

## Writing Misdemeanor and Criminal Charges in Audit: Evidence from Serbia

VELJKO DMITROVIĆ, NEMANJA MILENKOVIĆ & NEMANJA JAKOVLJEVIĆ

**Abstract** State Audit Institution of Serbia is obliged to submit a request for initiation of misdemeanor proceedings, and submit a criminal complaint to the competent authority, if during the audit process it discovers materially significant actions that indicate the existence of elements of a misdemeanor or a criminal act. Relying on that, the subject of the paper is to analyze the views of Serbian accountant and auditors about writing misdemeanor and criminal charges in public sector audits. An analysis of the results was carried out using the SPSS 28 software package. Descriptive statistics have been used in order to analyze the characteristics of the sample. The Mann-Whitney U test was conducted in order to compare two independent groups in regards to an observed scale variable. The p value is used to indicate if the differences between two particular A groups that were in this research are statistically significant (where  $p < 0.05$  is considered statistically significant at the 95% confidence level).

**Keywords:** • audit • auditors • charges • court • irregularity

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## 1 Introduction

In Article 41 of the Law on the State Audit Institution of Serbia, it is defined that the Institution is obliged to submit without delay a request for initiation of misdemeanor proceedings, and submit a criminal complaint to the competent authority, if during the audit process it discovers materially significant actions that indicate the existence of elements of a misdemeanor or a criminal act. This suggests that the employees of the State Audit Institution have an obligation to collect documentation and write reports for irregularities and violations that they find during the audit engagement. However, most of the employees of the State Audit Institution are trained economists who may not have sufficient qualifications to write accurate and clear charges that would ensure that the court process does not end with the rejection. If the general state auditor concludes that the evidence from audit reports indicates a suspicion that a misdemeanor or a criminal charge has been committed by the subject of the audit, he is obliged to submit a request for the initiation of misdemeanor proceedings, a criminal complaint, to the competent authority without delay. The supreme state auditor is obliged to inform the general state auditor about cases where the action of the entity who is the subject of audit, has caused damage to state property, about which he also informs the public advocate.

At the same time, Article 36 defines that if sufficient evidence has been obtained through the audit of the response report to express the opinion that the response report is not credible, the general state auditor files a report against the responsible person of the subject of the audit due to the suspicion that he has committed a criminal offense by confirming the response report. The request for the initiation of misdemeanor proceedings must contain all the information required in connection with its initiation in the Law on Misdemeanors, because otherwise it cannot be determined whether there are conditions for the initiation of misdemeanor proceedings. This means that the request for initiation of misdemeanor proceedings must necessarily contain the place, time, and manner of the act for which the applicant charges the defendant.

Difficulties in misdemeanor proceedings are represented by insufficient data on the defendant, whether the defendant is a legal entity, a responsible person in a legal entity or a natural person, as well as an entrepreneur (Spasenić, et al., 2019). The seriousness of this problem is particularly pronounced in the case of legal entities, due to the numerous changes that occur due to mergers, separations, or changes in legal subjectivity on any other basis and given that the offense was committed at a time when the perpetrator was working or was obliged to work, regardless of when the consequence occurred. When the request for initiation of misdemeanor proceedings contains everything necessary, that is, when it is comprehensible, orderly, contains all the necessary data and is submitted in a sufficient number of copies, only then does the first-instance judge assess whether the conditions for initiating misdemeanor proceedings have been met. Since the statute of limitations is (absolute) two years from the date of the offense committed, the request for initiation of misdemeanor proceedings should be submitted as soon as possible after the

offense has been committed, so that the first-instance judge can assess whether the conditions for initiation of proceedings have been met and possibly, in this sense, intervene with the applicant requests that the request be supplemented, and after that supplement be made a conclusion on the initiation of the procedure, because a conclusion made after one year from the commission of the misdemeanor does not mean anything, since the statute of limitations for the initiation of the misdemeanor procedure has expired. The subject of the paper is to analyze the views of persons engaged in accounting and auditing in the Republic of Serbia on the writing of criminal and misdemeanor charges in public sector audits. An analysis of the results was carried out using the SPSS 28 software package. Descriptive statistics have been used in order to analyze the characteristics of the sample. The Mann-Whitney U test was conducted in order to compare two independent groups in regards to an observed scale variable. The p value is used to indicate if the differences between two particular A groups that were in this research are statistically significant (where  $p < 0.05$  is considered statistically significant at the 95% confidence level).

