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C O N T E N T S

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EXPROPRIATION ISSUES THROUGH THE PRISM OF LIMITATIONS OF CONSTITUTIONAL GUARANTEES OF PROPERTY RIGHTS IN THE LEGAL SYSTEM OF THE REPUBLIC OF CROATIA

ABSTRACT: Although the institution of expropriation is known in all contemporary legal systems, it should be observed through the lens of limitations on the constitutional guarantee of property rights. This is especially important since the inviolability of property is one of the highest values of the Croatian constitutional order, which in itself serves as a criterion for interpreting the Constitution of the Republic of Croatia. Therefore, the focus of this paper is on the theoretical definition and normative framework of expropriation through the analysis of relevant constitutional and legal provisions, with particular attention given to the jurisprudence of the Constitutional Court of the Republic of Croatia. Finally, the paper addresses several contentious issues regarding the legal regulation of expropriation in Croatia, as well as the need for specific solutions *de lege lata* and *de lege ferenda*.

Keywords*: expropriation, property rights, Constitution, Constitutional Court.*

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1. Introduction

The Constitution of the Republic of Croatia (hereinafter: the Constitution), as the fundamental legal act of the Croatian state, is not value-neutral but is based on the highest values it embodies, which serve as the foundation for its interpretation. One of the fundamental values of the constitutional order of the Republic of Croatia, as proclaimed in Article 3 of the Constitution, is, inter alia, the inviolability of ownership. Furthermore, Article 48 of the Constitution guarantees the right to ownership as a human right, with constitutional judicial protection ensured before the Constitutional Court of the Republic of Croatia (hereinafter: the Constitutional Court). Specifically, the principle of the inviolability of ownership, i.e., the constitutional guarantee of the right to ownership, is one of the principles that is significantly applicable in expropriation procedures.

Although the state is authorized, through legally justified actions, to limit or, in certain cases, even to take ownership, such measures are permissible only when they are strictly necessary and in the interest of the national community, i.e., in the public interest. In other words, the fundamental criterion for expropriation is the public interest, which exists, for example, when it is necessary to construct major infrastructure projects for which the acquisition of land is a conditio sine qua non.

This paper is based on research conducted using the methods of content analysis and synthesis, as content analysis has proven suitable for examining the historical development of the institute of expropriation. This method allows for tracking legal changes, identifying existing problems, and proposing potential solutions for improving normative regulation. Qualitative content analysis enabled an objective examination of various data on the topic, while the method of synthesis facilitated the contextualization of data from different sources into a new coherent whole.

The aim of the paper is to examine the issue of expropriation from various perspectives, particularly from the standpoint of normative regulation and theoretical determination. This is done through the constitutional role of the inviolability of ownership and the limitations of ownership rights guarantees within the legal system of the Republic of Croatia, with special attention given to the jurisprudence of the Constitutional Court. The paper seeks to contribute to a deeper understanding of the exceptional importance of the inviolability of ownership as a fundamental constitutional principle and the constitutional guarantee of ownership rights in the context of expropriation. This is achieved through legal recognition and practical application.

Accordingly, the paper highlights certain contentious issues in the legal regulation of expropriation in the Republic of Croatia, emphasizing the need for specific solutions both de lege lata (under current law) and de lege ferenda (for future legislation).

2. Constitutional Guarantee and Constitutional Court Protection of Ownership Rights

2.1. The Inviolability of Ownership as a Fundamental Constitutional Value

It was initially emphasized that, as the fundamental legal act of the Croatian state, the Constitution is not value-neutral but is founded on ethical principles expressed through its fundamental values. Article 3 of the Constitution stipulates the highest values of the constitutional order of the Republic of Croatia as: freedom, equality, national equality and gender equality, peacemaking, social justice, respect for human rights, preservation of nature and the human environment, the rule of law, a democratic multiparty system, and, relevant to the topic at hand, the inviolability of ownership. It is worth noting that the highest values of the Croatian constitutional order were already prescribed in the 1990 Constitution and were intended to serve as the basis for establishing and achieving a modern democratic state. The second amendment to the Constitution in 2000 further specified that these highest values serve as the foundation for interpreting the Constitution (Šarin, 1997).

Since the Constitution represents a unified whole, it cannot be approached in a way that extracts a single provision from the overall relationships it establishes, interpreting it separately and mechanically, without regard to all the other values protected by the Constitution. The structural unity of the constitutional text gives rise to an objective order of values, which, as such, must be protected and promoted. In other words, the Constitution possesses an internal unity, and the meaning of any individual part is inherently linked to all other provisions. Viewed in this sense, the Constitution reflects comprehensive principles and fundamental decisions that must guide the interpretation of all its individual provisions.

This means that the two classical groups of rights protected by the Constitution, namely, the group of personal, civil, and political rights and the group of economic, social, and cultural rights, which includes the right to ownership, must be considered as a unified whole, coordinated and equally

valued protected goods. In summary, no constitutional provision can be isolated from its context and interpreted independently. Each constitutional provision must always be interpreted in accordance with the highest values of the constitutional order of the Republic of Croatia, including the inviolability of ownership. These values, as noted at the outset, serve as the foundation for interpreting the Constitution itself. For the Constitutional Court's legal position on the unity of the constitutional text, see, for example, Decision No. U-I-3789/2003 et al., dated December 8, 2010; Decision and Resolution No. U-IP-3820/2009 et al., dated November 17, 2009; and Decision No. U-I-3597/2010 et al., dated July 29, 2011.

It is particularly noteworthy that the Constitutional Court, in its constitutional jurisprudence, has confirmed that Article 3 of the Constitution has an additional function. In addition to serving as a foundation for interpreting the Constitution, it also acts as a guideline for the legislature when elaborating on individual human rights and fundamental freedoms guaranteed by the Constitution. Therefore, it is directed at state authorities rather than directly at citizens. The highest constitutional values, thus, should guide administrative bodies and courts in resolving individual cases, since, according to the Constitution, courts and other state bodies base their decisions on the Constitution, laws, international treaties, and other valid sources of law (Smerdel, 2010; Häberle, 2002; Scalia, 1997; Dworkin, 1985).

However, it is important to emphasize that the Constitutional Court, after some hesitation, expressed in 2014 its stance that fundamental values, although not constituting a direct constitutional basis for protecting constitutional rights and freedoms through the institution of constitutional complaints, must be considered alongside other guarantees of human rights and fundamental freedoms (See Decision and Resolution No. U-III-6559/2010, dated November 13, 2014.

In summary, fundamental values represent an ethical concept underlying the Croatian Constitution, aiming to avoid arbitrariness in its interpretation and application. Observing Article 3 of the Constitution through the principles of constitutionalism, its significance lies in the fact that it represents a list of the highest criteria for interpreting any constitutional provision. This is particularly relevant given the brevity of the Constitution, which at times requires interpretation to establish the true meaning of individual provisions and the Constitution as a whole, especially when dealing with broad concepts such as the inviolability of ownership (Bačić, 2011; Bačić, 2006).

Obiter dicta, the Constitutional Court, recognizing this fact, has developed extensive case law interpreting the highest values of the constitutional order

of the Republic of Croatia. Their content, indeed, has been interpreted by the Constitutional Court in numerous decisions and rulings, primarily in proceedings for the abstract constitutional review of laws and subordinate acts (protection of constitutionality in abstracto), but also in proceedings for specific constitutional review (in concreto protection of constitutionality) (Šarin, 2015; Krapac, 2014).

2.2. Constitutional Guarantee of the Right to Ownership

Constitutional guarantees, including the constitutional guarantee of the right to ownership, are primarily aimed at protecting the rights and freedoms of individuals or social groups or safeguarding certain relationships that form the socio-economic foundation of society or its superstructure. Given the above, when discussing the inviolability of ownership, Article 3 of the Constitution must also be emphasized alongside Article 48, which explicitly guarantees the right to ownership.

At the time the Constitution was adopted, this marked a return to classical sources of constitutionality, as the restrictions on ownership characteristic of the former communist system were abolished. The Constitution eliminated the dualism of property relations and no longer recognizes social ownership. Moreover, the Constitution prescribes and guarantees the inviolability of (individual) ownership belonging to a specific natural or legal person, guaranteeing the holder of ownership rights the right to dispose of their property (Crnić, 1991).

Ownership is, therefore, a fundamental legal institution for delineating private property relations within a community. From a constitutional perspective, its most important aspect is its private usability and the general freedom to dispose of the object of ownership. Since ownership is not absolute, it must be shaped and protected through legal regulation, adapting its content and function to changing social and economic circumstances. The state has committed to this regulation by embedding the guarantee of the right to ownership in the Constitution, as well as its social function, according to which ownership entails obligations. Hence, ownership holders (and their users) are required to contribute to the general welfare.

Thus, the constitutional norm guaranteeing the right to ownership must be interpreted broadly to extend beyond the guarantee of individual ownership of a specific item to include ownership as a legal institution within the legal system of the Republic of Croatia. For the Constitutional Court›s legal position see Decision No. U-I-46/1994, dated November 30, 1994.

Since ownership, in the sense of Article 48(1) of the Constitution, "must be interpreted very broadly" as encompassing "in principle all property rights," including economic interests inherently tied to property and the legitimate expectations of parties that their property rights, based on legal acts, will be respected and their realization protected, the Constitutional Court has adopted general legal positions on the inviolability of ownership and the constitutional guarantee of ownership rights. See, for example, Decision No. U-III-661/1999, dated March 13, 2000; Decision No. U-IIIB-1373/2009, dated July 7, 2009; Decision No. U-III-3871/2009, dated May 13, 2010.

It should be noted that while the constitutional guarantee of ownership rights binds the legislature, which may not limit ownership below the level set by the Constitution, this does not mean the legislature cannot adapt specific elements of ownership rights to social, economic, environmental, and other circumstances of societal development. However, this can only be done while preserving the "essence of ownership rights." The constitutional guarantee of ownership rights protects this right from state encroachments, broadly understood, as encompassing all property rights. In other words, the guarantee of ownership rights prevents administrative authorities, whether through individual acts or regulations, from infringing on ownership by imposing certain obligations to act, tolerate, or refrain, except where such encroachment is based on law, as will be discussed further in the text.

2.3. General Legal Positions of the Constitutional Court on the Constitutional Guarantee of Ownership Rights

The general legal positions on the constitutional guarantee of ownership rights, or the content of the three constitutional rules on ownership, were first elaborated by the Constitutional Court in Decision No. U-IIIB-1373/2009 of July 7, 2009. It relied on the legal positions of the European Court of Human Rights (ECHR) regarding the protection of ownership under Article 1 of Protocol No. 1 to the European Convention on Human Rights (hereinafter: the Convention). The Constitutional Court emphasized that Article 48(1) of the Constitution, which guarantees ownership rights, must be viewed in conjunction with Article 50 of the Constitution, which regulates the constitutional possibilities for its deprivation or limitation to protect certain constitutional values or goods.

The first rule, contained in Article 48(1) of the Constitution, is of a general nature and prescribes the guarantee of ownership rights. It requires that the state not abolish the essence of ownership rights, which include the

general freedom to dispose of the object of ownership. Above all, the essence of ownership rights encompasses private use, meaning that the object of ownership belongs to the right holder for their benefit, serving as a basis for free private enterprise and work. The constitutional guarantee of ownership thus requires that the owner be provided with free space within the property-legal sphere, allowing them to develop and independently shape their personal and entrepreneurial spheres of life.

Unlike the first rule, the second and third rules pertain to certain degrees of interference with ownership rights. The second rule, contained in Article 50(1) of the Constitution, governs the expropriation or restriction of ownership, which shall not be considered constitutionally impermissible if it is prescribed by law, is in the interest of the Republic of Croatia, and if compensation equal to the market value of the expropriated or restricted property is ensured and paid. Thus, the second rule permits state interference in ownership rights when it is in the interest of the Republic of Croatia. The Constitution, in fact, provides the basis for determining that the cited article refers to the general interest, i.e., the interest of the Republic of Croatia directed toward achieving the common good. Therefore, any interference in ownership undertaken in the interest of the Republic of Croatia, whether it involves expropriation or restriction, presupposes compensation of market value guaranteed by the Constitution. The foundation of such compensation lies in the fact that, in all mentioned cases, the goal of limiting or expropriating ownership is precisely to contribute to the realization or improvement of the common good, which is the previously emphasized social function of ownership.

However, the third rule, contained in Article 50(2) of the Constitution, grants the legislature the authority to restrict ownership rights by law without the obligation to pay any compensation. It is important to emphasize that the legislature can do so only in exceptional circumstances, i.e., when necessary measures must be taken to protect certain constitutional values or goods that the constitutional framers deemed so important as to place them under the category of state or general community interests: the protection of the interests and security of the Republic of Croatia, nature, the human environment, and public health. This concerns the protective function of ownership, inherently tied to the public interest of the community as a whole or its parts. As noted, the Constitution does not guarantee compensation for such restrictions. It is particularly important to stress that the three constitutional rules on ownership are neither independent nor unrelated. Specifically, the second and third rules, which pertain to certain degrees of interference with ownership rights, must always be interpreted in light of the general guarantee of ownership rights.

This means that before considering whether the first rule has been respected, it must be determined whether the other two rules apply to the specific case or law under constitutional review.

Thus, the legislature is tasked with realizing the guarantee of ownership rights and, taking into account the socially just regulation of ownership, considering the protected interests of private owners and general or public interests, establishing a fair balance that aligns the two. Just as the guarantee of ownership rights does not protect the abuse of ownership, the social function of ownership does not justify disproportionate or excessive restrictions on private ownership rights. For the Constitutional Court›s legal position see Decision No. U-I-763/2009 et al., dated May 30, 2011.

In this sense, the principle of proportionality applies to all rules on ownership. That is, any regulation of ownership must ensure the mentioned fair balance and an even relationship between the ownership rights of private individuals and general or public interests. In other words, interference with ownership rights must ensure a fair balance between the demands for respect and protection of the constitutional right to ownership of private individuals and the demands of state, public, or general community interests, which may include the protection of the opposing rights or interests of third parties. Therefore, in every individual case, there must be a reasonable proportionality between the means used to expropriate or restrict ownership and the goals intended to be achieved. The constitutional order of the Republic of Croatia is based on the principle of proportionality, as stated in Article 16 of the Constitution, which reads: "Freedoms and rights may only be restricted by law to protect the freedoms and rights of other people, the legal order, public morality, and health. Any restriction of freedom or rights must be proportionate to the nature of the necessity for the restriction in each individual case."

It should be noted, however, that the state enjoys a certain margin of appreciation in applying measures related to ownership and contractual and other relationships associated with it, just as it does in applying measures in other areas connected to the country's social, financial, or economic policies. The Constitutional Court must consider this margin when examining alleged violations of ownership rights in each individual case it reviews. A similar stance is upheld by the European Court of Human Rights (ECHR), as seen, for example, in Agosi v. the United Kingdom, Application No. 9118/80, ECHR Judgment, October 24, 1986, para. 52, and Stretch v. the United Kingdom, Application No. 44277/98, ECHR Judgment, June 24, 2003, para. 37. (Omejec, 2013; Letsas, 2007).

In conclusion, we can summarize that in the constitutional order of the Republic of Croatia, ownership may be expropriated: a) only by law, b) only if an interest of the Republic of Croatia is established, and c) with compensation equal to market value, while the restriction of ownership (not expropriation) is exceptionally allowed only by law to protect: a) the interests and security of the Republic of Croatia, b) nature, c) the human environment, and d) public health.

3. Normative Framework for Expropriation in the Republic of Croatia

3.1. The Concept and Assumptions of Expropriation

From the earliest days of human society and the establishment of social relations through legal norms, the institution of ownership has emerged as a crucial element and, one might say, a constant in all existing legal systems. Ownership rights represent one of the fundamental institutions of the entire legal and social order, particularly in the legal systems of the continental European legal tradition, which developed on the foundations of the reception of classical Roman law (Gavella, Josipović, Gliha, Belaj & Stipković, 2007). However, despite being a historical and legal constant, ownership rights have not been immune to various modifications, primarily driven by social and political changes.

Since ownership rights traditionally contain strong components of absoluteness and exclusivity, the issue of their restriction or deprivation is highly complex. As previously mentioned, the Constitution guarantees ownership rights both in terms of protection from public authority intervention and as a guarantee of the preservation of the institution of ownership itself. In other words, by guaranteeing legal entities certain freedoms and rights, including ownership rights, public authority imposes limitations upon itself (Pezo, 2007). However, this guarantee does not mean that ownership rights are entirely unrestricted or that the Constitution prohibits any intervention by public authorities in the proprietary rights of legal entities. Ownership may be restricted or expropriated by law in the interest of the Republic of Croatia, with compensation at market value. It is important to emphasize that the constitutional phrase “ownership may be expropriated by law” should not be interpreted literally to mean that a formal law must be enacted for every individual case of expropriation. Instead, this constitutional expression means that the law must prescribe the conditions under which expropriation

is permitted, in accordance with the Constitution, in legal (administrative or judicial) proceedings, concerning specific legal (administrative or judicial) matters.

Following the adoption of the Constitution in 1990, a series of systemic laws in the Republic of Croatia guarantee ownership rights, protecting them as a fundamental institution of the free market economy. Foremost among these is the Ownership and Other Real Rights Act (hereinafter: ZOV).

Given that the Constitution allows the legislature to limit or expropriate ownership only as a strictly defined exception prescribed by law, public authorities are permitted to intervene. Ownership rights may be restricted against the owner›s will or even expropriated entirely, but only under conditions and in a manner prescribed by law (Jelušić & Šarin, 2015; Crnić, 1994).

One of the legal mechanisms for restricting or expropriating ownership rights is the legal institution of expropriation, defined in legal theory as the forced deprivation or encumbrance of ownership in the general or public interest, based on an individual act of authority, with compensation paid at market value (Pezo, 2007).

In accordance with the ZOV, ownership rights may, in the interest of the Republic of Croatia, be expropriated by law (complete expropriation) or limited by establishing another party›s right over the owner›s property (partial expropriation), in which case the owner is entitled to compensation as provided by the regulations on expropriation.

It is important to emphasize that, although the Republic of Croatia adheres to an individualistic conception of ownership, private interests are protected only insofar as they do not conflict with the public interest. Specifically, in the context of expropriation, public authorities, when pursuing certain public interests, are entitled under legally defined conditions to intervene in an individual›s property rights, suspend their rights to disposal and exclusion of third parties to a certain extent, or even deprive them of ownership rights if necessary.

By interpreting theoretical definitions, constitutional provisions, and legal norms, it can be concluded that public interest, or in this case, the interest of the Republic of Croatia, is the fundamental prerequisite for initiating the expropriation process. Public interest, or the interest of the Republic of Croatia, is understood as an interest directed toward the welfare of the state and all its citizens and, as such, enjoys legal protection. Since no legal act exhaustively and definitively enumerates what constitutes the interest of the Republic of Croatia, its definition, meaning, and protection as a legal standard

often depend on the competent authorities that deal with it and are determined on a case-by-case basis (Smerdel, 2013; Smerdel & Sokol, 2009).

Given that expropriation encroaches on one of the fundamental human rights, it is necessary to approach the determination of public interest with particular caution and avoid any potential conflict, both through legal regulation and the actions of competent authorities.

3.2. The Genesis of Expropriation as a Legal Institution

Tracing the historical development of the legal institution of expropriation reveals that expropriation is not a concept whose origins can be attributed to the modern development of legal systems. Expropriation, as a legal mechanism, was known as far back as ancient Roman law, and examples of its use during the Middle Ages (albeit under the conditions applicable at the time) demonstrate that this institution is not particularly novel in legal practice or, consequently, in legal theory (Britvić Vetma, 2009).

Institutionally, the legal regulation of expropriation emerged during the French Revolution. The Declaration of the Rights of Man and of the Citizen emphasized: "No one shall be deprived of even the smallest portion of their property without the owner's consent, except where a legally established public interest so requires, and then only with fair and prior compensation." After the Revolution, almost all elements of classical expropriation were established in French expropriation laws by 1810 (Staničić, 2013).

The legal institution of expropriation was first introduced in the territory of present-day Croatia through the Austrian General Civil Code (hereinafter: OGZ) in 1853. In Dalmatia, it had been in force since 1811, and it stipulated that, in the interest of public welfare, the state could expropriate private property with appropriate compensation. After the Croatian-Hungarian Settlement, expropriation was regulated through a combination of the OGZ and domestic laws. During the period from 1918 to 1941, it was governed by the OGZ and the Serbian Civil Code of the Kingdom of Serbia, which also provided for compensation in cases of expropriation due to public necessity.

Mention should also be made of the Federal Expropriation Act of 1957, which thoroughly regulated the expropriation process but allowed for state coercion without fair compensation. By contrast, the 1978 Expropriation Act of the Socialist Republic of Croatia allowed for expropriation of real property with fair compensation or the limitation of ownership rights if the general interest, as determined by law, so required.

In 1994, the Croatian Parliament adopted the Expropriation Act, which was generally aligned with the constitutional guarantee of ownership rights and prescribed a two-step expropriation process: determining the interest of the Republic of Croatia and conducting the expropriation procedure, including the determination of compensation. While the law had positive aspects, it was criticized for its unclear procedural rules, lack of transparency in the expropriation process, and the hindrance of investments caused by local government obstructions.

Due to legal uncertainty and ambiguities regarding the application of the law, which often led to legal disputes, it was deemed necessary to draft a new law that, adhering to constitutional constraints, would better balance the interests of the state, investors, and owners of expropriated properties (Uzelac & Javorović, 2015).

3.3. Amendment of the Legal Framework: Adoption of the Expropriation and Compensation Act

In 2014, the Government of the Republic of Croatia (hereinafter: the Government) submitted a draft Expropriation and Compensation Act to parliamentary procedure, emphasizing that adopting a new law had become necessary due to economic challenges. This move was aligned with entrepreneurial and market freedom as the foundation of the economic system of the Republic of Croatia and the urgent need to initiate an investment cycle in the country. This cycle was expected to stimulate the growth and development of the Croatian economy by creating conditions for increased investments and improving the management of assets of interest to the Republic of Croatia.

The Expropriation and Compensation Act (hereinafter: ZOI) was adopted by the Croatian Parliament on May 30, 2014. Its primary aim, as highlighted, was to improve the investment climate and promote economic development. The innovations intended to achieve this goal included:detailed regulation of the content of proposals and the required evidence and documents; standardization of the method for determining property values; agreement-based appointment of appraisers by the expropriation beneficiary and the property owner, with the option for the competent authority to appoint an appraiser if no agreement is reached; mandatory written notice of inspection dates for all involved parties; specification of evidence requirements; mandatory public disclosure of offers to enhance transparency; establishment of a register of expropriated properties; determination of the market value of properties based on their utility prior to the

change in their purpose; specification of compensation for properties deemed expropriated under special regulations; stipulation that expropriation procedures for strategic projects of the Republic of Croatia are to be conducted by the central state administration authority responsible for justice (See ZOI, 2014).

While the ZOI introduced several positive changes to the legal framework for property expropriation in the Republic of Croatia, certain legal provisions have sparked significant controversies within academic and professional circles.

One contentious issue is the possibility of expropriating property for the construction of structures or execution of works of national or regional importance and for implementing strategic projects declared as such by the Government. This provision creates potential for the abuse of state power to serve private interests, especially as strategic projects may encompass a broad range of activities, including private investments. This raises concerns about fairness and the protection of property owners' rights.

Another controversial issue pertains to the method of determining compensation for expropriated property. Compensation is calculated based on the market value of the property at the time of expropriation, considering its utility prior to the change in purpose that led to the expropriation. This provision could result in scenarios where property owners receive compensation that does not reflect the true value of their property after its purpose changes. This is particularly problematic in cases where the property is converted, for example, from pastureland to construction land. Consequently, the provision may be deemed unfair to property owners, as it does not account for the potentially significant increase in property value due to the change in its purpose. This raises questions about whether the constitutional and conventional guarantees of ownership rights have been adequately safeguarded.

A third potential issue relates to the costs of the appeals process. Although the costs of the expropriation process are borne by the expropriation beneficiary, property owners who file unsuccessful appeals are required to cover the costs associated with the appeal. This provision may have a discouraging effect on property owners seeking legal remedies.

A fourth problem, related to the previous one, concerns the provision that the value of the subject property in expropriation proceedings is deemed unassessable, despite the fact that the value of the expropriated property is evaluated during the proceedings. While this provision is justified as a cost-saving measure for appeal proceedings, the same goal could have been achieved differently, such as by amending attorney fee regulations.

