initial court meeting, prior to the hearing, the judge will inform the defendant about his/her rights and provide an explanation regarding the reasons for initiating the proceedings. This includes clarifying the nature of the economic offense involved and how it was committed.

Among various rights, the court will emphasize that the defendant has the right to remain silent, to refrain from answering certain questions, to present his/her defense, to defend himself/herself individually or with the assistance of an attorney, to disclose all relevant facts and evidence, and to propose additional evidence.

It is important to note that the defendant's right to access and examine the case files and evidence has an exception. This exception applies when the defendant has not yet been questioned, thereby granting the possibility of denying access to the files and case inspection (with the exception of the application, expert testimony, and investigation report). Consequently, as a general rule, the first evidentiary action is the hearing of the defendant.

2.9.3. What is the typical procedure followed during a court hearing?

Once the judge has read the indictment, the defendants are given an opportunity to present their statements. If both the representative of the enterprise and the responsible person are present, the representative of the enterprise is heard first. However, the responsible person who has not yet been questioned is not allowed to attend this hearing.

The responsible person will be asked to provide his/her full name, one of their parent's names, place of birth, age, education, occupation, and the role he/she holds within the legal entity at the time the economic offense was committed. Additionally, he/she will be asked whether he/she has been previously convicted, if he/she is currently facing prosecution for any other criminal or economic offense, and to provide information about his/her financial and family circumstances. These questions aim to provide the court with a comprehensive understanding of the circumstances surrounding the offense. Some of these factors may be taken into consideration by the court when determining the appropriate sanction.

2.9.3.1. Defense

The defendant is given the opportunity to personally and orally present his/her defense, which involves addressing all the allegations made in the accusation and presenting any facts that support the defendant's case.

This process begins with the defendant being asked to enter a plea of guilty or not guilty. Following that, the defendant is allowed to present his/her perspective on the entire situation. Any denials or discrepancies from the details outlined in the indictment should be substantiated with supporting evidence.



EXAMPLE: If the defendant asserts that his/her employee followed all the regulations, he/she should provide the employee's details (name, surname, and address) and propose him/her as a witness. If there is any document that can support this claim, the defendant is obligated to bring the original document for inspection and an adequate number of copies for the court and other involved parties in the proceedings.

When presenting the defense, the defendant may use notes.

After the defendant has presented his/her defense, the others present have the opportunity to ask him/her additional questions.

2.10. Termination of proceedings

The court may terminate the proceedings in the event that the responsible person is unavailable to state authorities (e.g., moved abroad) or when the responsible person is temporarily mentally ill or has a temporary mental disorder.

The procedure resumes when the reasons for which the proceedings were terminated cease.



It's good to know! The responsibility of the person responsible for the economic offense does not end simply because his/her employment in the enterprise has ended, or due to the opening of bankruptcy proceedings, or even if it becomes impossible to sanction the enterprise due to its termination.

2.11. How does the court decide?

In order to determine whether an economic offense has occurred and to establish other relevant circumstances, the court relies on the allegations presented in the indictment and the defense put forth by the defendant. The presentation of evidence becomes crucial in this process. The parties involved in the proceedings have the opportunity to propose evidence and should clearly indicate the circumstances that the evidence supports. It is ultimately the court's decision whether to accept or reject such proposals.

The court takes great care to examine all the mentioned circumstances, and as a result, may rightfully reject a witness if he/she lacks the necessary competence (e.g., if he/she does not possess direct knowledge of the matter he/she is testifying about) or if multiple witnesses

have already provided the same opinion on a particular matter, which the court deems to have been sufficiently examined.

If the court, by rejecting certain evidence, fails to address a relevant circumstance that is crucial to the proceedings, it may provide grounds for an appeal.

2.11.1. *Verdict*

After the presentation of all the evidence and closing arguments, the court will conclude the main trial and deliver a verdict. The court has the authority to find the defendant responsible, absolve him/her from responsibility, or dismiss the accusation. In a verdict finding the defendant responsible, the court will:

- ▶ specify the act for which he/she is held responsible, providing the facts and circumstances that constitute the elements of an economic offense;
- ▶ indicate the applicable regulations;
- ▶ determine the penalty;
- ▶ establish the costs of the proceedings and specify who is responsible for bearing them;
- ▶ set a deadline for the payment of fines.



It's good to know! In justified cases, the court may grant the convicted legal and responsible person the option to pay the fine in installments, with a payment period of up to one year.

The court is obligated to provide an explanation for its decision. In this part of the verdict, the court will outline the procedure followed, the evidence presented, and the rationale behind its decision. Additionally, the court will explain how it evaluated the penalty.

2.12. Which court has jurisdiction over the appeal process and what is the specific timeframe within which I can initiate the appeal?

An appeal can be filed within **eight days from the date the judgment is delivered**.

The appeal postpones the execution of the verdict!

The appeal is submitted in written form to the court that made the initial decision, which is the competent commercial court. The commercial court will then forward your appeal, along with the judgment and case files (trial records, attached evidence, and other documents) to the Commercial Appellate Court, which will make a decision on the appeal.



It's good to know! Unlike the deadline for filing an appeal against a judgment, the deadline for filing an appeal against **a decision** is **three days from the day the decision was delivered**.

The appeal should contain:

1. the designation of the judgment against which the appeal is being filed, including the case number, for example: PK 123/22;
2. the grounds for filing an appeal, for example, the contention that the court failed to properly establish the factual situation or failed to properly weigh the sanction.
3. explanation of appeal;
4. a proposal for a decision to be made by the second-instance court, for example, the complete cancellation of the judgment and its remand to the first-instance court for retrial, or among other possibilities, the modification of the judgment;
5. the signature of the appellant.

