

# PRINCIPLES OF CRIMINAL PROSECUTION UNDER THE 2021 CRIMINAL PROCEDURE CODE OF REPUBLIKA SRPSKA

Original Scientific Article

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**Abstract:** The prosecutor, as a state body, performs the basic function of criminal prosecution in criminal proceedings in accordance with the principles of legality and accusatory nature. The principle of legality obligates the prosecutor to prosecute in order to file an indictment if there is evidence of a criminal offense. The accusatorial principle indicates that the initiation of criminal proceedings depends on the prosecutor, because the legislature prescribes that criminal proceedings *can be* initiated only at the prosecutor's request. Criminal prosecution depends on the prosecutor's decision to prosecute matters, and the aggrieved party can only represent the indictment filed by the prosecutor if the prosecutor decides to abandon the indictment confirmed. The aggrieved party may be given a possibility to prosecute criminal offenses in which the public interest has not been violated.

**Keywords:** accusatory principle, legality, aggrieved party.

## GENERAL REMARKS ON THE PRINCIPLES OF CRIMINAL PROSECUTION

The principle of legality and the accusatorial nature of criminal prosecution are the basic principles of criminal procedure that oblige the prosecutor to initiate and conduct criminal proceedings when he provides sufficient evidence to support the indictment. The prosecutor's request and the existence of sufficient evidence are cumulatively set conditions, according to the principle of legality, for undertaking criminal prosecution. In regard to the criminal offenses prosecuted on a motion by the aggrieved party, the principle of legality of criminal prosecution is conditioned by the aggrieved party's interest, because these are criminal offenses in which there is a close connection between the perpetrator and the aggrieved party. According to the accusatorial principle, the only the prosecutor has a right to initiate a criminal prosecution, while the aggrieved

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party can only represent the indictment filed by the prosecutor if the prosecutor abandons criminal prosecution after the indictment has been confirmed. The principles of legality and accusatorial principle thus defined in the criminal procedure in Republika Srpska can be classified under the group of principles of criminal prosecution, because these principles prescribe the conditions for criminal prosecution, that is, a individual responsible for criminal prosecution and the goal of criminal prosecution, which is to gather sufficient evidence and file an indictment based on the evidence of the existence of a criminal offense and the accountability of the suspect or the accused for the criminal offense committed. The principle of legality of criminal prosecution is in line with the guarantee function of the criminal-law principle of legality (Cigler, 1994: 10). There is a synthesis between the principles of formality and legality of criminal prosecution, because the obligation to file an indictment is determined and the entity who this obligation is established (Škulić, 2014: 57). The function of criminal prosecution is performed in the state interest ex officio by a competent body, regardless of whether the person who suffered injury in the commission of a criminal offense wants it (Simić-Jekić, 1973: 155).

By amending the principles of legality and opportunity in the criminal procedure of Republika Srpska, the aim was to give more significant procedural rights to the aggrieved party in the criminal proceedings. The violation and endangerment of the aggrieved party's personal and property rights resulted in the request that the aggrieved party be treated compassionately during the criminal proceedings. The legal regulation of the place of the aggrieved party in the criminal proceedings is reduced to procedural rights, placing a property claim of the aggrieved party in the criminal proceedings, as well as taking measures to prevent secondary victimization. The procedural place of the aggrieved party (Grubač, 2012: 105-120) is being improved both through measures of procedural protection of the aggrieved party in criminal the proceedings, while the place of the aggrieved party in the criminal proceedings is observed through the right to a fair trial (Ilić, 2012: 156).

*Amendments to the principle of legality and  
the accusatorial principle according to the 2021 CPC*

The amendments to the Criminal Procedure Code of Republika Srpska (hereinafter: the 2021CPC) amended the principles of criminal prosecution, the accusatorial principle, and the principle of legality. The amendments to the principles of criminal prosecution of the accusatorial principle and the principles of legality were made with the aim of improving the procedural place of the aggrieved party in the sense that the aggrieved party can undertake criminal prosecution if the prosecutor abandons the prosecution after the indictment has been confirmed. However, it should be mentioned that the legislature talks about assuming the criminal prosecution after the confirmed indictment, and at this stage of the proceedings after the indictment confirmed, we can no lon-

ger talk about criminal prosecution, but about the aggrieved party representing the prosecutor’s indictment, rather than his/her own indictment.