Despite these shortcomings, it remains uncertain whether the objectives of adopting the ZOI have been fully achieved. The Government, as the

authorized proposer of the law, had anticipated that its enactment would accelerate expropriation procedures, increase transparency, and ensure fair compensation for expropriated properties. However, some of these goals have not been realized.

It is worth noting that the ZOI was amended twice, in 2017 and 2019. These amendments simplified the process of securing evidence of the condition and value of properties, aligned the form of compensation with the most common type, monetary compensation, and established compensation in the form of substitute property as an exception. The deadline for submitting expropriation proposals was extended from two to four years if the interest of the Republic of Croatia was determined by a Government decision. Furthermore, the appraisal report's validity period was limited to two years, and the concept of a temporary expropriation decision was introduced (See Act on Amendments to the Expropriation and Compensation Act, 2017). The Act on Amendments to the Expropriation and Compensation Act (2019) modified only the authorities responsible for conducting expropriation procedures.

Despite certain improvements brought by these amendments, such as the introduction of the concept of a temporary expropriation decision, fundamental criticisms remain. Specifically, the temporary expropriation decision seeks to balance conflicting interests, as the previous property owner receives compensation before the temporary decision is issued, with the possibility to continue the process if they consider the compensation inadequate. This mechanism enables investors to acquire ownership of the property after compensation is paid, while previous owners are entitled to market compensation based on the property's appraised value (See Article 36.a of the Act on Amendments to the Expropriation and Compensation Act from 2017).

In summary, while the ZOI introduced certain improvements to the expropriation system, the aforementioned issues raise concerns about fairness and effectiveness. These should be addressed through further amendments and revisions to fully ensure the protection of ownership rights and achieve greater alignment with European standards and constitutional rights.

4. Conclusion

Since the Constitution reflects certain overarching principles and fundamental decisions that must guide the interpretation of all its individual provisions, no constitutional provision can be isolated and interpreted independently. It must always be interpreted in accordance with the highest

values of the constitutional order of the Republic of Croatia. In other words, the highest values stipulated in Article 3 of the Constitution, including the inviolability of ownership, serve as criteria for assessing every constitutional and other legal norm during its interpretation. These fundamental constitutional values act as criteria and guidelines for state administrative bodies and courts when resolving individual cases, including expropriation procedures. Through such procedures, the state, by intervening in property rights, takes or restricts these rights from certain entities for its benefit or the benefit of other entities.

Thus, the inviolability of ownership is undoubtedly one of the fundamental principles that holds significance and application in expropriation proceedings. This is alongside Article 48 of the Constitution, which guarantees the right to ownership as one of the human rights protected by the Constitutional Court, and Article 50 of the Constitution, which regulates the constitutional possibilities for the deprivation or limitation of ownership to protect certain constitutional values or protected constitutional goods. Since the adoption of the Constitution in 1990, a series of systemic laws have guaranteed the right to ownership, safeguarding it as a fundamental institution of the free market economy. However, ownership can still be expropriated by law, but only if there is a legitimate interest of the Republic of Croatia and with compensation at market value.

Given the high expectations surrounding the new legal framework for expropriation in Croatia, the enactment of the Expropriation and Compensation Act (ZOI) elicited mixed reactions within academic and professional circles. While supporters of the ZOI, consistent with the primary goal of the Government as the authorized proposer, believed it would address the shortcomings of the previous normative framework, critics highlighted certain contentious provisions and potential negative consequences in practice.

Considering that the ZOI contains numerous shortcomings, some of which were highlighted here and largely remained even after the amendments in 2017 and 2019, it is reasonable to question whether the law has fulfilled its ratio legis. Moreover, some normative provisions excessively restrict the constitutional (and conventionally guaranteed) right to ownership. This points to the need for a reevaluation of the legal regulation of the expropriation framework, as the existing issues cannot generally be resolved de lege lata but rather require solutions de lege ferenda.

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PROBLEMATIKA IZVLAŠTENJA KROZ PRIZMU OGRANIČENJA USTAVNOG JAMSTVA PRAVA VLASNIŠTVA U PRAVNOM PORETKU REPUBLIKE HRVATSKE

APSTRAKT: Iako institut izvlaštenja poznaju svi suvremeni pravni sustavi, valja ga promatrati kroz prizmu ograničenja ustavnog jamstva prava vlasništva. Tim više jer je nepovredivost vlasništva jedna od najviših vrednosti hrvatskog ustavnog poretka, a koje kao takve predstavljaju kriterij za tumačenje Ustava Republike Hrvatske. Stoga je fokus rada na teorijskom određenju i normativnom okviru izvlaštenja kroz analizu relevantnih ustavnih i zakonskih odredbi, pri čemu se osobita pozornost posvećuje jurisprudenciji Ustavnog suda Republike Hrvatske. Konačno u radu se ukazuje i na određena sporna pitanja zakonskog uređenja izvlaštenja u Republici Hrvatskoj, te na potrebu za određenim rješenjima *de lege lata* i *de lege ferenda.*

Ključne riječi: *izvlaštenje, pravo vlasništva, Ustav, Ustavni sud.*

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SHAPING A DIGITAL FUTURE THAT SAFEGUARDS HUMAN RIGHTS – GENERATIONAL PERSPECTIVES FROM SERBIA

ABSTRACT: This paper aims to explore the impact of digital transformation on human rights and security protection in the age of modern technologies, as well as to support policymakers in designing a rights-oriented and human-centric digital transformation. This challenge prompted the authors to examine relevant literature and analyze current policies and measures aimed at enhancing proactive strategies. To this end, an online empirical survey was conducted with 132 participants (ages 18-65+) from Serbia during the last quarter of 2024. The research findings support the hypothesis that the relationship between human rights and technological development is highly significant. The results emphasize privacy as the foundation of digital rights, focusing on the ethics of data usage and the protection of individuals' rights to freely express opinions and ideas online. Bridging the digital divide is crucial to ensure that technological advancements benefit all individuals equitably. Promoting access to digital literacy and education is essential for enabling individuals to effectively engage in discussions about these issues in the context of modern technologies. Furthermore, the effective protection of human rights requires coordinated efforts from

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policymakers, decision-makers, and institutional stakeholders to establish a framework that upholds justice, equality, and dignity in the digital era, as highlighted by the findings of this paper.

Keywords: *human rights, digital transformation, generation theory, stakeholder approach, Serbia.*

1. Introduction

Digital transformation significantly impacts every aspect of people's lives, influencing how they work, learn, access public services, and manage their health and well-being (Dror-Shpoliansky & Shany, 2021). Technological advancements have introduced new business models and innovative ways to connect, create, and participate in civic and economic spaces (Rajčević, Brajević & Jevtić, 2024; Dedjanski, Jevtić & Grozdanić, 2024). While these advancements offer immense benefits, they also pose significant risks and challenges. Among these challenges are unlawful surveillance practices, cyber and ransomware attacks, and privacy breaches. Additionally, the spread of illegal and harmful content, misinformation, disinformation, and advocacy of discriminatory hatred exacerbates societal harms and undermines trust in governments, the digital environment, and democratic principles (Citron, 2020). Adhering to the principles of human rights as "universal and inalienable, "belonging to all individuals simply by being human (UN Human Rights Office, 2022), governments have obligations to uphold and protect these rights under legislation, within the digital context (UN General Assembly, 2013). While digital technology is a recent phenomenon, the concept of rights has deep historical roots. Early milestones include the Cyrus Cylinder of 539 BC, often considered the foundational statement of human rightsthe – Magna Carta of 1215, which limited monarchical power and emphasized legal rights, and the English Bill of Rights of 1689, which advanced ideas of civil liberties (Sutto, 2019; Đorđević, 2020). UDHR – The Global Charter of Human Rights, in charge from the 1948, marked a significant turning point by establishing a common standard for fundamental rights to be universally protected (UN, 1948). It affirmed the principle that HR are inalienable and universal, a perspective reiterated by UN High Commissioner (for HR, 2022), which also notes that many human rights are considered absolute. Similarly, the *Recommendation on Children in the Digital Environment* (OECD, 2021) calls on stakeholders to "identify how the rights of children can be protected and respected in the digital environment and take appropriate measures to do so."

In the contemporary digital era, the speed, scale, and borderless nature of the online environment have transformed how human rights are understood and exercised. These include novel ways in which rights can be violated or abused and scenarios where the exercise of one right may come into tension with another rooted in Srebro, Paunović, & Jevtić, (2024), and Srebro, Zakić, Jevtić, & Milošević (2020) works. These rights encompass, in both online and offline spheres:

> – *The right to express and share opinions*, *Addressing misinformation and disinformation*, *Combating illegal and harmful content*, *Preventing internet shutdowns and restrictions*, *Privacy and data protection*, *Connectivity and addressing digital divides*, *Emerging technology-related rights*, and *Individual interests*.

Additionally, *legal and human rights*, codified in domestic human rights and legal frameworks, require governments to recognize and protect them. Given its global and cross-cutting nature, digital transformation raises significant questions about the roles and responsibilities of various stakeholders. The digital environment operates across multiple jurisdictions, necessitating the involvement of policymakers, decision-makers, and regulators from diverse sectors. Additionally, private entities, particularly online platforms, play a pivotal role in enabling or constraining individuals' ability to exercise certain rights in the digital age (OECD, 2019; Billingham & Parr, 2020). In this regard, the aim of this study is to investigate the impact of digital transformation on human rights and security in the digital age, as well as to provide support for stakeholders in designing and implementing a rights-oriented, human-centric approach to digital transformation.

The paper is structured in the following manner: it begins with an introduction, followed by a literature review that sets the foundation for the study.This is followed by a detailed explanation of the methods and materials used. Key results are presented and thoroughly discussed before concluding with the findings, limitations, and suggestions for future research. Finally, the references cited throughout the paper are compiled at the end.

2. Literature overview

To better understand the attitudes of participants included in the empirical research on the effect of specific factors on human rights protection, the principles of Generational Theory were consulted. This theory involves a cyclical generational model where values resonate with individual

psychological types and interactions within families and groups. The framework, developed by Strauss and Howe (1991) and further elaborated by authors such as Hawkins and Meier (2015), Sheldrake (2020), Diepstraten, Ester & Vinken (1999), Mannheim (1952), Toman (1976), and others, outlines a "secular crisis" and "spiritual awakening" The findings of this theory provide valuable insights for understanding and enhancing human experiences. Currently, commonly recognized generational labels in cultures such as the US, UK, and many European countries include Baby Boomers, Generation Y, Millennials, and Generation X. By recognizing the motivations and strengths of each generation, it is possible to transform the so-called "generational gap" into a source of harmony and collaboration. The Silent Generation and Baby Boomers, who grew up relying on face-to-face interactions, remain deeply engaged in their real-life communities. In contrast, younger generations, such as Millennials and Gen Z, have embraced digital tools and social media to build and maintain virtual communities. For organizations, understanding these communication dynamics is critical to fostering inclusive engagement. Supervisors, managers, and policymakers must adopt multi-generational approaches that address the needs and motivations of citizens of all ages, whether employed, unemployed, students, or retirees.

Within the framework of *HRP (Human rights protection) in the digital era*, tailoring strategies to the traits, experiences, and preferences of each generation is vital. ***The protection of HR*** and security in the the digital framework as the dependent variable in this research is a complex and multifaceted issue, influenced by the risks and challenges inherent in digital transformation across institutional, public, private, and civil sectors. A comprehensive understanding of these dynamics can be achieved by considering the following critical factors of impact:

Digital rights as human rights, where privacy stands as the cornerstone of digital rights, encompassing the right to control personal information and data in the digital landscape; Right of free speech in digital spaces; Cybersecurity and human rights; Equitable access to technology bridging the digital divide to ensure that technological advancements benefit all individuals equitably, regardless of socioeconomic status or geographical location; Algorithmic accountability and transparency, ensuring that algorithms used in decision-making processes are fair, transparent, and free from biases that could adversely impact human rights; Right to digital education promoting access to digital literacy and education, enabling individuals to navigate and participate effectively in the digital age; Protection against digital exploitation, and Ethics in data usage where the government and organizations must adhere

to ethical standards in data collection and processing, respecting individuals' consent and privacy while avoiding intrusive surveillance practices. These factors highlight the interconnected nature of human rights and technological advancement. Effective protection requires coordinated efforts from policymakers, decision-makers, and institutional stakeholders to address these challenges and create a framework that promotes justice, equity, and dignity in the digital era.

Citizens, as subjects *of human rights protection in the digital e*ra, must navigate significant changes within society, institutions, organizations, and themselves, all of which are influenced by digital transformation and empowerment. This can be understood through the following key factors of citizens impact as an independent variable through:

- Citizens' control over their personal information in digital spaces through their right to digital privacy; Protection against cyber threats; enabling citizens to understand and utilize digital technologies responsibly and securely and their empowerment through digital literacy improvement (Popović, Miškić, Jevtić, & Kvrgić, 2020; Jevtić, Kvrgić, Ćorić & Beslać, 2020; Jevtić & Srebro, 2024); Demand for transparent policies; equal access to digital resources; Rright to protest and express opinions online; Accountability for digital platforms; Redress mechanisms for digital violations and participation in decision-making. An active involvement in shaping policies related to digital rights, ensuring that their voices are included in decisions about the digital landscape are base for the future collaborative role of citizens (Srebro, Janjušić, Miletić, Dzafić, Jevtić, 2023).

To create a secure and just digital future, it's essential that both regulatory and court-based actions protect human rights in the digital age (Đorđević, 2022; 2020; Petrov & Stanković, 2020; Srebro, Paunović, & Jevtić, 2024; Jevtić & Srebro, 2024; Petrov & Prelić, 2019). This can be achieved by focusing on the following key aspects, and ensuring the collaborative role of the citizens:

- Public consultation requirements mandated by Government; Citizens right to access information, Citizens representation in digital policy decision-making bodies should ensured through Digital Governance Committees; Data protection regulations; Policymakers should establish platforms where citizens, governments, and private sectors collaborate to address global digital issues through Participation in Internet Governance, Whistleblower protections; Regulation of platform accountability to provide mechanisms for users to report harmful content and appeal wrongful decisions; Inclusion

mandates to ensure that marginalized communities' rights are protected in the digital space; Monitoring and auditing requirements as tithe support to Citizen-driven audits in their digital rights properly protection, and Court-based actions where courts should ensure citizens have access to legal remedies for digital rights violations, allow class action lawsuits, and provide oversight of government surveillance. Additionally, courts should review AI decisions, protect online speech, and support cooperation on cross-border cybercrime, ensuring that human rights protections are respected globally.

By focusing on these principles, both the regulatory framework and legal system can help shape a digital world that respects citizens' rights and promotes a fair and just society.

3. Methods and Materials

Study model and research hypotheses. The defined study model consists of two variables:

- Citizens' active participation, as independent variable (abbr. 1), which includes citizens' engagement in shaping digital policies, normative frameworks, and court practices. It represents the action or factor that influences the outcome, and
- A secure and human rights-based digital future, as dependent variable (abbr. 2), which refers to the result or outcome impacted by the level and quality of citizens' participation. It includes aspects like inclusivity, security, fairness, and the HRP in the digital era.

The hypothesis posits that the **independent variable** (citizens' active participation) directly influences the **dependent variable** (the achievement of a secure and human rights-based digital future). The more active and effective the participation, the stronger the positive impact on the dependent outcome. The objective of the research is to evaluate whether (1) significantly does not affect or affects (2). Hypothesis are defined as folowes:

H0: *Citizens' active participation in shaping digital policies, normative frameworks, and court practices does not ensure a secure and human rights-based digital future.*

Ha: *Citizens' active participation in shaping digital policies, normative frameworks, and court practices ensures a secure and human rights-based digital future.*

Sample characteristics

To substantiate the theoretical framework of the study, an empirical online survey was conducted to gather citizens' perspectives on the research topic. The survey involved a sample of 132 participants from the Republic of Serbia who voluntarily contributed to evaluating factors that could impact the improvement of HRP and security in the digital landscape. The data collection took place in August 2024. Specifically, the data reveal the following distributions:

- *Gender:* The survey participants comprised 65.15% men and 34.85% women, indicating a predominance of male respondents.; *Age Groups:* Respondents were divided into four age categories: 18–24 years, 25–35 years, 36–54 years, and 55 years and above. The largest proportion of participants belonged to the 36–54 age group (40.15%), followed by the 25–35 age group (28.79%) and the 55+ age group (15.91%). The youngest group, aged 18–24, constituted 15.15% of the sample. The results indicate a higher representation of middle-aged participants; *Level of Education:* Respondents were grouped into three educational categories: primary, secondary, and higher education. The majority of participants had completed secondary education (50%), followed by those with higher education (34.85%), and those with only primary education (15.15%). This distribution highlights that most respondents possessed at least a high school level of education, and *Social Status:* Participants were classified as employed, unemployed (including students, high school seniors, and family dependents), or retired. The majority of respondents were employed (57.58%), while 34.85% were unemployed, and 7.58% were pensioners.

This indicates that the largest proportion of respondents is actively employed, with fewer being unemployed or retired. The demographic insights provide a comprehensive understanding of the respondent pool, which is predominantly composed of middle-aged, employed individuals with at least secondary education.

3.1 Key Findings and Disccusion

The questionnaire included specific statements representing both the independent and dependent variables, which respondents assessed using a Likert scale ranging from 1 to 5, where 5 indicates the highest level of agreement with the statement.). Table 1 presents the mean values and standard deviations for the statements associated with variable (1).

Table 1. Central tendency and dispersion measures for variable (1)

Statements related to the independent variable **(1)**	**Mean**	**Std Dev**
(1.1) Privacy is the cornerstone of digital rights, alongside ethics in data usage, and the safeguarding of individuals' rights to express opinions and ideas freely on online platforms.	3.69	1.02
(1.2) Individuals should have access to education that enables them to understand and protect their rights in the digital era, including recognizing risks like cyberbullying and data misuse.	3.90	0.97
(1.3**)** Citizens must actively engage in shaping ethical digital practices and policies that align with human rights, ensuring their voices are heard in the development of secure and inclusive digital ecosystems.	3.93	1.09
Total	132	1.00000

Source: Authors' research

Table 2 presents the mean values and standard deviations for the statements associated with variable (2).

Table 2. Central tendency and dispersion measures for variable (2)

Statements related to the dependent variable **(2)**	**Mean**	**Std Dev**
(2.1) Regulatory frameworks and policies should ensure citizen representation in decision-making bodies and establish multistakeholder platforms for collaboration between governments, the private sector, and citizens to address human rights protection in the digital environment.	3.87	1.14
(2.2) Courts specializing in digital rights issues should oversee and regulate government surveillance activities to ensure they are lawful, necessary, and proportionate, thereby improving access to justice for citizens.	3.91	1.09
(2.3) The judicial system should consistently defend freedom of expression online while balancing it with measures to address hate speech and misinformation.	3.75	1.15
Total	132	1.00000

Source: Authors' research

Accuracy of the research framework is detailed in Table 3. The coefficient of determination (R^2) of 0.6437 indicates that variable- citizens' active participation (1) accounts for approximately 64.37% of the variation in variable- the achievement of a secure and rights-based digital future (2).

This value reflects a good model fit and demonstrates that a significant share of the fluctuation in the dependent variable – the achievement of a secure and rights-based digital future (2) is accounted for by variations in the independent variable – citizens' active participation (1). The model's root mean square residual (RMSR) of 0.5421 further highlights its accuracy. Additionally, the mean value of the dependent variable – the achievement of a secure and rights-based digital future (2) is 3.843, with a total of 132 observations in the dataset. While the results suggest that the model performs well, there is potential for improvement through the inclusion of additional predictors or consideration of other relevant variables.

Table 3. Model Summary

Coefficient of Determination	0.643678
Adjusted Coefficient of Determination	0.640937
Standard Error of Estimate	0.542082
Average Response Value	3.843434
Number of Observations (or Weighted Sum)	132

Source: Authors' research

Statistical importance is displayed in Table 4. The ANOVA results [F(1,130)= 234.8381, p<0.0001][F(1,130) = 234.8381, p < 0.0001][F(1,130) =234.8381, p<0.0001] demonstrate a high F-ratio and a p-value below 0.0001, indicating that the model achieves a high level of statistical significance. This confirms that the model's ability to account for the fluctuation in the outcome variable is robust and not due to random chance. Furthermore, the Model's Sum of Squares (79.29588) and the Sum of Squares for Error (43.89604) suggest that the model explains a significant portion of the fluctuation in the outcome variable.

Table 4. Variance Examination

Source	**DF**	**Sum of Squares**	**Mean Square**	**F Ratio**
Model	1	79.29588	79.2959	234.8381
Error	130	43.89604	0.3377	**Prob > F**
C. Total	131	123.19192		<0.0001

Source: Authors' research

The strength of the influence is illustrated in Table 5. The intercept is statistically meaningful, with a p-value of 0.0156, indicating that it is not random and plays a role in the model, despite not being directly related to the independent variable. The independent variable- citizens' active participation (1) shows a high t-coefficient of 15.32 and a very low p-value (<0.0001), confirming its substantial significance as a predictor in the model. A one-unit rise in the independent variable (1) results in an increase of 0.8600232 in the dependent variable. The standardized beta coefficient (Std Beta) for the independent variable- citizens' active participation (1) is 0.802295, demonstrating its strong influence on the dependent variable- the achievement of a secure and rights-based digital future (2). Additionally, the variance inflation factor (VIF) for the independent variable- citizens' active participation (1) is 1, indicating the absence of significant multicollinearity and confirming the stability of the model.

Table 5. Coefficient Estimates

Term	Estimate	Std Error	t Ratio	Prob>|t|	Std Beta	VIF
Intercept	0.543042	0.221548	2.45	0.0156	0	.
Varijable(1)	0.8600232	0.056121	15.32	<0.0001	0.802295	1

Source: Authors' research

Valorization of the Defined Research Hypothesis. ***Hypothesis Ha***: ***Citizens' active participation in shaping digital policies, normative frameworks, and court practices ensures a secure and human rights-based digital future,*** was confirmed, as it was established that variable (1) has a statistically significant impact on variable (2). This finding backs the theoretical research model and substantiates the presumption of a cause-and-effect relationship between the two variables. The regression model is represented by a linear regression equation, providing a concrete mathematical framework for forecasting the value of the variable – the attainment of secure and rights-based digital future (2) calculated from the measurement of the variable – citizens' active participation (1). The resulting function quantifies the relationship between the variables and can be applied to predict outcomes in future analyses, as expressed in formula (1).

$$\textit{Variable}\ (2)=0.5430419899+0.8600232405\cdot\text{Variable}\ (1) \qquad (1)$$

Based on the analysis of the regression model, including ANOVA and regression results, the effectiveness and significance of the study model were assessed. The explanatory power coefficient (R^2) of 0.6437 and the adjusted R^2 of 0.6409 indicate that the model explains approximately 64% of the variation in the dependent variable, demonstrating its strong explanatory power, although not accounting for all of the data's variability. Additionally, the root mean square error (RMSE) of 0.5811 confirms that the discrepancies between actual and predicted values are minimal, reflecting the model's high accuracy. The ANOVA results, with p-values below 0.0001, further validate the statistical importance of the model, confirming that the independent variable has a substantial and meaningful effect on the outcome variable. The coefficient of the predictor variable – citizens' active participation (1) (0.8600) shows a favorable and statistically meaningful impact on the outcome variable – the achievement of a secure and rights-based digital future (2). The standardized beta coefficient (0.8023) further emphasizes the relatively strong influence of the predictor variable on the outcome variable. Additionally, the high t-ratio (15.32) for the independent variable reinforces the robustness and significance of the model. A variance inflation factor (VIF) of 1 indicates that there is no multicollinearity between the predictor variables. This suggests that each independent variable in the model is independent of others and does not cause redundant or inflated estimates in the regression analysis, which is a positive indicator of the model's stability. These findings collectively indicate that the model is accurate, statistically significant, and provides meaningful insights into the relationship between the independent- citizens' active participation (1) and dependent – the achievement of a secure and rights-based digital future (2) variables. While the model demonstrates strong explanatory power, there remains potential for further enhancement, such as incorporating additional variables or performing a more detailed data analysis, to improve its predictive accuracy and explanatory capacity. Concerning the Generation Theory in the results of the research, there can be found further groups of participants:

– 15.91 % of Baby Boomers, within the half are from ***Silent generation*** (pensioners) (7.58%). The Silent Generation's contributions to human rights protection are deeply intertwined with their pivotal role in advancing civil rights and advocating for social welfare in shaping key legislative advancements that protect fundamental rights and freedoms. Their legacy serves as a reminder of the lasting influence of collective effort and the significance of safeguarding rights for future generations in both analog and digital contexts. The contributions

of Baby Boomers to human rights protection in the digital era are deeply rooted in their generational characteristics and historical experiences. Baby Boomers' commitment to social justice, diversity, and environmental conservation reflects their belief in the collective responsibility to protect human rights. Their legacy underscores the significance of intergenerational collaboration to address emerging challenges and create a fairer, more equitable future for all.