## 2 Literature overview

The authors (Flasher, et al., 2022) looked at how auditors in the public sector use the available powers, with the intention of examining the relationship behind the judicial authorities and to provide an answer to the question of what the role of the auditor in the system of financial reporting and fraud investigation in the public sector is. They claim that significantly better results are achieved when state auditors are competent both to conduct audits of financial statements and to investigate fraud. The author (Krom, 2016) investigated the measures that were taken against certified accountants from the territory of America. He established that more than half of the initiated procedures were completed with the determination of measures and that they were predominantly of a non-monetary nature. It is essentially an activity that should be within the competence of the court for accounting and auditing.

For the job of writing irregular financial reports, political neutrality can be important as a quality that can ensure the independence of the person writing the reports (Jakovljević, 2022). The author (Jakovljević, 2021) believes that auditors must maintain their neutrality towards political influence to perform their audit activities impartially. It is essential that the persons engaged in auditing work should be politically neutral to be able to find irregularities in the financial statements and business operations of the entities that are the subject of audit engagement, and so that the reports written on the basis of their reports are appropriate for the effective implementation of the judicial process.

### 3 Research

The research was conducted by creating a short questionnaire about examining persons engaged in accounting and auditing in the Republic of Serbia on the writing of criminal and misdemeanor reports in public sector auditing. The questionnaire was sent to the addresses of more than 200 randomly selected respondents in the Republic of Serbia, and instructions for filling out the questionnaire were also sent with it. The questionnaire was available for filling during the second week of November 2022. A total of 114 complete responses were received, which were assessed as sufficient and relevant for further analysis. The answers were analyzed using the graphic method and through the textual description and graphs are presented in the continuation of the paper.

The targeted groups of respondents were economists and lawyers engaged in audit work or work related to audit, such as managers, consultants, commercial judges and prosecutors, lawyers and others. A total of 20 statements were created in the form of a questionnaire with answers in the form of a five-point scale and distributed to respondents via social networks. The first 6 questions related to the collection of information on the structure of respondents based on data on gender, age and work experience. Statements are provided below.

**Table 1:** Statements for the research

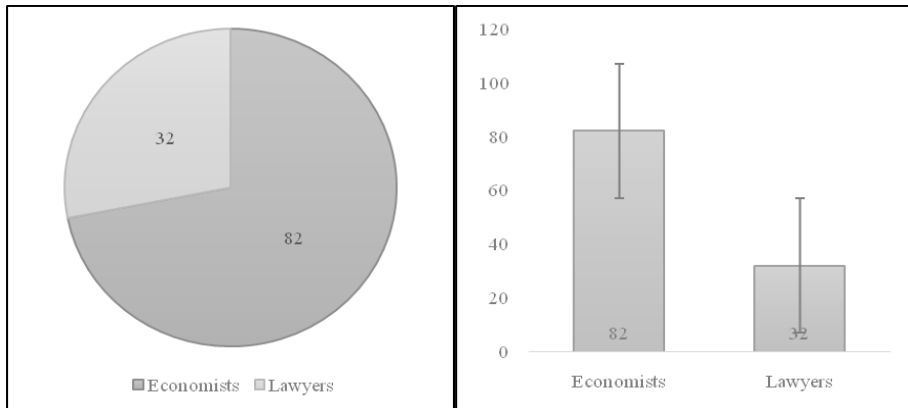
no.	statement text
7	I believe that counterfeiters are rapidly changing their lifestyles in terms of consumption - wardrobe, travel, cars, real estate...
8	I believe that counterfeiters rarely take vacations.
9	I believe that fraud occurs most often in the sphere of accounting.
10	I believe that most frauds are committed by lawyers.
11	I believe that accountants and internal auditors have great success in detecting and preventing fraudulent activities.
12	I believe that forensic auditors have great success in detecting fraudulent activities.
13	I believe that lawyers do not have enough prior knowledge in the areas of accounting, financial reporting and auditing.
14	I believe that criminal charges should be filed with the competent authority, if materially significant actions are discovered during the audit process that indicate the existence of elements of a misdemeanor or a criminal act.
15	Criminal and misdemeanor charges should be filed by state auditors (as economists by education), because they are instructed in the business of the entity that committed the misdemeanor or criminal offense?
16	Criminal and misdemeanor charges should be filed by lawyers employed by the prosecution, because they know the law and have experience in filing charges and conducting misdemeanor proceedings.
17	State auditors (as economists by education) are not competent to file criminal and misdemeanor charges because they have no knowledge in the field of law, nor experience in filing charges and conducting misdemeanor proceedings.