The aggrieved party in criminal proceedings can perform one of the possible procedural roles, which is a potential prosecutor for criminal offenses prosecuted *ex officio*, a subsidiary prosecutor for a criminal offense prosecuted *ex officio*, the aggrieved party with a motion for criminal prosecution for criminal offenses prosecuted at the suggestion of the aggrieved party. The Criminal Procedure Code narrows the possibility of the aggrieved party to be a subsidiary prosecutor, because this possibility does not exist at the previous stages of the criminal proceedings (Škulić, 2016: 41), it exists after the confirmation of the indictment. The aggrieved party is limited in his procedural rights in the criminal proceedings, because the aggrieved party’s complaint against the prosecutor’s decision is not decided by the immediately higher body, but by the same one (Bajović, 2018: 411). If the aggrieved party had the procedural right to assume the prosecution from the prosecutor today, which he/she does not have, we could control the prosecutor’s decision on the existence or non-existence of sufficient evidence to conduct an investigation or the existence of sufficient evidence to file an indictment (Buha, 2020: 480–487).

The legal amendments to the Criminal Procedure Code of Republika Srpska did not lack amendments to the principle of legality in such a way that the prosecutor cannot undertake criminal prosecution for certain criminal offenses for which there is no consent of the aggrieved party, which are criminal offenses in which the public interest in criminal prosecution conducted *ex officio* by the prosecutor, as a state body, does not dominate.

The changes in the principle of legality and the accusatorial principle according to the 2021 CPC were made in order to seemingly improve the procedural place of the marginalized aggrieved party (Buha & Jukić, 2020: 628 635) as a secondary procedural participant in the criminal proceedings. Thus, by amending the accusatorial principle according to paragraph 2 of Article 16 of the RS 2021 CPC, the aggrieved party as a prosecutor can assume the criminal prosecution after the indictment has been confirmed if the prosecutor abandons the prosecution. The aggrieved party assumes the criminal prosecution if two conditions are cumulatively fulfilled, and that is the existence of a confirmed indictment, and if the prosecutor declares that he abandons the prosecution. In this legal situation, the aggrieved party’s hands are still tied, because he/she is following the “paved paths” in the prosecutor’s confirmed indictment, which indicates that this legal provision which prescribes that the aggrieved party assumes the criminal prosecution is meaningless, because he/she has no procedural rights in criminal prosecution and may not influence neither the issuance of an order to conduct an investigation nor the filing of an indictment. We would dare to say that only “cosmetic changes” were made to the criminal procedure. That the place of the aggrieved party is still marginalized is confirmed not only by changes in the accusatorial principle but also in the provisions of the Criminal Procedure Code on the rights of the aggrieved party

in the criminal proceedings, because the aggrieved party remains deprived of significant procedural rights, which improve his procedural place in the criminal proceedings, which is the right to appeal the decision not to conduct an investigation, as well as the right to appeal the judgment (Buha, 2020: 490).

In theory, we find that the thesis that the defendant and other participants in the criminal proceedings do not have the right to appeal the decisions made by the public prosecutor, because these internal decisions are binding only on the public prosecutor's office, rather than the defendant and the court (Vasiljevic, 1981: 135, Grubac, 1995: 150). This view is quite understandable regarding the right of the defendant to appeal against the prosecutor's decisions, because he/she has the right to appeal the judgment or court decision and can point to certain omissions and illegalities in the work of the prosecutor. And certainly this understanding is in line with the thesis that the main procedural participants in the criminal proceedings are the defendant and the prosecutor. However, if we want to give a more active procedural role to the aggrieved party in the criminal proceedings, as the law attempts to do, that is, the status of a subsidiary prosecutor, then we must give him/her more procedural rights.

