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## **CRIMINAL OFFENSES AGAINST PROPERTY SEEN FROM AN ANGLE OF BASIC INSTITUTES OF LAW - THINGS AND REAL RIGHTS**

**ABSTRACT:** Based on the data from official documents of the Republic Statistical Office and judicial institutions of the Republic of Serbia, the paper analyzes and presents the results of research related to the threat to property and real rights in the Republic of Serbia in the period from 2009 to 2019. We performed the analysis of available data in order to detect the “loss of crime” in a group of crimes aimed at protecting property. The purpose of this paper is a causal analysis of crimes against property in the entire territory of the Republic of Serbia with the aim of revealing causal relations and links between the number of reported, accused and convicted persons for these crimes, to determine the degree of loss of crime and take systemic measures to reduce that loss measure, in accordance with the standards of developed countries.

**Keywords:** *Crimes against property, Property, Things and real rights.*

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## 1. Introduction

The Roman law did not determine the notion of property as Romans considered things as “notions clear to all”. Hence, any definition of the notion of property was considered as tautology. One of, so to say, the most quoted definitions of the term is that “the things are material segments of the nature apprehended by people and that serve to satisfy certain human needs”. Bonfante says that Roman jurists regarded property as *una entita esteriore che, nella coscienza economico-sociale, e isolata e concepita come oggetto a se stante* (outer entity, which is in social and economic view deemed as separate and regarded as an independent object) (Milošević, 2012, p. 223).

In terms of civil law, a thing is a part of material or tangible nature in people's possession with a certain ownership or any other property right. As a result, under civil law, things are deemed as only those objects that cumulatively have two features. The first one is that they are *de facto* and virtually in human possession, but their existence does not require a certain form or a verification by touching as it had been previously required by Roman law (*res corporales eae sunt, quae sua natura tanga possunt*). In line with the above-mentioned, all things serving man and submitted to human will represent *res* in legal sense. The second condition is that there is ownership right or any other property right pertaining to this thing (Stanković & Orlić, 1996, p. 6).

No matter the challenges in defining a notion of things (either to include all things, or exclude those not regarded as things), there is a consensus in law on the division of property. The property can be divided into *corporalia* (corporate) and *incorporalia* (incorporal), *res in commercio* (things in trade) and *res extra commercium* (things outside trade), *res Mancipi* (things in mancipation)<sup>1</sup> and *res nec Mancipi* (things not in mancipation), *genera* (replaceable) and *species* (irreplaceable), *quae primo usu consumuntur* (consumable) and *quae usu minuuntur* (non-consumable), *mobilia* (movable) and *immobilia* (immovable), *universitates* (plain and complex), divisible and non-divisible, principal things and *accessorium* (accessories) (Stanojević, 1999, p. 183).

Property rights are defined as *iura in re* and as such represent the rights with a property nature. Property rights have several characteristics such as:

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<sup>1</sup> Contemporary law did not keep this division, as it had been considered outdated even in the ancient times, and completely forgotten in the post-classical times. The criterium of such division was exclusively economic. Such division of things was accepted and used only in the Roman law.

their object (which is always a thing and solely a thing since the property claims either lay claim to a certain thing, or a recognition of a right to this thing); incorporation into an object (ever since the Roman law, property rights have been considered as contained in things, or as their integral part); that they have effect *erga omnes* (towards everybody); and that they are considered as permanent (such rights do not cease to exist with the destruction of property, or, if not permanent, than fairly longer than any other rights). The classical law recognizes some types of property rights such as ownership, formality, mortgage and land lease with property effect. However, according to the modern law, there are two groups of such rights, that is, the ownership in the widest sense, and *iura in re aliena* (property rights over other people's possessions) that encompass formality, mortgage rights and long-term lease of land with property effect (Malenica, 1999, p. 183).

## 2. Methodology

The subject of the paper are things and real rights as protective subjects of illegal attacks on them. The basic research question in the paper is: is the protection of a person's belongings and real rights important for a person's sense of legal security?

The scientific goal of this paper is the epistemological analysis of criminal acts against property on the entire territory of the Republic of Serbia in the period 2009-2019 year, with a focus on considering the causal links and relations between the number of reported, accused and convicted persons in order to determine the degree of loss of crime and take systemic measures to reduce that loss to a reasonable extent in accordance with the standards of developed countries.

The general hypothesis from which the paper based was that for the feeling of legal security of citizens in the Republic of Serbia, it is important to protect their belongings and real rights, which are provided by preventing crimes against personal, social and state property.

