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THE POSSIBILITY OF LIMITING THE EXERCISE OF THE RIGHT TO APPEAL IN CRIMINAL MATTERS ACCORDING TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

Abstract

The right to a legal remedy in criminal proceedings, which enables the refutation of the legal and factual basis of a court decision, is a guarantor of a legal and correct court decision, i.e. the pillar of a legal and fair procedure without which modern criminal procedural systems could not be imagined. Guaranteeing and exercising this right contributes to the protection of individual and general interests, as well as the realization of fundamental principles of criminal procedure, such as legality, fairness, truth and legal certainty. Despite the exceptional and unequivocal importance of legal remedies, i.e. appeals in criminal proceedings, in one of the most important international legal instruments in the field of protection of human rights – the European Convention for the Protection of Human Rights and Freedoms, it was proclaimed in such a way that gives the possibility of its limitation. Pointing out the exceptional importance of this legal remedy, the author analyzed the provisions of the European Convention for the Protection of Human Rights and Freedoms, which proclaimed the right to appeal in criminal proceedings, as well as the decisions of the European Court of Human Rights, with the aim of pointing out the shortcomings of the provisions of the Convention that the signatory states provides the possibility of limiting the review of certain court decisions in criminal proceedings.

Keywords: *right to a legal remedy, appeal in criminal proceedings, limitation of the right to appeal in criminal proceedings, European Convention for the Protection of Human Rights, European Court of Human Rights.*

1. Introduction

The possibility of reviewing a court decision by means of legal remedies, which represents a fundamental feature of modern criminal procedural legislation, viewed through the history of criminal law, existed even in the criminal procedure

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of the Roman Empire (*provocatio ad populum).* By means of *provocatio ad populum*, a Roman citizen who was sentenced to death could present the verdict for review before the people's court (see more about that Bayer, 1995, p. 12) as well as in medieval Germanic and Frankish law (*urteilsschelte*) – the party that was not satisfied with the verdict could challenge the opposite party to a duel and on that occasion propose a new verdict. After the duel, the verdict proposed by the side that won it would be passed (see more: Bayer, 1995, p. 55; Avramović & Stanimirović, 2013, p. 209). Relying on the definition of justice (fairness) by the Roman jurist Ulpian, which reads *Iustitia est constans et perpetua voluntas ius suum cuique tribuendi*, it is noted that the possibility of challenging a court decision in early social periods was recognized as a way to achieve justice, *i.e.* as an integral part of the legal mechanism for the realization of the principle of fairness of the criminal procedure.

Woven into the criminal procedure of the earliest social periods, the thought of the need to standardize the possibility of reviewing a court decision, as a presumption for the achievement of a fair and legal procedure, is today as a generally accepted legal standard embodied in the most important international legal instruments and in national legal systems. Without the procedural institute of legal remedies, which can eliminate possible illegalities and irregularities in the decision-making process, as well as in the decision itself, it is impossible to imagine the realization of the core principles of criminal procedure, as well as the goal of the criminal procedure. Precisely because of the above, a general agreement has been reached in modern criminal procedural systems on the necessity of standardizing this procedural institute (on the necessity and justification of legal remedies in criminal proceedings, see: Živanović, 2022, pp. 40-43).

The Procedural Institute of Legal Remedies, which is the guarantor of making a legal and correct court decision, is a fundamental assumption for achieving a fair trial (see *Delcourt v. Belgium*, par. 25.2), which is proclaimed as the goal of criminal proceedings. The importance of legal remedies for the implementation of fundamental procedural principles and for the implementation of a fair procedure is indicated by prominent authors in the field of criminal procedural law (Grubač, 2002, p. 119; Brkić, 2016, p. 149; Škulić, 2016, pp. 46-75; Bugarski, 2016, pp. 174-189; Bejatović, 2016, p. 13; Đurđić, 2006, p. 126; Knežević, 2012, p. 244). It is about an institute that enables „access to justice" (Beširević *et al.,* 2017, p. 710; Ilić, 2015, p. 82). Since fairness can be defined as compliance with justice (fairness) (*Pravna enciklopedija,* 1979, p. 1037), from the aspect of procedural logic as well as from the aspect of international legal standards achieved in the field of human rights protection, a procedure in which the defendant would be exposed to the possibility of arbitrary action and punishment by judicial authorities cannot be considered a fair procedure, without the possibility of reviewing a decision