- 40.15 % of ***Generation X's***, known as the "bridge generation," born between 1966 and 1980, in a period marked by rapid technological advancements that were not yet universally accessible, make the biggest part of participants, and among employed (57.58%). Gen X Generation contributions hold significant relevance within the scope of HRP in the digital era. Their contribution to the expansion of entrepreneurship, technological progress, and increased environmental consciousness, reflects their commitment to progress while balancing the values of equity and sustainability emphasizing the need for inclusive digital policies that respect human dignity, protect individual freedoms, and promote fairness in a technology-driven society.
- 28.79 % of Millennials (Gen Y), among which there are employed mostly, but also unemployed participants. Millennials' technological proficiency and adaptability have played a pivotal role in driving innovations like remote work, virtual collaboration, and digital problem-solving, all of which align with the evolving demands of a digitally connected workforce. To retain Millennial talent and advance human rights in the workplace, businesses must focus on mentorship, diversity initiatives, and career development, all while ensuring robust protections for employees' digital data and privacy.
- 15.15 % of participants are from Gen Z generation, often described as the "generation of truth," mostly studding, unemployed. From the viewpoint of HRP, Generation Z brings a unique approach to the workforce and societal values, emphasizing sincerity and accountability. Shaped by the financial instability their parents experienced Influenced by the 2008 Great Recession, Generation Z remains focused on traditional financial incentives, such as salaries and bonuses, as key motivators, retirement benefits, healthcare coverage, and tuition reimbursement. Recognizing and addressing these priorities is crucial not only for fostering engagement and productivity but also for upholding the broader principles of human

rights protection, which emphasize equity, inclusion, and the right to work in environments that respect individual identities and values.

Generation Alpha, born around 2010 and onwards who represents the youngest cohort, with its oldest members just entering their teenage years, was not represented in the research sample but, holds significant importance for the future of HRP in the digital era. As the first generation to grow up entirely within the context of a highly interconnected digital world, their formative experiences are deeply shaped by a landscape of rapid technological innovation, globalized social networks, and unprecedented access to information.

4. Conclusion

This paper explores a dynamic approach to the protection of human rights and security in the era of modern technologies, with a particular focus on the ongoing digitization of institutions, the economy, education, and the ecosystems supporting these processes. The analysis emphasizes the importance of strengthening the collaborative relationship between citizens and the institutions responsible for safeguarding human rights.

The study argues for the need to recognize the transformative power of modern digital applications, the knowledge and skills of individuals, and the broader implications of digital communications in shaping the future trajectory of human rights protection. In this context, the paper calls for a comprehensive understanding of how institutional frameworks—particularly the judicial system—can be redefined to meet the challenges of digital rights protection. A significant contribution of this study lies in its expansion of the generational characteristics of human rights holders (Jevtić., Beslać, Janjušić., & Jevtić., 2024), drawing attention to their evolving roles in both historical and future contexts. By examining how different generations engage with digital technologies and human rights, the study seeks to provide deeper insights into how diverse stakeholder groups can play an active role in shaping a more inclusive and resilient framework for human rights protection in the modern era.

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OBLIKOVANJE DIGITALNE BUDUĆNOSTI UZ POŠTOVANJE LJUDSKIH PRAVA – GENERACIJSKI PRISTUP IZ SRBIJE

APSTRAKT: Cilj rada je da istraži uticaj digitalne transformacije na ljudska prava i zaštitu bezbednosti u doba savremenih tehnologija, kao i da svojim nalazima podrži kreatore politike u dizajniranju digitalne transformacije orijentisane na ljudska prava. Ovaj izazov je podstakao autore da prouče relevantnu literaturu i analiziraju politike i mere s ciljem unapređenja proaktivnih strategija. U tu svrhu, sprovedeno je online empirijsko istraživanje sa 132 učesnika (starosti 18-65+) iz Srbije tokom poslednjeg kvartala 2024. godine. Rezultati istraživanja podržavaju hipotezu da je veza između zaštite ljudskih prava i tehnološkog razvoja izuzetno snažna. Nalazi naglašavaju privatnost kao osnovu digitalnih prava, fokusirajući se na etiku korišćenja podataka i zaštitu prava pojedinaca da slobodno izražavaju svoja mišljenja i ideje na internetu. Premošćavanje digitalnog jaza od ključne je važnosti kako bi se osiguralo da tehnološki napredak koristi svim pojedincima na ravnopravan način. Promovisanje pristupa digitalnoj pismenosti i obrazovanju od suštinskog je značaja za omogućavanje pojedincima da efikasno učestvuju u komunikaciji o ovim pitanjima u vreme savremenih tehnologija. Takođe, efikasna zaštita ljudskih prava zahteva koordinisane napore kreatora politike, donosilaca odluka i institucionalnih aktera u cilju uspostavljanja okvira koji podržava pravdu, jednakost i dostojanstvo u digitalnoj eri, na šta upućuju rezultati ovog rada.

Ključne reči: *ljudska prava, digitalna transformacija, generacijska teorija, pristup zainteresovanih strana, Srbija.*

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MERGERS AND ACQUISITIONS IN THE BANKING SECTOR OF THE REPUBLIC OF SERBIA

ABSTRACT: As a form of foreign direct investment, mergers and acquisitions have become an important form of cross-border investment in developing and transition countries since the last century. For a country to attract such investments, it must meet specific conditions, including political stability and favorable macroeconomic indicators. Following a period of political instability and economic crisis, Serbia has once again become an attractive destination for foreign investments, including mergers and acquisitions. This paper uses a qualitative methodology to analyze the trends and value of mergers and acquisitions in Serbia in the 21st century, with a particular focus on the banking sector. The aim of the paper is to show how mergers and acquisitions have shaped the banking sector in Serbia and to identify the key factors that have influenced these processes.

Keywords: *mergers, acquisitions, foreign investments, banking, transition, investment, economic development.*

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1. Introduction

In the modern business environment, characterized by globalization, technological innovation, the rapid flow of information, internet-based business, and shortened product life cycles, companies face constant challenges to survive. The strategy of growth and development is crucial for external expansion and the improvement of business performance, enabling companies to adapt to rapid market changes and maintain competitiveness. The effective implementation of these strategies can significantly contribute to the long-term success and sustainability of a company in a dynamic environment. Growth and development are "key goals for every company, but they differ in terms of time frame, strategy choices, success factors, activities, competitive advantages, and legal regulations in the target market" (Babić, Bojanić & Sajić, 2023, p. 340).

The terms acquisitions and mergers first emerged in the early 20th century. The literature offers various interpretations provided by numerous authors and institutions, both domestic and international. For instance, Porter (1980) analyzed company strategies, including vertical integrations and acquisitions, in the United States and on a global scale (p. 299).

This paper aims to present a theoretical overview of the concepts of mergers and acquisitions, including their types, motives, and financial strategies, as well as a review of prior research. Particular attention is given to analyzing the types, motives, and value of acquisitions in the banking sector of the Republic of Serbia during the 21st century. This analysis seeks to enhance the understanding of their mechanisms and impact on this sector, considering specific regional and temporal dimensions.

2. Literature review

Understanding mergers and acquisitions is a complex task, as various sources interpret them from different perspectives. Đaković and Inđić (2022) classify the motives for mergers and acquisitions based on the type of integration, emphasizing that the primary goal of horizontal mergers is to gain control over a larger share of the market or to enter new markets.

Mijatović (2018) defines a merger as "the merging of two or more companies into one, whereby a larger company usually absorbs a smaller one," and describes acquisitions as "transactions in which one company buys and gains control over another". Similarly, Vunjak (2016) describes a merger as "merging companies into a corporation means that one company

remains, while the other ceases to exist, transferring its claims and debts to the parent company" (p. 353). Mergers can be classified as follows: 1) horizontal – the merger of companies within the same industry, aimed at achieving economies of scale; 2) vertical – the integration of companies at different stages of production within the same industry, intended to improve quality and efficiency; 3) conglomerate – the integration of companies from different sectors to protect against economic fluctuations; and 4) congeneric – the association of companies within the same industry that lack direct connections with customers or suppliers (Reed & Lajoux, 1995, p. 4).

Darayseh and Alsharari (2022) analyze factors influencing mergers and acquisitions in the banking sector of the United Arab Emirates, emphasizing macroeconomic conditions. Bruner (2016) examines financial and strategic aspects, while Gaughan (2018) focuses on strategies and their impact during crises. DePamphilis (2020) highlights corporate restructuring and post-transaction integration as key to long-term success. Đorđević, Carić, and Nikolić (2010) classify acquisitions into four types (pp. 556–557):

1. Corporate integration – a process in which the boards of directors of two companies decide to merge with the prior approval of shareholders, whereby the merging company ceases to exist and becomes part of another company;
2. Merger – a process involving the creation of a new company from two merging companies, with shareholders of both companies receiving shares in the newly formed entity;
3. Takeover – a situation where one company offers to purchase shares of another company at a specific price, publicizing the offer through the media and informing shareholders, bypassing the management and board of directors of the target company;
4. Purchase of property – a process where one company acquires the property of another, requiring the mandatory approval of the shareholders of the company whose property is being purchased.

Essentially, a merger differs from an acquisition because in a merger, there is usually an equal joining of the companies, whereas in an acquisition, one company takes control over the other. The authors' further note that, in addition to the four listed types of acquisitions, there is another: a situation where the company's owners become its managers or investors, often through a takeover, resulting in the company's shares no longer being publicly traded. This type of acquisition is referred to as a "management buyout" or a "leveraged buyout" (Đorđević, Carić & Nikolić, 2010, p. 557). The acquisitions can be

categorized as follows: 1) friendly acquisitions, which are approved by the management of the target company and are sometimes initiated by them; and 2) hostile acquisitions, which involve a takeover without the approval of the target company's management (Komnenić, 2009). Additionally, acquisitions can be classified as either majority, involving the purchase of more than 50% of shares, or minority, involving the purchase of less than 50% of shares (Lazibat, Baković & Lulić, 2006).

3. Mergers and acquisitions in Serbia during the 21st century

At the beginning of the 21st century, Serbia experienced an increase in integration, primarily through acquisitions, while mergers remained more prevalent in developed countries. The Republic of Serbia, with its favorable geopolitical position, continues to attract significant foreign investments, which are vital for its economic development. The economic challenges of the late 20th century, including wars and hyperinflation, left lasting consequences for Serbia, hindering its progress. Weakened domestic investments further increased the country's reliance on foreign direct investments (FDI). Unlike portfolio investments and loans, FDI plays a crucial role in financing both global and national economies, particularly in developing and transition countries, where it often serves as the primary source of capital and a driver of economic growth (Stojadinović Jovanović, 2013, p. 36). Moreover, FDI has a substantial impact on gross domestic product (Milošević & Stankov, 2023). Considering these factors, FDI not only plays a pivotal role in restoring and strengthening Serbia's economy but also significantly influences its economic development and stability. Factors attracting FDI include "macroeconomic stability, fair privatizations, trade liberalization, the fight against corruption, and tax incentives" (Grandov, Stankov & Roganović, 2014). Conversely, dissuasive factors include "poor infrastructure and complex processes for obtaining building permits and registering companies" (Grandov, Stankov & Đokić, 2013).

Large corporations often invest in specific countries to access new markets, acquire resources, and enhance business performance. To achieve these goals, they employ strategies such as acquisitions, mergers, or greenfield projects (Bubnjević, 2009). Despite the economic recession that impacted the country, Serbia succeeded in "attracting significant foreign investments, with approximately 85% of these investments originating from European Union member states; Austria held the largest share, followed by significant investments from Greece, Norway, Germany, the Netherlands, the United

States, the United Kingdom, Slovenia, France, and other leading countries" (Bubnjević, 2009).

Table 1. Economic determinants of the host country as drivers of foreign direct investments

DETERMINANTS	TYPE OF FDI ACCORDING TO TRANSNATIONAL COMPANY MOTIVE
Market sizes and income per capita	MARKET
Market growth	
Access to regional and global markets	
Specific consumer preferences	
Market structure	
Raw materials	RESOURCES/ASSETS
Cheap unskilled labor	
Qualified workforce	
Technology	
Asset creation	
Physical infrastructure	
Productivity	EFFICIENCY
Other input-output costs	
Membership in regional integrations	

Source: United Nations Conference on Trade and Development, 1998, p. 91.

Table 1 outlines the key economic determinants of host countries that drive FDI. These determinants are categorized based on the motives of transnational companies, such as market access, resource availability, and efficiency considerations.

Until 2012, the largest investors in Serbia included Austria, Norway, Germany, Luxembourg, Greece, the Netherlands, Italy, Russia, Slovenia, and Hungary. Significant investments were made by companies such as Telenor, Fiat, Stada-Hemofarm, Phillip Morris DIN, Eurobank EFG, Salford Investment Fund, CEE/BIG Shopping Centers, National Bank of Greece, US Steel, Fondiaria SAI, PepsiCo Marbo, and British American Tobacco South East Europe. In 2012, the majority of capital inflows were directed towards the manufacturing industry, real estate sector, trade, and construction (Grandov, Stankov & Đokić, 2013). According to data from the National Bank of Serbia (NBS), between 2011 and 2020, "the largest inflow of FDI to

Serbia came from the Netherlands, China, Austria, Russia, and Luxembourg, while in 2020, the leading investors were the Netherlands, Slovenia, China, Germany, Austria, and Great Britain". These investments were primarily aimed at export-oriented companies in Serbia (NBS, 2024a).

In the 21st century, foreign companies have primarily invested in the telecommunications, tobacco, insurance, gas, food, automotive, and service sectors in Serbia. However, the banking sector has recorded the highest number of acquisitions. Among the notable acquisitions of Serbian companies, the 2007 investment by Telekom Srbija stands out, involving €20.4 million in M:tel d.o.o. in Podgorica and €19.6 million in Telekom Srpska (Božić, Aćimović, Mijušković & Marković, 2013, p. 538). In 2008, the Serbian company Comtrade acquired the Slovenian firm Hermes Softlab. Additionally, sectors such as food, pharmaceuticals, agriculture, brewing, cement, and banking have been characterized by sustained acquisition activity in Serbia throughout this century. Major acquisitions in the Balkans include the sale of Telenor's assets in Bulgaria, Hungary, Montenegro, and Serbia, as well as the sale of the United Group media company. In recent years, investments in the Serbian market from China and Turkey have been particularly prominent (Mihić Munjić, 2019).

Serbia's favorable geostrategic position and status as a transitional economy have made it an attractive destination for foreign investors. Among them, China stands out as the first Asian country to invest significantly in Serbian infrastructure, particularly in the infrastructure, energy, and finance sectors. Key Chinese investments include the construction of the bridge over the Danube between Zemun and Borča (2011–2014), the acquisition of the ironworks in Smederevo by Hesteel Group (2016), and the construction of sections of Corridor 11, including the stretch from Surčin to Obrenovac, undertaken by China Communication Construction Ltd (2017). Additionally, the Chinese company CMEC has made substantial investments in the energy sector through its acquisition of the Kostolac B power plant (Janaćković & Janaćković, 2019).

Among the notable acquisitions in Serbia, several transactions stand out. The Chinese company Zijin acquired a 63% stake in RTB Bor, while Zhuhai Yinlong purchased Ikarbus, and the Afarak Group took over Magnochrom. Additionally, Al Dahra Agriculture acquired the property of PKB Corporation, and P&O Ports purchased the Port of Novi Sad. In other sectors, the Smurfit Kappa Group acquired the Belgrade Paper Mill and Avala Ada, Mid Europa Partners took over MediGroup, Coca-Cola acquired Bambi, and PepsiCo purchased Knjaz Miloš. Within the service sector, Siemens acquired Milanović

Inženjering, Meritus úljaja took over Trizma, Alkemy acquired Kreativa New Formula, and Nova Iskra was purchased by Rent 24 (Mihić Munjić, 2019).

In the 21st century, the insurance sector in Serbia underwent numerous acquisitions. Austrian UNIQA acquired 80% of Zepter Osiguranje, while Slovenian Triglav purchased Kopaonik Osiguranje in 2007. Italian Fondiaria Sai took over DDOR Novi Sad in 2011. Following the liquidation of AS Osiguranje Beograd in 2016, its portfolio was transferred to Sava Osiguranje. In subsequent years, the sector saw further consolidation. AXA Osiguranje merged with Wiener Stadtische Osiguranje in 2017, and Energopromet Garant Beograd merged with Sava Osiguranje in 2018. In 2019, Societe Generale Insurance rebranded as OTP Osiguranje Novi Sad and underwent changes in its ownership structure (Dimić, Balaban & Paunović, 2023).

The rapid advancement of technology at the turn of the 20th and 21st centuries significantly transformed production processes across all industries, with utility sectors also profoundly impacted by these changes. Technological innovation has become a cornerstone of modern business, driving progress and reshaping industries. The IT sector, in particular, has experienced remarkable growth, while advancements in robotics and artificial intelligence have created new opportunities and challenges across economic sectors. In the context of acquisitions within Serbia's IT sector, notable transactions include the purchase of Frame by the American company Nutanix and Telekom Srbija's acquisition of Telemark Systems. Dominion Hosting Holding acquired a stake in mCloud, and a significant transaction occurred when Epic Games purchased 3Lateral Studio. Given the dynamic development of the IT sector and its critical role in the modern economy, it is anticipated that this sector will continue to play a leading role in acquisition activities in the future (Mihić Munjić, 2019).

One of the key sectors for the economic development of Serbia is the innovative startup ecosystem. According to the *Startup Genome* report from 2020, the number of startup ecosystems in Serbia is estimated at between 200 and 400, with a total value of approximately 439 million dollars. Startups from two main centers – Belgrade and Novi Sad – were included in the analysis. This report ranks the Serbian startup ecosystem among the fastest-growing in the activation phase, based on the increase in financing volume, the number of acquisitions, and the growth in the number of startup companies (Startup Genome, 2024). On a sample of employees in IT companies in the Republic of Serbia, a statistically significant positive impact of information technology on organizational agility has been determined (Lekić, Vapa-Tankosić, Mirjanić & Lekić, 2023a). Additionally, research highlights the interconnection of intellectual capital components – such as human, structural, and relational

capital – and their role in enhancing business performance in ICT companies (Lekić, Vapa-Tankosić, Lekić, Vapa & Mandić, 2023b). The IT industry dominates Serbia's startup ecosystem, with the gaming and blockchain sectors particularly standing out, attracting significant inflows of foreign direct investments. For instance, in 2021, the American company Take-Two Interactive Software, a global leader in video game development, acquired 94.5% of the Serbian company Nordeus in a transaction valued at 378 million dollars (Radosavljević, Bešić, & Rendulić-Davidović, 2022). In the modern business environment, technological innovation, new ideas, and knowledge transfer play a crucial role in the growth and development of companies. Technological acquisitions are increasingly important as a mechanism for advancing technologies and developing innovative products, thereby contributing to sustainable competitive advantages in the market (Savović, Zlatanović & Nikolić, 2021).

4. Mergers and acquisitions in the Serbian banking sector

Over the last two decades, the banking sector of the Republic of Serbia has faced numerous challenges, including factors that threatened the stability of banks, such as the slow pace of economic transformation and recovery, the global economic crisis, and political instability (Vapa & Vukosavljević, 2021). The sector has been characterized by complex processes of mergers and acquisitions, with acquisitions significantly predominating. These processes have served as key mechanisms for enabling Serbian banks to adapt to market challenges and global trends. Since 2000, the presence of foreign banks in the Serbian market has steadily increased. Through acquisitions and strategic investments, foreign banks have taken over domestic institutions or merged with existing ones and there has been a noticeable increase in the presence of foreign banks in Serbia during this period (Zelenović & Babić, 2018).

In 2002, 50 banks operated in the Serbian market. However, this number declined sharply due to the restructuring and consolidation of the financial sector. By 2010, the number of banks had decreased to 33, and by 2018, to 28. This trend of declining bank numbers has continued, with only 20 banks operating in the Serbian market as of 2024 (NBS, 2024b). Banks, primarily from the European Union, have acquired a significant number of domestic banks, leading to a reduction in state ownership within the banking sector. These changes are the result of systemic reforms, privatization and consolidation efforts. The introduction of new business models and innovations in financial services by foreign banks has further enhanced the sector's efficiency.

Table 2. Processes of acquisitions and mergers in the banking sector in Serbia since 2000.

Year	Bank	**Buyer**
2000.	Šumadija banka	Jugobanka Jubanka
2003.	Postbanka	Eurobanka EFG
2004.	Eksim banka	Bank Austria
	Srpska regionalna banka a.d. Beograd	Credy banka a.d. Kragujevac
2005.	Atlas banka	Piraeus banka
	Meridian banka	Credit Agricole
	Nova banka	Findomestic banka
	DDOR banka a.d. Novi Sad	Metals banka a.d. Novi Sad
	Novosadska banka	Erste banka
	Delta banka	Intesa Sanpaolo banka
	Continental banka	NLB (Nova ljubljanska banka)
	Jubanka	Alpha bank
2006.	Nacionalna štedionica – banka a.d. Beograd	EFG Eurobank a.d. Beograd
	Vojvođanska banka	National Bank of Greece
	Centrobanka a.d. Beograd	Laiki Popular Bank Public Co Ltd
2007.	Niška banka, Kulska banka i Zepter banka	OTP banka
	A banka	KBC banka
	Panonska banka a.d. Novi Sad	Banka Intesa a.d. Beograd
	HVB	Unicredit banka
2008.	Laiki banka	Marfin Bank Joint-Stock Company Beograd
	NLB LHB banka a.d. Beograd	NLB Continental banka a.d. Novi Sad
2009.	Metals banka a.d. Novi Sad	AP Vojvodina i DDOR Novi Sad a.d.
2010.	Privredna banka Pančevo	Banka Poštanska štedionica Beograd
	Kosovsko-Metohijska banka iz Zvečana	Dunav osiguranje a.d.o. Beograd
	Credy banka iz Kragujevca	Nova Kreditna banka iz Maribora
	Findomestic banka	BNP Paribas
2012.	Volksbank	Sberbank

Year	Bank	**Buyer**
2013.	Moskovska banka na srpskom tržištu	VTB banka
	KBC banka	Telenor
2014.	Dunav banka	Telekom
2015.	Čačanska banka	Halk banka
	Hypo Alpe Adria Bank	Američki fond Advet i Evropka banka za obnovu i razvoj (EBRD)
2016.	Hypo Alpe Adria Bank	Addiko banka
	KBM banka a.d. Kragujevac	Direktna banka
2017.	Marfin banka a.d. Beograd	Expobank
	Alpha bank	Jubanka a.d. Beograd.
	Jubanka a.d. Beograd	AIK banka a.d. Beograd
	BNP Paribas	Direktna banka a.d. Kragujevac
2018.	VTB a.d. Beograd	API Bank a.d. Beograd
	Piraeus banka a.d. Beograd	Direktna banka a.d. Kragujevac
2019.	Telenor banka a.d. Beograd	PPF grupa (Mobi Banka a.d. Beograd)
	Vojvođanska banka a.d. Novi Sad	OTP Banka Srbija a.d. Novi Sad
	Societe Generale Banka Srbija	OTP Banka Srbija a.d. Novi Sad
	Komercijalna banka	Država
2020.	Jubmes banka a.d. Beograd	ALTA banka a.d. Beograd
2021.	Direktna banka a.d. Kragujevac	Eurobank Direktna a.d. Beograd
	Opportunity banka a.d. Novi Sad	3 Banka a.d. Novi Sad
	OTP Banka Srbija a.d. Novi Sad	Vojvođanska banka a.d. Novi Sad
	MTS banka a.d. Beograd	Banka Poštanska štedionica a.d. Beograd
2022.	Komercijalna banka a.d. Beograd	NLB banka a.d. Beograd
	Naša AIK banka	Agroindustrijska komercijalna banka AIK banka a.d. Beograd
	Sberbanka Srbija a.d. Beograd	Agroindustrijska komercijalna banka AIK banka a.d. Beograd
	Credit Agricole banka Srbija	RBA banka a.d. Novi Sad
2023.	Expobank	Adriatic Bank a.d. Beograd
	RBA banka a.d. Novi Sad	Raiffeisen banka a.d. Beograd

Source: Authors, based on UNCTAD, NBS, Miković (2022) and official websites of banks

Table 2 provides a comprehensive overview of the most significant mergers and acquisitions in the Serbian banking sector from 2000 to the

present. The table illustrates how these processes have contributed to the transformation of the banking sector. Foreign banks have assumed a dominant role in the Serbian banking sector, primarily through acquisitions, while merger processes have been rare. A notable example of both a merger and an acquisition can be observed in the case of NLB Bank. In 2005, NLB Bank acquired 98.43% of the shares of Kontinental Banka, becoming its majority owner in a transaction valued at 49.5 million euros. Subsequently, in 2008, NLB Kontinental Banka from Novi Sad and NLB LHB Banka merged, and on January 1, 2009, they commenced joint operations under the name NLB Banka Beograd (Zelenović & Babić, 2018).