Almost all basic methods of cognition and research were used in the preparation of the paper, with a focus on the methods of analysis, synthesis, classification, generalization and inductive-deductive method. Of the general scientific methods, the statistical method was applied, and of the data collection methods, the operational method of document content analysis with both its techniques, qualitative and quantitative content analysis, was primarily used. For the needs of quantitative analysis of documents, a specially constructed instrument was used - the Code of Terms and Codes.

The main sources of literature from which information was extracted are data in official documents of the Republic Statistical Office and judicial institutions of the Republic of Serbia on attacks on property on the territory of the Republic of Serbia in the period from 2009 to 2019.

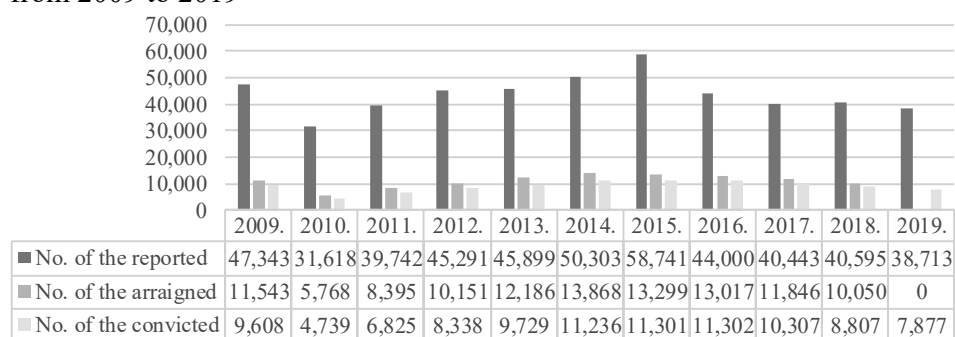
The unit of analysis was data on the number of reported, accused and convicted persons for criminal offenses who have things and real rights as a subject of protection (Blagojević Danilović & Tančić, 2018).

### 3. Research

According to the data in Graph 1, in the territory of the Republic of Serbia, in the period from 2009 to 2019, on an annual level, on average, about 43,881 adults were reported for a crime against property. Out of the total number of reported persons, an average of 10,011 indictments were filed annually, of which an average of 9,097 convictions were handed down annually, which is 20.73% of the total number of reported persons for this group of criminal offenses.

The most general analysis of this group of criminal offenses indicates a large discrepancy between the number of filed criminal charges, accused and convicted adults for criminal offenses against property. The total percentage of loss of crimes in this group of crimes is high and amounts to 79.27%.

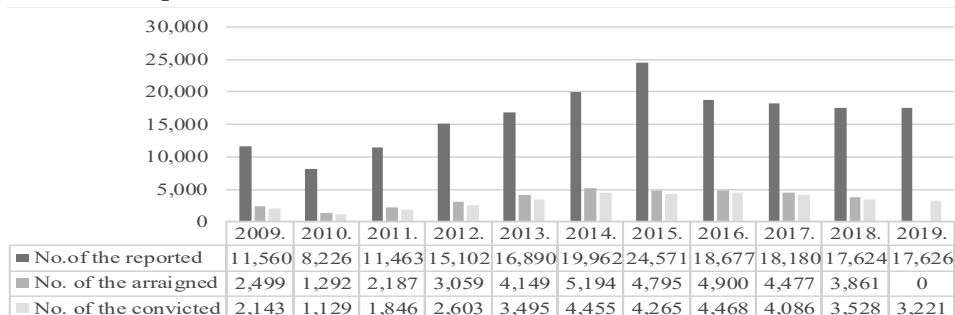
**Chart 1:** Number of reported, accused and convicted adults in the territory of the Republic of Serbia for criminal offenses against property in the period from 2009 to 2019



Source: Authors research

In the continuation of the research, we observed individual crimes against the same protective facility, trying to find out which are the crimes against property that have the greatest loss of crime in the phase of conducting criminal proceedings.

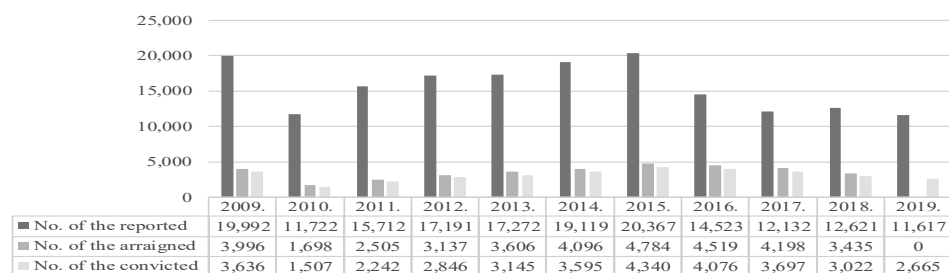
**Chart 2:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of thefts in the period between 2009 and 2019



Source: Authors research

From the data shown in Graph 2, it can be seen that in the past eleven years, an average of 16,353 adults were reported for the crime of theft, of which an average of 3,310 were charged. Out of the total number of accused persons, an average of 3,204 persons were indicted annually by the verdict of the competent courts, which is 20% of the reported persons.