18	I believe that the penalties for misdemeanors in keeping business books should be toughened, especially for the management that is responsible for the company's operations.
19	I believe that an audit court should be established with the prosecutor's office, which would be responsible for initiating and conducting misdemeanor and criminal proceedings based on misdemeanors and criminal offenses discovered in the audit process.
20	I believe that an audit court should be established with the prosecutor's office, which would be responsible for initiating and conducting misdemeanor and criminal proceedings based on misdemeanors and criminal offenses discovered in the audit process.

Source: Authors.

The questionnaire does not collect confidential information about respondents. The estimated time for filling out the questionnaire is 2 minutes. The questionnaire consists of 20 short questions. We believe that by participating in this research, the respondents made a significant contribution to the scientific research activity in the Republic of Serbia. The research results do not meet the assumptions of normal distribution. We used tests that do not make assumptions about the distribution of the population, i.e. non-parametric tests, among which we especially singled out the Mann-Whitney test. Nonparametric tests are less sensitive to extreme values than parametric tests and generally have less power than parametric tests when the assumptions of parametric tests are met.

**Figure 1:** Racio between Economists and Lawyers



Source: Authors.

The initial hypothesis is that both groups of respondents, economists and lawyers, have a high degree of agreement with the statements. An alternative hypothesis is that both groups of respondents, economists and lawyers, do not have a high degree of agreement with the statements, that is, that there are differences in the degree of agreement between economists and lawyers for certain statements. The average scores for each question and group are given in next table.

**Table 2:** Report 1

<b>Report</b>		7	8	9	10	11	12	13	14	15	16	17	18	19	20
Economists	Mean	2.49	3.46	3.34	3.26	2.67	2.44	2.00	2.01	2.89	2.55	2.73	2.73	2.66	2.54
	Std. Dev.	1.2	1.3	1.2	1.2	1.3	1.2	1.2	1.3	1.3	1.2	1.3	1.3	1.4	1.5
Lawyers	Mean	3.41	4.11	3.44	3.81	3.63	3.48	3.44	3.07	3.52	1.78	1.85	1.67	1.56	1.56
	Std. Dev.	1.1	0.8	1.0	1.0	0.9	1.1	1.1	1.4	1.1	1.3	1.3	1.2	1.2	1.2

Source: Authors.

Since the data isn't normally distributed, we used Mann-Whitney test in order to compare differences in the level of agreement (for each individual statement) between economists and lawyers.

Regarding statement number 7, which reads, I believe that people who engage in counterfeiting quickly change their lifestyle in terms of consumption (wardrobe, travel, cars, real estate), a clear difference between the views of economists and lawyers is noticeable. At a significance level of 0.001, the Mann Whitney test showed that there is a statistically significant difference in the answers to question number 7, that is, that economists showed a higher degree of agreement with statement number 7 compared to lawyers. A similar difference between the attitudes occurs in questions number 8 ( $p=0,027$ ), 10 ( $p=0,033$ ), 11 ( $p=0,001$ ), 12 ( $p=0,000$ ), 13 ( $p=0,000$ ), 14 ( $p=0,001$ ) and 15 ( $p=0,029$ ). In statement number 9, the difference in respondents' answers is not statistically significant.