The 2012 Criminal Procedure Code of Republika Srpska (hereinafter: the 2012 CPC) defines the principle of legality and the accusatorial principle as basic principles of criminal procedure which are a guarantee for fair criminal proceedings against the suspect or the accused, because the criminal proceedings can be initiated only by the prosecutor if there is evidence that a crime has been committed. According to Articles 16 and 17 of the 2012 CPC, criminal prosecution falls exclusively within the competence of the prosecutor when there is evidence of a crime committed. Although at first glance a hasty conclusion could be made that, under the 2021 CPC, the criminal proceedings can be initiated by the aggrieved party, this is certainly not the case because the legislature, in paragraph 2 of Article 16 of the RS 2021 CPC, uses the legal phrase *the aggrieved party assumes* criminal prosecution but does not initiates a criminal proceeding. The competence to initiate criminal proceedings still falls exclusively within the competence of the prosecutor.

#### *The accusatorial principle in the criminal procedure of Republika Srpska*

In criminal law, the accusatorial principle is defined as the basic principle of procedural participants (Grubac, 1995: 72), while others as the principle of criminal prosecution (Škulić, 2014: 53). According to the accusatorial principle, the function of criminal prosecution is entrusted only to the prosecutor, that is, the initiation and conduct of criminal proceedings is possible only at the request of the prosecutor. The initiation of criminal proceedings according to this principle does not fall within the competence of the court. The court is not competent to collect and conduct evidence, but may reach a decision only on the basis of evidence presented by the parties before the court (Damascus, 2001: 48). According to the rule *nemo index sine actore* without an authorized

prosecutor, there are no criminal proceedings and thus the functions of prosecution (thesis), defense (antithesis) and trial (synthesis) are strictly separated (Petrić, 1985: 13). In essence, it is possible that the antithesis does not differ from the thesis if the defense, in the material sense, consists in admitting guilt (Škulić, 2002: 5). The principle of accusation, that is, the accusatorial principle, is related to the existence of parties to the criminal proceedings, where one of the parties performs the function of criminal prosecution, while the other is protected from that prosecution (Čubinski, 1933: 9). In the adversarial procedure, the role of the court is passive, because the court does not actively participate in proving a case. Rather, it supervises the presentation of evidence as well as other procedural actions performed by the parties (Pavišić, 2008: 13).<sup>2</sup> The prosecutor is an actively legitimized, that is, an attacked procedural actor who submits a request decided by the court (Živanović, 1940: 129-130). In criminal law, the accusatorial principle is observed from the point of view of learning about historical forms of criminal procedure (Strogović, 1948: 24). The accusatorial principle means that the criminal proceedings cannot be conducted without an indictment,<sup>3</sup> a decision reached by the authorized prosecutor and that the functions of prosecution and trial are separate and the court is limited to considering the facts presented in the indictment and reaches a decision in accordance with the principle of free evaluation of evidence (Buha, 2017: 159-178). Discussion in the accusatorial procedure is oral, direct and contradictory, it was usually a public procedure and the free evaluation of evidence principle was used in evaluating evidence, but these are not essential characteristics of the accusatorial principle, that is, procedure (Vasiljević, 1981: 18).

Although certain changes have been made to the accusatorial principle according to the 2021CPC in the sense that the procedural place of the aggrieved party as a prosecutor who can undertake the criminal prosecution has been “seemingly” improved, the aggrieved party as a prosecutor can undertake criminal prosecution; however, under Article 241 of the 2012 CPC, the prosecutor, when he/she finds that there is sufficient evidence, files an indictment

<sup>2</sup> Although one of the basic principles of criminal prosecution is the accusatorial principle, according to the 2012 CPC and the 2021 CPC, according to which the prosecutor is the only one authorized to initiate criminal proceedings or conduct criminal prosecution, we must not ignore the fact that our criminal proceedings are mixed because the role of the court, no matter how passive, because the court is not obligated to establish the truth, that is, the legislature does not define the principle of truth; however, the court is not obligated to present evidence but there is possibility for the court to present evidence and propose that some evidence be presented and certainly for the purpose of determining the truth, which is indisputably relative in the criminal proceedings. Article 276, paragraph 2, item (d) of the 2012 CPC prescribes that evidence may be presented by the court in addition to the parties. Paragraph 3 of the same article stipulates that the court or the panel may at any time ask a witness questions in the criminal proceedings.

