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## ITEMS OF AFFECTIVE VALUE IN ENFORCEMENT PROCEDURE

**ABSTRACT:** Recognizing the particular significance certain possessions hold for their owners, this paper examines their status within the enforcement procedure in Serbia, especially in light of the core principle of safeguarding the debtor's personal dignity. Over the past several decades, marked by dynamic socio-political shifts in the region, the treatment of items with affective value has evolved. Through a historical analysis of the list of exempted items and a comparative overview of normative solutions across the former Yugoslav republics, the authors identify several commendable legislative adjustments. Nonetheless, the overarching assessment suggests a degree of legislative backsliding: rather than fostering progressive, compassionate changes in the treatment of debtors, recent amendments have shown declining concern for not only economic and social factors but also the debtor's professional, ethical, and emotional standing. As such, the current legal framework—focusing narrowly on the existential minimum—fails to adequately safeguard the dignity of debtors and their families, thus impeding the development of more humane enforcement practices in Serbia.

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## 1. Introductory Notes

Due to the owner's emotional attachment, the affective value of an item exceeds its market or ordinary worth (Radišić, 2014, p. 311). This subjective assessment is invoked in damage compensation only when the harm was caused by an intentional criminal act (Article 198(4) of the Law on Obligations, 1978). This represents one of the key departures from the general principle of objective fault in Serbian tort law, effectively (re)defining the conditions for liability (Radulović, 2020, p. 340). On the other hand, the concept of affective value as a basis for material compensation is supported by provisions regulating property law matters, particularly acquisition of ownership from a non-owner (Article 31(2) of the Law on the Fundamentals of Property and Legal Relations, 1980). A bona fide acquirer may become the legal owner of an item even if it was not obtained from someone with rightful ownership, constituting an exception to the principle that disallows acquiring property rights from a non-owner.<sup>1</sup>

Consequently, the acquirer's absolute right is qualified by the former owner's right to reclaim the movable item at its market value within one year, provided it holds special significance for them—effectively serving as a synonym for its affective value. This legal mechanism enables the original owner to recover an item deemed more valuable than money, even if reacquisition comes at a substantially higher price than its initial cost.

More broadly, and independently of the rules previously discussed, affective value is considered in relation to the item's appraised worth—as an extraordinary price—alongside its ordinary market value and the value arising from the owner's special attachment. Although this subjective dimension in assessing property has a long-standing tradition in Serbian law, it continues to raise questions in legal practice, both in the fields of tort and enforcement law. For items with objectively low market value that nevertheless carry deep personal significance—such as pets, awards, medals, mementos, family photographs, or personal correspondence—earlier research indicates that general insurance principles display limited sensitivity to affective value, both globally and domestically (Gajinov, 2024, p. 48). Given the many unresolved issues, the

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<sup>1</sup> This claim cannot be asserted after one year has elapsed since the acquisition of ownership rights over the item.

authors set out to assess the status of affectively valued items in enforcement proceedings, particularly in the context of the core principle of protecting the personal dignity of the debtor over recent decades, a period shaped by markedly dynamic socio-political developments in the region (Ujdehag et al., 2014). Using historical and normative methods, the paper analyzes the list of items exempted from enforcement, which includes those of special importance to the owner, as prescribed by the regulations governing execution procedures. The aim is to determine whether the normative framework adequately protects the integrity of the enforcement debtor, not only in material terms but also regarding moral and status-related aspects. The authors' overall conclusions are substantially informed by selected comparative legal solutions from the countries of the former SFRY, whose regulations are grounded in shared socio-political, normative, and cultural-historical foundations.

## **2. Items Typically Associated with Affective Value and Their Relationship to Market Value**

Certain items often hold little to no monetary value but carries immense personal importance from the owner's subjective standpoint, such as family photographs, personal correspondence, or awards for various achievements (Stanković & Orlić, 1999, p. 17). Conversely, some items may possess both substantial market value and deep emotional significance for the owner, as in the case of family jewelry, works of art, or other valuables, particularly when they are collectible in nature.