On the other hand, in statement number 16, which reads that criminal and misdemeanor charges should be filed by lawyers employed in the prosecution, because they know the law and have experience in filing charges and conducting misdemeanor proceedings, there is also a clear difference between the views of economists and lawyers, but in the other direction. Namely, at the significance level of 0.002, the Mann Whitney test showed that there is a statistically significant difference in the answers to question number 16, that is, that economists showed a lower degree of agreement with statement number 16 compared to lawyers. A similar difference between the views appears in questions number 17 ( $p=0,002$ ) and 18 ( $p=0,000$ ). However, there is a particularly interesting phenomenon in the answers to statements number 19 ( $p=0,000$ ) and 20 ( $p=0,001$ ), which directly refer to the question of the need to establish an audit court in the Republic of Serbia. Although the structure of the answers shows a significant degree of agreement with the statement among this group of respondents, the Mann-Whitney test showed that there is a statistically significant difference in the answers, i.e. that economists showed a lower degree of agreement with statements number 19 and 20 in relation to lawyers.

The grouping of questions into two categories, namely the first group called general attitudes from forensics consists of questions with serial numbers from 7 to 13, and the

second group called competence of the auditor and the audit court consists of questions with serial numbers from 14 to 20. Average values were created for both defined categories by age groups are given below.

**Table 3:** Report 2

Report		Group I	Group II
< 35	Mean	20.26	14.8947
	Std. Deviation	5.506	5.61639
< 45	Mean	20.00	18.3721
	Std. Deviation	3.395	5.39410
< 55	Mean	21.75	17.5000
	Std. Deviation	4.637	5.65685
< 65	Mean	22.81	16.6875
	Std. Deviation	3.710	5.86195

Source: Authors.

Differences by categories that are statistically significant are among respondents aged 35 to 45 for the group of questions called the competence of auditors and the audit court ( $p=0.005$ ) in favor of economists who agree more with the examined statements compared to lawyers and for a group of questions called general attitudes from forensics ( $p=0.006$ ) in favor of economists who agree more with the examined statements than lawyers.

**Table 4:** Report 3

Report															
	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
< 35	Mean	2.68	3.42	3.05	3.05	2.95	2.89	2.21	1.89	2.53	2.00	2.58	2.00	1.89	2.00
35	Std. Dev.	1.204	1.170	1.177	1.129	1.433	1.449	1.398	1.487	1.307	1.106	1.502	1.202	1.197	1.247
< 45	Mean	2.37	3.56	3.33	3.47	2.65	2.40	2.23	2.14	2.86	2.72	2.98	2.86	2.44	2.37
45	Std. Dev.	1.176	1.402	1.286	1.202	1.251	1.237	1.250	1.390	1.302	1.278	1.282	1.338	1.385	1.363
< 55	Mean	2.79	4.08	3.58	3.54	2.79	2.62	2.33	2.46	3.00	2.37	2.21	2.46	2.67	2.33
55	Std. Dev.	1.351	1.100	1.139	1.179	1.351	1.245	1.551	1.414	1.383	1.209	1.351	1.351	1.523	1.633
< 65	Mean	3.19	3.31	3.69	3.50	3.25	3.00	2.88	2.37	3.75	1.87	2.12	2.00	2.25	2.31
65	Std. Dev.	1.424	1.138	1.078	1.366	1.291	1.155	1.310	1.544	1.238	1.586	1.360	1.414	1.693	1.815

Source: Authors.