Table 3. Overview of active banks in Serbia.

Num.	Bank
1	Addiko Bank a.d. Beograd
2	Agroindustrijsko komercijalna banka AIK banka a.d. Beograd
3	ALTA banka a.d. Beograd
4	Adriatic Bank a.d. Beograd
5	API Bank a.d. Beograd
6	Banca Intesa a.d. Beograd
7	Banka Poštanska štedionica a.d. Beograd
8	Bank of China Srbija a.d. Beograd
9	Erste Bank a.d. Novi Sad
10	Eurobank Direktna a.d. Beograd
11	Halkbank a.d. Beograd
12	NLB Komercijalna banka AD Beograd
13	MIRABANK a.d. Beograd
14	3 BANKA a.d. Novi Sad
15	OTP Banka Srbija a.d. Novi Sad
16	Procredit Bank a.d. Beograd
17	Raiffeisen banka a.d. Beograd
18	Srpska banka a.d. Beograd
19	Unicredit Bank Srbija a.d. Beograd
20	Yettel Bank ad Beograd

Source: Authors according to NBS (2024b) List of banks.

Over the past decades, the acquisition process has had a transformative role in the Serbian banking sector, facilitating the entry of major foreign

banks. Among the largest acquisitions was the 2005 takeover of 90% of Delta Bank by the Italian bank Intesa Sanpaolo, in a transaction valued at 462 million euros. Intesa Sanpaolo further expanded its presence in the Serbian market in 2007 by acquiring 87.39% of Panonska Banka's share capital for 130 million euros (Zelenović & Babić, 2018). In 2006, the National Bank of Greece acquired 99.34% of Vojvodina Banka's capital for 385 million euros. Around the same time, the Hungarian OTP Bank solidified its market presence through several strategic acquisitions, including Niška Banka for 14.1 million euros, Kula Banka for 118.6 million euros, and Zepter Banka for approximately 32 million euros (Zelenović & Babić, 2018). These transactions significantly enhanced OTP Banka's footprint in Serbia. Another noteworthy acquisition occurred in 2005 when Greek Alpha Bank purchased 88.64% of Jubanka Beograd's share capital for 152 million euros. In the same year, Erste Bank took over 83.28% of Novi Sad Bank's share capital in a deal worth 73.1 million euros (Kontić & Kontić, 2009). In a more recent phase, OTP Banka Srbija further bolstered its market position in 2017 by acquiring Vojvođanska Banka from the National Bank of Greece for 125 million euros. Concurrently, the Czech bank Expobank entered the Serbian market by acquiring Marfin Bank Belgrade from Cyprus Popular Bank in a transaction valued at 14.59 million euros (Miković, 2022, p. 200).

The presented examples demonstrate how foreign banks, through acquisition processes, have played a pivotal role in the consolidation and transformation of the Serbian banking market. These changes have not only restructured ownership but also driven the modernization of Serbia's financial sector, aligning it more closely with international standards. Table 3 offers a comprehensive overview of banking institutions currently operating in Serbia, highlighting a substantial reduction in the number of active banks. This decline reflects the sustained processes of acquisitions and consolidations, which have significantly reshaped the structure of the domestic banking sector. Today, the Serbian banking market is dominated by foreign banks, which have secured a considerable share of the overall market. This evolution has fostered sectoral modernization, the adoption of advanced technologies, and the diversification of services. Furthermore, increased competition among banks has led to improved efficiency and service quality, ultimately benefiting banking service users in Serbia.

5. Conclusion

Corporate finance management is a cornerstone of a bank's successful operation, with effective capital management being pivotal to achieving strategic business objectives. This becomes particularly critical in scenarios where conflicts arise between the interests of capital owners and the bank's management. Among the most critical responsibilities of financial managers is determining optimal capital allocation and investment strategies, with FDI often serving as a primary vehicle for expansion and growth. Mergers and acquisitions are the most prevalent forms of FDI in the banking sector, offering banks the ability to expand their operations, penetrate new markets, and strengthen their market positioning. These transactions provide opportunities to enhance service quality, secure access to essential resources and advanced technologies, and diversify business portfolios. Moreover, they deliver substantial strategic advantages, such as improved access to innovative technologies, specialized expertise, and critical resources within new markets, thereby fostering long-term growth and competitiveness.

The prevalence of mergers and acquisitions has historically fluctuated in response to global economic developments, political instability, and financial crises. In Serbia, the late 20th century saw a significant decline in such activities due to political upheavals and armed conflicts. However, with political stabilization in the early 21st century, Serbia reemerged as an attractive destination for foreign direct investment. Although the 2008 global economic crisis caused fluctuations in the value of mergers and acquisitions, Serbia's post-crisis recovery reinforced its appeal to foreign investors. This resurgence was particularly evident in 2011, when the country recorded a record net value of cross-border mergers and acquisitions. The most active sectors in these processes include banking, insurance, food production, brewing, mining, energy, telecommunications, infrastructure, pharmaceuticals, and the information technology sector, with technological innovation playing a pivotal role in driving growth. Through the implementation of successful merger and acquisition strategies, banks can not only expand their market presence, but also enhance their ability to deliver higher-quality services, contributing to their overall success and sustainable growth. Therefore, strategic planning and careful management of these processes are crucial for the long-term success and stability of banking institutions.

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SPAJANJA I AKVIZICIJE U BANKARSKOM SEKTORU REPUBLIKE SRBIJE

APSTRAKT: Kao oblik stranih direktnih investicija, merdžeri i akvizicije postali su važan vid prekograničnog ulaganja u zemlje u razvoju i tranzicije od prošlog veka. Kako bi zemlja bila privlačna za ovakva ulaganja, mora ispunjavati uslove poput političke stabilnosti i dobrih makroekonomskih pokazatelja. Nakon perioda političke nestabilnosti i ekonomske krize, Srbija je ponovo postala atraktivna za strana ulaganja, uključujući merdžere i akvizicije. Ovaj rad koristi kvalitativnu metodologiju za analizu kretanja i vrednosti merdžera i akvizicija u Srbiji u 21. veku, s posebnim fokusom na bankarski sektor. Cilj rada je da se ukaže kako su merdžeri i akvizicije oblikovali bankarski sektor u Srbiji i identifikuju ključni faktori koji su uticali na ove procese.

Ključne reči: *spajanja, akvizicije, strana ulaganja, bankarstvo, tranzicija, investicije, ekonomski razvoj*.

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REGULATORY ASPECTS OF THE CONTROL OF DIETARY SUPPLEMENTS IN THE REPUBLIC OF SERBIA

ABSTRACT: The modern way of life often involves supplementing the diet with dietary supplements. By using them, we introduce additional vitamins, minerals, probiotics, and other substances with nutritional or physiological effects. These supplements are applied in dosage forms, and their safe use requires consistent adherence to regulatory requirements. Aspects of the control of dietary products include guidelines for production conditions, as well as physico-chemical and microbiological testing. Due to the specificity and widespread use of these products, the analysis requirements for product registration, as well as for product controls during the registration period, should be detailed, but also described in a way that enables their practical implementation. Regulatory aspects of statutory and mandatory requirements often differ in Europe, the USA, China, etc. This paper discusses the requirements of domestic regulations and proposals for their additions or corrections.

Keywords*: dietary supplements, regulatory aspects.*

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1. Introduction

In recent decades, there has been a noticeable trend of increasing use of dietary supplements. For this group of pharmaceutical products, according to domestic regulations, the terms food supplements and dietary supplements are used, and according to the Rulebook on Food Supplements, they are defined as: food supplements (dietary supplements), food that supplements the usual diet and that represents concentrated sources of nutrients or other ingredients with a nutritional or physiological effect, individually or in combination, and are sold in dosage forms such as capsules, pastilles, tablets, powder bags, liquid ampoules, dropper bottles, and other similar forms of liquid and powder intended for ingestion in small, dosed amounts (Rulebook on Food Supplements, 2024). The complexity of this definition points to the basic role of this group of pharmaceutical products, which is a dietary supplement, that is why it is important to look at the umbrella document in Serbia that deals with food: the Law on Food Safety (2019). The use of dietary supplements is associated with a healthy lifestyle and on the other hand, economic factors, such as higher incomes, a higher level of health insurance, and a higher level of education, are significant predictors of the frequency of dietary supplements (Baralić, Đorđević & Milinković, 2019; Satia-Abouta, et al., 2003). Also, the use of supplements in old age is becoming more and more widespread (Gariballa, Forster, Walters & Powers, 2006; Mahdavi-Roshan M., et al., 2021).

2. Requirements for conditions of production of dietary supplements

Dietary supplements as a category of pharmaceutical dosed forms must be produced under strictly defined production conditions, under the supervision of qualified employees, and with the use of defined active and auxiliary substances. Only under completely defined conditions and with compliance with the requirements for production conditions, the manufacturer can produce this category of products, which over time, according to regulatory requirements, is increasingly approaching the requirements for the production of medicines (Binns, Lee & Lee, 2018; Puvača, Vapa Tankosić, Ignjatijević, Carić & Prodanović, 2022).

Only when he provides the prescribed conditions can a manufacturer obtain a production license from the competent authorities. In our country, the production of nutritional supplements is under the supervision of the sanitary

inspection of the Ministry of Health. The conditions for this permit are: the application of regulations that prescribe production conditions, the Good Manufacturing Practice (GMP) Guidelines, which are also binding for drug manufacturers, the application of the HACCP principle and the ISO 22000 standard, which are among the mandatory conditions for food production, and are issued by certified bodies for evaluation and supervision of the quality management system (Vapa Tankosić, Puvača, Giannenas, Tufarelli & Ignjatijević, 2022).

The conditions for the production of dietary supplements are described in the Rulebook on sanitary and hygienic conditions for facilities where the production and trade of foodstuffs and general use items are carried out (1997) and the hygiene criteria in the Rulebook on general and special conditions of food hygiene at any stage of production, processing and circulation (2010).

3. Stages of registration of dietary supplements in the Republic of Serbia

The necessary conditions for the registration of dietary supplements are (reference):

1. precisely defined product composition (qualitative and quantitative),
2. product specification (basic features of the product and corresponding criteria by which steam production and quality control are monitored),
3. quality control analyses,
4. description of the production process with control points,
5. method of packaging and declaration.

Documentation on all the mentioned stages and product samples is the subject of further activities to approve the product for marketing.

For the placement of dietary supplements, i.e. for the permission of the Ministry of Health and the entry of a dietary supplement into the database of registered products, it is necessary to fulfill the requirements of the following three stages:

Phase I – expert opinion and categorization, with the approval of the text of the declaration by scientific institutions; for this step are authorized: Faculty of Pharmacy, University of Belgrade or Faculty of Pharmacy, Novi Sad.

Phase II – expert opinion and analytical report of the health institution on the health suitability of the dietary product; the Institute for Public Health of Serbia "Dr. Milan Jovanović Batut", the Institute for Public Health of

Vojvodina, the Institute for Public Health Niš, the Institute for Public Health Kragujevac, the City Institute for Public Health Belgrade or the Institute for Hygiene of the Military Medical Academy in Belgrade are responsible for this type of report.

Phase III is the registration of the dietary product in the database of the Ministry of Health of the Republic of Serbia – the notification number is required in the text of the product declaration.

Regulatory procedures are different in different countries, but the framework covering production and product quality is similar worldwide (Binns, Lee & Lee, 2018). In Serbia, procedures are carried out following our laws and regulations, but with the full inclusion of EU guidelines. They define the quality of products and materials for their production, declaration, and quality control. When the same product is registered in several countries, documentation is prepared that is almost the same everywhere, and the declaration is adapted to local regulations, following what the regulatory bodies of that country have prescribed as the mandatory content of the text on the box and instructions for use.

4. Regulatory frameworks for dietary supplements in Europe

In Europe, the general principles and requirements related to food production are based on conclusions about the confirmed safety of food components in documents updated by the European Food Safety Authority (EFSA) and in the EU General Food Law EU General Food Law (2002) (Regulation (EC) No. 178/2002) (Vettoraz, Lopez de Cerain, Sanz Serrano, Gil, Azqueta, 2020). Other important EU documents in this sense are Directive 2002/46/EC, health and nutritional declarations Reg. EC 1924/2006, declaration Reg. EC 1169/2011, gluten regulation EU No 828/2024, food safety Reg EC 2073/2005, contaminants Reg EC 1881/2006, a single list of substances that can be added EC 1925/200, new food EC 2015/2283 and others.

The regulatory framework for dietary supplements in the Republic of Serbia is generally harmonized with the regulations of the European Community.

A large number of EU requirements have already been incorporated into local regulations, but the specifics of the conditions of production and markets, which in reality still do not formally belong to the EU, should also be considered.

5. Possible directions and proposals for supplementing the regulatory framework for dietary supplements in Serbia

The umbrella document, the Food Safety Low, and by-laws define the conditions for the production and control of dietary supplements. In this sense, the up-to-date Rulebook on establishing the Food Safety Monitoring Program for 2024, which defined the obligations of the competent ministry in terms of sample analysis to determine the level of contaminants, collecting data for risk analysis and checking valid standards, is also significant. This document, as well as other related documents, do not draw enough attention to nutritional supplements containing probiotic microorganisms, which are often intended for children up to 3 years of age. Given that the application of these products is expanding and the number of applied probiotic cultures is expanding, it is necessary to define the conditions for controlling the type of probiotics (EFSA database of approved probiotic strains) and the number of probiotic cells in the products during registration and the product expiration date (EFSA – European Food Safety Authority, EU General Food Law (Regulation (EC) No. 178/2002).

By looking at domestic regulatory requirements and requirements of pharmaceutical production, quality control, many years of experience in pharmaceutical production, and the aspects of preserving the health of the population, the authors of this paper draw attention to proposals for improving local regulations:

1. Since these are pharmaceutical-dosed products that exhibit unwanted effects, but also have contraindications as well as medicine, it is necessary to perform both qualitative and quantitative analysis after each produced batch. This proposal aims to fully control all manufactured batches (rather than the regulatory requirement to inspect one batch per year) and is a major step forward in terms of the safety of the use of dietary supplements on the market.
2. As dietary supplements are very often used as a supplement to drug therapy and as there must be products on the market that will improve people's lives, the product must contain the amount of active substance until the end of its use, and that is why it is important to add a stability test to the mandatory requirements. This requirement also contributes to the safety of the use of dietary supplements with the aim of controlled application of an effective, efficient, and safe product during the declared term and not only with data analysis at the time of registration and/or extension of product registration (Binns, Lee & Lee, 2018).

3. Improve the requirements that must be met by the production facility, related to the level of air cleanliness. With this request, we contribute to the aspects of the production of a safe product, primarily in terms of reducing contamination from the air during production.
4. Define the qualifications for the responsible person for the production of dietary supplements in the Rulebook. The requirement to define the responsibility of production is close to the requirements of drug production, but the justification for this position is the fact that dietary supplements are dosage pharmaceutical forms with significant application in prevention and therapy and deserve a serious approach and definition of production responsibility.
5. Multidisciplinary approach to define specific requirements in the phase of product registration: analysis of probiotic supplements (confirmation of the name of the probiotic strain, monitoring of the number of probiotic cells, etc.). We are witnessing an increasing number of probiotic products on the market, and the laboratories that test these products at the time of registration often do not have a methodology for determining the number of probiotic cells that compares their activity (Zavišić, Ristić, Petković, Šaponja, 2023). The recommendation is a more detailed approach to the regulatory framework for the production, control, and declaration of probiotics following the IPA Europe International Probiotic Association and with the experiences of countries that have already done so (Denmark, France, Italy, etc.) (IPA, 2024).
6. Requests for more detailed analyses during the registration period (larger number of microbiological and physico-chemical analyses than currently required – supplement analyses of the content of selected heavy metals – mandatory determination of cadmium content). The control of the content of heavy metals in the product is of great importance from the aspect of product safety and the increasingly present cumulative effect of the presence of heavy metals in food and water (Zavišić, et al., 2023).

The above proposals are certainly guidelines for more detailed control of dietary supplements, and from the point of view of increasing production costs, they represent an additional burden on domestic producers, but from the point of view of protecting the health of the population, they represent a significant contribution. Also, by adopting the recommendations for improving the regulatory requirements, we are getting closer to the requirements of production and business conditions in the EU.

5. Conclusion

In recent decades, dietary products have proven many positive effects on health and have become an integral part of modern life. Therefore, regulatory effects are very significant because they are directly related to safe and effective application. The authors of this paper propose suggestions for national regulations: qualitative and quantitative analysis after each produced batch, add a stability test to the mandatory requirements, level of air cleanliness in production area, define the qualifications for the responsible person for the production of dietary supplements, detailed analysis of probiotic supplements and generally detailed analyses during the registration period.

The adoption of recommendations for the improvement of national regulations would contribute to the quality of dietary products and greater confidence in their benefits.

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REGULATORNI ASPEKTI KONTROLE DIJETETSKIH SUPLEMENATA U REPUBLICI SRBIJI

APSTRAKT: Savremeni način života često podrazumeva dopunu ishrane primenom dijetetskih suplemenata. Njihovom primenom unosimo dodatne vitamine, minerale, probiotike i druge supstance sa hranljivim ili fiziološkim efektom. Primenjuju se u doziranim oblicima i za njihovu bezbednu upotrebu neophodna je dosledna primena regulatornih zahteva. Aspekti kontrole dijetetskih proizvoda podrazumevaju uputstva za uslove proizvodnje, fizičko-hemijska i mikrobiološka ispitivanja. Zbog

specifičnosti i široke rasprostranjenosti primene ovih proizvoda zahtevi analiza za registraciju proizvoda kao i za kontrole proizvoda tokom perioda registracije treba da budu detaljni, ali i opisani na način koji omogućuje njihovu praktičnu primenu. Regulatorni aspekti propisanih i obaveznih zahteva često se razlikuju u Evropi, SAD, Kini i dr. U ovom radu razmatrani su zahtevi domaće regulative i predlozi za njihove dopune ili korekcije.

***Ključne reči**: dijetetski suplementi, regulatorni aspekti.*

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OUT-OF-COURT MORTGAGE SETTLEMENT PROCEDURE IN THE LIGHT OF EU LAW AND THE LEGISLATION OF THE USA, ENGLAND, GERMANY AND THE CZECH REPUBLIC

ABSTRACT: The out-of-court settlement procedure for claims in European continental civil law presents a challenging area of study, both from a doctrinal perspective and in terms of its normative foundation. Therefore, its characteristics are analyzed within the context of EU law, with special attention to the legislation of Germany and the Czech Republic, as well as the legal frameworks of the USA and England. However, the primary focus of this paper is on the out-of-court procedure for the settlement of mortgage-secured claims in the Republic of Serbia, which is examined in light of the relevant provisions of Directive 2014/17/EU of the European Parliament and the Council of February 4, 2014, on credit agreements for consumers relating to residential immovable property (Mortgage Credit Directive 2014/17). While the directive contains numerous provisions, this paper will focus only on those aspects of the Mortgage Credit Directive 2014/17 that are significant for improving certain *de lege lata* legal rules governing the Serbian out-of-court mortgage settlement procedure. The research employs dogmatic legal and comparative legal methods. The main objective of this paper is to evaluate future legal amendments in the context of the corresponding provisions of the Mortgage Credit Directive 2014/17.

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1.Introduction

The introductory part of the paper contains the general characteristics of the Mortgage Credit Directive 2014/17, the main goals and importance of its adoption, as well as the field of its application ratione materiae in the EU.

The Mortgage Credit Directive 2014/17 entered into force on March 20, 2014. In addition to its numerous provisions that have a private law and public law character, the paper will analyze only those provisions relevant to the topic of this paper. The Mortgage Credit Directive 2014/17 was adopted with the intention of removing differences in the regulations of EU member states for the simplified conclusion of cross-border contracts on mortgage loans. The main goal of its adoption was to establish uniform standards in terms of lending in the EU in order to reduce potential risks related to mortgage loans. The Mortgage Credit Directive 2014/17 is based on the principle of minimum harmonization of the national legislation of EU member states. It regulates the most delicate issues for consumers in the field of mortgage loans, such as problems related to the orderly payment of loan obligations and the procedure for forced execution of overdue loan claims. Despite the clearly proclaimed goals, it is noticeable that the Mortgage Credit Directive 2014/17 still allows for a wide variety of different national legislations and their disunity regarding the regulation of mortgage loans (Mišćenić, 2014, pp. 114–119).

The field of application of the Mortgage Credit Directive 2014/17 *ratione materiae* refers to credit agreements secured by a mortgage or other real legal means of security that are applied in the respective member states for residential real estate or secured by law in connection with residential real estate, as well as to credit agreements whose basic purpose is to retain or establish property rights on land or on existing or future real estate. The basic meaning of the Mortgage Credit Directive 2014/17 is to achieve a high level of legal protection of consumers when concluding loan agreements related to real estate. Member states have the discretionary authority not to apply certain provisions or the Mortgage Credit Directive 2014/17 as a whole to certain types of loans, as well as to extend the application of the rules to those credit agreements that are excluded from the scope of the Mortgage Credit Directive 2014/17, for example to real estate that is not considered residential real estate (Mišćenić, 2014, pp. 119–120).

It should be clearly emphasized that directives represent legal acts of the EU as a separate legal system. Therefore, they do not have the significance of international custom or general legal principles of international law, which as constitutional categories bind all states (subjects) of international law, not only EU member states. (Dimitrijević, et al., 2012, pp. 46–51). However, even so, directives are not insignificant for domestic legislation. Although Serbia is not obliged to apply EU regulations (this obligation arises from the day of accession to the EU), this is not an obstacle for the Serbian legislator to gradually harmonize domestic regulations with EU regulations. Considering that EU law is superior to the national rights of the member states, it represents a significant legal category and a sufficient reason for it to be seriously studied in Serbia (Beširević, 2023, p. 8).

2. General notes on the out-of-court procedure for the settlement of claims

In this part of the paper, a general overview of comparative law solutions on the out-of-court claim settlement procedure will be presented. Of course, this is an out-of-court procedure for the settlement of claims that the debtor has not settled within the due date (due claims).

The German Law on Out-of-court Services from 2008 regulates the collection of claims as a special type of out-of-court procedure for the settlement of claim. Collection of claims in out-of-court proceedings can only be carried out by registered entities. Authorized subjects in the extrajudicial claim collection procedure are: lawyers, legal entities or partnerships that do not have the status of a legal entity, and natural persons. The legal rules, in addition to the strict licensing procedure of bodies that carry out out-of-court claims collection procedures, protect debtors (consumers) from various abuses by clearly prescribing the procedure for revocation of license and imposition of fines. The law expressly stipulates that service providers in the out-of-court claim collection procedure must be insured, which provides debtors with an additional level of legal protection. In addition to other requirements, providers of out-of-court debt collection services must undergo adequate training. During 2019, serious discussions for amending the law began. The following emerged as key issues that deserve additional legal regulation: the prescription of adequate amounts of compensation, the passing of examinations and the system of control of the work of bodies that carry out out-of-court claims collection procedures. Despite the legal regulation of the out-of-court debt collection procedure, court enforcement officers still play a

key role in Germany. They are public authorities and their work is subject to judicial control (Tajti, 2020, pp. 30–35).