Human motivations for collecting various items reflect a blend of economic, religious, magical, aesthetic, and intellectual drivers. Collections are often the product of decades-long dedication—a hobby that demands commitment, affection, patience, and at times, substantial investments in space and equipment. Beyond amassing large home libraries, individuals commonly collect postage stamps, badges, pins, vinyl records, old coins, and occasionally items such as napkins, porcelain sets, figurines, stickers, or fridge magnets from different countries around the world. For the collector, these objects carry significant personal meaning, despite typically holding negligible market value. This emotional bond is further reinforced when collecting is not a source of income, but a pure passion and personal hobby of the owner. Awards, medals, and trophies bestowed upon athletes hold special value and significance, even when they are replicas and contain only minimal quantities of precious metals such as gold, silver, or bronze. These items are thus categorized as possessions with pronounced affective value,

akin to personal correspondence, family photographs, and various mementos to which owners are sentimentally attached. There is particular reason to discuss emotional attachment in cases involving companion animals (but not other domestic livestock), especially given the legal status these animals have acquired over recent decades within both international and national legal frameworks. According to the Law on Animal Welfare (Article 5, Paragraph 26, 2009), companion animals are defined as animals kept for companionship—an acknowledgment that undoubtedly affirms a special bond between owner and pet (Radulović, 2020, p. 346). This applies most commonly to dogs and cats which, if mixed breed, typically have low market value (Antić, 2011, p. 485). Despite the growing acceptance of biocentric ethics and the recognition of a specific form of legal subjectivity for pets, in cases involving injury or death of owned animals, they are still regarded legally as mere objects.<sup>2</sup>

### **3. Status of Items with Affective Value in Serbian Enforcement Legislation**

Enforcement against a debtor's movable property is carried out through inventorying, appraisal, and sale of items, with the proceeds used to satisfy the creditor's claim. These enforcement actions form an integrated whole, though each is executed as a distinct procedural step. As a rule, the appraisal of the debtor's movable items is conducted concurrently with the inventory; however, this is not mandatory, as certain items require specialized expertise or expert evaluation for accurate appraisal. The inventory includes only those items necessary to satisfy the creditor's claim and cover the costs associated with the enforcement process.

Through a chronological review of various legislative acts governing enforcement and security measures in Serbia, this paper seeks to examine the status of affectively valued items in enforcement proceedings as a reflection of concern for the debtor's dignity from a professional and ethical standpoint. The Law on Enforcement Procedure of 1978 marks the beginning of the

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<sup>2</sup> The right to compensation for material damage includes the reimbursement of medical expenses for an injured animal. In the event of its death, market value is typically assessed according to species, breed, health status, age, specific characteristics, sex, and training, with pedigree notably increasing its value (Milenković, 2015, p. 528). However, the special emotional bond between the owner and the deceased companion animal invites reconsideration of whether compensation might reflect its affective value—an approach that ought not to be strictly conditioned by the existence of a criminal offense (Law on Obligations, Article 189(4)), nor by qualified fault in the civil-law sense (Milenković, 2015, p. 537).

modern phase of Serbia's enforcement legislation. Article 71 included a list of items exempted from enforcement, intended to ensure satisfaction of the basic living needs of the debtor and their family members, or to support the performance of independent professional activity as their primary source of livelihood. Within this list, we also find objects bearing affective value, such as decorations, medals, wartime commemoratives and other insignia of honor and recognition, wedding rings, personal letters, manuscripts and other private documents of the debtor, as well as family photographs. Awards received personally by the debtor, or their relatives, were exempt from enforcement. However, such items may also form part of a debtor's collection, in which case it is necessary to assess the extent to which these objects generate benefit for the owner, to determine the legitimacy of their seizure. If they are the product of the debtor's pure passion, regardless of the existence of a market for such items, the authors hold that they should reasonably be exempt from enforcement due to the special subjective bond between the owner and the items in question. Regarding family photographs, theoretical interpretations suggested that the exemption applied only to family portraits, and not to other artworks depicting different subjects (Grubač, 1979, p. 280).

As in the 1978 Enforcement Law, the subsequent Law on Enforcement Procedure from 2000 provided that enforcement is to be carried out by courts, either at the creditor's request or *ex officio*. However, the 2000 law omitted provisions aimed at protecting debtors engaged in independent professional activity, as well as safeguards concerning the operations of certain legal entities. This legislative omission was justified on the grounds that such provisions had frequently been exploited. With regard to items of affective value exempted from enforcement, the list remained largely unchanged. Nonetheless, inexplicably, the wedding ring was omitted. The likelihood of abuse, such as presenting an expensive diamond ring as a wedding ring, is exceedingly low. Moreover, tradition distinguishes wedding bands by their simple design, typically crafted from yellow, white, red, rose, or even black gold, often combined with engraving, which are features that set them apart from other rings. Seizing a wedding band, which symbolizes a promise and commitment to love and shared life, would constitute a profound affront to the dignity and honor of both the debtor and their life partner.