Statistically significant differences in questions 7 out of 20 by category are as follows. For questions 16 and 18 for groups of respondents up to 35 and up to 45 years old, for question 8 for groups of respondents up to 35 and up to 55 years old, for question 15 for groups of respondents up to 35 and up to 65 years old, for question 17, for groups of respondents up to 45 and up to 55 years old, for questions 7, 15, 16, 17 and 18, for groups

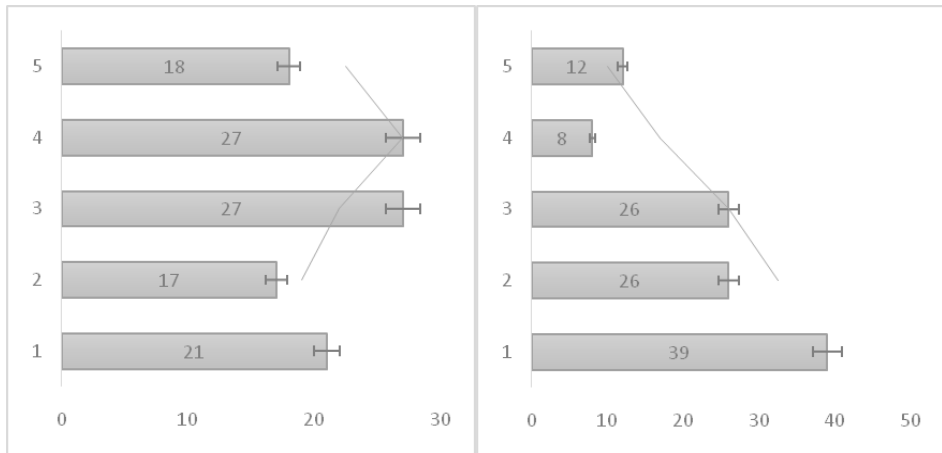
of respondents up to 45 and up to 65 years old and for question 8 for groups of respondents up to 55 and up to 65 years old. Ovaj pasus je OK, ne znam samo da li da im navodimo i detalje...

#### **4 Discussion**

The State Audit Institution of Serbia is obliged to submit a request for initiation of misdemeanor proceedings, and a criminal complaint to the competent authority if, during the audit process, it discovers materially significant actions that indicate the existence of elements of a misdemeanor or criminal offense. Relying on this, the subject of the research is to analyze the attitudes of accountants and auditors in the Republic of Serbia on the writing of misdemeanor and criminal charges in public sector audits. There is a noticeable trend of a sharp decline in the number of reports submitted in the last four years, and the structure of submitted reports is dominated by misdemeanor reports, while there are almost no criminal reports. Some experts express concern because the current situation is such that reports are approached by state auditors who are predominantly economists by education and do not know the law. 47.7% of respondents responded to statement number 14, which reads "I believe that criminal charges should be filed with the competent authority, if materially significant actions are discovered during the audit process that indicate the existence of elements of a misdemeanor or a criminal act" with I agree at all, 15.3% of respondents answered with I agree, 12.6% of respondents answered with I'm not sure, 12.6% of respondents answered with I do not agree and the remaining 11.7% of respondents responded with I do not agree at all. Such results show that there is a significant degree of agreement among respondents with this statement. This means that the respondents largely believe that reports should be submitted for irregularities determined by the audit.