The situation in the Czech Republic is particularly interesting. Private executors are part of the debt collection system, which over time have proven to be very effective in the out-of-court debt collection process. The peculiarity of the Czech claims collection system is reflected in the fact that the Supreme Court of the Czech Republic, in 2016, decided that foreign arbitration awards cannot be enforced by private bailiffs, but only through a less efficient judicial enforcement procedure. Thus, the procedure for the enforcement of foreign arbitration awards is separated and significantly more difficult compared to the procedure for the enforcement of domestic arbitration awards. Such a decision of the highest judicial instance caused a revolt of the legal public because it is contrary to the concept of the International Convention on the Recognition and Enforcement of Foreign Arbitral Awards from 1958 (Tajti, 2020, pp. 39–41).

One of the most developed systems of out-of-court debt collection procedures exists in the United States of America (USA). Court enforcement officers (*court enforcement officers*, *court bailiffs*) participate in the out-of-court claim collection procedure, as in Great Britain. However, in the USA, the debt collection procedure is regulated by systemic laws, both at the federal level and at the level of individual states. Their main features are strict legal regulations, with certain deviations that limit the procedural activity of the debtor. For example, the debtor is obliged to accept unconditionally that the arbitration chosen by the creditor is competent for resolving disputes related to the collection of claims. In practice, such a procedure additionally initiates many disputed situations (Tajti, 2020, pp. 24–26).

In Europe, Great Britain has the most developed system of out-of-court debt collection. He relies heavily on solutions from the US legal system, despite the fact that there is no single legal act that regulates the out-of-court claim collection procedure. Legal entities that perform services of out-of-court debt collection procedures became part of the legislation with the adoption of the Consumer Protection Act of 1974. The Consumer Credit Act was adopted in 2006 with the aim of providing adequate legal protection for consumers. The law expanded the jurisdiction of the Office for Fair Trade in connection with the licensing procedure for legal entities that provide debt collection services. In addition, consumers are provided with additional legal security, even if other dispute resolution methods have been contracted, through the legal protection procedure before a special body – the Financial Ombudsman Service. One of the more important protective legal provisions

is the ban on charging the costs of out-of-court procedure for the settlement of claims.that were not previously agreed upon. In order to provide additional protection to debtors against unfounded demands of bailiffs, the British bailiff system underwent significant changes in 2014. The law introduced different categories of bailiffs. Civil bailiffs are a special type of private bailiffs who, unlike court enforcement officers, are not employed by state bodies. In order to protect the debtor, the law, among other things, in the debt collection procedure strictly prescribes procedural powers when entering the debtor's premises (Tajti, 2020, pp. 18–24).

Undoubtedly, it can be concluded that despite the significant expansion of the legal powers of private bailiffs in the out-of-court debt collection procedure, there are no adequate and systematic solutions in comparative law for the many challenges and problems that accompany the out-of-court debt collection procedure (Stänesku, 2015). Taking into account the presented comparative legal solutions, the question arises whether it is necessary to adopt a common regulatory framework for the EU area. In case of a positive answer, he would sublimate in himself all the advantages of good practice in the procedure of out-of-court collection of claims in European countries, as well as positive solutions from Great Britain, such as the legal authorization of consumers to waive mandatory arbitration and settle the dispute before the financial ombudsman (Kilborn, 2018).

3. Out-of-court mortgage settlement procedure and corresponding rules of the Mortgage Credit Directive 2014/17

The functioning of any legal system cannot be imagined without an enforcement procedure because the right to legal protection acquires its full meaning only after the successful completion of the enforcement procedure. The physiognomy of the enforcement procedure undoubtedly affects the degree of organization of the entire legal system. As there is no codification of the rules of enforcement procedure in the Republic of Serbia, in addition to the law that regulates the enforcement and security procedure, there are other laws that regulate certain special enforcement procedures (Crnjanski, 2019a, pp. 127–128). One of such laws is the Mortgage Law, 2006 (hereinafter: ZH). In addition to substantive legal provisions, it also contains procedural rules on the out-of-court mortgage settlement procedure.

The out-of-court mortgage settlement procedure is governed by the mandatory norms of Art. 29-38 ZH and contains several stages: it starts with the first warning delivered by the mortgage creditor from the enforcement

document to the debtor or the owner of the mortgage immovable property (if they are different persons) if the debt on maturity has not been paid, then follows the warning about the sale of mortgage immovable property, the record of the mortgage sale and the sale procedure. The right to sell is realized by auction sale and sale by direct agreement. If the debtor does not pay the debt within 30 days from the day of receipt of the first warning, the creditor will send the debtor and the owner of the mortgage immovable property and other mortgage creditors a warning about the sale, which must contain the legal elements from Art. 30 ZH. If the debtor does not pay the debt after the expiration of 30 days from the date of receipt of the first notice, the mortgage creditor is authorized to submit to the real estate registry a request to record the mortgage sale in his favor (Art. 31, paragraph 1 ZH). If the debtor does not pay the debt by the date of finality of the decision on recording the mortgage sale, and if a period of 30 days has passed since the date of issuance of that decision, the creditor may, based on the decision, proceed with the sale of the mortgage immovable property through auction or direct sale (Art. 34, paragraph 1 ZH).According to the provisions of Art. 34, paragraph 3 ZH, after the finality of the decision on the recording of the mortgage sale, and before starting the auction sale, the creditor is obliged to evaluate the market value of the mortgage immovable property through an authorized court expert (or another person authorized by law to perform evaluation tasks). Sale by direct negotiation until the moment of the announcement of the auction sale is possible at a price that cannot be lower than 90% of the estimated market value of the mortgaged real estate (Article 34, Paragraph 4 ZH). If the mortgage immovable property remains unsold at the first public auction, the creditor can continue the sale by direct negotiation, but at a price not lower than 60% of the estimated value of the real estate, or can schedule another auction sale that must be held no later than 120 days from the day of the end of the unsuccessful auction (Art. 34, paragraph 5 ZH). If the mortgage immovable property remains unsold in the out-of-court settlement procedure within 18 months from the date of finality of the decision on the note of mortgage sale, the immovable property registry will issue a decision on deleting the note ex officio (Art. 34, paragraph 6 ZH). The creditor is obliged to hold the first auction sale within six months from the date of finality of the decision on the recording of the mortgage sale (Art. 35, paragraph 2 ZH). Based on Art. 38, paragraph 3 ZH, if the mortgage creditor settles by acquiring ownership rights to the mortgage immovable property, it is considered that the claim is settled at the time of acquisition of ownership rights (Crnjanski, 2019a, p. 128).

The aforementioned legal rules on the out-of-court mortgage settlement procedure do not contain the achieved European standards of protection of housing loan beneficiaries as consumers. The Mortgage Credit Directive 2014/17 contains comprehensive rules that include all stages of contracting, starting from the negotiation to the conclusion of the loan agreement. Due to the fact that in the Mortgage Credit Directive 2014/17 there is a special chapter on information and procedures before the conclusion of the loan agreement (chapter 4), it is necessary to first emphasize the important features of the negotiation process. Negotiations represent a certain time interval in which the parties consider the possibility of concluding a contract and agree on its terms. This is a regular situation with contracts in which higher property values are exchanged. Negotiations imply an exchange of opinions on the subject of the contract between potential contractors. The negotiation process is legally regulated and when the parties enter into negotiations, they have certain duties towards each other. In legal theory, pre-contractual liability is known as *culpa in contrahendo*. It designates negligence (*culpa*) as a sufficient degree of guilt for the existence of liability in the course of contracting. If the negotiations end with success, they, along with other circumstances, contribute to the interpretation of the contract. In Serbia, there is a consistent legal solution on negotiations. In Article 30 of the Law on Obligations, 1978, it is prescribed that the negotiations that precede the conclusion of the contract are not binding and either party can terminate them whenever they want. However, the party that conducted the negotiations without the intention to conclude the contract is liable for the damage caused by conducting the negotiations. In addition, the party that conducted the negotiations with the intention of concluding the contract, then abandons that intention without a valid reason and thereby causes damage to the other party, is also responsible for the damage. Such a legal formulation prescribes a general duty to negotiate with expressly emphasized legal deviations (Orlić, 1993, pp. 19–32).

Considering the importance and property value of the housing loan contract, the rules of the Mortgage Credit Directive 2014/17 regulate the part of the negotiation process that refers to the obligation to provide information before concluding the contract (Chapter 4, Article 14 of the Mortgage Credit Directive 2014/17). The member states ensure that the creditor makes available to the credit user (consumer) the personalized information necessary for a comparative analysis of the available credits on the market, the assessment of their consequences and for deciding whether he wants to conclude a credit agreement (point 1). Personalized information in paper form or on some other permanent medium is provided through ESIS (item 2). Member states

shall allow the consumer a period of at least seven days in which he will have sufficient time for comparative analysis, risk assessment and making a decision based on complete information. Also, the member states determine that the time period represents either a period for consideration before the conclusion of the credit agreement or a period for exercising the right to withdraw after the conclusion of the credit agreement, or a combination of the mentioned possibilities. If the member state determines a time interval for consideration before concluding the credit agreement, during that time period the offer is binding for the creditor with the possibility that the consumer can accept the offer at any time. However, member states may determine that the consumer is not obliged to accept the offer within a certain period that does not exceed the first ten days from the day of its consideration (point 6).

The mortgage creditor who conducts the out-of-court settlement procedure is obliged, among other things, to include in the contract for the sale of mortgage immovable property the costs of the sale, which include the costs and fees of third parties (Art. 41, paragraph 1, item 1 ZH). The legal norm formulated in this way, which does not contain a limitation regarding the amount of costs and fees of third parties, may impair the position of the mortgage debtor regarding the total amount of the amount settled in the out-of-court mortgage settlement procedure. The legislator completely excluded the mortgage debtor from the procedure of determining the total due amount of the secured claim. The right to return surplus value in the out-of-court sale of mortgage immovable property is a protective instrument for the mortgagor against unjustified enrichment of the mortgagor. The right to determine the amount of the due debt (the amount of the due debt for collection is an integral part of the notice of sale) is exclusively on the side of the creditor, bearing in mind that the determined amount is not considered by any other entity in the process of settlement of an enforceable out-of-court mortgage (Hiber & Živković, 2015, p. 257). Therefore, it would be necessary for the mortgage creditor to inform the mortgage debtor in advance of the amount and costs of the mortgage immovable property sale procedure and to enable him to express his opinion on them, because legal protection can only be enjoyed by those costs that are necessary and sufficient to complete the out-of-court mortgage settlement procedure (Crnjanski & Knežević, 2015, pp. 255–276).

Contrary to such legal solutions, according to the rules of the Mortgage Credit Directive 2014/17, the payment of fees is allowed only for those amounts that represent the necessary compensation for the costs of non-fulfillment of the loan debtor's obligations. If the price of the mortgage immovable property affects the amount of the secured mortgage claim, a fair settlement procedure

and the necessary measures that will enable the achievement of the most favorable price for the mortgage immovable property must be prescribed (chapter 10, article 28, points 2 and 3 of the Mortgage Credit Directive 2014/17). If the achieved price of the immovable property affects the amount owed by the consumer, member states must provide procedures or measures that will enable the achievement of the best price of the immovable property in question in the foreclosure procedure. If, after the enforcement procedure, the amount of the claim remains unpaid, member states will ensure the adoption of measures that, in order to protect consumers, will facilitate the payment of the remaining amount (Chapter 10, Article 28, Item 5 of the Mortgage Credit Directive 2014/17).

In the settlement procedure, the creditor undertakes to perform an assessment of the market value of the mortgage immovable property after the decision on the recording of the mortgage sale becomes legal validity and before starting the auction sale by an authorized court expert or other person authorized by law to perform assessment work. The law omits the active role of the mortgage debtor, or at least his timely knowledge of the very important fact of assessing the value of the mortgaged real estate. Such a legal solution is content-deficient in relation to the rules of the Mortgage Credit Directive 2014/17. Taking into account the rights and obligations of consumers, EU member states are obliged to prescribe such legal rules when providing additional services in connection with credit agreements, on the basis of which credit creditors will commit to fair, just, open and responsible behavior (Chapter 3, Article 7, Item 1 of the Mortgage Credit Directive 2014/17). The property valuation procedure is also clearly prescribed. The member states undertake that the property valuation procedure is carried out by expert appraisers who are sufficiently independent from the execution procedure – in the form of a document that has the value of permanent evidence (Chapter 6, Article 19, Item 2 of the Mortgage Credit Directive 2014/17).

The key shortcoming of ZH is reflected in the fact that the participation of public authorities during the implementation of the out-of-court mortgage settlement procedure is not prescribed. If the authority to implement the *de lege ferenda* out-of-court mortgage settlement procedure was transferred to public bailiffs, then they would control the legal conditions for its implementation. The public bailiff, as a public authority, would be the guarantor of the fulfillment of legal conditions and the balanced legal position of the mortgage creditor and the debtor in the out-of-court procedure for the settlement of claims secured by a mortgage (Crnjanski, 2019b, pp. 519–532) Based on Art. 4, paragraph 5 of the Law on Enforcement and Security, 2016, public

bailiffs are exclusively competent to carry out enforcement and when it is prescribed by a separate law. As a result, the latest amendments to the Law on Enforcement and Security, as the main law that governs the enforcement procedure, made it possible to transfer exclusive jurisdiction to the public bailiffs by a special law for the implementation of the out-of-court mortgage settlement procedure.

4. Conclusion

The right to fair legal protection in enforcement proceedings requires that the settlement of legally unsubstantiated amounts of claims be prevented. In other words, the right to guarantee protection against legally unfounded demands of the enforcement creditor in the enforcement procedure is also worthy of legal protection. The legal rules governing mortgages in the Republic of Serbia have not adequately eliminated possible deviations related to the legal position of the mortgage creditor and the mortgage debtor in the out-of-court mortgage settlement procedure. First of all, this is reflected in the fact that the debtor is not authorized by law to control the total amount of claims that are settled in the out-of-court mortgage settlement procedure. A justified and legally logical aspiration to enable a more efficient and faster procedure for the settlement of claims secured by a mortgage can turn into its opposite if there are no consistently prescribed legal instruments of control in the out-of-court mortgage settlement procedure. The legal and political requirement to enable faster and more successful settlement of the mortgage creditor must be correlated with the legal and political need for balanced institutional protection of the mortgage debtor.

The out-of-court mortgage settlement procedure is carried out without the participation of public authorities, so the balance of the legal interests of the mortgage creditor and the debtor can be significantly shifted. The rights of the mortgage debtor in the out-of-court *de lege lata* mortgage settlement procedure are not satisfactorily protected. It is necessary *de lege ferenda* to supplement certain legal solutions in order to protect the legal position of the mortgage debtor, taking into account the appropriate standards prescribed by the Mortgage Credit Directive 2014/17. Considering the fact that the main competence for the implementation of the enforcement procedure has been transferred to the public bailiffs, the most effective and systemically harmonized solution would be to transfer the competence for the implementation of the out-of-court mortgage settlement procedure to the public bailiffs through a special law regulating the mortgage. In this way, the public bailiff would

control the legality of the out-of-court mortgage settlement procedure from the point of view of public law powers. The public bailiff, as a holder of public authority, would guarantee a balanced position and equal legal protection of the mortgage creditor and the debtor. Specific proposals for amending the existing legal solutions would refer to the control role of the public bailiff during the implementation of the out-of-court mortgage settlement procedure. He would control all stages of the proceedings. First, it would allow the debtor to comment on the proposed appraiser of the mortgaged immovable property. Furthermore, as a public law entity, it would control and determine the total amount of the due claim that is settled in the out-of-court mortgage settlement procedure. Finally, it would control the material elements of the contract on the sale of mortgaged immovable property by direct negotiation because, in addition to the buyer, it is signed by the mortgage creditor as the legal representative of the owner of the mortgaged immovable property (Article 36, paragraph 1 ZH).

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VANSUDSKI POSTUPAK HIPOTEKARNOG NAMIRENJA U SVETLU PRAVA EU I ZAKONODAVSTAVA SAD, ENGLESKE, NEMAČKE I ČEŠKE

APSTRAKT: Vansudski postupak namirenja potraživanja u evropskom kontinentalnom građanskom pravu predstavlja izazovno polje posmatranja ne samo u doktrinarnom pogledu, već i sa stanovišta normativnog supstrata. Zbog toga se njegova obeležja posmatraju u kontekstu prava EU, s posebnim osvrtom na zakonodavstva Nemačke i Češke, ali i zakonodavstva SAD i Engleske. Ipak, težišna tačka ovog rada usmerena je na vansudski postupak namirenja hipotekom obezbeđenog potraživanja u Republici Srbiji, koji se razmatra u svetlu odgovarajućih pravila Direktive 2014/17/EU Evropskog parlamenta i Saveta od 4. februara 2014. o ugovorima o potrošačkim kreditima koji se odnose na stambene nepokretnosti (dalje

u tekstu: Direktiva o hipotekarnim kreditima 2014/17). Iako sadrži brojne odredbe, u ovom radu analiziraće se samo ona pravila Direktive o hipotekarnim kreditima 2014/17 koja su značajna za unapređenje određenih *de lege lata* zakonskih pravila koja uređuju srpski vansudski postupak hipotekarnog namirenja. Istraživanje je sprovedeno primenom pravnodogmatskog i uporednopravnog metoda. Osnovni cilj rada jeste da se buduće zakonske izmene sagledaju i u kontekstu odgovarajućih pravila Direktive o hipotekarnim kreditima 2014/17.

Ključne reči: *vansudsko namirenje hipotekarnog potraživanja, Direktiva o hipotekarnim kreditima.*

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INTERNATIONAL JURISDICTION – DILEMMAS OF A SPECIFIC PROCEDURAL ISSUE

ABSTRACT: International jurisdiction, as a special type of jurisdiction exercised by national courts or other bodies to resolve private law disputes with a foreign element, is activated whenever a relevant foreign element exists in the dispute. This foreign element may either define the civil or commercial law relationship or link the dispute to a state, or several states, other than the state of the court. Issues related to international jurisdiction fall under the domain of international civil procedural law, and the applicable procedural rules are outlined in the Law on the Resolution of Conflicts of Laws with the Regulations of Other Countries, the Law on Civil Procedure, and relevant international agreements, depending on the nature of the disputed legal issue. The legal provisions in these two laws, functioning as general (lex generalis) and special (lex specialis) laws, differ primarily in how the principle of perpetuation of jurisdiction is applied. This situation leaves practice and doctrine to provide applicable solutions. This paper will present and analyze doctrinal viewpoints and judicial practice concerning the establishment of international jurisdiction, with the aim of evaluating the proposed solution in the draft of the new Law on Private International Law. The objective of the paper is to further clarify the specific procedural situation in which courts, having established their international jurisdiction, may encounter facts that have changed during the course of the proceedings.

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1. Introduction

The term jurisdiction (or competence) in modern legal practice refferes to a fundamental institute of procedural rules, as well as a special element of the court proceedings where rights and obligations are decided upon, either from the sphere of public law or private law relations. Jurisdiction, as an umbrella term, means the authority provided by law as well as the obligation of the competent authority to resolve the legal issue brought before it. In the context of private law relations, the issue of the jurisdiction of the court that merits the disputed legal issue is one of the prerequisites of a a fair trial. The dynamics of civil procedural law is set so that the determination of jurisdiction is one of the first procedural actions, which can significantly affect the outcome of the dispute itself. Since the pool of civil law disputes that can be resolved before national courts includes disputes that are purely internal in nature, as well as disputes whose essential legal elements are related to another state or states, in addition to substantive and local jurisdiction, the court may be in a situation to determine its international jurisdiction.

In the context of disputed legal relations with a foreign element, the procedural rules to be applied are contained in the Law on the Resolution of Conflicts of Laws with Regulations of Other Countries (LRCL), the Law on Civil Procedure (LCP) and concretely relevant international agreements according to the nature of the disputed legal issue. Issues of international jurisdiction fall within the domain of international civil procedural law, as a special legal field that includes international private law and civil procedural law. In this sense, the Law on Civil Procedure, which sets the postulates of jurisdiction in civil proceedings and foresees international jurisdiction as a special form of jurisdiction, and the Law on Resolution of Conflicts of Laws, which regulates international jurisdiction in more detail, are important. If we stay on the field of regulation of international jurisdiction by the rules of the two mentioned Laws, which is the general context of this paper, we will notice that the provided legal solutions of these two regulations, which stand in interrelation as general (*lex generali*) and special (*lex specialis*) laws, differ precisely in the matter of the operation of the principle of perpetuation of jurisdiction. Such a situation leaves practice and doctrine to provide applicable answers. The paper will present and analyze doctrinal points of view and judicial practice regarding the establishment of international jurisdiction, with

the aim of evaluating the proposed solution in the proposal of the new Law on private international law. The aim of the paper is to further clarify the specific procedural situation in which courts that have established their international jurisdiction may find themselves on facts that have changed during the court proceedings.

2. The principle of perpetuation of jurisdiction – perpetuatio fori

Court jurisdiction, as a legal theoretical concept, is regulated by law, and refers to a precisely defined range of tasks performed by a judicial body. It is regulated by law as an authority and an obligation, in the sense that the courts are obliged to act in disputed legal matters if they fall under their jurisdiction, and that they must not refuse to act if failure to act means a denial of justice for the party. In the context of civil proceedings, jurisdiction is divided into substantive, local and functional, as well as international as a special type of jurisdiction for civil disputes with a foreign element. In the procedural context, jurisdiction is a necessary procedural assumption for the initiation, management and substantive termination of a dispute (Miuca, 2011, p. 283).

The basic principle, incorporated in the Civil Procedure Law (CPL), is that the court *ex officio* determines its jurisdiction immediately upon receipt of the lawsuit, based on the facts stated in the lawsuit and those known to it, as well as that, after determining the jurisdiction, the court must watch over it throughout the proceedings. If the court finds that there is no basis for jurisdiction or accepts the objection of incompetence filed by the party, and that in the concrete case there will be no denial of justice, court declares itself incompetent. At any time during the proceedings, the court can assess its jurisdiction, but it is limited by the legal provision that the facts in relation to which it assesses are those that existed at the time the lawsuit was submitted to the court (that is, when the defendant still does not know that the proceedings have been initiated), and according to the rules valid at the time of decision. This principle also extends to international jurisdiction. Therefore, it is possible, and necessary, for the court to examine its jurisdiction at several stages during the proceedings, since the grounds provided by law on which the jurisdiction is based are subject to change, temporally and spatially. In this sense, it is necessary, legally, to decide in relation to which factual situation the court has to assess its jurisdiction, i.e. to somehow freeze in time the facts on which jurisdiction depends. Also, it is necessary to determine in relation to

which rules the existence of jurisdiction will be assessed during the duration of the proceedings (Prica, 2021, p. 182).

The Law on Civil Procedure (LCP) regulates the establishment or retention of jurisdiction for the so-called "internal" disputes, i.e. disputes without a foreign element. According to the rules of the LCP, if the court has established substantive and local jurisdiction based on the facts that existed at the time the lawsuit was filed, it remains competent until the end of the proceedings, regardless of any change in the circumstances on which jurisdiction was originally based. It is referred to as *perpetuatio fori* and means the freezing of the factual situation in order to prevent the fraudulent behavior of the parties, as well as to contribute to procedural economy and a fair trial in terms of time. The limits of the application of the principle of *perpetuatio fori* are the absolute lack of jurisdiction of the court (if the facts change in the direction of the jurisdiction of a higher court or a court of other substantive jurisdiction).

Retention of jurisdiction is a generally accepted procedural principle in civil procedural law, which enables that the change of the facts on which the jurisdiction is based at the time of filing the lawsuit cannot affect the jurisdiction during the proceedings (except in circumstances specified by law), i.e. does not lead to a loss of jurisdiction or a change of competent court. The main purpose of this principle is to prevent the abuse of procedural powers by the participants in the proceedings, by fraudulently changing the facts on which jurisdiction is based, which are temporally and spatially variable. In this way, it is possible for the court to have jurisdiction at the moment of making a meritorious decision, regardless of possible changes during the proceedings. At the same time, this principle does not affect the possibility of the court to engage in the assessment of jurisdiction during the proceedings, because the court must exercise and asses if necessery its jurisdiction over the course of the entire proceedings. What happens when there is a change in the facts on which international jurisdiction is based during the proceedings? Can the principle of perpetuation of jurisdiction be applied in disputes with a foreign element?

3. International jurisdiction

International jurisdiction represents a special type of jurisdiction of national courts, or other authorities, to discuss private law disputes with a foreign element. It is always activated when there is a relevant foreign element in the dispute that determines the civil or commercial legal relationship or the dispute relates to a foreign state, or several foreign states, which is not the

state of the court. Although labeled as "international", this is a type of internal jurisdiction of the courts, where the label of internationality, as in the case of the term "private international law", is used to denote the special feature of the legal relations on which it is established.