that may be made contrary to legal provisions or based on a factual situation that is wrongly or incompletely determined. Hence, it is clearly seen that a fair trial is unthinkable without the procedural institute of legal remedies, which is an inseparable part of it.

The importance of the role of legal remedies in achieving a fair trial is also reflected in the fact that the principle of procedural fairness has a wide domain, that is, it is not limited only to criminal proceedings. Namely, the guarantee of the right to a legal remedy and its realization are a reflection of the level of development of a legal system and social community, which is why, as stated in professional literature (Mol & Harbi, 2006, p. 11) and judicial practice (*Delcourt v. Belgium*, par. 25), this right represents the foundation of a democratic society, and „is of essential importance for the functioning of a democracy".

The importance of this right is primarily indicated by international legal instruments adopted under the auspices of the United Nations and the Council of Europe. In the first case, it is about the Universal Declaration of Human Rights from 1948 (hereinafter: Declaration) and the International Covenant on Civil and Political Rights from 1966 (hereinafter: ICCPR; Zakon o ratifikaciji Međunarodnog pakta o građanskim i političkim pravima, 1971). Among the minimum legal standards for the protection of human rights set by the Declaration, the right to a legal remedy took its place. The guarantee of the mentioned right is guaranteed by the provisions of Art. 8 of the Declaration, which stipulates that everyone has the right to a legal remedy, which can be exercised before national courts „against acts that violate the fundamental rights recognized by the constitution or laws". Then, the ICCPR more specifically determines the right to a legal remedy, by the provision of Art. 14, para. 5 guarantees every person, who has been declared guilty of a criminal offense, the possibility to request a review of his guilt and conviction from a higher court in accordance with the law. It follows from the aforementioned provision that only a conviction decision, *i.e.* a decision declaring a person guilty of a criminal offense, is subject to review by a higher court instance, leaving no possibility for a wider interpretation, in relation to other types of decisions that the court can make. Also, the ICCPR does not provide for restrictions regarding the use of the said right, from which it can be concluded that it can be exercised in all criminal cases, regardless of the prescribed type and severity of punishment. Then, the right to a legal remedy is guaranteed by the European Convention for the Protection of Human Rights of the Council of Europe from 1950 (hereinafter: ECHR; Zakon o ratifikaciji Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda, 2003), as the most important international instrument in the field of protection of human rights and freedoms. It is important to note that, unlike the right to an effective legal remedy (Art. 13) and the right to a fair trial (Art. 6), which are

provided for in the original text of the ECHR, and which are closely related, the right to appeal in criminal matters was proclaimed under Art. 2 of Protocol 7 to the ECHR from 1984 (hereinafter: Protocol 7). In addition to the fact that it is a right that is an essential prerequisite for achieving a fair and legal procedure, the ECHR regulates certain possibilities of deviating from the right to appeal in criminal matters. Although of an optional nature, deviations from the aforementioned right can lead to a worsening of the defendant's procedural position, *i.e.* endangering both individual and general interests, as well as certain principles of criminal procedural law, such as the principles of legality, fairness, the principle of truth and the principle of legal certainty.