**Chart 3:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for aggravated theft in the period between 2009 and 2019

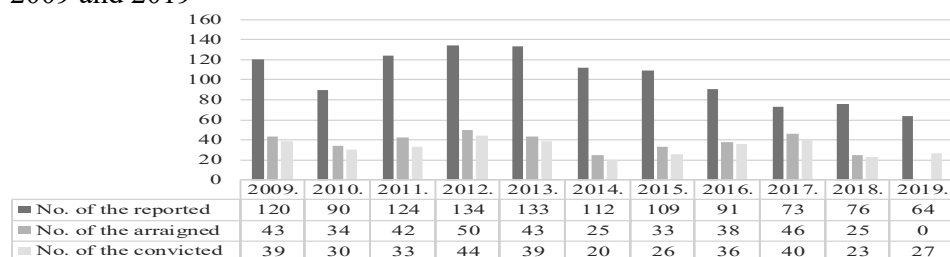


Source: Authors research

The same legality as in the analysis of the criminal offense of theft can be observed in the case of the criminal offense of aggravated theft (Chart 3), where in the past eleven years, annually, on the territory of the Republic of Serbia, an average of 15,661 adults were reported. Of the reported adults, on average about 3,270 persons were indicted and 3,161 convicted annually, which represents about 20% of the reported persons. As with the crime of

theft, so with the crime of aggravated theft, about 80% of cases represent the loss of a crime.

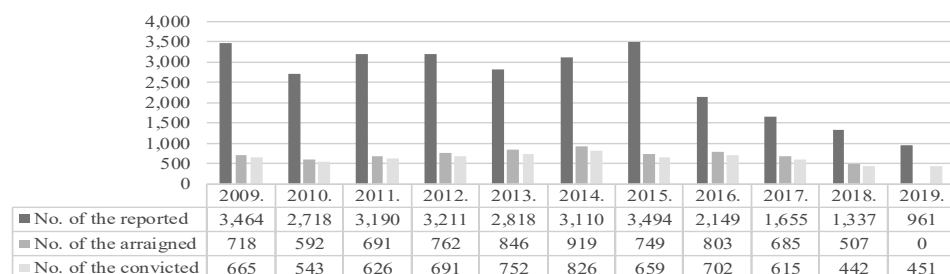
**Chart 4:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for robbery in the period between 2009 and 2019



Source: Authors research

In the case of robbery (Graph 4), 102 adults were reported annually, among whom an average of 35 indictments were filed, of which 32 adults were convicted annually, which is 31% of the total number of reported persons.

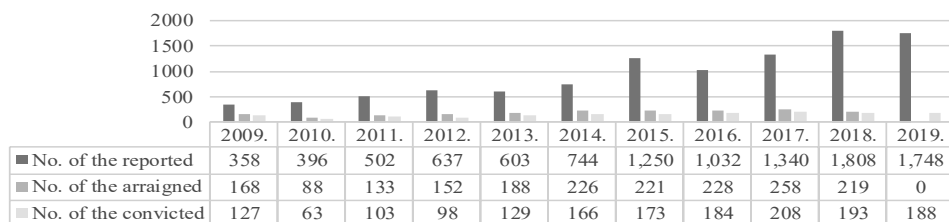
**Chart 5:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of larceny in the period between 2009 and 2019



Source: Authors research

When it comes to the criminal offense of robbery (Chart 5), in the observed period, an average of 2,555 adults were reported for this criminal offense annually, of which about 661 persons were charged annually, and at the end of the criminal proceedings, convicted by a court verdict. about 634 adults, which is about 25% of the total number of registered persons.