An appeal that does not include any of the aforementioned items will be deemed **incomplete** by the court and will be returned to you for revising or correcting it within a specified deadline.

2.13. How does the second-instance court reach a decision?

The Commercial Appellate Court, functioning as a second-instance court handling appeals, typically reaches a decision during a session in the absence of the parties. However, in exceptional cases where the presence of the parties, or one of them, is deemed necessary for clarifying the matter, the court will issue a summons to inform the parties of the session's date and location.

The Commercial Appellate Court may:

1. **dismiss the appeal** – citing reasons such as untimeliness (filed after the deadline) or irregularity (if it is not clear from the appeal which decision is being appealed).
2. **reject the appeal as unfounded and uphold the first-instance verdict** – if it determines that the grounds for appeal lack merit and that the commercial court made a correct decision.
3. **accept the appeal, annul the first-instance verdict, and remand the case to the first-instance court for a retrial** – This can occur, for example, if the appellate court finds that the first-instance court failed to fully establish the factual situation.
4. **Accept the appeal and modify the first-instance verdict** if it deems that the allegations raised in the appeal are well-founded. In such cases, the appellate court does not remand the case to the first-instance court but instead decides on the matter itself.

If the first-instance verdict has already been overturned once in the same case, the second-instance court will render its own decision.

2.13. The decision of the second-instance court has been issued

On the day of **the final decision** by the Commercial Appellate Court, the procedure concludes, and the decision that either releases you from liability or convicts you becomes legally binding.

Final decisions include all the aforementioned decisions made by the second-instance court, except for the decision to return the case to the first-instance court for retrial.

A legally binding decision cannot be reviewed through regular proceedings anymore.

Therefore, ONCE THE DEADLINE FOR VOLUNTARY FULFILLMENT OF THE SANCTION HAS EXPIRED, THE DECISION CAN BE ENFORCED BY USING FORCE.

2.14. Extraordinary legal remedies: When can I use them?

Extraordinary legal remedies, such as a **request to repeat the procedure** and a **request for the protection of legality**, are only submitted in exceptional circumstances – when there are specific legal reasons prescribed by law.

The specific reasons for these procedures are strictly prescribed by the Criminal Procedure Code in cases of economic offenses.



EXAMPLE: A reason for repeating the procedure arises if the judgment is based on a false document or false testimony from a witness, expert, or any other person. The reason for initiating a procedure for the protection of legality arises when a law applied in the proceeding is deemed unconstitutional based on a decision by the Constitutional Court.

The reasons for applying extraordinary legal remedies in proceedings related to economic offenses are specified in articles 473, 479, and 485 of the Criminal Procedure Code, published in the “Official Gazette” no. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – decision US and 62/2021 – decision US.



IT IS IMPORTANT TO NOTE THAT THE FILING OF ANY EXTRAORDINARY REMEDY DOES NOT SUSPEND THE ENFORCEMENT OF A FINAL DECISION. If the fine is not paid within the specified deadline, the sanction may still be enforced!

2.15. Deprivation of property benefit from a legal entity

The enterprise is not allowed to retain the property benefit obtained through an economic offense.

If the court determines the existence of such property benefit, the decision regarding its deprivation will be made in the judgment.

If the enterprise ceases to exist either before or after the initiation of the proceedings for the economic offense, the proceedings will be conducted against the enterprise to which the obligations have been transferred, but only with respect to the deprivation of the property benefit obtained through the commission of the economic offense.

CONSEQUENCES OF CONVICTION IN MISDEMEANOR AND ECONOMIC OFFENSE PROCEEDINGS

Registry of criminal, misdemeanor and administrative sanctions

The [Central Registry of Imposed Measures](#) is maintained by the Serbian Business Registers Agency, containing collected data on business entities whose operations have been sanctioned through the imposition of criminal, misdemeanor or administrative sanctions.

Certain measures can serve as a basis for temporary restrictions of rights, such as:

- ▶ prohibitions, limitations, or security measures on conducting registered business activities or operations;
- ▶ prohibition of performing duties or holding positions in legal entities or as entrepreneurs;
- ▶ measures imposed in accordance with regulations in the field of tax procedures and tax administration;
- ▶ restrictions on the disposal of funds and other measures.

Information about legal entities with temporary restrictions of rights is published on the Serbian Business Registers Agency's website, aiming to enhance the transparency of business operations of entities. However, information about individuals who have been subject to prohibitions or security measures in court proceedings is not publicly available and is disclosed only in accordance with the relevant regulations.

Deletion from the Central Registry of Imposed Measures occurs upon the expiration of the validity period of temporary restrictions.

Registry of Economic Offences Records

The registry of convictions for economic offenses by final judgments are maintained by the commercial courts. In the event of a new proceeding related to an economic offense, the conviction data will be available to the court and may be considered as an aggravating circumstance in the new proceeding.

Data on the convicted enterprise or responsible person from the registry can only be disclosed to competent state authorities (court, prosecutor's office, the Ministry of Internal Affairs, inspection) for the purpose of conducting criminal or economic offense proceedings, and only if there are justified reasons.

Deletion of Convictions

Conviction data may be deleted after a certain period.

Convictions for fines imposed on enterprises and responsible person are deleted within **three years from the finality of the judgment**, provided that neither the enterprise nor the responsible person commits a new economic offense.

If a protective measure is imposed along with a fine, the conviction cannot be deleted before the execution of the protective measure.

Conditional sentences are deleted **after one year following the expiration of the probation period** (unless revoked).

In cases where a person is acquitted, the conviction is deleted if the person does not commit a new economic offense within **one year from the final judgment**.