2. Right of Appeal in Criminal Matters According to the European Convention on Human Rights

The original text of the ECHR did not contain a special right to review the court's decision in criminal matters. The need to guarantee it was recognized at the Fourteenth Session of the General Assembly in 1959, when a proposal was made to proclaim a „general right to review". The aforementioned proposal also contained the idea of limiting such a right, in the sense that „minor offenses" would be exempt from the possibility of review. Then, the next step taken in order to standardize the right to appeal in criminal matters followed the comparison of the text of the ECHR with the text of the ICCPR. After comparing the mentioned international legal instruments, it was established that the ECHR contains fewer legal standards in this regard, which is why there was a need to equalize them (Trechsel, 2005, pp. 361-362). The aforementioned steps resulted in the prescription of the right to appeal in criminal matters, the provision of Art. 2 of Protocol 7, which entered into force in 1988, four years after its adoption.

Provision of Art. 2 of Protocol 7 prescribes the right to appeal in criminal matters as follows:

"1. Everyone convicted of a criminal offence by a tribunal shall have the right to have his conviction or sentence reviewed by a higher tribunal. The exercise of this right, including the grounds on which it may be exercised, shall be governed by law.

2. This right may be subject to exceptions in regard to offences of a minor character, as prescribed by law, or in cases in which the person concerned was tried in the first instance by the highest tribunal or was convicted following an appeal against acquittal."

As they are directly related to the exercise of the right to appeal in criminal matters as the right to a legal remedy, it is important to refer to certain convention rights, such as the right to a fair trial, which, *inter alia*, means ensuring a fair trial before an independent and impartial court (Art. 6 ECHR) and the right to an effective remedy (Art. 13 ECHR). Although the rights proclaimed by special provisions of the ECHR, the European Court of Human Rights (hereinafter: ECtHR) in its decisions has long advocated the position that the right to an effective remedy is consumed by the right to a fair trial. The ECtHR defended this position with the argument that Art. 6 of the ECHR sets „more requirements" and that as such they include the right to an effective legal remedy from Art. 13 of ECHR. In this sense, in cases where it was established that there was a violation of the right to a fair trial, the ECtHR did not consider the existence of a prominent violation of the right to an effective legal remedy. The stated point of view persisted until the decision of *Kudla v. Poland* (paras. 152, 157), in which the ECtHR established that the right to an effective legal remedy is directly related to the right to a fair trial, that is, to the right to access the court, but that it is not included in it. Bearing in mind the above, the ECtHR established that the right to a fair trial is strengthened by the right to an effective legal remedy (*Efendiyeva v. Azerbaijan*, para. 59; *Titarenko v. Ukraine*, para. 80). The effectiveness of the legal remedy is one of the basic questions that arise in connection with the realization of the right to a legal remedy, bearing in mind that only an effective legal remedy enables the achievement of the purpose of its legal constitution. In order for a certain legal remedy to be effective, it must have the ability to achieve both legal and real, practical efficiency (on the effectiveness of the legal remedy, see Živanović, 2022, pp. 65-69), that is, as established by the ECtHR: an effective legal remedy is a legal remedy that achieves a sufficient degree of certainty in law and in practice (*Gutsanovi v. Bulgaria*, paras. 88–89; *Salman v. Turke*y, para. 81; *İlhan v. Turkey*, para. 58; *O'Keeffe v. Ireland*, para. 175). The effectiveness of the legal remedy ensures that the legal remedy is available to everyone in the national legislation, which aims to ensure the enjoyment of the rights and freedoms proclaimed by the ECHR (Škulić & Bugarski, 2015, p. 494).

2.1. The Manner and Basis of Prescribing the Right to Appeal in Criminal matters – Art. 2, para. 1 of Protocol 7

Provision of Art. 2, para. 1 of Protocol 7 guarantees the right of every person to present the decision by which he was convicted or punished for review before a higher judicial instance, leaving the manner and basis of its prescription to national legislations. From the interpretation of the mentioned provision,

it follows that the ECHR regulates the possibility of rebutting only the decision on conviction or sentence, whereby the ECHR protects the procedural position of the accused. In this sense, the ECHR starts from the point of view that the defendant has the (greatest) immediate legal interest in challenging such a decision, since it was made to his detriment.