<sup>3</sup> An indictment, according to the criminal procedure of Republika Srpska, can only be filed by the prosecutor under Article 241 of the 2012 CPC when he determines, during the investigation, that there is sufficient evidence from which the basic suspicion that the suspect committed a crime arises and will prepare and submit the indictment to the judge for the preliminary proceedings. The mentioned legal provision indicates that there is no criminal procedure without an indictment confirmed by the judge for the preliminary proceedings and indicates that the prosecutor is responsible for criminal prosecution but not for the decision to initiate and conduct criminal proceedings.

following the investigation. Thus, the aggrieved party does not have the right to file an indictment, nor to participate in building an indictment in terms of gathering evidence which is the basis for filing an indictment. The indictment falls exclusively within the competence of the prosecutor as a state body with the basic task of gathering evidence in the favor of and against the suspect pertaining to the criminal offense committed and the guilt of the suspect. The suspect obtains the status of an accused person only after the indictment has been confirmed by the judge for the preliminary proceedings, which is evident from Article 242 of the 2012 CPC and Article 243 of the 2012 CPC.

### *The principle of legality in the criminal procedure of Republika Srpska*

The principle of legality is defined in theory as the principle of obligation of official criminal prosecution (Škulić, 2014: 53). The prosecutor is obligated to initiate the criminal proceedings *ex officio* if there is evidence of a criminal offense committed, so that within the accusatorial principle according to which the criminal proceedings can be initiated only by the prosecutor, the principle of legality of criminal prosecution applies, according to which the prosecutor has an obligation to institute the criminal proceedings if there is evidence of a criminal offense committed. According to the legal definition of the accusatorial principle and the principle of legality in our 2012 CPC, it is clear that the principle of formality or legality operates within the framework of the accusatorial principle (Roxin, 2006: 71-72). In theory, we encounter the principle of formality and the principle of legality of criminal prosecution in parallel, and in essence it is a principle of the same content, because the prosecutor has an obligation to institute the criminal proceedings if there is evidence of a crime committed. In fact, the prosecutor is the only entity who can introduce an initiative to conduct criminal prosecution (Grubac, 2006: 150).

We notice that in theory there is a certain difference between the principles of formality and legality of criminal prosecution because the thin line of demarcation exists between these two principles in the sense that the principle of formality is bound exclusively to the right rather than to the duty of the prosecutor as one of the main actors in the criminal proceedings to institute the criminal proceedings, while the principle of legality of criminal prosecution indicates, in addition to the right, the duty of the prosecutor to undertake criminal the prosecution *if there is evidence of a crime committed*. According to the 2012 CPC, it is not possible to separate the principle of formality from the principle of legality of criminal prosecution, because the legislature prescribes that the prosecutor is obligated to initiate the criminal prosecution if there is evidence of a crime. In fact, these two principles are interdependent, there exists neither criminal prosecution nor the prosecutor's duty to prosecute if there is no evidence of a crime committed, so it is difficult to make a clear distinction between the principles of formality and legality of criminal prosecution.



Whether we will observe the principle of legality as a principle of criminal prosecution or the principle of criminal procedure also depends on the legal definition of this principle, which is indicated by legal solutions which are different in the Republic of Serbia and the Republic of Croatia. According to Article 6 of the Criminal Procedure Code of the Republic of Serbia, a prosecutor is obligated to undertake criminal prosecution when there are grounds for suspicion that a criminal offense has been committed or that a certain person has committed a criminal offense prosecuted *ex officio*. Like our Code, the Code of Serbia indicates that the principle of legality is the principle of criminal prosecution, while in Croatia the situation is different, because under Article 2 of the Criminal Procedure Code of the Republic of Croatia the principle of legality is the principle of criminal procedure because the proceedings are conducted at the request of the authorized prosecutor. Accordingly, it could be concluded that we encounter different theoretical classifications of this principle.