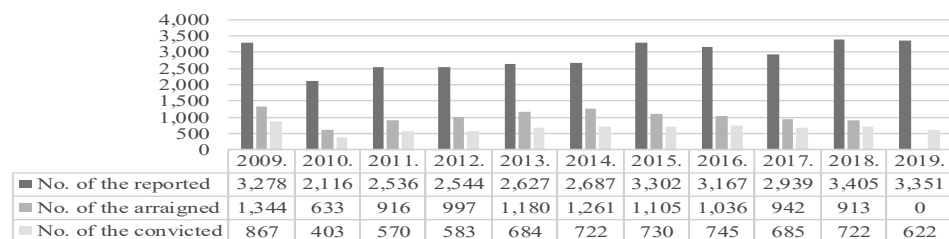
**Chart 6:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of embezzlement in the period 2009-2019



Source: Authors research

For the criminal offense of evasion (Chart 6), in the observed period, on an annual level, on average, about 947 criminal charges were filed against adults in the entire territory of the Republic of Serbia. Out of the total number of filed criminal charges, on average about 171 indictments were filed annually, on the basis of which about 148 convictions were pronounced annually before the competent courts, which represents only 16% of the adults reported for this crime.

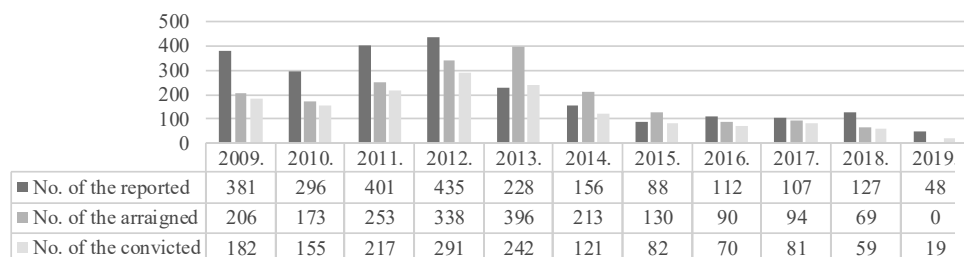
**Chart 7:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of fraud in the period between 2009 and 2019



Source: Authors research

In the observed period, for the criminal offense of fraud (Graph 7), an average of about 2,666 criminal charges were filed against adults, of which the competent prosecutor's offices filed an average of 938 indictments and an average of 667 convictions per year, which makes up 25% of the total number of registered adults.

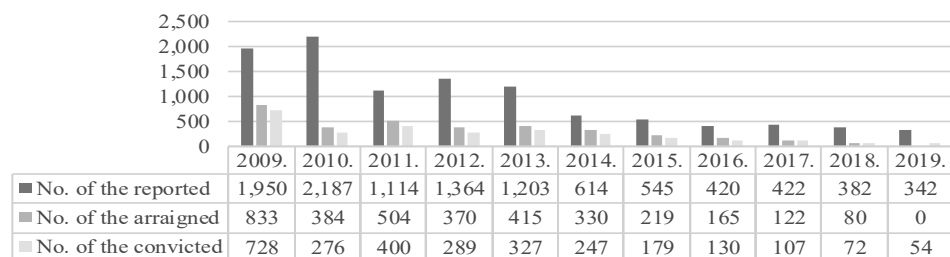
**Chart 8:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of obtaining and using credit and other benefits under false pretences in the period between 2009 and 2019



Source: Authors research

From the data presented in Graph 8, it is evident that the criminal offense of unfounded acquisition and use of loans and other benefits is not one of the most frequent criminal offenses against property in the Republic of Serbia. In this period, an average of 216 persons were reported for this crime annually, of which the competent prosecutor's offices filed an average of about 178 indictments, and the competent courts handed down an average of 138 final verdicts per year, which represents 64% of the total number of reported persons.

**Chart 9:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of petty theft, embezzlement and fraud in the period between 2009 and 2019

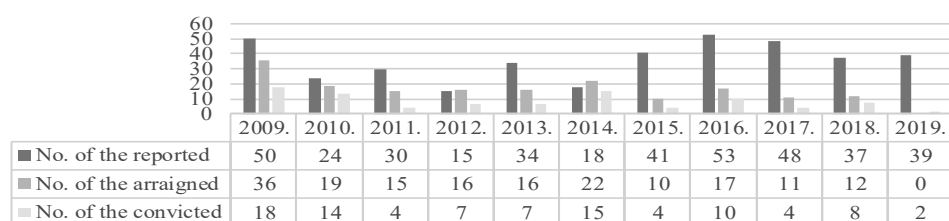


Source: Authors research

For the criminal offense of petty theft, evasion and fraud (Chart 9), in the first five years of the observed period, significantly more criminal charges were filed against adults than in the next six years. The reason for that is that in that transitional period, the legal regulations changed, according to which

the essence of this criminal act began to include other types of behavior. On average, about 958 adults were reported for this crime annually. The competent prosecutor's offices filed an average of about 311 indictments, and the competent courts handed down an average of about 255 final verdicts per year, which represents 27% of the total number of reported persons.