In the subsequent 2004 version of the Law on Enforcement Procedure, the list of items exempt from enforcement remained unchanged, thereby preserving the inadequate treatment of the wedding ring. Furthermore, the law did not expand the list to include other objects that might warrant a "privileged" status due to their personal significance for the debtor or their family members.

The 2011 Law on Enforcement and Security introduced a new dual-track enforcement procedure, carried out in parallel by courts and enforcement officers (bailiffs). While courts retained authority to issue decisions, subsequent amendments broadened bailiffs' jurisdiction, granting them primary responsibility for enforcing claims arising from communal and similar services. Article 82 contains the list of movable items exempt from enforcement, and under points 4 and 6, several items are identified as potentially holding special significance for the owner. Notably, the term *ordenje* (Serbian for "decorations") was replaced with *ordeni* (T/N: same meaning, slightly different form), while items such as medals, wartime commemoratives, and other marks of distinction received by the enforcement debtor, as well as personal letters, manuscripts, and other private documents, along with family photographs, were retained. However, the newly introduced phrasing—"received by the enforcement debtor"—now excludes recognitions awarded to the debtor's relatives or ancestors, even if cherished as part of family heritage. Likewise, documents must now belong exclusively to the debtor, limiting the scope of exemption. This opens the possibility of confiscating items that nurture familial memory of honored or beloved individuals, passed down through generations—an outcome the authors regard as a highly problematic legal intervention, undermining the dignity of both the debtor and their relatives. Furthermore, analysis of point 4 reveals that the term *slika* ("picture"), previously used in broader terms has been replaced by *fotografija* ("photograph"). This shift enables the confiscation of, for example, family icons—frequently inherited and tied to longstanding traditions of religious observance—or artistic portraits of ancestors. Even this seemingly linguistic adjustment further narrows the list of affectively valued items exempt from enforcement and risks violating the foundational principle of safeguarding the debtor's personality and dignity (Vavan, 2025, pp. 102–103).

Provisions exempting working and breeding livestock belonging to debtor farmers and agricultural producers from enforcement—based on economic and existential concerns—were only foreseen in the 1978 Law on Enforcement. In all subsequent legislative versions, livestock and other domestic animals raised for economic purposes have become subject to inventory and seizure, requiring that enforcement actions be conducted in accordance with various regulations pertaining to animal husbandry, veterinary care, and general animal welfare (Folić, 2017, pp. 49–50).<sup>3</sup> The 2011 Law on Enforcement and

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<sup>3</sup> All animals are appropriately marked, and the holdings where they are kept are registered in the Central Database for Animal Identification.

Security introduced, for the first time, an exemption for companion animals (Article 82, point 6). This exemption was phrased in the singular form, indicating it applies to a single individual animal. The intent was to protect the dignity and personality of the debtor, as well as the animal itself, which is increasingly regarded as possessing a distinct legal subjectivity under the growing influence of biocentric ethics (Gajinov, 2023). The provision has been interpreted narrowly, and its phrasing<sup>4</sup> helps prevent potential abuses by persons professionally engaged in breeding and keeping animals, such as dog breeders or horse stables (Šarkić, 2016, p. 200). Moreover, it is uncommon for someone to earn considerable profit through the possession of a single animal used exclusively for exhibitions or competitions.

Under the current Law on Enforcement and Security, enacted in 2015 and subsequently amended, public enforcement officers were assigned a dominant role in enforcement proceedings.<sup>5</sup> Accordingly, these officers are responsible for respecting legal provisions exempting certain movable items from enforcement. The law preserves the established structure of exempted items, listed in Article 218. Items of affective value remain protected from enforcement, including orders, medals, wartime commemoratives, and other decorations and recognitions, personal letters, manuscripts and other private documents, and family photographs. A welcome development is the removal of the previous requirement that recognitions must have been awarded to the enforcement debtor personally, now allowing the debtor to retain items received by family members or ancestors as part of cherished family legacy. Despite the more appropriate term *slika* (“picture”) appearing elsewhere in legal usage, the current law continues to use *fotografija* (“photograph”), which may still narrow interpretive scope. The wedding ring remains conspicuously absent from the list of exempt items, even though ethical considerations strongly favor its exclusion from enforcement. Point 6 refers once again to a companion animal, and again in the singular. This raises the question: what if the owner keeps multiple pets—especially

<sup>4</sup> Some argue that the legislation ought to distinguish between companion animals commonly kept in this region (such as dogs and cats) and exotic pets (such as reptiles and monkeys), which typically carry high purchase value. However, considering the increasing presence of parrots and other furry companion animals in residential settings, we regard the legislative generalization in this case as entirely appropriate.