*Prosecution on a motion by the aggrieved party*

Regarding the amendments to the principle of legality of criminal prosecution under the 2021 CPC, the possibility of the prosecutor to initiate criminal proceedings for crimes in which private interest dominates is actually limited. For this reason, the legislature decided that in respect of criminal offenses in which private interest dominates (Škulić, 2011: 5), the prosecutor may initiate criminal proceedings only upon the motion of the aggrieved party. Specifically, these amendments to the principle of legality for initiating criminal proceedings on the aggrieved party's motion require that two formal conditions are met, namely the injured party's motion and the prosecutor's motion, because without the prosecutor's decision to accept such a motion there are no criminal proceedings. However, the motion of the aggrieved party for criminal prosecution is a condition without which the criminal proceedings may not be initiated. Interestingly, Article 17, paragraph 2 of the 2021 CPC stipulates that the prosecutor may or may not undertake criminal prosecution for criminal offenses prosecuted on a motion by the aggrieved party. However, the question arises as to what happens if the prosecutor does not undertake criminal prosecution despite the existence of the motion of an aggrieved party for criminal prosecution.

What are the criminal offenses that are prosecuted on a motion by of an aggrieved party? We sought the answer to this question in the substantive criminal legislation of Republika Srpska. Under Article 247 of the 2017 Criminal Code of Republika Srpska (hereinafter: the RS CC), prosecution in the case when the perpetrator is in a close relationship with the aggrieved party is undertaken on a motion by the aggrieved party, and these criminal offenses are as follows: criminal offense under Article 224 paragraph 2 of the RS CC that is, theft if the value of the confiscated item does not exceed 300 KM and the perpetrator intended to obtain a small property gain; a criminal offense under Article 229 of the RS CC, that is, evasion; the offense of fraud under Article 230 of the

RS CC, the offense of concealment, Article 236 CC RS; the offense of illegal immigration, Article 237 of the RS CC, the offense of damage and confiscation of another's property, Article 240 of the RS CC; offense damage to housing and business buildings and special parts of the building under Article 241 CC RS, and the offense of damage to other people's rights, Article 242 of the RS CC. These criminal offenses are prosecuted upon the motion of the aggrieved party under the following conditions: the perpetrator of these criminal offenses is in a close relationship with the aggrieved party, that is, that criminal offenses, as the legal provision itself stipulates, are committed against a spouse, blood relative, brother or sister, adoptive parent or adoptee or against other persons with whom the perpetrator lives in a joint household.

In criminal offenses prosecuted on a motion by the aggrieved party, the private law relationship between these two procedural participants in the criminal proceedings has been violated, the perpetrator of the criminal offense and the aggrieved party who have a close relationship and should regulate their private legal relations without the interference of the state with the rights which do not violate the public good or insult the public interest. These are criminal offenses in which the private interest between the perpetrator of the criminal offense and the aggrieved party dominates, no public interest is identified. The legislature in paragraph 2, Article 17 of the 2021 CPC stipulates that the prosecutor *may*, rather than he *will* undertake criminal prosecution only on the basis of a request of an aggrieved party in cases provided for by the Code. Thus, the prosecutor has no legal obligation to undertake criminal prosecution for criminal offenses prosecuted on a motion by the aggrieved party, provided that the motion is an imperative condition for the criminal prosecution of such criminal offenses. It is practically possible to have a situation where there is a request of the aggrieved party to prosecute criminal offenses based on a motion by the aggrieved party without the prosecutor initiating criminal proceedings, the legislator says he/she may or does not have to initiate criminal proceedings, so the question arises how to act in such a potential legal situation where there exists the motion of the aggrieved party, but the prosecutor does not act upon the request. Therefore, does the prosecutor in such a legal situation, when there is a request of the aggrieved party for criminal prosecution, and does not act upon it, have the obligation to pass a procedural legal act, such as an order not to conduct an investigation. Article 224 of the 2012 CPC stipulates that the prosecutor will order an investigation if there is reasonable suspicion that a crime has been committed, so the motion filed by the aggrieved party to prosecute the offense on a motion by the aggrieved party would constitute reasonable suspicion that a crime was committed. However, considering that the prosecutor is not obligated to act upon the request of the aggrieved party, the question is whether he/she could also issue an order to suspend the investigation, for example, if there is not sufficient evidence of a crime committed despite the motion of the aggrieved party for criminal prosecution. We believe that if the aggrieved party filed a motion for criminal prosecution of criminal offenses prescribed by the code to be prosecuted on a motion by the aggrieved party and if the prosecutor