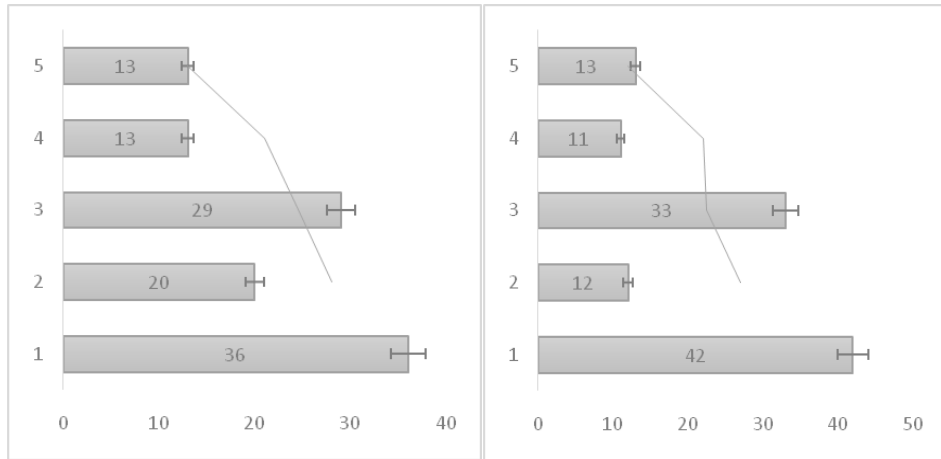


**Figure 2:** Answers on the 15th and 16th questions



Source: Authors.

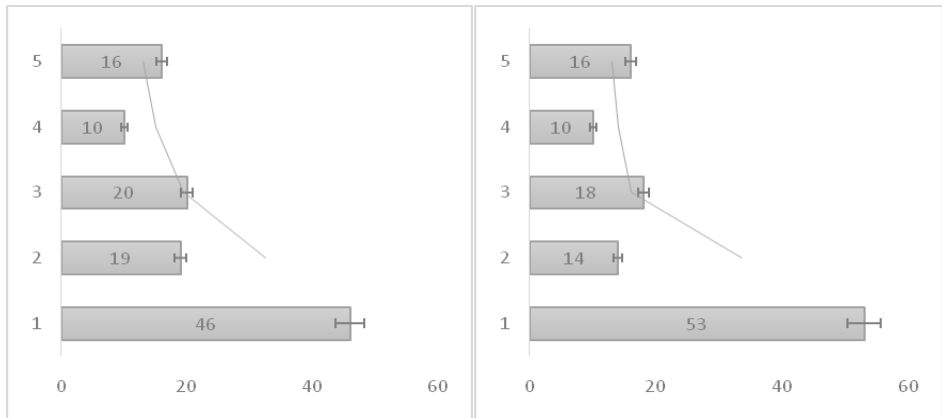
To statement number 15, which reads Criminal and misdemeanor charges should be filed by state auditors (as economists by education), because they are instructed in the business of the entity that committed the misdemeanor or criminal offense, 19.1% of respondents answered with I agree at all, 15.5% of respondents answered with I agree, 24.5% of respondents answered with I'm not sure, 24.5% of respondents answered with I do not agree and the remaining 16.4% of respondents answered with I do not agree at all. Such results show that there is a significant degree of disagreement among respondents with this statement. The majority of respondents believe that state auditors, as economists, should not file reports, which is followed by the answers to the next question number 16, which reads Criminal and misdemeanor charges should be filed by lawyers employed by the prosecution, because they know the law and have experience in filing charges and conducting misdemeanor proceedings, 35.1% of respondents answered with I agree at all, 23.4% of respondents answered with I agree, 23.4% of respondents answered with I'm not sure, 7.2 % of respondents answered with I do not agree and the remaining 10.8% of respondents answered with I do not agree at all. Such results show that there is a significant degree of agreement among respondents with this statement. Respondents believe that applications should not be written by economists but by lawyers.

**Figure 3:** Answers on the 17<sup>th</sup> and 18<sup>th</sup> questions

Source: Authors.

On statement number 17, which reads State auditors (as economists by education) are not competent to file criminal and misdemeanor charges because they have no knowledge in the field of law, nor experience in filing charges and conducting misdemeanor proceedings, 32.4% of respondents answered with I agree at all, 18% of respondents answered with I agree, 26.1% of respondents answered with I'm not sure, 11.7% of respondents answered with I do not agree and the remaining 11.7% of respondents responded with I do not agree at all. Such results show that there is a significant degree of agreement among respondents with this statement. To statement number 18, which reads I believe that the penalties for misdemeanors in keeping business books should be toughened, especially for the management that is responsible for the company's operations, 37.8% of respondents answered with I agree at all, 10.8% respondents answered with I agree, 29.7% of respondents answered with I'm not sure, 9.9% of respondents answered with I do not agree and the remaining 11.7% of respondents answered with I do not agree at all. Such results show that there is a significant degree of agreement among respondents with this statement.