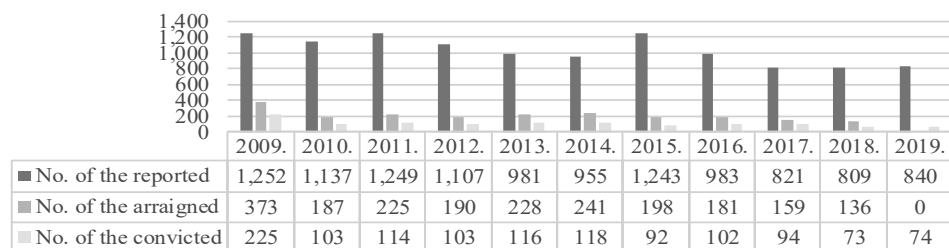
**Chart 10:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of appropriation of other people's property in the period between 2009 and 2019



Source: Authors research

Seizure of someone else's property is a criminal offense that does not have a large percentage of participation in property crime in Serbia. An average of 35 criminal charges are filed annually for this crime against adults, of which about 16 people are charged annually. Convictions against adults for this crime averaged 93 per year, representing about 24% of the total number of criminal charges filed (Chart 10).

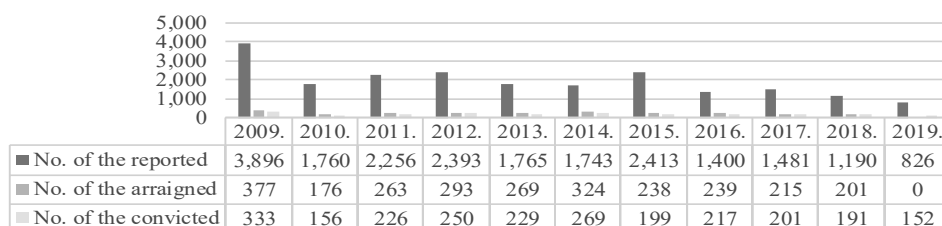
**Chart 11:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of destruction and damage of other people's property in the period between 2009 and 2019



Source: Authors research

A large loss of crime in the Republic of Serbia, in the period from 2009 to 2019, was also observed in the criminal offense of destruction and damage to another's property (Chart 11), for which about 1,035 adults were reported annually, about 193 were charged and About 110 persons were convicted by final verdicts of the competent criminal courts, which makes about 17% of the total number of persons reported for this criminal offense.

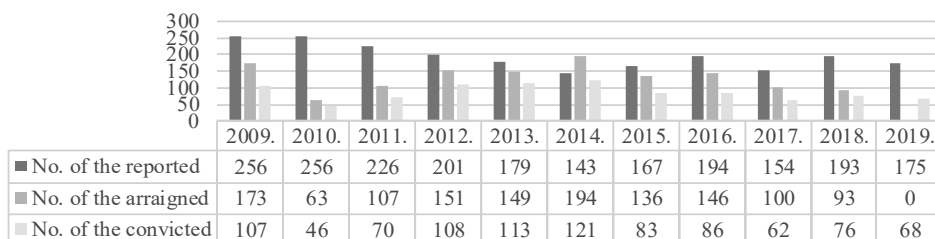
**Chart 12:** The number of the reported, arraigned and convicted persons of age in the entire territory of the Republic of Serbia for the criminal offence of unauthorized use of another's vehicle in the period between 2009 and 2019



Source: Authors research

From the presentation of the number of reported, accused and convicted persons for the criminal offense of unauthorized use of another's vehicle in Graph 12, it is clear that the loss of crime in this criminal offense is enormous. Namely, in the Republic of Serbia, in the observed period (2009-2019), on average about 1,920 criminal charges were filed annually against adults, of which on average about 234 indictments were filed annually, and by the competent courts about 220 were issued to adults. convictions, which accounts for about 11% of the total number of criminal charges filed.

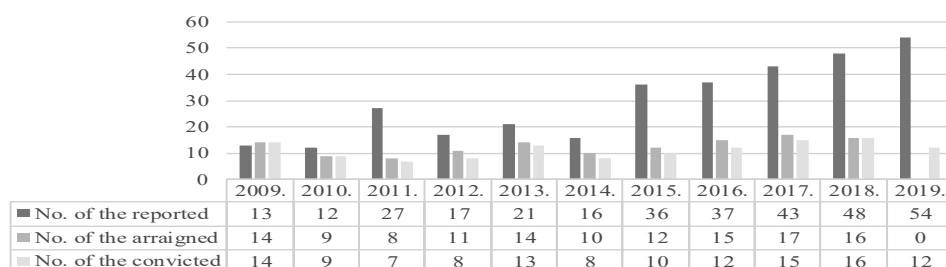
**Chart 13:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of extortion in the period between 2009 and 2019



Source: Authors research

The situation is much more favorable with the criminal offense of extortion (Chart 13), where on average criminal charges were filed against 195 adults annually, of which, on average, about 119 indictments were filed annually, and about 85 final verdicts were handed down by the competent courts. adults, which represents 44% of the total number of filed criminal charges for this crime.