does not decide to institute criminal proceedings, he/she is obligated to order the suspension of investigation for the reasons listed in Article 232 of the 2012 CPC.

When the prosecutor, after receiving the request of the aggrieved party for criminal prosecution regarding criminal offenses prosecuted on a motion by the aggrieved party, assesses that there is no legal basis for instituting proceedings, the prosecutor then informs the aggrieved party who has no procedural possibility of instituting criminal proceedings, but only the right to object to the passive attitude of the prosecutor (Bajer, 1982: 197).

## THE PRINCIPLES OF CRIMINAL PROSECUTION AND INITIATION OF CRIMINAL PROCEEDINGS IN REPUBLIKA SRPSKA

The principle of legality and the accusatorial principle are the basic principles of criminal procedure. However, some scholars (Škulić, 2014: 50-57) classify these principles in the group of principles of criminal prosecution, some link the principle of legality to the principle of criminal prosecution (Grubač, 2009: 175), while others link this basic procedural principle to the public prosecutor (Vasiljević, 1981: 39), some scholars (Krapac, 2010: 48) link the principle of legality to instituting and conducting criminal proceedings. The principle of legality is the principle of criminal prosecution according to Article 17 of the 2012 CPC, because the legislature stipulates that the prosecutor has a duty to undertake criminal prosecution. The legislature in Republika Srpska did not address the issue of when criminal proceedings are considered instituted as this issue is legally defined and resolved in the criminal procedure of Serbia, Article 7 of the Criminal Procedure Code of the Republic of Serbia, as well as in the criminal procedure of the Republic of Croatia, Article 17 of the Criminal Procedure Code of the Republic of Croatia. Although in theory we encounter different classifications of this principle, either as the principle of the public prosecutor, the principle of criminal prosecution or the principle of instituting and conducting criminal proceedings, as well as the principle of criminal prosecution, it is clear and unquestionable that the principle of legality is a principle related to the prosecutor as a state body whose main duty is to prosecute the perpetrator of a criminal offense, conduct an investigation, file an indictment, collect evidence in favor of and against the accused, that only the prosecutor may institute criminal proceedings, if there is evidence that a criminal offense has been committed. Note that the legal term *criminal proceedings* is used in Article 16 of the 2012 CPC and *criminal prosecution* in Article 17 of the 2012 CPC. Is the instituting of criminal proceedings the same as criminal prosecution, because the accusatorial principle prescribes that the prosecutor is competent to institute criminal proceedings, and the principle of legality that the prosecutor undertakes criminal prosecution if there is evidence that a crime

has been committed. Could we draw a conclusion from such legal formulations contained Articles 16 and 17 of the 2012 CPC that criminal prosecution is one of the stages of criminal proceedings that is conducted only if there is evidence of a criminal offense, and the criminal proceedings can be instituted even if there is no evidence of the crime committed. The legislature in Republika Srpska does not prescribe clearly when the criminal proceedings are instituted and who institutes them and under which procedural acts, as it has been done in the neighboring states of the Republic of Serbia and the Republic of Croatia.<sup>4</sup>