**Figure 4:** Answers on the 19<sup>th</sup> and 20<sup>th</sup> questions



Source: Authors.

On statement number 19, which reads I believe that an audit court should be established with the prosecutor's office, which would be responsible for initiating and conducting misdemeanor and criminal proceedings based on misdemeanors and criminal offenses discovered in the audit process, 41.4% of respondents answered with I agree at all, 17.1% of respondents answered with I agree, 18% of respondents answered with I'm not sure, 9% of respondents answered with I do not agree and the remaining 14.4% of respondents answered with I do not agree at all. Such results show that there is a significant degree of agreement among respondents with this statement. On statement number 20, which reads I believe that an audit court should be established with the prosecutor's office, which would be responsible for initiating and conducting misdemeanor and criminal proceedings based on misdemeanors and criminal offenses discovered in the audit process, 47.7% of respondents answered with I agree at all, 12.6% of respondents answered with I agree, 16.2% of respondents answered with I'm not sure, 9% of respondents answered with I do not agree and the remaining 14.4% of respondents responded with I do not agree at all. Such results show that there is a significant degree of agreement among respondents with this statement.

The results of the research show that the conditions to confirm the initial hypothesis have not been met, and therefore we adopt its alternative hypothesis, which is that both groups of respondents, economists and lawyers, do not have a high degree of agreement with the statements, that is, with certain statements, there are differences in the degree of agreement between economists and lawyers, which was confirmed by applying the Mann-Whitney test.

The irrefutable statement is that respondents, as many as 98% of them, believe that it is necessary to write charges for violations and irregularities that the state audit institution

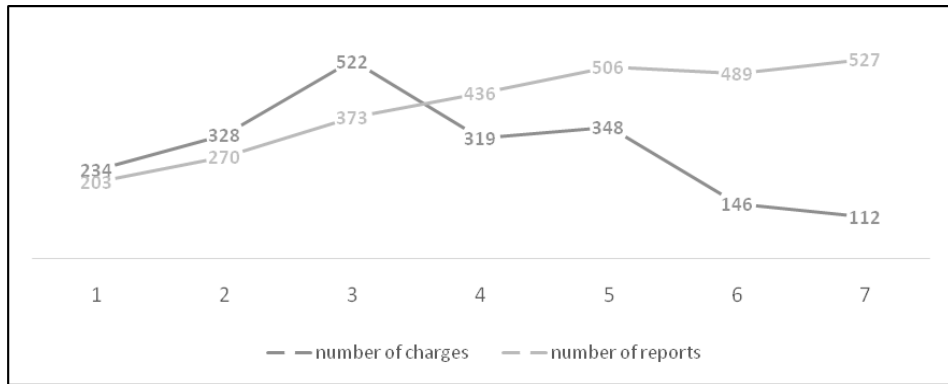
finds during the audit. This is an extremely high number of agreements, and it directly shows the huge expectations that respondents place on the State Audit Institution as an independent state organization that should act for the benefit of all citizens of the Republic of Serbia. The respondents therefore expect the State Audit Institution to employ qualified and professional persons with high ethical awareness and moral responsibility so that they can adequately audit the spending of public funds. Many respondents believe that economists should not write charges, but lawyers should, and that charges should not be written by the State Audit Institution of Serbia but should be by the General Audit Court of Serbia. This point of view is significantly different from the current situation in the Republic of Serbia, which, unlike many other countries, does not have an Audit or Accounting Court, and charges were written by the State Audit Institution, where most employees are economic professionals. It is not surprising that the answers show that a significant part of the respondents, as many as 67% of them, believe that state auditors, as trained economists, are very unqualified or unqualified to write good charges. The presented results point to the existence of an extremely strong need to implement positive reforms in the state audit system in the Republic of Serbia, which would include the creation of the Audit or Accounting Court with the prosecution as the highest state authority for writing charges and conducting and resolving court disputes based on irregularities that state auditors determine during conducting audit engagements, which could, among other things, also carry out the certification of state auditors and private sector auditors according to the highest standards of internationally accepted practice, the notification of other diplomas and certificates, as well as publishing professional journals and realizing professional gatherings and professional seminars for a wider circle of professionals practitioners in the field of accounting, auditing and finance.