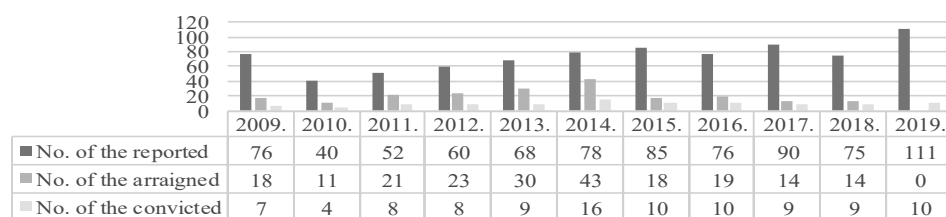
**Chart 14:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of blackmail in the period between 2009 and 2019



Source: Authors research

The situation is similar with the crime of blackmail (Chart 14), where on average in the entire RS for this crime, annually, about 29 adults were reported to the investigative bodies, of which about 12 people were indicted annually, and At the end of the criminal proceedings, about 11 adults were convicted annually by final judgments of the competent courts, which represents 38% of the total number of reported persons.

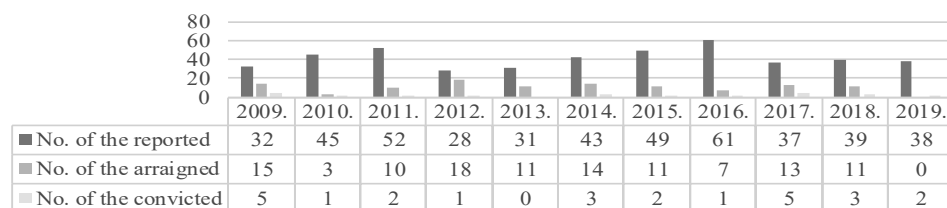
**Chart 15:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of abuse of trust in the period 2009-2019



Source: Authors research

For the commission of the criminal offense of abuse of trust (Chart 15), in the observed period, on average about 74 adults were reported annually, of which an average of 19 persons were indicted, and the accused were convicted on average about 9 adults per year, which represents about 12% of the total number of registered persons.

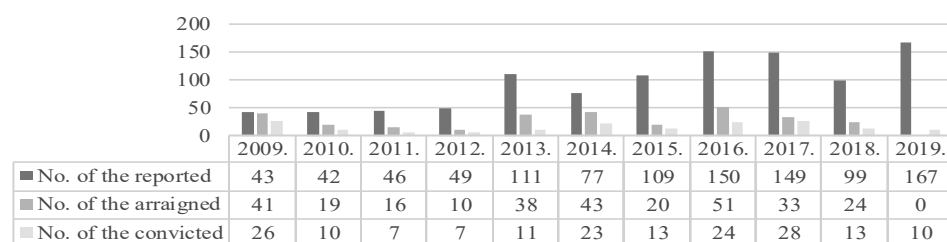
**Chart 16:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of greenery in the period between 2009 and 2019



Source: Authors research

The largest loss of crime in the observed period was in the criminal offense of greenery (Chart 16), for the commission of which an average of about 41 adults were reported annually, of which about 10 were indicted and only about 3 were convicted by the competent courts. per year, which is only 7% of the total number of registered persons.

**Chart 17:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of unlawful occupation of land (2009-2019)

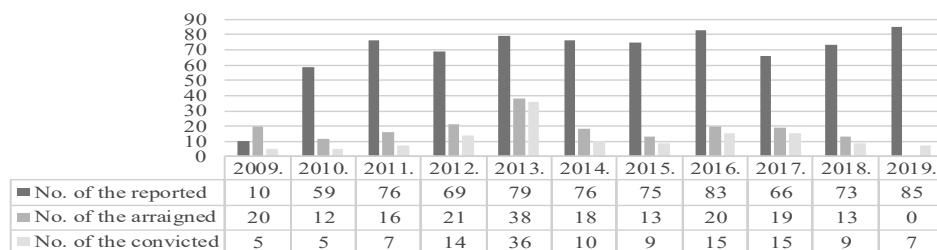


Source: Authors research

For the commission of the criminal offense of illegal occupation of land (Chart 17), in the observed period, on the territory of RS, on average about 95 adults were reported annually, of which about 27 persons were charged per year, and of the persons against whom an indictment was filed, The competent

criminal courts convicted an average of about 15 adults a year, which is 16% of the total number of persons reported for this crime.