This type of jurisdiction is provided for by procedural rules (therefore in the segment of regulations that regulate civil proceedings) and conflict of laws rules of private international law. In this sense, the corpus of norms that are designated as international civil procedural law is contained in the LRCL and the LCP. The basic source of norms on international jurisdiction is the LRCL, which derogates from the norms of the LCP. The only norm of the LCP that is not derogated by the LRCL is the general rule on jurisdiction, which stipulates that the court is competent to discuss disputes with a foreign element when this is expressly provided for by law or an international treaty. If international jurisdiction can not be determined by law or international agreement for a certain type of dispute with a foreign element, the rules on local jurisdiction of the LCP are applied. Proceedings with a foreign element are always conducted according to the procedural rules of the country of the court, which are contained in the general procedural laws, as well as special laws containing the norms of international procedural law, and depending on the circumstances of the specific case, according to the application of the principle of *lex specialis derogat legi generali*.

International jurisdiction is an abstract jurisdiction, in the sense that it implies the authority of all courts in one country to resolve a specific dispute, and which court will actually act is further determined by the rules on local and substantive jurisdiction. In this sense, international jurisdiction, like substantive jurisdiction, is defined by the subject matter of the dispute (because it implies the jurisdiction of national courts for a special type of dispute, and is more closely determined by criteria that are similar to the bases of local jurisdiction, with the exception of citizenship). The order of actions in the case of a dispute with a foreign element implies to first determine whether there is a basis for establishing international jurisdiction. If the answer is affirmative, the stage of determining the applicable law is reached, because the internationally competent court applies its own conflict of law rules[1]. In addition, the internationally competent court applies its procedural

[1] This consequence of established international jurisdiction is the basis of forum shopping, where the parties can choose an internationally competent court (whose jurisdiction is stipulated by law) in order to influence the outcome of the dispute through the choice of governing law through the conflict of law norms of the state of the internationally competent court.

rules. Based on international jurisdiction norms, conflict of laws norms and legal qualifications of domestic law, the court first decides whether it has jurisdiction, and then which law is competent to resolve the given dispute.

Norms on the determination of international jurisdiction are imperative norms[2], which means that in every dispute that has a relevant connection with another state or other states, it must first be established whether there is a basis for international jurisdiction. This is done by referring to the norms that resolve the conflict of jurisdiction and further determines whether there is a basis for general or special international jurisdiction (Đundić, 2022, p. 1047). If there is no basis for establishing general or special international jurisdiction, based on regulations or an international treaty, the court will be able to resolve the dispute with a foreign element if it can establish international jurisdiction by referring to the relevant provisions of civil procedural law – norms on local jurisdiction, which are applied as subsidiary[3]. If international jurisdiction cannot be established, the court to which the lawsuit was filed, or another act that initiates the proceedings, has an *ex officio* obligation to declare itself without jurisdiction, cancel all previous actions in the proceedings and dismiss the lawsuit, unless the jurisdiction depends on the consent of the defendant, and the defendant has given his consent. Then the procedure continues based on the prorogation of international jurisdiction. Again, the conditions for the prorogation of international jurisdiction are contained in the regulations on the resolution of conflicts of jurisdiction. The court takes care of its international jurisdiction *ex officio* during the entire proceedings, even though the facts on the basis of which it is established, and eventually perpetuates are established at the moment of delivery of the lawsuit to the defendant (that is, when the defendant becomes aware of the initiated proceedings), according to the applicable rules of the LRCL. This does not exclude the possibility of suspending the proceedings if the basis of international jurisdiction disappears due to the acquisition of immunity by the defendant, because the court has an obligation to take care of its jurisdiction throughout the proceedings, *ex officio*.

[2] Norms on jurisdiction are norms adopted in the public interest, so that the judiciary functions properly. Jurisdiction itself is a procedural prerequisite for initiating, conducting and ending a dispute (Stojšić Dabetić, 2018, pp. 46-47).

[3] The rules on local jurisdiction in disputes with foreign elements are always applied when international jurisdiction is not overridden by internal regulations, when it is not regulated by international sources, or when the existing regulations are not precise enough to be applicable in practice.

4. Perpetuation of international jurisdiction– perpetuatio iurisdictionis

With the passing of the LRCL, back in 1983, conditions were created for the normative regulation of international jurisdiction by a special law, according to the legal authority of the general procedural law. However, the legislator at the time failed to legally regulate every segment of the issue of determining and establishing international jurisdiction, which additionally creates problematic situations in practice, since even today the legal text, with certain changes that did not concern this issue, is in force and is being applied in litigation proceedings with a foreign element. There are two basic questions that should be regulated by law when it comes to international jurisdiction of the court: to which point in time are the facts on the basis of which the (non) existence of international jurisdiction is determined, and how do changes in those facts affect the international jurisdiction.

Article 81 of the LRCL expressly regulates only the moment relevant to the assessment of the existence of international jurisdiction of domestic courts. The international jurisdiction of the court of the Republic of Serbia, according to the LRCL, is evaluated in relation to the facts that exist at the time when the litigation begins. We see that the text or wording for which the legislator decided significantly differently from the wording that survives in all amendments to the LCP, and ties the assessment of the international jurisdiction of the domestic court to the facts that exist at the moment the claim is delivered to the defendant, because that moment is considered the beginning of the course of litigation. As a reminder, in civil proceedings without a foreign element, jurisdiction is assessed based on the facts that exist at the time the lawsuit is submitted to the court. The LRCL, as a *lex specialis*, further does not state the legal treatment of the change of facts in relation to international jurisdiction, i.e. the possibility of applying the principle of perpetuation of jurisdiction to international jurisdiction (Dika, Knežević & Stojanović, 1991, p. 261).

The LCP, in Article 16, paragraph 3, stipulates that the court will be declared *ex officio* to be incompetent, cancel the actions taken in the procedure and dismiss the lawsuit, if during the procedure it is established that the court of the Republic of Serbia is not competent to resolve the dispute, unless the jurisdiction of the domestic court does not depend on the consent of the defendant, and the defendant gave his consent in this particular case. This legal solution, incorporated into the legal text since the adoption of the LRCL, influenced the doctrinal positions at the time, which

declared in favor of the position that there is no application of the principle of perpetuation of jurisdiction in relation to international jurisdiction (Triva, 1983, p. 208; Poznić, 1983, p. 736; Dika, 1987, p. 23). Considering that the LCP is only partially derogated by the LRCL, the rule of the LCP has to be applied to segments of international jurisdiction that are not regulated by the LRCL (Poznić, 1983, 719). Dika, on the other hand, is not inclined to such an exclusive attitude, and marks as problematic the alignment of international with substantive jurisdiction, regarding the possibility of applying the principle of perpetuation, emphasizing that international jurisdiction is closer to local jurisdiction.

As for the moment for evaluating the international jurisdiction of domestic courts, the doctrine then took the view that it was a redactional error that had to be corrected by later practice. Although such a situation has not happened so far. In favor of the argument that it was an error by the legislator, the doctrine also highlighted the fact that in other provisions of the LRCL, international jurisdiction is tied to the facts that exist at the time of filing the lawsuit (Art. 59, Art. 61), so the LRCL itself is not uniform in its provisions regarding the moment to which the assessment of international jurisdiction is linked. Although we could interpret articles 59 and 61 of the LRCL as the intention of the legislator to deviate from the general rule in special cases, the justified aspiration that the legal regulation of international jurisdiction should still show a certain degree of complementarity would support the argument of "unintentional carelessness" of the legislator at the time.

As far as the practice is concerned, the postponement of the moment of establishment of international jurisdiction or binding it to the moment of delivery of the lawsuit to the defendant, certainly leaves a greater opportunity for the parties to manipulate the facts, although not unlimited since most disputes with a foreign element are initiated in the forum of the defendant. If there are conditions to deviate from the forum of general jurisdiction, the possibilities for abuse increase, although one should not a priori assume fraudulent intent in the actions of the parties, which results in a change in the facts on which international jurisdiction is based.

Bosnić, as well as Vuković, state that the application of the principle of perpetuation in the case of international jurisdiction is indisputable, as well as that the legislator's intention regarding the moment for assessing the international jurisdiction of domestic courts should not be considered a mistake, but a conscious and deliberate choice of the legislator, applying the *lex specialis* methodology, that is that Art. 81 LRCL derogated from the provisions of the LCP (Dika, Knežević & Stojanović, 1991, p. 261). A similar

point of view is represented by Knežević, emphasizing that there is no basis for different treatment of the application of the principle of perpetuation in relation to internal and international jurisdiction. Regarding the impact of a subsequent change of facts in favor of the existence of the exclusive jurisdiction of a foreign court, the doctrine considers that in this case, assuming that the perpetuation of international jurisdiction is not contested, the established international jurisdiction would have priority over the exclusive jurisdiction of a foreign court. Support for this point of view is found in the argument that the exclusive jurisdiction of a foreign court has no effect on the validity of the prorogation of the domestic forum (Knežević, 1988, p. 243). The exclusive jurisdiction of a foreign court is certainly a fact that primarily the parties should pay attention to, bearing in mind future intentions regarding the recognition and execution of the court decision and the final realization of their rights. In the opposite case, if the conditions for the international jurisdiction of the court are subsequently acquired, which did not exist at the time of delivery of the lawsuit to the defendant, reasons of expediency require that the establishment of the jurisdiction of the domestic court be enabled (Knežević, 1988, p. 243).

5. Perpetuatio fori vs perpetuatio iurisdictionis – dilemmas and solutions

Certainly, the change of facts on the basis of which the court based its international jurisdiction does not have to, and indeed is not, always a consequence of the fraudulent intent of the parties. It is possible that during the proceedings the legal basis of international jurisdiction may change, within the regular legislative procedure, or other circumstances that the parties could not influence, e.g. changes in the borders of a country. And then there is a reason to apply the rule on perpetuation of jurisdiction, for the sake of legal security of the parties.

From the aspect of procedural security, economic efficiency, and legal security in general, and by analogy with civil proceedings, there is no reason to deprive international jurisdiction of the possibility of perpetuation, or that the principle of *perpetuatio fori* does not apply in the context of international jurisdiction as *perpetuatio iurisdictionis*. Especially, bearing in mind that the influence on the facts on which the international jurisdiction is based directly affects the meritorious outcome of the dispute because it leads to the application of different conflict of law rules and, potentially, to a different governing law for a particular dispute, which is especially serious if fraudulent parties are

behind the change motives of the party or parties[4]. Therefore, in the context of disputes with a foreign element, if the jurisdiction of the domestic court was established at the moment of delivery of the lawsuit to the defendant (which is the relevant moment of "freezing" of the factual situation in the LRCL), the subsequent change of the facts on which the international jurisdiction is based will not affect its loss.

Now we come to two problematic situations in practice – one is the different moments of freezing the factual situation for the purposes of *perpetuatio fori* (initiation of proceedings) and *perpetuatio iurisdictionis* (beginning of the course of litigation), and the other is the possibility of prorogation of international jurisdiction and its influence on the establishment of international jurisdiction. We will see that they are interconnected, or that the postponement of the moment of establishment of international jurisdiction, in relation to jurisdiction in disputes without a foreign element, stems from the wide possibilities of prorogation of international jurisdiction.

According to Art. 81 of the LRCL, international jurisdiction is established on the basis of facts that existed and were known to the court at the time the claim was delivered to the defendant. It is a legally determined moment that is relevant to the assessment of the existence of international jurisdiction, because the provisions of the LRCL are primarily changed when deciding on the international jurisdiction of a domestic court. Although the LRCL does not explicitly talk about the establishment of jurisdiction, but only about the moment of its determination, the doctrine agrees that there is no reason to deny international jurisdiction the feature of perpetuation and that not mentioning this feature in the LRCL is an editorial error, which can certainly be remedied by referring to analogy with the principles of general civil procedure. Therefore, in a dispute with a foreign element, the court is

[4] Certainly, the change of facts does not necessarily have to be fraudulent, i.e. the change of facts may be the result of objective circumstances that the parties could not influence, as was the case after the breakup of the FRY and the creation of independent states, which inevitably affects the basis of international jurisdiction of the proceedings that were then in progress. Likewise, the High Court in Belgrade, in regard to the inheritance dispute in which a foreign element appeared after the secession of Montenegro, refused to declare itself without jurisdiction, specifically referring to the establishment of jurisdiction: "At the time of the filing of the lawsuit in 1994, there was no foreign element in this litigation. That element arose in the course of this procedure in 2006, after the secession of Montenegro, so in this particular case, given that the international element appeared during the procedure before the domestic court, while the procedure was already in progress, the domestic court could not be declared incompetent at this stage of the procedure, because the jurisdiction of the domestic court was retained" (Decision of the High Court in Belgrade, Gž 943/2014, dated 05/29/2014 year).

procedurally authorized to assess its international jurisdiction at the moment when the litigation begins, i.e. at the moment of delivery of the lawsuit to the defendant, and not at the moment of initiation of the proceedings, i.e. by submitting a lawsuit to the court (Decision of the Commercial Court of Appeal, Pž. 8230/2012 dated 01.30.2013). Later changes in the circumstances and facts on which international jurisdiction is based do not lead to its loss. The only exception is the case of subsequent acquisition of immunity (Court Practice of Commercial Courts – Bulletin No. 4/2016, 92-95).

Litigation in relation to the defendant starts from the moment he becomes familiar with the lawsuit, that is, from the moment the lawsuit is delivered to the defendant, and it is justified to appreciate the existence of international jurisdiction from that moment. According to the LRCL (Art. 50), when the jurisdiction of the domestic court depends on the consent of the defendant, it is considered that the defendant has given his consent by submitting an answer to the lawsuit, that is, an objection to the payment order, or in the case he has not challenged the jurisdiction or started arguing. Certainly, this brings with it certain difficulties, bearing in mind the existence of a foreign element. Most often, the process of delivering the lawsuit to the defendant will require a certain amount of time and the judicial cooperation of two or more countries, as well as special costs.

In disputes where jurisdiction depends on the consent of the defendant (Hoblaj, 2022, p. 70), i.e. in disputes in which prorogation of jurisdiction is possible[5], before declaring itself internationally incompetent, the court must determine that there is no express or tacit agreement on the prorogation of international jurisdiction. Jurisprudence has taken the position that in a situation where there are disputes with a foreign element in which the prorogation of jurisdiction is possible (Vukadinović, 2020, p. 386), it is premature to declare lack of international jurisdiction immediately after receiving the claim (Decision of the Higher Commercial Court, Pž. 3065/2005 dated 03.10.2005 – Judicial practice of commercial courts – Bulletin No. 4/2005). Therefore, in disputes with a foreign element in which the prorogation of jurisdiction is

[5] Prorogation of jurisdiction is one of the ways of establishing the international jurisdiction of a domestic court based on the consent of the parties. The consent of the parties may be contained in a separate written agreement on jurisdiction, a pleading or an oral statement of the defendant before the court. The condition for the validity of the prorogation agreement is the existence of a mixed dispute, in the sense that one party is a domestic person, and the other party is a foreign person, and this is appreciated at the time of delivery of the lawsuit to the defendant (Decision of the Supreme Court of Cassation, Prev 236/2014, dated 04.04.2016).

possible, the court is bound to declare itself internationally incompetent *ex officio* only if the defendant does not respond to the lawsuit at all and does not respond to the court's invitation to attend the preliminary hearing, and by law there is no other grounds for establishing jurisdiction other than the defendant's consent.

The draft of the Law on International Private Law, which was created in 2012 and was withdrawn from further procedure until the adoption of the Civil Code, can be a good guide to the direction in which the domestic jurisprudence and the legislator will move in the matter of regulating the establishment of international jurisdiction. In the text of the Draft Law, the determination and establishment of international jurisdiction are explicitly distinguished, and two separate articles of the Draft are even divided. In relation to the valid LRCL, as the relevant moment for determining the facts and circumstances on which international jurisdiction is based, the moment of initiation of the procedure (submission of the claim to the court or other competent authority) is determined, as in the LCP. When a possible lack of international jurisdiction is established in the course of the proceedings based on the provisions of an international treaty, law or provisions on local jurisdiction, the court will be declared incompetent, unless there are conditions for prorogation of jurisdiction. The hierarchy of rules on the basis of which international jurisdiction is determined ranges from international treaties, through laws, and all the way to regulations on local jurisdiction. The establishment of international jurisdiction is expressly provided for by a special provision that the court or other authority remains competent even if during the procedure the facts on which the jurisdiction was based, determined at the time of the initiation of the procedure, change.

6. Concluding remarks

Contemporary trends in comparative international private law have shown that after more than forty years of validity of the Law on Resolution of Conflicts of Laws with Regulations of Other Countries as a respected codification, there is a need to innovate the rules. At the same time, the impact of the *acquis communautaire* of the European Union results in the need for harmonization and unification of national rules with international private law within the European Union.

The extent to which the moment of initiation of the procedure, i.e. the moment of submission of the lawsuit or other act that initiates the procedure, is truly adequate for the assessment of international jurisdiction

can be assessed in relation to two factors. If we take into account that in procedures with a foreign element, the initiation of the procedure does not have to coincide with the knowledge of the defendant that the procedure has been initiated, i.e. upon receipt of the lawsuit or other document in the court, the defendant has no real possibility to immediately engage in challenging international jurisdiction if he has an interest in doing so. The process of delivering the claim to the defendant is generally longer in proceedings with a foreign element. This, on the one hand, gives the possibility that certain changes take place in their natural course and as such affect or not international jurisdiction. On the other hand, it narrows the space for possible procedural maneuver of the defendant in relation to international jurisdiction, unless it is a procedure where prorogation is possible. We believe that the defendant's space for a possible objection maneuver is narrowed, but to a significantly lesser extent, even in the event that the procedure is initiated on the basis of general jurisdiction, that is, in the defendant's forum, bearing in mind the possibility of submission as a procedural action. Another point of view on such a legal solution is the need to achieve a certain degree of complementarity in procedural rules related to judicial and non-litigation proceedings, regardless of the presence of a foreign element. In support of this position, the willingness of the legislator to explicitly foresee the establishment of international jurisdiction in the Draft of the new Law on Private International Law also speaks for itself.

It is indisputable that, in order to achieve a fair trial, the space for possible manipulations by the parties in relation to the facts on which jurisdiction is based must be significantly reduced by adequate legal provisions, and we believe that our legislator is moving in that direction. Also, for a significant number of proceedings, especially from contractual relations, the moment of assessment of the existence of international jurisdiction of the domestic court will be postponed, that is, it is linked to the action or statement of the defendant, with the same effect of the principle of perpetuation of jurisdiction.

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MEĐUNARODNA NADLEŽNOST – NEKE DILEME SPECIFIČNE PROCESNE SITUACIJE

APSTRAKT: Međunarodna nadležnost kao posebna vrsta nadležnosti nacionalnih sudova, ili drugih organa, za raspravljanje privatnopravnih sporova sa inostranim elementom se aktivira uvek kada u sporu postoji relevantan inostrani element koji određen građanskopravni ili trgovačkopravni odnos, odnosno spor vezuje za državu, ili više država, koja nije država suda. Pitanja međunarodne nadležnosti spadaju u domen međunarodnog građanskog procesnog prava, te procesna pravila koja se imaju primeniti sadržana su u Zakonu o rešavanju sukoba zakona sa propisima drugih zemalja, Zakonu o parničnom postupku i konkretno relevantnim međunarodnim ugovorima prema karakteru spornog pravnog pitanja. Predviđena zakonska rešenja ova dva propisa, koji stoje u odnosu opšteg (lex generali) i posebnog (lex specialis) zakona, razlikuju se upravo u pitanju delovanja principa perpetuacije nadležnosti. Takva situacija ostavlja praksi i doktrini da daju primenjive odgovore. U radu će biti prikazana i analizirana doktrinarna gledišta i sudska praksa u vezi sa ustaljivanjem međunarodne nadležnosti, sa ciljem da se oceni predloženo rešenje u predlogu novog zakona o međunarodnom privatnom pravu. Cilj rada jeste da dodatno razjasni specifičnu procesnu situaciju u kojoj se mogu naći sudovi koji su ustanovili svoju međunarodnu nadležnost na činjenicama koje su se u toku postupka promenile.

Ključne reči: *međunarodna nadležnost, ustaljivanje nadležnosti, princip perpetuacije, perpetuatio iurisdictionis*.

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COMMON LAW AND THE INSTITUTE OF BLOOD VENGEANCE

ABSTRACT: Common law is one of the oldest forms of legal regulations that developed through unwritten rules and norms of behaviour that were established in the earliest communities. This law was based on customs adopted by the members of social community and passed down from generation to generation. In the absence of codified laws, customs made it possible to maintain social order and resolve conflicts within the community. One of the most well-known norms of common law was the institute of blood vengeance. It represented a way of maintaining balance and it could be said to embody 'justice' within the community, reflected in the practice where murder or injury was reciprocated with the same measure towards the perpetrator or his family. In the earliest periods, this rule was deeply rooted in the belief that only revenge could restore lost honor and establish balance within the community. Given the importance of the institute of blood vengeance, this paper will analyze when and in which documents blood vengeance was first mentioned, its characteristics, as well as its two institutions – oath and conciliation. These institutions, by their origin and purpose, can be said to oppose this custom, and within them, certain elements for its suppression can be found.

Keywords*: common law, custom, blood vengeance, oath, conciliation.*

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1. Introduction

Unwritten norms contained in customs and oral tradition regulated life in a certain period of time and were formed over a long time period. A customary-legal norm contained in a particular custom is not shaped by a defintion, but is determined by behaviour and sanction of a social group as a whole and represents its developmental stage as well as experiences and awareness of the need of such a relationship. With the development of society, the customs gradually changed, expressing social maturity of a certain traditional profile and a certain time period. Customs are in each such level temporarilly and spatially determined, that is, they have certain specific contents and forms (Čulinović-Konstantinović, 1984, p. 53). The same is the case with the blood vengeance which changed its form over time. It is obvious that the blood vengeance is part of the customary law, known to all ancient people. It was created in the original community within the clan- tribal society. In that time period, the blood vengeance was an extra-state pattern of behaviour, that is, self-judgement, as it was usually called. Also, it represented an unequivocal warning to the attacker, that his family, fraternity and tribe are behind the attacked, as well as that the revenge threatens each male member of the family, fraternity and tribe.With such characteristics the blood vengeance presented a full expression of solidarity of the early society 'one for all, all for one'. (Karan, 1985, pp. 10–11). 'Blood revenge is a very rigid, brutal and drastic customary law, anathematized, condemned and rejected in the civilized world as such' (Ramljak & Simović, 2006, p. 389). Contrary to the 'state law' blood revenge had established rules which turned the custom itself into some kind of a legal order (Karan, 1971, p. 616).

It is relevant to mention that in the former Yugoslavia blood revenge took roots in some parts of Kosovo, South Serbia, Macedonia and Montenegro, and sporadically in some other areas as well. Explanations for its occurrence are scientifically unfounded, and thus unacceptabale, and are based on the presence of 'boiling blood', 'innate agressiveness together with destruction' etc. (Ramnjak & Simović, 2006, p. 390).

2. Customary law

Customary law refers to legal rules whose formal source is not found in a regulation passed by legislative body, but in the customs of social environment, which were created gradually and spontaneously (Blagojević, 1985, p. 958). A custom is an unwritten general rule, which was created by long-term adherence to the same way of behaviour and which is accepted by members of a particular

social group. On the other hand, law is an expression of concentrated will, while the creators of customs act spontaneously, they are anonymous and there is no consciously coordinated action among them with the aim of creating customs. Therefore, Stanković and Vodinelić state that certain theorists say that "law is closer to man's will and custom to his instincts" (1996, p. 42). Stanimirović and Divac (2023) point out that the customary law, during the last two centuries, can be understood as a set of norms of a certain content that are adhered to and that with their understanding and a value system they protect an organized society such as a tribe, a clan, a brotherhood, a certain environment or a social class and an ethnic minority (p. 57).

From a historical point of view,until the establishment of written sources of law, customs were the exclusive rules of behaviour that regulated life in a social community. They were created spontaneously as an expression of religion, culture, moral and tradition within people. Also, they are adapted to social reality, they are different, bearing in mind different social groups that apply them (Popov, 2001, p. 29).