When it comes to the way of prescribing the right to appeal in criminal matters, the ECHR prescribes the obligation to standardize it, but does not oblige the contracting states with regard to the way of prescribing the said right, that is, the contracting states are free to regulate the way of exercising the said right themselves, in accordance with their legal order (*Natsvlishvili and Togonidze v. Georgia*, paras. 90–98; *Gurepka v. Ukraine*, para. 59; *Krombach v. France*, para. 96). Although left to the discretion of the signatory states, prescribing the manner of exercising the right to appeal in criminal matters should be in accordance with the standards set by the ECtHR. In this sense, in national legislations, the possibility of rebutting a conviction can be narrowed if it is a conviction that was made on the basis of the legal instruments on the recognition of a criminal offense, that is, when it is the result of a settlement. The possibility of narrowing the right to appeal against such a conviction is justified, as the ECtHR points out, by the fact that the acceptance of a settlement by the defendant and the waiver of the right to a regular criminal procedure entails the waiver of the right to a regular review of the appeal on the merits (*Natsvlishvili and Togonidze v. Georgia*, paras. 90-98; *Krombach v. France*, para. 96).

However, this position of the ECtHR must be interpreted in a restrictive manner, bearing in mind that it does not imply the right of the signatory state to deprive the defendant of the right to review the conviction decision in special criminal procedural forms, since the defendant's consent to resolve the criminal case in a special criminal procedural form, does not imply his necessary waiver of the right to appeal in full. The defendant's waiver of the right to appeal in that case cannot be the subject of a presumption, but must be established *in concreto* in a clear and unambiguous manner. Also, the defendant's waiver of the right to appeal must be covered by minimal protective measures commensurate with its importance (*Galstyan v. Armenia*, para. 90; *Sejdovic v. Italy*, para. 86; *Rostovtsev v. Ukraine*, para. 29).

When it comes to the grounds on which the decision on conviction or sentence can be brought before a higher court as a subject of review, the ECHR does not specify what the grounds are, which leads to the conclusion that such a decision can be challenged both on legal and factual grounds. In this sense, as found by the ECtHR, the signatory states can limit the review of the conviction or sentence only *de iure*, just as they can make the statement of the defendant's appeal

conditional on obtaining the permission of the court. However, all restrictions prescribed by national legislation, in this case regarding the grounds for contesting a court decision, in accordance with the protection of the right of access to court (Art. 6, para. 1 ECHR), must be established with a legitimate aim in a way that does not violate the very essence of law (*Rostovtsev v. Ukraine*, para. 27; *Gurepka v. Ukraine*, para. 59; *Galstyan v. Armenia*, para. 125; *Tsvetkova and others v. Russia*; *Krombach v. France*, para. 96).

As follows from the above, it is clear that the ECtHR is trying to bring closer to the signatory states how to interpret and apply the provision of the ECtHR that proclaims the manner and basis of prescribing the right to appeal in criminal matters. In its decisions, the ECtHR sets the correct standards that must be respected in national legislations when regulating this right. In this way, the ECtHR additionally protects the procedural position and rights of the defendant, not allowing the interpretation of this convention provision in a way that may harm the interests of the defendant, on the one hand, but on the other hand it enables the narrowing of the scope of guaranteeing the right to appeal in special procedural forms, strictly according to the conditions established by law, in which way the principle of effectiveness of criminal proceedings is protected.

2.2. The Possibility of Limiting the Exercise of the Right to Appeal in Criminal Matters – Art. 2, para. 2 of Protocol 7

By interpreting the provisions of Art. 2, para. 2 of Protocol 7, which foresees the possibility of limiting the exercise of the right to appeal in criminal matters, *i.e.* the possibility of deviating from the said right, it is established that the ECHR allows the signatory states to, when proclaiming the said right, in their national legislations, deviate from it if it is: 1) on acts of minor importance that represent a legal category, 2) on cases in which the first-instance decision was made by the highest court instance or 3) on cases where a conviction was passed after an appeal against an acquittal.