<sup>5</sup> Judicial authority in enforcement proceedings is now limited to joint sale of immovable and movable property (such as industrial facilities), acts and omissions, enforcement related to family relations, and reinstatement of employees. All other enforcement procedures fall under the jurisdiction of public enforcement officers. The provision from the 2011 legislation that allowed enforcement creditors to choose between court or bailiff-led enforcement is no longer in force.

of different species—or cares for them together with children? In such cases, seizure would be a particularly harsh and unsettling action.

#### **4. Expanding the List of Affectively Valued Items Exempt from Enforcement Due to Respect for the Debtor's Dignity**

An analysis of statutory provisions governing the exemption of items with particular emotional value to the debtor—serving to safeguard personal dignity and familial bonds—reveals that legal solutions have evolved in an inconsistent and *ad hoc* manner. These developments have failed to provide adequate protection for enforcement debtors and have equally overlooked the creditor's right to effective enforcement (Šarkić, 2018). Rather than implementing thoughtful, forward-looking reforms that might foster a more humane approach to the debtor's personhood, legislative changes have often led to the omission of certain items from protection or introduced provisions that—at least for a time—made it impossible to exempt belongings significant to family memory and heritage. This occurred particularly where the law required that such items be awarded to or owned exclusively by the enforcement debtor. Only the 1978 Law on Enforcement Procedure included provisions that explicitly protected debtors engaged in independent or professional activity—protections that remain present in the enforcement legislation of countries such as Croatia and North Macedonia. Under the 1978 framework, in addition to items and means essential for meeting basic existential needs,<sup>6</sup> the law exempted working and breeding livestock, agricultural machinery, and other tools necessary for the livelihood of farming debtors. Similarly, tools, machinery, and other instruments required for the independent exercise of craft professions were also excluded.

Exemptions extended to items deemed necessary for professional, scientific, artistic, or other activities—such as books and related objects—which, in many cases, could be understood as possessions with affective value. This is especially true for artistic exhibits, specialized equipment, unfinished creative works, laboratory tools, and research instruments used in

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<sup>6</sup> This version of the law—similarly to several later ones—included items such as clothing, footwear, underwear and other personal effects; bedding; kitchenware; furniture; a stove, refrigerator, and washing machine; and other household items necessary for the debtor and members of their household, depending on the living conditions in their environment. It also provided for the exemption of food and fuel sufficient for the debtor and their household for a six-month period, as well as the debtor's cash—if they have regular monthly income—up to the legally exempt amount, proportionate to the time remaining until the next payment.



home-based scientific or experimental work. Naturally, assessments of which books or objects were necessary depended on the debtor's profession (e.g. writer, painter, sculptor, actor, photographer, scientist) (Grubač, 1979, pp. 279–280). Although these provisions were vital for safeguarding not only the debtor's socio-economic status but also their professional development and dignity, they were omitted in all subsequent versions of the law. Furthermore, the foundational principle of protecting the debtor's personal dignity was gradually transformed into a procedural standard requiring court and later public enforcement officers to act with due regard toward the personhood of the debtor and members of their household. In the current Law on Enforcement and Security, the phrase “due regard” has been replaced with “due care,” a legal standard already established in the 1978 Law on Obligations. In effect, the focus of enforcement proceedings has shifted: rather than centering on the protection of the enforcement debtor's personal dignity, the emphasis is now placed on the obligation of the public enforcement officer to act with professional competence and due care.