"A custom is a social norm that is the result of a long and sponatneous construction by the social mass acting diffusely without a special organization for that purpose. Certain ways of people's behaviour in specific situations are repeated many times so that it becomes a habit through a long repetition and it starts to be considered obligatory to act this way in the future in given occasions. A custom, therefore, represents a norm created by a long repetition and which derives its binding force from this repetition" (Lukić, 1995, p. 30). From the mentioned above, the condition for creation, that is emergence of customs, is the maintenance of relative stabilty of social relations (Krstić, 2010, p. 11). A custom is formed through a long period of time by "repeating adequate behaviour for a social community" and on the basis of repeated practice it becomes a social obligation (Čulinović-Konstantinović, 1984, p. 53). Ancient customs come from the time of the original community. Customs are resistant to changes because they are deeply rooted in the social, collective and individual consciousness of people. They are passed down 'from generation to generation', so by repeating the same way of behaviour they have become a habit, which comes naturally (Blagojević, 1994, p. 38). On the other hand, Jering (1998) emphasizes that it is necessary to distinguish a custom from a habit, because a habit is a certain behaviour that has been permanently retained and established in a certain community, but does not contain a normative element, since nobody will be reprimanded due to, for example, having different habits than the majority. According to the same author, "a habit adheres to what is purely external, it is an expression of

continous action, and it does not judge the content of an action. However, a custom simultaneously expresses a judgement about the content of an action, a judgement that this content is good. A custom as such is a good custom. Failure to act according to a custom is considered a 'sin', as a violation of a custom, and there lies the reproach that something happened that should not have happened. When it comes to a habit, these terms are not used, which indicates it is completely different from a custom" (p. 270). In a system where a custom has become a social norm, an individual cannot commit an offense and avoid responsibility, because the consequences will surely come, which the community will take care of. One of the sanctions, i.e. norms of customary law is a blood revenge. Where the first written traces of blood revenge can be found, when did it originate, what are the specifics of its execution and which are its main institutions are questions that will be answered in this paper.

3. The first mentions of a blood vengeance

The oldest legal monuments, which are often said to be mostly codes of customary law of their time, are based on tradition. From the preserved legal – historical records, it is found out that all the peoples of the ancient East : Egypt, Babylonia, Assyria, India as well as those of the later slave – owning states, Rome, Greece etc., have visible remains of blood revenge and composition (more in : Jelić, 1927). The written record of blood revenge can be found in Hammurabi's Code, which sanctions the system of talion, 'eye for an eye' (article 196), 'bone for a bone' (article 197).[1] The Babylonians made a distinction between a slave and a free man , so the talion was applied only in cases of injury to free people, while the compensation was given to other citizens for the caused injuries.[2] A trace of talion system was also found in Law of XII Tables.[3] So, for example, it is prescribed that in the case of a serious body injury ('the case of breaking limbs') the principle of talion will be applied (Šarkić & Popović, 1996. p. 43).

[1] It is assumed that the well-known slogan 'an eye for an eye, a tooth for a tooth' originates from this article.

[2] This compensation is determined by article 198 of Hammurabi's Code that says: ' If he destroys a man's eye or breaks a man's bone, he must pay one mina of silver.' [Code of Hammurabi – translation of Čedomilj Marković]

[3] According to the common law that had ruled in Rome before the Law of the XII Tables, the heir could not inherit his ancestor who 'fell by the executioner's hand' until he had first revenged him, on the basis of which it can be concluded that the blood revenge was part of customary law among the Romans (Jelić, 1927, p. 75).

According to the Bible, the Jews were also familiar with the blood revenge and the system of composition, as all the ancient nations at the beginning of their development. Although the blood revenge was retained in the Old Testament, it did not remain in its original form beacuse it was precisely prescribed when and how it would be carried out. The content of the second and the fifth books of Moses is primarily taken into account here. "According to those regulations, the avenger was authorized to pursue his executioner and return the evil done to him with the same measure , i.e. 'life for life, an eye for an eye, a tooth for a tooth, an arm for an arm, a foot for a foot, a rope for a rope, a wound for a wound, a bruise for a bruise. However, a distinction was made whether the injury was caused negligently or intentionally, so in the first case the culprit could save himself by fleeing to some kind of asylum, in which case the avenger lost the right for revenge" (Jelić, 1927, p. 73). It is important to mention that in terms of revenge there was no difference between a man and a woman, as well as between a full-blooded Jew and a settler, while those who injured slaves were only responsible for their murders and not for the injuries they inflicted on them. Sharia law also had within it ancient forms of repression. More precisely, blood revenge is the only form of revenge retained in the Koran, and only for a murder with intention. At the same time, it is individualized according to the talion system. The composition is prescribed in the Koran only in the case of involuntary murder, and it is paid to the family of the murdered. (Kuran, p. 49).

Ruska pravda, the most complete collection of Old Slavic customary law from the 11th and 12th century contains three basic forms of the original social repression: exile from the community, blood revenge and ransom (composition). The first article of the oldest edition of Russian justice said: "If a man kills a man, then a brother takes revenge for a brother,or a son for a father, or a nephew or a sister's son. If there is no one to take revenge, then 40 hryvnias for the head." As mentioned in the article above, it can be concluded that the law imposed reconciliation as an obligation, and replaced revenge with the precisely determined amount of a ransom, and later this ransom turned into a fine (Šćepanović, 2003, p. 59).

In our region legal monuments from the era of Nemanjic appear in the 12th century and contain the institution of composition for blood crimes which was called "vražda (money compensation)".[4] So for example, in the charter of king Milutin (1299/1300. year) which was addressed to the monastery of

[4] 'Vražda (money compensation)' existed the whole time in the medieval Serbia and one half of it was always paid to the state, and on privileged church estates to the church, and the other half to the family.

Saint George on Serava near Skopje, prescribed that money compensation is not taken from the town and village, but from the murderer, and on that basis it can be concluded that personal responsibilty had already been introduced. "It is believed that our medieval states destroyed the tribal society as well as the blood vengeance, but that the arrival of the Turks, in a yet unexplained way renewed the tribal way of life and also the blood vengeance" (Karan, 1973, p. 25). According to the same author, many scientists consider that the tribal way of life had never been completely destroyed but continued to exist with certain changes after the arrival of the Turks. Documents about it can be found in the Turkish and Dubrovnik archives, in different sources such as texts on stacks, French authorities' orders, various statutes and laws, travel writers' records and of course, in people's memory.

The customary law of Albanian tribes was recorded no sooner than in the 19th century as Law of Leka Dukađin (Duričić, 1998). It is assumed that this law was named like this because of the reputation Leka had as a warrior in his community and beacuse he was a fair judge and knew the customs of his people. (Karan, 1985, p. 20). His law was passed down orally, from generation to generation for years in this community. These rules were collected and systematized in 75 points by Jovan Lazović and called 'Law of Leka Dukađin' (Stojković, 2020). Law of Leka Dukađin[5] precisely describes the occasions that obligate revenge, the ways it should be done and the limitations that had to be followed unconditionally.

4. Blood vengeance – origin and causes

It can be said that the blood vengeance is a legitimate behaviour on a certain level of the development of society. In the original community when the intergroup contacts and relations became more frequent and more complicated, the issue of protecting the members of a clan community from injuries and murders by members of other clans arose. Taking into account the protection of blood relatives who were obliged to protect and help each other, Samardžić (1967) states that it was normal that the institution of collective responsibility of the entire genus arose from this collective concern. The purpose of blood revenge was reflected in the fact that the members of one community, that was considered injured, took revenge on the members of other community, which the perpetrator belonged to.

[5] See for more details: Zakon Leka Dukađin [Law of Leka Dukađin]

On the injury or the murder was responded with the blood revenge which was directed not only to the person who committed the injury but to all members of the group. This is the first, primary phase in the development of the blood revenge. This form of the blood revenge is called the total revenge (Šarkić, 2011, p. 26), becuase it is done by kindred against kindred, group against group. When it comes to this unlimited revenge, both the perpetrator and any member of his group can be killed (Garson, 1926, p. 22). The blood vengeance in this period often turned into a war of extremination because one revenge due to its disproportion provoked and imposed another revenge, so the multiple revenges turned into a war that could end with the total destruction of a group that was numerically smaller and which therefore did not have the possibility to retaliate in the same measure. The consequences that were caused by the unlimited blood vengeance were very often disastrous for the feuding communities, so even their survival was questioned. The things mentioned as well as the development of the social consciousness had the effect of abandoning the original type of unlimited total revenge and reducing it to a narrower circle of people, that is, to the deliquent's family and his closer relatives. Over time, the blood vengeance transformed into the revenge aimed at the deliquent himself, that is, the perpetrator of the crime. In this period, an individual exclusively becomes responsible for his actions (Vidović, 1990, p. 167).

In a class society, representatives of social communities, i.e. the holders of power opposed the blood revenge and restrained it, defending in that way general interests, but also their positions in the society. In this way, execution of the blood revenge was limited, as mentioned before, by reducing it to the closest relatives, then on the individual, which led to the proportion between committed and retaliated evil by applying the so-called principles of talion (Šćepanović, 2003, p. 35). The principle of talion was adopted in the slave system. In this period, in the case of the injury of a free man, full proportion was applied in retaliation towards the person who caused the injury. So the talion became the means of offical protection in the slave society, but with limited application. More precisely, the talion could be applied only in cases of protection of physical integrity of free people, which meant that the legislator considered that only free persons, i.e. people of higher social status deserved such protection, which he openly emphasized and wrote down in the legal norm, i.e. in the Hammurabi's code (Vidović, 1990, p. 169). "The talion system in its evolutionary development went through three phases: *the primitive talion* according to which the injured person himself, that is, his relatives evaluated and returned to the offender the appropriate degree

of harm inflicted ; the *private court talion* according to which the judge as a disinterested person determined the injured party's right to revenge and determined the proportion between the injury inflicted and the retaliation that shoud have been done against the injured person, and after doing all that, the execution was given to the injured, i.e. his relatives; and finally, *a purely judical talion* according to which the judge not only determined the right to revenge and estimated appropriate degree of retaliation, but also carried it out through a special expert – operator, in the presence and under the supervision of the injured party" (Jeličić, 1927, p. 79).

When it comes to actions, that is, the causes that obligate revenge, they are accurately and extensively stated in the Law of Leka Dukađin. Revenge always occurred if someone was killed as a guest, and it was almost always obligatory if the victim of the crime was a child, a woman or an old man. Also, the revenge could and had to be done for many other actions ,especially those regarding the insult of honour and reputation, as it was at the same time the insult of the whole family of the one to whom it was inflicted. So, for example, honour could have been taken away from the man if someone spoils his mediation or an oath, if he takes his wife away from the house by force, if his house, barn, warehouse and other rooms in his yard were broken into, etc. (Karan, 1985, p. 22).

5. Blood vengeance – specifics of execution

Blood vengeance, as any other behaviour has its rules that determine precisely when it can be carried out, and when it cannot be carried out. These rules obligate revenge, but at the same time limit it and even prohibit. The right to blood revenge, according to the rule , is given by the committed murder or some action, which with its consequences is equated with these acts. In this case, the motive of the murder for which the revenge is carried out, as well as the way in which it was carried out, is of little importance. It can be said that the revenge was a duty , because if a person (a man) does not carry it out, he completely loses reputation and honour in the community, to which people were always very sensitive to. For that reason, the one who did not carry out a revenge in the community was considered a second class citizen. That is why blood revenge was not only a law, but duty as well.

Blood revenge is public. The avenger was obliged to publicly announce his action i.e. the murder so that the family of the murdered would not be mistaken who the perpetrator was, but also that it would be known who carried out the revenge. Revenge was announced with gunshots, after which

the avenger surrendered peacefully to the authorities and its proceedings. The duty of the avenger is to announce himself to his executioner and to warn him about the revenge so he would know who is attacking him and why, so that he has the opportunity to defend himself. The weapon of the murdered was not allowed to be taken, and especially not to be robbed, since such action was considered shameful.

As a rule, revenge could be carried out in any place with certain exceptions. So, for instance, revenge could not be carried out in places of worship or where believers would gather. Also, it could not be done when the executioner was in the company of a woman or under *oath* (Karan, 1985, p. 29). Customs require that at the moment of carrying out the revenge it is *penam sanguinis* paid by the victim, so in that way the community is warned that the revenge is taking place (Čučković, 1971, p. 259).

The rule is that the revenge is the right and duty of a man. Excluding a woman from a revenge is not a good gesture but rather a consequence of understanding that the woman is not capable of taking part in revenge or making serious decisions in the tribal community.[6] (Karan, 1985, p. 29). However, it does not mean that women had no role in blood revenge. They incited revenge, by keeping the objects of the murdered one and showed them occasionally, they would marry a man who took a revenge on himself. The woman was also a conciliator, beacuse as a 'godmother' with a child in her arms, she would go and mediate for the quarreling parties to reconcile. In addition, if it was completely necessary, a woman was also an indirect participant, if there was no one to carry out a revenge (Vlahović & Dančetović, 1998).

Vengeance could not be carried out on the priest beacuse he was unconditionally exempt from it, as well as the church was protected. On the other hand, revenge could be carried out on any male member of the family, brotherhood or tribe which owes blood regardless of their age, which means it could be a child in a cradle. However, there were very rare cases when vengeance was carried out on children or the elderly, since such an act was considered unheroic and shameful, beacuse in both cases the victim was weak (Karan, 1985, pp. 29–32). On the other hand, the most honest people, those who enjoyed the greatest respect, the heads of the family, who were at the top of the family hierarchy were in the greatest danger.

[6] Zurl claims that a woman in the patriarchal Albanian society "did not owe blood if she killed somebody,her relatives were responsible for a murder i.e. father and brothers. When a woman as a mediator enters between the quarreling parties , the quarrel must stop. If a woman takes someone for protection, even a murderer, no one may kill him" (Zurl, 978, p. 94).

It is important to emphasize that the revenge had to be carried out and every debt had to be 'paid' , even after a long period of time when even members of family could not remember any wrongdoings. So, an important feature of revenge is its timelessness. Namely, according to the customary law revenge can be carried out any time and it is completely unimportant when the event that was a cause for revenge happened. The sources do not give a complete answer to the question whether revenge was carried out only during the life of a 'blood debtor' or the family was exposed even after his death (Čučković, 1971, p. 259). Yet, Karadžić described the custom of keeping a bloody shirt or some other piece of clothing, so as to remind of the unsettled debt. This custom was especially prevalent among women, if they were left widowed or with small children (Herco, 2012, p. 245).

6. Blood revenge institutions

The main institutions of customary-law rules of behaviour, and blood revenge as well are oath and conciliation. In spite of the fact that blood revenge was considered sacred duty of a clan and a tribe, there was a search for conciliation between the warring parties. Search for the reconciliation would start by giving an oath by the damaged party. At the same time it is important to emphasize that the granting of an oath and conciliation always depended on the degree of guilt of both parties involved in the conflict, as well as other relevant circumstances (Šćepanović, 2003, p. 61). From a psychological point of view, blood forgiveness has very valuable consequences, which are reflected in the fact that ' it provides the person in question with social respect (because reasons for the boycott cease), while the person's sentiment of self-respect remains intact, which closes new possibilities of revenge since the main motive is satisfied in the best possible way for both parties (Karan, 1971, p. 62).

6.1. Oath

An oath is in many aspects an exceptional institution of blood revenge. It is actually a truce that can end in two ways, by a conciliation or a revenge. A conciliation ends a conflict, revenge continues it and an oath is somewhere between.

Đuričić (1979) states that in Albanian dictionary an oath is defined 'as a term of freedom and security given by the house of the murdered to the male members of the killer's family- that they will not take revenge as an end to

blood feuds and other disputes between families in the same tribe (alb. *fis*)' (p. 8). According to the same author, an oath represents confidence in the guarantor's personality that he will force the debtor to respect his rights, which means that without a personal guarantee there is no oath (Đuričić, 1979, p. 8). Oath is never given directly to the murderer or members of his household, which means it is always given through mediators, who are impartial in the conflicts they solve and who are good at reconciliation. The obligation to seek an oath immediately after the committed murder is of great psychological importance. Without it, the injured family would immediately take revenge that would surely be cruel and disproportionate. The period of 24 hours, the time an oath usually lasted seems short, but it is enough for emotions to 'cool down' to some extent. With an oath the immediate conflict is postponed and time is gained to prepare other actions regarding the settlement or possible reconciliation. Also, this truce is necessary so that the murdered would be buried with respect, which would be impossible if the injured family took revenge immediately. After the funeral the mediators do everything so as to prolong the oath. In doing so, they refer to the village's right to ask for and receive an oath, which lasts for 30 days. A village's oath has the purpose to find a peaceful solution to the conflict. It is important to emphasize that mediators ('bestari') did not receive any compensation for their services. For him, mediation on the one hand is a confession, and on the other hand it is a risk, because 'in case that family of the murdered killed the executioner during an oath, it would fall into hands of those who asked for an oath and his duty would be to take revenge on the murdered. For that reason the one who gave an oath had to be in good relations with the injured family, because only in that case he could be given an oath' (Karan, 1985, p. 39).

According to the rule, an oath must not have been broken. Whoever broke the oath brought upon himself general contempt and boycott of the whole community. Persons who violated the oath were deprived of military honour, their weapons were confiscated and publicly broken. Murderer who was given an oath for a certain period of time could walk freely and carry out his duties, but was not allowed to stand out too much in the community. The members of his clan guaranteed that he would live modestly and not misuse the given freedom (Šćepanović, 2003, p. 52). Oath is usually given by the host, that is, the head of the family, and it can also be given by other older man. In any case, it must be a person who knows his family well and the situation in it. If it is possible, all male members of the family are present at giving the oath, so that everyone knows about it and so that no one of them can, if he commits revenge under the oath, justify that he did not know abut

it (Karan, 1985, p. 40). In fact, an oath is not an ordinary truce, but wisely considered preparation for reconciliation.

6.2. Conciliation

As a means of curbing blood feuds, reconciliation between the blooded parties appears, known as composition (lat. *componere,* which means to reconcile), and for which in our customary law the term reconciliation is used. Jelić states that blood revenge and reconciliation are two completely different institutest that are fundamentally 'sharply' different. He further explains that the essence of blood revenge consists of returning evil to evil in proportion that according to the understanding of the avenger corresponds to the inflicted evil, and the purpose of the reconciliation consists of proportionate material compensation that the offenders give to the injured for the injure of damage caused. In other words, revenge is obtaining satisfaction by spilling blood of its offenders and the reconciliation is settlement through material compensation[7] (Jelić, 1927, p. 78). Reconciliation occurred more often and more easily if the family of the murdered person was poor and weak, so the excecution of revenge was more difficult or could call into question further survival of the family. According to the customary law reconciliation and settlement could occur in the following cases:

- if the murdered person deserved death by his work and incorrect behaviour towards the killer or members of his family,
- if the murder happened in the same brotherhood,
- if accidental inadvertent or mistaken murder happened,
- if two people argued and in that argument they mutually wounded each other, so one of them died as a result of the wounds received
- On the other hand, reconciliation could not occur:
- if the murder was committed out of jealousy or envy, or from an ambush, or by deception ,

[7] Material compensation that the offenders gave to the injured for the injury or damage caused was called blood fee. "Albanians call it 'poare e djakut' ('the price of blood'). Initially, it was not immediately paid in money because according to concepts of time a person's life was priceless and irreplacable. Therefore, instead of money, weapons or a riding horse with all the equipmnt were usually accepted. Much was gained by this settlement; the injured family was satisified because its deceased member was shown respect (as a hero), and the compensation (in this case material) did not offend its dignity, as it did not contain small things but objects that marked the external signs of the validity of that house. That is why the injured family demanded at all costs that the killer, as a condition for his death, hands over the rifle he used to revenge his family member. That rifle was called 'blood rifle' and it was sacred to that family" (Karan, 1985, p. 51).

- if the murderer was bribed,
- if someone's guest was killed,
- if someone hits somebody else intentionally and humiliates him in the public place,
- if someone raped someone else's wife or took her away from her husband, or when a woman becomes pregnant with a man who is not her husband,
- if a husband found adulterer with his wife,
- if someone 'makes a mistake' with a girl and will not take her for his wife,
- if someone maliciously hurts someone else's wife and as a result she gives birth to a dead child,
- if someone proposed to someoe else's fiancee or her parents 'give' her to another man and
- if someone hit somebody else intentionally and belittled him in a public place (Šćepanović, 2003, pp. 61–62).

Pavković (1977) states the presence of bloody reconciliation and the substitution of a dead man with alive one, which contain elements of revenge and reconciliation, but it is not about revenge nor material compensation, but above all about returning into the original state of social and economic balance. As an example, he says that among the Eskimos,when a man is killed, his family can force the killer to take place of the murdered man in his group. And among some African and black people, as well as among the North American Iroquois, father adopts the murderer of his son and treats him like his own son. A very special custom of blood atonement is giving a wife for the murdered man. Among the Bedouins of Syria and Jordan, the price of the blood of the murdered man is called *diya* and it consisted long of fifty camels, one milking and one racing camel and one *ghora*, that is a young free girl, who is a daughter, sister or aunt of the murdrer. She was married to the son, brother or a father of the murdered man without any gifts. If the murdered person was a sheik or belonged to a respectable and strong brotherhood, two or three girls were given. A girl married in this way did not have a full status of a wife, and she stayed in marriage until she gave birth to a male child (female children were not taken into account), and until he grew up and was able to carry weapons. During all that time it was considered that she was 'borrowed' to the relatives of the murdered in order to 'provide' a replacement for the lost memeber of the family by giving birth to a male child. When she fulfilled her'duty' *ghora* was free, and her current husband did not have any rights ove her (Pavković, 1977, p. 630).

Our oldest sources, from the Middle Age indicate that after the murder peace could be established by godfatherism and fraternity, and also by marriage between the parties making peace. Blood reconciliation is not done right after the murder, because the injured party would not agrree to it, but later, usually after one year. The most important act of reconciliation is ritual and public acceptance of godfatherism and fraternity.[8] Reconciliation was not offered to the brotherhood of the murdered man by the killer, but by the close and distant relatives. In all cases of blood reconciliation starting from the Middle Age new fraternities were in fact a certain type of social adoptive kinship. It preserved a clear symbolism of a man killer alive and not just anyone but the one who committed a murder. However, Pavković (1977) emphasizes that there is no known case that a new 'brother', 'son' or 'father' really moved into the home of the murdered one and replaced him in everything. Also, it is not known if and to what extent they replaced the murdered person in a social and ordinary life.

When it comes to reconciliation, it was carried out through serfs called 'blood court'. It was formed by friends and close relatives of the murdered person headed by the priest as the president of the court. There were usually 24 members in the composition of this court and 12 members for the inflicted wounds, and all of them were appointed by the family of the murdered or injured person. The trial was public, in an open field or in church. The task of the court was to listen to the witnesses, evaluate the evidence based on free belief and to rule on the amount of compensation, i.e. the blood fine, the way and deadline for its payment. The verdict was not in the written form, but guarantors were appointed on both sides who remembered and 'told' how the verdict was decided. Blood fee was more like a consent for reconciliation and a sign of attention from the killer, than a compensation or price of the life of the murdered. For that reason it consisted of giving things that are worn as an ornament and a visible sign that the blood of the murdered person was

[8] "At Arbanas in the area of Plava and Gusinja a brother or a father of the deceased, untying the bound murderer , addressed with these words: You are responsible to God for the evil you did, and from now on be my brother (father,son) instead of my deceased (father,son). In Malesia in northern Albania during the most solemn act of blood reconciliation, the injured party speaks solemnly and loudly so that all the present could hear: Now, and from now on we are brothers and may my brother's blood be pure t you. With these ords reconciliatins was over so everuone present reconciled and kissed each other. In Montenegro, the injured party would way these words to the executioner: ' You are healthy my dear brother, my dear friend and from today my godfather'. (...) The rest of you brothers and friends are healthy, welcome and be happy.' All this is transmitted as a promise to posterity , to preserve and nurture this friendship" (Pavković, 1977, p. 634).

repented of. In the beginning the amount of the blood fine was determined by an elected court (serfs), and later by a custom and then it was paid in money. The amount of blood fee determined in this way was differrent in various regions (Šćepanović, 2003, p. 63). After the appearance of reconciliation, that is the composition, it was left on the will of the injured party to choose the method of satisfaction – blood revenge or composition. So, in this phase there was the existence of both institutes, with the fact that evolution went in the direction of strengthening the composition and suppressing blood revenge. At the end of this process it remained that the murder was the only crime allowed to be sanctified by blood revenge, so that finally blood revenge as a criminal blood institution was abolished (Srzentić & Stajić, 1954, p. 10).