The possibility of limiting the right to appeal in the case of acts of minor importance entails certain difficulties. Although the ECHR requires that it is about acts that are provided for by law as such, the interpretation and application of the said provision can cause wide and different interpretations on the one hand, and on the other hand it can harm the principle of legality and fairness of the procedure, and thus the procedural position of the defendant.

In connection with the way of interpretation of the provisions of Art. 2, para. 2 of Protocol 7, which can be wide and varied, it is important to note that the criteria that make up the "lower limit" of the interpretation (application) of

this provision have been established, below which the signatory states cannot go when proclaiming the mentioned limitation. Namely, as established by the ECtHR, a signatory state in its legal system can provide for the limitation of the right to appeal in criminal matters if it is based on "achieving a legitimate goal" and if it "does not violate the essence of the right" (*Rostovtsev v. Ukraine*, para. 27; *Gurepka v. Ukraine*, para. 59; *Galstyan v. Armenia*, para. 125; *Tsvetkova and others v. Russia,* para. 179; *Krombach v. France*, para. 96). Also, the ECtHR took the position that an act of lesser importance cannot be considered an act for which a prison sentence is prescribed. In this sense, the signatory states cannot refer to the exception regulated by the provision of Art. 2, para. 2 of Protocol 7 if a prison sentence is prescribed for that offense according to domestic law (*Zaicevs v. Latvia*, para. 52; *Galstyan v. Armenia*, para. 124).

When standardizing the mentioned exception, the creators of the ECHR were probably guided by the principle of the efficiency of the procedure, starting from the assumption that such lighter acts (acts of minor importance), characterized by low social danger, do not harm the general, social interest. However, even though the principle of efficiency of criminal procedure is classified as a key principle of criminal procedure, in this case it would not be justified to give it priority in relation to the realization of the principle of legality and fairness. Although the ECtHR has set legal standards regarding a more restrictive interpretation of the possibility of limiting the right to appeal when it comes to offenses of lesser importance, it is still important to point out that every sentence and conviction should have the possibility to be reviewed by a higher court instance, respecting the principle of dispositive procedure by legal remedies. Namely, accepting such a limitation would mean the assumption that a certain national legal order tacitly agrees to possible legal and factual errors in court decisions, which would cause the survival of illegal and irregular court decisions in the legal system. Also, it is evident that in this way damage is caused to the individual interest, that is, the interest of the defendant, which calls into question the realization of the right to a fair procedure, which is also an international core legal standard set by the original text of the ECHR.

If we try to determine the place of the principle of procedural efficiency in modern criminal procedural systems and in the work process of judicial bodies, we will come to the conclusion that it is an extremely important principle, that is, a principle whose importance can be equated with the importance of the principle of legal and correctly resolution of criminal matters. The aforementioned results from the fact that the stated principles represent a prerequisite for the realization of the principle of fair trial, proclaimed in Art. 6 ECHR. Bearing in mind the above, the judicial authorities do not have an easy task, which is reflected in

the achievement of equality in the realization of the interests of the effective resolution of criminal matters on the one hand, and their legal and correctly resolution on the other, even if they were acts of lesser importance with a lighter threat. At this point, it is important to point out the decision of the ECtHR (*Intiba v. Turquie*, cited by: Manojlović-Andrić, 2018, p. 14) in which the position was taken that "the principle of good administration of justice has a greater scope" than the principle of procedural efficiency and that therefore "the choice of less quick but fairer procedures can be justified".

Also, in addition to the protection of individual and general interests, as well as the basic principles of criminal procedure, the possibility of refuting the court decision by which the defendant was convicted of a crime of "minor importance" (in the sense of its determination according to the ECHR) has a preventive effect on the work of the first-instance court instance, which will strive to determine the factual situation correctly and completely, as well as to implement the law as precisely as possible. Bearing in mind the above, it can be concluded that the limitation of the right to appeal against a conviction and sentence for a minor criminal offense may have negative rather than positive consequences on the principles of criminal procedure as well as on the protection of the defendant's procedural position.