## 5 Conclusions

The representativeness of the sample, overly optimistic answers or answers that do not fully reflect the real attitudes of the respondents can be mentioned as potential key shortcomings of the research. Due to all the above, it is necessary to take the presented data with a great deal of caution when interpreting them and when using them officially. After the auditors send a request to initiate misdemeanor proceedings, the misdemeanor court can reject the request to initiate misdemeanor proceedings or pass a decision on the initiation of misdemeanor proceedings. If the misdemeanor court decides on the initiation of misdemeanor proceedings, it informs about the date for holding the hearing at which evidence, written or oral, will be presented. Thus, the auditors who wrote the applications must attend the hearing, and this may be a time when they are in the field in another city, conducting another audit engagement, and preparation for appearing in court may require additional time and exclusion from one audit engagement to returned to looking through the documents they had prepared for the application. The defendant will also be heard at the hearing. The misdemeanor court can suggest to the defendant that he can give his defense in writing, and after all the evidence has been presented, the misdemeanor court decides in the form of a verdict or decision. The court renders a verdict when it declares

the defendant guilty or when it acquits the defendant. The misdemeanor court decides in cases where there are legal reasons for suspending misdemeanor proceedings. When misdemeanor liability is established in misdemeanor proceedings, misdemeanor sanctions prescribed by the Law on Misdemeanors will be applied to the offender.

Analyzing the general reports of the State Audit Institution, the number of published reports and charges by type in the period from 2015 to 2021, it concludes that although the total number of reports increased significantly in the analyzed period, it was largely sampled by the reduction of combined audits, which were divided into financial statements audits and regularity audits, the number of which increased, which means that there is practically no substantial increase, while at the same time questionable qualitative determination of the very character of individual reports. However, the number of reports has significantly decreased during the analyzed period, especially the number of criminal reports, which may indicate a wrong selection of entities that are subject to audit, avoidance of important state authorities and circumvention of problems that are noticed, so that reports are not written, which may protect them some public officials, and perhaps audit employees, avoid writing applications due to lack of expertise. At the same time, it was noted, which can be clearly seen in the graph below, that the year 2018 is a turning point in the relationship between the total number of reports and the total number of applications. Before 2018, the total number of charges was greater than the total number of reports, and since 2018, the total number of charges is less than the total number of reports, and year after year that gap is getting bigger and bigger. Thus, a simple question arises: what happened negatively in 2018 in the practice of state auditing in the Republic of Serbia, which consequently led to a sharp deterioration in the ratio of the total number of reports to the total number of applications, and it is very likely that the answer to that question found in the new leadership that began its mandate in 2018 and that, with its moves, probably made a turning point in the analyzed relationship in 2018. All in all, the existing relationship certainly cannot be characterized as favorable, therefore, concrete steps are necessary that will increase the quality of the state audit in the Republic of Serbia.

**Figure 5:** Analysis of the written charges and audit reports

Source: General reports of the State audit institution of Serbia.

The main conclusion is that most respondents, as many as 98% of them, believe that it is necessary to write charges for violations and irregularities that the state audit institution finds during the audit. However, the majority of respondents also believe that state auditors, as trained economists, are unqualified to write good charges and that charges should be written by the General Audit Court, which indicates the existence of an extremely strong need to implement positive reforms in the system of state audit in the Republic of Serbia, which would include the creation of the Audit or Accounting Court with the prosecution as the highest state authority for writing charges and conducting and resolving court disputes based on irregularities that state auditors determine during the implementation of audit engagements, which could also perform other tasks of importance for the accounting and auditing profession and the entire system of state administration.

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