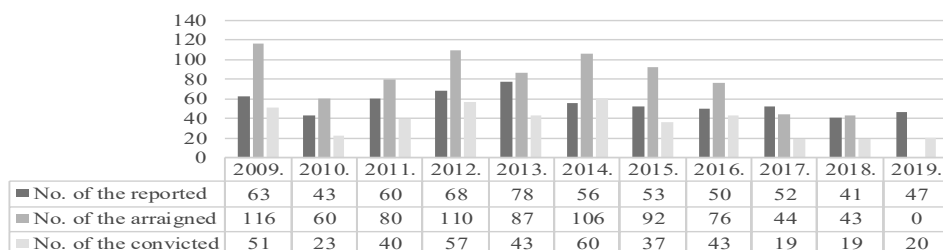
**Chart 18:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of unlawful occupation of premises (2009-2019)



Source: Authors research

The situation with the criminal offense of illegal immigration is almost identical (Chart 18), which, contrary to the practice in developed countries, still exists in the Republic of Serbia. In the entire observed period (2009-2019), an average of about 69 adults were reported for the commission of this criminal offense per year, of which the competent prosecutor's offices filed indictments for about 17 people, and the competent courts issued an average of about 12 adults. final convictions, which represents 17% of the total number of persons reported for this crime.

**Chart 19:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of infringement of another's right (2009-2019)

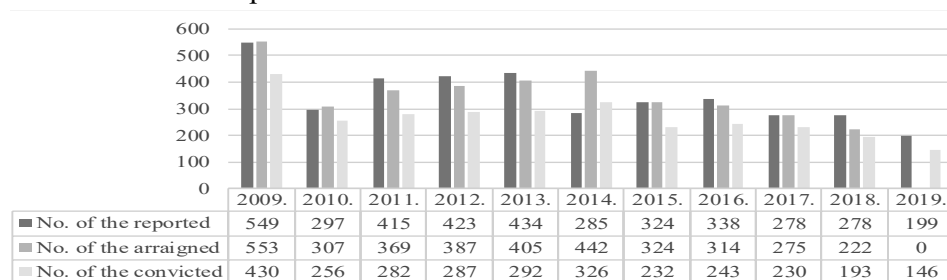


Source: Authors research

For the criminal offense of damage to other people's rights (Chart 19), in the analyzed period, about 56 adults were reported on average per year. The curiosity of this criminal offense is that in the same period, on average, about

74 persons were indicted annually by the competent prosecutor's offices, and about 37 adults were convicted by final criminal courts, which is 66% of the total number of reported persons. The reason for this should be sought exclusively in the delay of court proceedings and their excessive duration, ie duration beyond a reasonable time, so that for some criminal offenses for which criminal charges were filed in an earlier period, indictments were filed and convictions were passed in the analyzed period (2009-2019).

**Chart 20:** The number of the reported, arraigned and convicted persons of age in the territory of the Republic of Serbia for the criminal offence of concealment in the period 2009-2019



Source: Authors research

In the observed period (2009-2019), the smallest loss of crimes in the group of crimes against property was in the crime of concealment (Chart 20). On average, about 347 adults are reported for committing this crime every year. Of the reported perpetrators of this crime, on average about 327 indictments were filed against adults on an annual level (only twenty less than the average number of reported persons), and of the accused, on average about 265 final convictions were handed down annually, which represents 76% of the total number of registered persons for the entire observed period.

## 4. Discussion

Generalizing the relationship between the number of reported, accused and convicted persons for crimes against property, it can be concluded that this type of crime has a large loss of crime. Namely, in the entire territory of the Republic of Serbia in the observed period (2009-2019), 482,688 criminal charges were filed against adults for criminal offenses against property. Out of the total number of filed criminal charges, the competent prosecutor's offices filed 110,123 indictments against adults, which is 22.81% of the reported

persons. Out of the total number of accused persons, the competent courts in court proceedings handed down 100,069 final convictions, which makes 90.87% of convicts, in relation to the accused and 20.73% of convicts in relation to the reported persons.

From the analysis of criminal offenses against property in the observed period, it was determined exactly that the loss of crime for the entire group of criminal offenses was 79.27%.

For individual offenses from this group of criminal offenses, the loss of crime was, for criminal offenses: greenery 93%; unauthorized use of someone else's vehicle 89%; trust abuse 88%; evasion 84%; land occupation 84%; destruction and damage to someone else's property 83%; illegal immigration 83%; petty theft 80%; aggravated theft 80%; confiscation of someone else's property 76%; robbery 75%; fraud 75%; evasion and fraud 73%; robbery 69%; blackmail 62%; extortion 56%; unjustified obtaining and using loans and other benefits 36%; violation of other people's rights 34%, and criminal offense concealment 24%.