When it comes to the possibility of limiting the right to appeal, pursuant to Art. 2, para. 2 of the Protocol, in the case that the first-instance judgment has been rendered by the highest court, it is clear that the creators of the aforementioned rule have been guided by the authority and integrity of the highest judicial authorities at the national level, competent for making decisions in the first instance. Despite the fact that it may be difficult to imagine the way in which a two-stage trial could be envisaged in this case, in terms of realizing the fundamental property of legal remedies – the property of devolution, certain authors (Ilić, 2015, pp. 86-87; Beširević *et. al.,* 2017, p. 715) rightly point out that in that case a review should be done by a panel that has different composition from the panel that made the decision. In this way, in such a procedure for legal remedies, the characteristic of (false) devolution, *i.e.* horizontal devolution, would be achieved, since in this case there is no court on the hierarchical ladder of the judicial system that is above the court that made the first-instance decision (thereby preventing the realization of properties of devolution, *i.e.* vertical devolution).

Finally, the third case in which the ECHR allows for the norming of an exception to the exercise of the right to appeal in criminal matters concerns the situation in which a conviction was rendered after the appeal procedure against the acquittal. This provision of the ECHR justifiably caused certain criticisms in the domestic procedural doctrine. As certain authors rightly note (Đurđić, 2006,

p. 180; Ilić, 2015, pp. 86-87; Beširević *et. al.,* 2017, pp. 715-716), the mentioned restriction can be said to be controversial in itself, since in this case it would be more logical if the ECHR prohibited the possibility of excluding the legal remedy, since it is the most difficult situation that can occur for the defendant after the investment legal remedy. In this case, it can be assumed that the defendant's procedural position worsened after the filing of a legal remedy by the opposing party, assuming that the defendant had no legal interest in appealing the decision by which he was acquitted. Bearing in mind the above, it is against the principle of fairness as well as procedural logic to prevent the rebuttal of a conviction that was made after the rebuttal of an acquittal, primarily because in this way the defendant is deprived of the opportunity to defend himself.

In connection with the aforementioned possibilities of limitation of the right to appeal in criminal matters provided for by Art. 2, para. 2 of Protocol 7, it is important to point out the positions of the ECtHR, taken in relation to them. It is about the following points: 1) limitation of the right to appeal in criminal proceedings must be done respecting the right to access the court in accordance with the provisions of Art. 6, para 1 ECHR (*Rostovtsev v. Ukraine*, para. 27; *Gurepka v. Ukraine*, para. 59; *Galstyan v. Armenia*, para. 125; *Krombach v. France*, para. 96); 2) signatory states must not hinder the defendant in the process of exercising the right to appeal, which violates the essence of the right to appeal (*Ruslan Yakovenko v. Ukrain*, app. no 5425/11, ECHR 4 September 2015, paras. 74–81); 3) the limitation of the right to appeal in criminal proceedings cannot be compensated by the right to compensation for material and non-material damage caused as a consequence of the aforementioned limitation, and in case of wrongful conviction (*Shvydka v. Ukraine*, paras. 53–55; *Airey v. Ireland*, para. 24; *García Manibardo v. Spain*, para. 43), etc.

3. Conclusion

Bearing in mind the importance of the institute of legal remedies, which is reflected, *a priori*, in ensuring the protection of the individual interest (that is, the protection of the defendant's procedural position), the general interest (that is, the protection of society and the legal system from improper and illegal decisions), as well as the protection of fundamental principles of criminal procedure (legality, fairness, truth, legal certainty), it is clear why this procedural institute is the basis of modern criminal procedural legislation. Taking its place in the criminal procedure of the Roman Empire, this institute in its normative legal genesis in the modern age reached the level of a general international legal standard. It is

a standard set by the most important international legal instruments adopted by the UN and the Council of Europe. However, in addition to the aforementioned inevitable importance of this institution in criminal proceedings, the ECHR provided for the possibility of deviating from the right to appeal in criminal matters when standardizing it. After interpreting and analyzing the provisions of the ECHR, as well as the practice of the ECtHR, the author takes the stance that the mentioned restrictions cannot be taken as valid and justified, since they conflict with the basic principles of criminal procedure. In connection with the exclusion of the possibility of rebutting the conviction and sentence for a minor offense, the author believes that it would be justified and expedient to allow the possibility of reviewing the said court decision, since otherwise there is a tacit consent that possible illegalities and irregularities in a certain court decision will persist in the legal order.