Under Article 16 of the 2012 CPC, the accusatorial principle, according to which the criminal proceedings can be instituted only by the prosecutor, but the Code does not define when the criminal proceedings are considered instituted. We believe that if the criminal proceedings can be instituted by both the prosecutor and the court by taking certain procedural actions of the prosecutor or the court in terms of passing a procedural legal act indicating the existence of a criminal offense, such as an order to conduct an investigation, remand in custody ordered by the court in the investigation phase at the request of the prosecutor, and when a suspect is summoned for questioning by the prosecutor. Thus, in practice, there are frequent situations when a person is remanded in custody in the investigation phase at the request of the prosecutor, as well as when a person is summoned as a suspect for questioning, these are procedural legal acts which restrict human rights and freedoms and which charge the person with committing a criminal offense due to the existence of grounds for suspicion that he has committed a criminal offense.

When the criminal proceedings are considered institute under the RS CPC, as well as many other unresolved issues, and whether it can be said that the principle of legality is the principle of criminal prosecution, which at the same time is not the principle of criminal prosecution, what is criminal prosecution? Are there criminal charges without a criminal prosecution? That such a legal situation is possible is indicated by the legal provisions defining the issue of instituting criminal proceedings in the Republic of Serbia and the Republic of Croatia. However, according to Article 241, paragraph 1 of the 2012 CPC, it is not possible to file an indictment unless an investigation has been conducted which indicates the existence of sufficient evidence from which a reasonable suspicion arises that the suspect has committed a crime. Are there criminal charges if there is no criminal prosecution under our law and does the principle of legality instruct the prosecutor to file an indictment or to institute the criminal proceedings and whether the initiation of criminal proceedings must lead to an indictment? All these issues indicate that changes in criminal procedure in Republika Srpska are necessary in order to overcome certain legal dilemmas that may lead to different application of criminal procedural legislation in practice, which is contrary to the legal standards of equality and security in terms of clarity and specificity of every offense or action to be lawful.

<sup>4</sup> Article 7 of the Criminal Procedure Code of the Republic of Serbia, Article 17 of the Criminal Procedure Code of the Republic of Croatia.

## CONCLUSION

The principle of legality binds the prosecutor to prosecute criminal offenses prosecuted *ex officio*. In the criminal proceedings, the prosecutor is a party to the proceedings, but also has a role of a state body whose basic function is criminal prosecution in accordance with the principles of legality and accusatorial principle. By amending the Criminal Procedure Code of Republika Srpska, the legislature attempted to entrust the function of criminal prosecution to the aggrieved party, but without success, because there can be no criminal prosecution after the confirmation of the indictment. The procedural role of the aggrieved party is still reduced to a secondary procedural role as a witness in the criminal proceedings and a person who has the right to file a property claim as well as a person who institutes the criminal proceedings for criminal offenses prosecuted on a motion by the aggrieved party. And as “significant”, “unfortunately”, procedural rights that the aggrieved party has under our CPC are the right to object to a negative prosecutor’s decision and the right to appeal the decision on the payment of costs of the criminal proceedings. The procedural right of the aggrieved party to file a property claim does not mean that the court is obligated to decide on the same, because under Article 103 of the 2012 CPC, the property claim will be discussed on a motion by the aggrieved party and if it does not significantly delay the criminal proceedings. Regarding the criminal offenses prosecuted on a motion by the aggrieved party, it is still not possible to institute criminal proceedings without the prosecutor’s request, which is in accordance with the principle of adversarial proceedings. The principles of legality and accusatorial principle, as the basic principles of criminal prosecution, reflect the right and exclusive duty of the prosecutor to prosecute as a state body entrusted with the right to initiate criminal prosecution if there is evidence of a criminal offense and the duty to indict. With the amendments to the accusatorial principle according to the 2021 CPC, the procedural right of the aggrieved party is reduced only to the procedural right to represent the indictment confirmed, which was filed by the prosecutor if he/she withdraws the charges. A particularly interesting solution in the new code prescribes that the aggrieved party can point to facts and introduce evidence important for proving the case; however, it remains questionable how to exercise his/her right determined under Article 46a, paragraph 1, item (b) of the 2021 CPC.

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