The biggest loss of crime was the crimes of greenery, unauthorized use of someone else's vehicle, abuse of trust, evasion, occupation of land, destruction of someone else's property and illegal immigration. The smallest loss of crime was in criminal offenses, unfounded obtaining and use of credit and other benefits, damage to other people's rights and the criminal offense of concealment.

In the epistemological interpretation of the mentioned data on the loss of crime, it is necessary to have a certain amount of caution because the ways in which statistical data on crimes against property are kept in the police, prosecutor's office and courts differ from the way official statistics are kept in the Republic Statistical Office (Ljubičić, Stephenson, Murrill, & Laličić, 2013).

Finally, the police, the prosecutor's office and the courts use different systems for monitoring cases of property crimes, which raises the issue of comparing data from these institutions. Police statistics are based on the number of reported crimes, and prosecutorial statistics on the number of reported adults, while court statistics are based on the number of cases and court rulings (Ibid.).

Official statistics in the Republic Statistical Office keep data concerning adults against whom criminal proceedings have been instituted / filed criminal charges, as well as data on the results of criminal proceedings against those persons kept in the records of prosecutor's offices and courts. Thus, the database of the Republic Statistical Office, prosecutor's offices and courts is based on two different questionnaires (the prosecutor's office submits

questionnaires SK-I and the courts SK-II) which do not allow merging into a single database. This makes it difficult to measure the progress made in combating property crimes, which necessitates a certain amount of caution in using and concluding these data.

## 5. Conclusion

For a sense of legal security in a country, it is necessary to provide maximum protection to basic values. Even in ancient Rome, it was believed that a person felt safe if his life, freedom, property and family were protected. Based on the analysis of twenty ways of attacking property on the territory of the Republic of Serbia in the period from 2009 to 2019, we came to the conclusion that in most cases the loss of crime was greater than 50% (except in three cases), which indicates that regulations on crimes against property are unclear, so it makes it difficult for law enforcement agencies to qualify an act or “drainage of wrongdoing” directed towards things and real rights is not good, so any “inadmissible act” is immediately qualified as a crime, although these elements are absent or on the other hand, collecting evidence on this group of crimes is bad and results in such statistics. Whatever the reason, it leads to an overload of state bodies related to criminal proceedings and their management, and the end result is always the inability to efficiently perform the tasks of internal affairs bodies, the prosecutor’s office or the court.

In order to improve the situation in this area, the authors of this paper, based on the experiences of developed countries, as well as many years of personal experience propose to the competent state authorities to specify the elements of criminal offenses related to things or property to reduce the number of reported behaviors of adults criminal cases.

In addition, the authors of the paper suggest the need to unify the Criminal Procedure Number (CPN), which ensures the merging of police and court data on criminal offenses against property in the Republic Public Prosecutor’s Office, which participates in all phases of criminal proceedings.

The unified data collection model is the basis for the introduction of a new instrument for monitoring the performance of cases in the Republic Prosecutor’s Office and the Republic Statistical Office, which would significantly improve the compatibility of statistical data of various state bodies and harmonize standards with developed European Union countries.

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## **KRIVIČNA DELA PROTIV IMOVINE SAGLEDANA IZ UGLA OSNOVNIH INSTITUTA PRAVA - STVARI I STVARNIH PRAVA**

**REZIME:** U radu su na osnovu podataka iz zvaničnih dokumenata Republičkog zavoda za statistiku i pravosudnih institucija Republike Srbije analizirani i prezentovani rezultati istraživanja koji se odnose na ugrožavanje stvari i stvarnih prava na teritoriji Republike Srbije u periodu od 2009. do 2019. godine. Analizu dostupnih podataka izvršili smo u svrhu otkrivanja „gubitka zločina“ u grupi krivičnih dela koja za cilj imaju zaštitu imovine. Svrha ovog rada jeste kauzalna analiza krivičnih dela protiv imovine na celokupnoj teritoriji Republike Srbije sa ciljem otkrivanja uzročnih odnosa i veza između broja prijavljenih, optuženih i osuđenih lica za ova krivična dela, radi utvrđivanja stepena ispoljavanja kriminalnih aktivnosti i preduzimanja sistemskih mera za smanjenje tog gubitka na razumnu meru, u skladu sa standardima razvijenih zemalja.

***Ključne reči:*** *krivična dela protiv imovine, imovina, stvari i stvarna prava.*

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