When it comes to the possibility of limiting the rebuttal of a conviction rendered after the rebuttal of an acquittal, its controversy arises from the very text of the provision. Namely, the exclusion of the possibility of rebutting a guilty verdict that was passed after the acquittal was rebutted cannot be considered justified and directly contradicts the principle of fairness, as well as procedural logic. Namely, in the case of an acquittal, there will most often be no appeal by the defendant or his defense counsel, but the appeal will be filed by the public prosecutor as the opposite party. If the appeal is successful, the court issues a guilty verdict and thereby worsens the position of the defendant. The impossibility of rebutting such a second-instance verdict cannot be taken as correct. This is due to the fact that its adoption caused the procedural situation for the defendant to worsen, since the defendant found himself in a new, harmful situation, which is why he needs to be able to challenge the conviction.

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za zaštitu ljudskih prava i osnovnih sloboda kojim se obezbeđuju izvesna prava i slobode koji nisu uključeni u konvenciju i prvi protokol uz nju, Protokola broj 6 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda o ukidanju smrtne kazne, Protokola broj 7 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda, Protokola broj 12 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda i Protokola broj 13 uz Konvenciju za zaštitu ljudskih prava i osnovnih sloboda o ukidanju smrtne kazne u svim okolnostima. Official Gazette of Montenegro – International Treaties, nos. 9/2003, 5/2005 and 7/2005 and Official Gazette of the Republic of Serbia – International Treaties, nos.12/2010 and 10/2015).

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MOGUĆNOST OGRANIČENJA OSTVARIVANJA PRAVA NA ŽALBU U KRIVIČNIM STVARIMA PREMA EVROPSKOJ KONVENCIJI O LJUDSKIM PRAVIMA

Sažetak

Pravo na pravni lek u krivičnom postupku, kojim se omogućava pobijanje pravne i činjenične osnove sudske odluke, predstavlja garant donošenja zakonite i pravilne sudske odluke, odnosno stožer zakonitog i pravičnog postupka bez kojeg se ne bi mogli zamisliti savremeni krivičnoprocesni sistemi. Garantovanjem i ostvarivanjem ovog prava doprinosi se zaštiti pojedinačnog i opšteg interesa, ostvarenju fundamentalnih krivičnoprocesnih načela, poput zakonitosti, pravičnosti, istine i pravne sigurnosti. I pored izuzetnog i nedvosmislenog značaja pravnih lekova, odnosno žalbe u krivičnom postupku, u jednom od najznačajnijih međunarodnopravnih instrumenata u oblasti zaštite ljudskih prava – Evropskoj konvenciji za zaštitu ljudskih prava i sloboda– ovo pravo je proklamovano na takav način da daje mogućnost njegovom ograničenju. Ukazujući na izuzetan značaj ovog pravnog leka, autorka je analizirala odredbe Evropske konvencije za zaštitu ljudskih prava i sloboda koje proklamuje pravo na žalbu u krivičnom postupku, kao i odluke Evropskog suda za ljudska prava, u cilju ukazivanja na manjkavosti konvencijskih odredaba kojima se državama potpisnicama daje mogućnost ograničenja preispitivanja određene sudske odluke u krivičnom postupku.

Ključne reči: pravo na pravni lek, žalba u krivičnom postupku, ograničenje prava na žalbu u krivičnom postupku , Evropska konvencija za zaštitu ljudskih prava, Evropski sud za ljudska prava.

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