In the regulation of this issue across successor states of the former SFRY, the list of items exempt from enforcement due to their special significance to the debtor's personhood includes, in Croatia, the wedding ring, family portraits, and other personal and family documents, recognized as evidence of family history and tradition (Article 135(7) of the Enforcement Act, 2012). The same provisions apply in the Federation of Bosnia and Herzegovina and in the Republic of Srpska (Article 117(4) of the Law on Enforcement Procedure, 2003). A similar framework is found in North Macedonia, with the caveat that written documents “must personally belong to the debtor” (Article 94(6) of the Law on Enforcement, 2016). In Montenegro, the list is narrower, as it does not include the wedding ring. Moreover, through the repeated use of the term *personal* in relation to letters, manuscripts, and other debtor documents, the law prevents exemption of items belonging to family members or ancestors (Article 81(4) of the Law on Enforcement and Security, 2011). Notably, none of the jurisdictions exempt companion animals from enforcement.

The legislative list of affectively valued items exempt from enforcement should first be amended to reinstate the wedding ring. Additionally, the term *family photograph* ought to be replaced with the broader term *picture*, which would allow for the exemption of items such as family icons—often representing a family's patron saint—and artistic portraits of ancestors or family members. Furthermore, the qualifier *personal* should either be removed or supplemented with *family-related* in reference to letters, manuscripts, and documents, thereby preserving materials belonging to the debtor's relatives.

The reintroduction of provisions protecting debtors engaged in independent professional activity is also warranted. When interpreted appropriately, such provisions would again permit the exemption of books and other objects closely tied to the debtor's scientific, cultural, or artistic work—items that may have little market value but are inseparably linked to the enforcement debtor's integrity and personal dignity.

## **5. Conclusion**

Over the past several decades, enforcement legislation has undergone substantial transformations in its foundational approach to protecting the personal dignity of debtors. However, instead of embracing constructive and affirmative reforms aimed at fostering more humane treatment, the legal trajectory has regressed in its concern for the economic, social, professional, ethical, and emotional status of enforcement debtors.

Regarding the debtor's personal attachment to specific items, it is commendable that companion animals have been added to the list of objects exempt from enforcement. Similarly, all decorations and recognitions belonging to the debtor's family members and ancestors have once again been exempted. Nonetheless, other legislative interventions fail to demonstrate sufficient sensitivity toward items of affective value, the cultivation of family traditions, marital commitments, remembrance of loved ones, and the emotional and professional dimensions of the debtor's identity, including their scientific, cultural, or artistic work. By focusing solely on guaranteeing the existential minimum, such legal solutions fall short of offering meaningful protection for the debtor's dignity, the socio-emotional aspects of their personality, and their professional status and reputation, thereby hindering the implementation of a more humane enforcement procedure.

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### **Conflict of Interest**

The authors declare no conflict of interest.

### **Author Contributions**

Conceptualization, T.G. and Z.V; methodology, T.G; formal analysis, M.M. and Z.V; writing – original draft preparation, T.G; writing – review and editing, M.M. and Z.V; resources, T.G., Z.V. and M.M. All authors have read and agreed to the published version of the manuscript.

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## **STVARI OD AFEKCIONE VREDNOSTI U IZVRŠNOM POSTUPKU**

**APSTRAKT:** Polazeći od posebnog značaja pojedinih stvari za imaoa, u radu autori nastoje da ocene njihov status u izvršnom postupku, u kontekstu ostvarivanja ključnog načela zaštite dostojanstva ličnosti dužnika, u proteklih nekoliko decenija, kao rezultat izrazito dinamičnih društveno-političkih odnosa na ovim prostorima. Analizirajući spisak stvari koje su izuzete od izvršenja sa afekcionom vrednošću, u istorijskom kontekstu, ali i uz osvrt na normativna rešenja zemalja bivše SFRJ, autori sa vremenske distance uočavaju pojedine dobre normativne korekcije. Ipak, opšta ocena je da je umesto pozitivno-afirmativnih promena koje bi doprinele humanijem tretmanu ličnosti dužnika, došlo do izvesne zakonske regresije u pogledu brige, kako o ekonomsko-socijalnom, tako i o njegovom

profesionalnom, etičkom i emocionalnom statusu. Samim tim, trenutno važeća zakonska rešenja, ostavljajući po strani isključivo obezbeđenje egzistencijalnog minimuma, ne daju adekvatan doprinos ukupnoj zaštiti digniteta, kako dužnika, tako i članova njegove porodice, pa time i većoj humanosti izvršnog postupka kod nas.

**Ključne reči:** afekciona vrednost stvari, izuzimanje od izvršenja, izvršni postupak, zaštita dužnika, Srbija.

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