7. Conclusion

Blood revenge appeared at a time when the original community was at a lower level of development and its application was conditioned by underdevelopment. At first, total blood revenge was applied, with the fact that in the further development of social communities it evolved so it was narrowed down to the circle of close blood relatives and finally exclusively to the person of deliquent, i.e. the perpetrator of the crime. Over time, it was mitigated by the principle of talion, in the sense of proportionality and the sameness of the execution method. The introduction of talion meant a major progress in the construction of the system of responsibility, and in geeneral, because the revenge was aimed at the perpetrator of the offense and it was proportional, i.e. equivalent to the injury caused. Also, it is important to conclude that the punishment through the application of talion was at the same time the most elementary idea that was accepted by the state as a sanction against a legal violation.

As it has been emphasized before, blood revenge was disproportionate, because the entire brotherhood, even tribe was exterminated. Constant conflicts threatened to poison the entire community which is why it had to look for ways to somehow curb this behaviour, if it could not be removed in any way. Thanks to an oath, the agreed rules had to be respected under which revenge could not be carried out. Also, blood revenge could not be carried out on any male member of the family of the murderer's family, but as a rule on him, thus narrowing the possibility of community war over one murder, which was the rule in an early blood revenge. However, an oath did not end, but only interrupted enmity, which is why it was necessary to find some other way to curb the blood revenge, and even to abolish it if possible. It can be

concluded that it was curbed by the creation and introduction of the institute of reconciliation, i.e. composition, which symbolizes reconciliation through material compensation or symbolic acts of social bonding. Blood revenge was gradually replaced by a composition that sought to restore social and economic balance. And the role of 'blood vessels' and rituals such as godships and brotherhoods emphasize the importance and maintenance of peace. Over time reconciliation became stronger as a more acceptable solution, while blood revenge was gradually abolished.

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OBIČAJNO PRAVO I INSTITUT KRVNE OSVETE

APSTRAKT: Običajno pravo predstavlja jedan od najstarijih oblika pravne regulative koji se razvijalo kroz nepisana pravila i norme ponašanja koje su uspostavljene u najranijim zajednicama. Ovo pravo se zasnivalo na običajima koje su članovi društvene zajednice usvajali i prenosili sa generacije na generaciju. U nedostatku kodifikovanih zakona običaji su omogućavali održavanje društvenog reda i rešavanje sukoba unutar zajednice. Jedan od najpoznatijih normi običajnog prava bio je institut krvne osvete. Ona je predstavljala način održavanja ravnoteže i možemo reći „pravde" unutar zajednice koja se ogledala u tome da se ubistvo ili povreda uzvraćala istom merom prema počiniocu ili prema njegovoj porodici. Ovo pravilo je u najranijim periodima bilo duboko ukorenjeno u verovanju da se jedino osvetom može vratiti izgubljena čast i da se može uspostaviti ravnoteža unutar zajednice. Uzimajući u obzir važnost instituta krvne osvete u okviru rada analiziraćemo iz kog perioda i u kojim dokumentima i kada se prvi put pominje krvna osveta, koja su njena obeležja, kao i njene

dve ustanove ¬ besu i umir jer se u njima mogu pronaći određeni elementi za njeno suzbijanje, pošto su pomenute ustanove, po svom nastanku i nameni, možemo reći, protiv ovog običaja.

***Ključne reči**: običajno pravo, običaj, krvna osveta, besa, umir.*

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CHANGING THE LEGAL WORLD – ARTIFICIAL INTELLIGENCE AND COMMERCIAL INTERMEDIARY CONTRACTS

ABSTRACT: Artificial intelligence poses a challenge to modern legal systems, as it represents a societal phenomenon and an extension of social reality. Aware that social reality is rapidly evolving due to technological progress, we rightfully question whether the existing legal frameworks are sufficient and adequate to accommodate the changes occurring in the field of artificial intelligence. Specifically, legal subjects include natural persons and legal entities. Can we still limit ourselves to only these two categories today, when computers equipped with cutting-edge artificial intelligence programs increasingly play a significant role in making decisions with legal consequences? This paper will focus on analyzing contemporary social trends and their impact on the existing legal framework, utilizing an evolutionary interpretation of legal institutes. Through the example of natural and legal persons acting as intermediaries in the provision of services, specifically in transportation, we will examine this phenomenon and potential future developments. In this context, the paper will focus on judicial practice related to the Uber case.

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Keywords: *Artificial Intelligence, Commercial Intermediary Contracts in Transport, Applicable Law, Uber.*

1. Introduction

Modern companies are investing huge resources in the improvement of artificial intelligence, which significantly affects the change in their business. The main goals are to reduce expenses and increase income in business, increase efficiency and meet the needs of clients.

Nowadays, almost all social phenomena acquire a global character, and this especially applies to multilateral markets, which, through multilateral platforms, as intermediaries, strive to find and connect persons who will participate in various types of economic transactions. Increasingly, decisions about connecting interested groups are made with the help of artificial intelligence. However, even though the decision on connection is made "somewhere else", legal certainty dictates that the legal consequences and responsibility regarding these decisions must be clearly regulated.

Despite operating in a global market, companies and individuals who carry out the activity of intermediaries are subject to the regulation of national regulations governing their registration. However, when an intermediary contract is concluded by contracting parties, and one of them belongs to a different national legal system then the domestic contracting party, we speak about foreign element in contract relation. This "over problem" is regulated by Private International Law norms. In these cases the regulation of contracts depends on national conflict of law norms that determine the applicable legal framework.

As a primary principle in legal regulation, the principle of legal certainty dictates predictability in the sense of undertaking acts in the legal sphere, regardless of whether these acts are undertaken in the pure domestic or Private International Law sphere, or in the real or virtual sphere. In recent decades, the virtual sphere represented a significant challenge for legal science and practice. Even today, this challenge does not subside, but is additionally intensified by new technical and technological achievements.

Historically speaking, the elasticity of the legal system has been confirmed in different situations. Thus, for example, at the time of the foundation of electricity, the jurisprudence interpreted the theft of electricity as a criminal offense of theft of another's movable property, so that over time, amendments to the existing provisions would incriminate it as a separate criminal offense.

On the other hand, the evolution of law related to certain issues moved in the direction of changing the legal rules which for the present time proved to be anachronistic and outdated. Thus, for example, in the sphere of determining the governing law for contractual obligations, the *lex loci contractus* as a connecting factor proved to be inadequate, especially with the development of distance selling. The rapid development of traffic and communication through correspondence, telephones, teleprompters, faxes and e-mail has led to the fact that the place of conclusion of the contract can be completely accidental, so serious difficulties arose when determining which place should be considered the place of conclusion of the contract (Varadi Bordaš, Knežević, & Pavić, 2016, p. 386). The science of Private International Law has given an answer to the question of which connecting factor is considered adequate. However, the question arises whether artificial intelligence imposes the need for a new change, or will evolution go in the direction of abstracting new trends into existing legal frameworks?

2. Commercial Intermediary Contracts

The commercial intermediary contract is a contract on the performance of commercial activities in which one of the contractual parties-the intermediary, obliges to find and connect with his principal, as another contractual party, a person who would negotiate the conclusion of a certain commercial contract and the principal obliges to pay him the agreed fee if the contract is concluded. The role of the intermediary consists in bringing the principal (his client) in contact with potential partners for concluding certain contracts.

The intermediary undertakes obligation to look for an opportunity to conclude a certain contract with the care of a prudent businessman and to point it out to his principal, informing him of all the circumstances significant for the performance of legal work that are known to him or should have been known to him. During the contract's duration, the intermediary's obligations include complete loyalty to the principal, adherence to the instructions received from the principal, as well as protection of his interests, full discretion and providing any other assistance to the principal related to the contract realization. Concerning national legal system the intermediary contract is named contract (the provisions of the Law on Obligations from 1978), informal contract (consent of the will is sufficient), contract *intuitu personae* and accessing contract. If it considers a foreign element the Law on Foreign Trade Business from 2009 will apply as well as international trade customs. The Law on Foreign Trade Business is relevant in relation to the mandatory provisions while dispositive

norms are determinate in accordance with party autonomy or the provisions of Private International Law Act from 1982.

Today, the commercial intermediary contracts are mostly concluded on line. One of the most important definitions of e-commerce was given by the United Nation Commission on International Trade Law (UNCITRAL): "e-commerce is a set of all commercial activities undertaken through the exchange of information generated or stored electronically, optically or analogically" (Hill & Walden, 1996). The UNCITRAL adopted Model Law of Electronic Commerce in 1996 (hereinafter: MLEC) in order to empower and facilitate e-commerce by providing national legislatures with a set of internationally accepted laws aimed at removing legal barriers. In Art 1 (e) of Chapter I (General provision): "Intermediary, with respect to a particular data message, means a person who, on behalf of another person, sends, receives or stores that data message or provides other services with respect to that data message".

The legal framework on European level is assured by Directive on electronic commerce (Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market, 2000).

Concerning contracts with a foreign element European Private International Law legal framework is settled by Regulation (EC) No 593/2008 on the law applicable to contractual obligations (Rome I Regulation). According to Art. 3 of Rome I Regulation a contract shall be governed by the law chosen by the parties. If there is no such a choice Art. 4, 1, a-h, prescribe a list of connecting factors for different types of contracts. The intermediary contract is not on the list, but there is a general rule in Art. 4, 2 applying where the contract is not covered by paragraph 1, prescribing that the contract shall be governed by the law of the country where the party required to effect the characteristic performance of the contract has his habitual residence. Concerning commercial intermediary contracts it is clear that an intermediary is carries out an characteristic obligation.

3. Reshaping intermediary contracts in transport-modern trends on the UBER example

According to data from 2023, Uber had more than 118 million monthly active users worldwide (Uber Annual Report, 2023). Uber, as a middlemen company, has more than 5 million drivers using the platform globally, which represents a significant number of service providers that are part of this business model. Uber's annual profit was about $31 billion in 2022,

which shows the growth and demand for the services it offers. These figures illustrate the scale of Uber's business and indicate the importance of the legal framework governing the relationship between drivers and passengers.

Given that Uber operates on a global level, it is necessary for different jurisdictions to align in order to create standards for a safer and fairer business. Global standards for the operation of platforms such as Uber can help regulating and reducing legal risks. These standards should include aspects such as consumer protection, liability and ethical standards for the use of artificial intelligence. Cooperation between countries is key to solving the challenges brought by digitization. Many countries and cities have recognized the need to regulate digital platforms like Uber, and have begun to develop legislative initiatives that oblige platforms to take responsibility for drivers and their activities (Kumar, 2024a).

Uber's platform faces different challenges in each market, further emphasizing the need to adapt to local laws, customs and user preferences. Adapting to local conditions is important to business success and sustainability.

Uber uses artificial intelligence in a number of areas, from determining driver routes to pricing based on demand, but also in the field of autonomous vehicles. Contemporary intermediation trends, such as those represented by Uber, highlight the importance of digital platforms in reshaping traditional industries. These trends bring new opportunities, but also challenges that require careful management and adaptation. Uber remains a key example of how technology can change the way services are offered and used, but also how the work environment is shaped in the 21st century.

4. Legal liability and challenges

The MLEC should not be misinterpreted as allowing for a computer to be made the subject of rights and obligations. Data messages that are generated automatically by computers without direct human intervention should be regarded as "originating" from the legal entity on behalf of which the computer is operated. Questions relevant to agency/intermediary that might arise in that context are to be settled under rules outside the Model Law (MLEC, p.27). However, the focus of the MLEC is on the relationship between the originator and the addressee, and not on the relationship between either the originator or the addressee and any intermediary. The MLEC is focused on the relationships between originators and addressees, but not on the rights and obligations of intermediaries, even one of this parties could act as an intermediary. The scope of MLEC is addressed on commercial activities as to cover matters

arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road. On the other hand, the UNCITRAL Convention on the Use of Electronical Communication from 2007 even also focused on the relationship between the originator and the addressee and not dealing with the rights and obligations of intermediaries, does not ignores their role (such as servers or web hosts) in receiving, transmitting or storing data messages on behalf of other persons or performing other "value-added services", such as when network operators and other intermediaries format, translate, record, authenticate, certify or preserve electronic communications or provide security services for electronic transactions.

The objective of EU Directive on electronic commerce is to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between the Member States. The Directive deals separately, in Section 4, with Liability of intermediary service providers, prescribing different conditions for non liability of an intermediary in cases of "mere conduit" (Article 12), "catching" (Article 13) and hosting (Article 14).

5. Regulation and ethical aspects

From the comparative prospective, the codes of ethics of intermediary regulate the ethical principles and rules of the intermediary behavior. Such a Code is in force in Republic of Serbia from 2014. The intermediary has to act impartially. Impartiality does not exist if: he has a personal or business relationship with one of the parties; he has a financial or other interest in relation to the subject of mediation, or if he acted in favor of one of the parties in the intermediary procedure.

Concerning these requests it is obvious that Uber is not providing only technical platform, but offers transportation services that ECJ states in preliminary ruling mentioned below. But even it does not act as an intermediary Uber often faces criticism for the way its technology is used, leading to the need for regulation. The regulatory framework in many countries and cities includes taxi, licensing and driver safety laws, but implementation of these laws is often challenging.

Ethics and bias in algorithms are also a significant problem; there is a risk of bias in the algorithms used to determine pricing or driver selection. The development of ethical guidelines is necessary to ensure fairness and transparency in business.

The lack of uniform standards in many jurisdictions can lead to legal uncertainty and increased risk for all parties (Davis, 2020a). Uber must actively address social issues and criticism, and also communicate transparently about its practices and efforts to improve services (Roberts, 2020a).

Also, Uber should provide transparency about the data it uses for analysis and decision-making. Algorithms used to determine drivers or prices should be clear, ensuring that all participants understand the rules of the game. The local community can play a significant role in shaping Uber's policies, especially regarding safety and the local economy (Garcia, 2018). Issues of legal liability, driver rights and ethical standards are challenges that Uber faces, and clearer regulations are needed to ensure legal certainty and protection for all participants.

In many jurisdictions, consumer protection is also an important aspect, but the question arises as to how these laws apply to platforms like Uber. It is necessary to clearly define how legal certainty can be ensured within these digital transactions. For example, in California, an Uber driver caused an accident, and the issue of liability led to lengthy legal proceedings, indicating the complexity of the legal framework in which Uber operates (California Public Utilities Commission, 2016). This situation has caused the need to revise the legal regulations related to digital platforms and their relations with users.

If Uber is considered as a service provider, the issue of minimum salary and working conditions is another challenge. Many drivers face low salaries, which can lead to financial problems. The regulation should ensure minimum working conditions that will protect the interests of drivers (Kumar, 2024a). Ethics in business is also an important aspect; dynamic pricing can cause frustration among consumers, so transparency in pricing methodology is key (Taylor, 2021a).

If Uber platform is considered as a middlemen company, then the relationship between Uber and users, including drivers and passengers is defined by Commercial Intermediary Contract. This document sets the basic legal framework, defining the obligations, rights and responsibilities of all parties. Uber as an intermediary has an obligation to provide a secure platform that connects drivers and passengers, while drivers must comply with quality standards, including licensing and insurance (Anderson, 2022a). Passengers also have responsibilities, such as respecting the driver and using the platform properly.

The contract also ensures ethical standards, such as informing consumers and drivers about pricing methods and how algorithms work. This can reduce complaints and increase trust in the platform (Roberts, 2020b). Ultimately, the contract is an umbrella in defining the relationship between all participants in the Uber ecosystem, and its structures and challenges must be constantly adjusted to ensure legal certainty and transparency in business.

As mentioned before, one of the most significant challenges is the issue of legal liability. When an incident occurs, the question of who bears responsibility becomes complex. Uber positions itself as a platform that connects drivers and passengers, and in many jurisdictions intermediaries are held liable only for their actions, while drivers are independent contractors (Anderson, 2022a). This legal distinction can make it difficult for consumers to prove their justice in the event of an accident.

6. Applicable law in the ride-sharing industry: challenges and solutions

Uber Technologies, Inc. is one of the most significant middlemen companies in the field of ride-sharing services, which connects drivers and passengers through a digital platform (Uber Technologies, Inc., 2023). This innovative service has changed the way people access transportation, but at the same time it has opened up a number of legal issues, including platform liability and the issue of commercial intermediary contracts.

Legally, a commercial intermediary contract defines the obligations and rights of an intermediary, in this case Uber, who acts as a link between a driver and a passenger (Smith, 2022). This contract governs the provision of services, as well as aspects of security, driver licensing and obligations to the consumers. When determining the applicable law to these contracts, courts consider a number of factors, including the location of service provision, each party's legal framework, and relevant statutory provisions (Johnson, 2021).

One of the key aspects of legal disputes involving Uber concerns the company's liability for the actions of drivers, particularly when incidents or injuries occur while driving (Davis, 2020b). In the case of Uber Technologies, Inc. c. California Public Utilities Commission, the court upheld the regulatory body's right to set rules for Uber's operations, emphasizing the company's obligation to ensure certain safety standards to protect consumers (California Public Utilities Commission, 2016). This ruling had a significant impact on the regulation of ride-sharing platforms and pointed to the responsibility of intermediaries for the safety of passengers.

An important topic is how Uber's obligations as an intermediary are defined in intermediary contracts. Depending on the jurisdiction, approaches to defining those obligations can vary significantly (Lee, 2023). Some courts have concluded that Uber cannot completely exclude its liability for drivers who are independent contractors, while in other cases there may be interpretations that favor the independent contractor model, thereby reducing the company's liability (Garcia, 2019).

Determining the applicable law is crucial, not only when dealing with international elements, but also in domestic disputes, where different laws may apply based on the nature of the services and the legal status of the parties to the dispute (Gernett, 2022). This question often depends on the specific circumstances of the case and the legal frameworks that apply in certain jurisdictions.

As shown, the complexity of legal issues related to Uber and similar platforms presents a challenge to the legal system. It is necessary not only to understand the relevant laws, but also to adapt those laws to new business models and technologies (Miller, 2024). As the market develops, the legal framework must also change in order to ensure consumer protection and legal certainty for all parties involved in transactions.

Applicable law refers to the legal system that applies to a certain legal relationship or transaction, and in the context of intermediary contracts, it can significantly affect the interpretation and implementation of contract provisions, as well as the rights and obligations of the parties (Thomas, 2023). Uber, as a global company that provides ride-sharing services, operates in multiple jurisdictions, which leads to complications when determining the governing law (Taylor, 2021b). For example, when a traveler from one country uses the services of a driver from another, the question arises as to which legal norms will apply, which can create legal uncertainty and make it difficult to resolve disputes (Roberts, 2020b).

Many countries have conflict of laws rules to help determine the applicable law in transactions with a foreign element, but these rules are often unclear (Anderson, 2022b). Different legal systems may have different approaches, further complicating the situation. In some cases, the parties may choose the applicable law to apply to their contract. This freedom of choice can be useful for companies like Uber, which often use choice-of-law clauses in their contracts to pre-define the legal norms that will apply in the event of a dispute (Nelson, 2023). Although such choices can increase legal certainty, they can also cause uncertainty if the parties disagree on the interpretation of those clauses (Kumar, 2024b).

The issue of consumer rights plays a significant role in this context. In different jurisdictions, consumer protection laws can vary significantly, and choosing a governing law that is not favorable to consumers can lead to frustration among users (Harris, 2022). In addition, regulations differ from one jurisdiction to another. For example, some laws may place additional requirements on drivers or platforms, such as registration obligations or adherence to local standards (Clark, 2023). This may affect the enforcement of the intermediary contracts and the rights and obligations of the parties.

International bodies, such as the Hague Conference on Private International Law, may also be relevant, as they set rules for determining the applicable law in transactions with international elements (Jones, 2021). In this sense, the applicable law plays a key role in ensuring legal certainty. A clearly defined applicable law can increase predictability in business, which is crucial for all participants in transactions. This element of predictability can help reduce the number of legal disputes (Parker, 2022).

When disputes arise, a clearly defined applicable law can facilitate their resolution and enable effective legal decisions (Stewart, 2023). For a company like Uber, the understanding and proper application of applicable law in intermediary contracts are essential to successfully operate in a global environment and preserve the rights of all participants in this process (Wilson, 2024).

7. The European Union approach

On December 20, 2017, the European Court of Justice-ECJ issued a highly anticipated ruling on the legal classification of Uber's services which connect users of its smart phone application to non-professional drivers using their own vehicles. The case at issue was brought before the ECJ by a court in Spain requesting a preliminary ruling (Asociación Profesional Elite Taxi, Case C-434/15). Whereas Uber claimed that it only provides a technical platform, the ECJ held that Uber offers transportation services which can be made subject to an authorization scheme by the Member States in the European Union (EU), similar to the ones used for taxis (Gesley, 2018).

The ECJ concluded that the service Uber provides must be classified as "an integral part of an overall service whose main component is a transport service." The ECJ took the view that the service at issue must therefore be regarded not as an "information society service" but as a "service in the field of transport." (Case C-434/15, para. 40.) However, in that regard, Court states that the intermediation service provided by Uber is based on the selection

of non-professional drivers using their own vehicle, to whom the company provides an application without which (i) those drivers would not be led to provide transport services and (ii) persons who wish to make an urban journey would not use the services provided by those drivers. In addition, Uber exercises decisive influence over the conditions under which that service is provided by those drivers. On the latter point, it appears, inter alia, that Uber determines at least the maximum fare by means of the eponymous application, that the company receives that amount from the client before paying part of it to the non-professional driver of the vehicle, and that it exercises a certain control over the quality of the vehicles, the drivers and their conduct, which can, in some circumstances, result in their exclusion (Case C-434/15, para. 40.).

The responsibility of the platform is posed as a key dilemma. It depends on interpretation whether Uber is an information society service acting as an intermediary or provider of transport services.

One of the main legal challenges facing Uber is the issue of liability for mistakes made by artificial intelligence. For example, if AI recommends a driver who is later involved in an incident, whose responsibility it is? Uber, as a platform, cannot be held responsible for the actions of drivers, given that drivers act as independent contractors and not as employees. But, the answer is different if Uber is considered as a provider of services.

8. Key court decisions: analysis and significance – determining the applicable law

Decision in the case of Uber Technologies, Inc. c. California Public Utilities Commission, No. 164 Cal. App. 4th 252 (2016), addressed regulations that the California Public Utilities Commission (CPUC) imposed on ride-sharing companies, including Uber. In this dispute, Uber challenged regulations related to driver licensing, fares and incident reporting, arguing that these regulations are excessive and hinder its business model as a digital platform that connects drivers and passengers. The court, however, affirmed that the CPUC has the authority to regulate Uber's operations in California. The decision emphasizes the importance of market regulation and the responsibility of platforms like Uber, noting that regulations are aimed at protecting consumers and preserving public safety. The court particularly pointed out the importance of licensing drivers and setting safety standards as key measures to protect passengers. The applicable law in this case refers to the legislative provisions concerning the regulation of public services and transportation, which define the powers of the CPUC. This ruling sets

an important precedent for the regulation of new technologies and services in transportation, emphasizing that regulators have the right to set rules and standards that ensure consumer protection, thus paving the way for future regulations in this sector.

Decision in Doe v. Uber Technologies, Inc., No. 2018 WL 4089628 (Cal. Ct. App. 2018) addressed Uber's liability for sexual assault while driving. The plaintiff claimed that Uber was responsible for the safety of its passengers and sought damages for the driver's assault. The court ruled that Uber was not liable because it did not have direct control over the driver, raising important legal questions about the platform's liability for the actions of independent contractors. The court confirmed that drivers are treated as independent contractors, reducing Uber's liability. It also confirmed that the driver's background check procedures were adequate. Ultimately, the court concluded that Uber was not directly involved in the incident, setting a precedent for platform liability in the gig economy. In this sense the gig economy implies free market system where organizations and independent workers are engaged in short-term work arrangements. However, the issue of passenger security remains important to the legal discussion on digital services.

Decision in O'Connor v. Uber Technologies, Inc., No. 2016 WL 446152 (N.D. Cal. 2016), focuses on the status of Uber drivers, whether they are employees or independent contractors, which affects their rights and obligations. Governing law relies on California labor and consumer law. A group of drivers filed a class-action lawsuit, arguing that they should be classified as employees because of Uber's direct supervision.

The court ruled that drivers can be independent contractors, but left open questions about possible exceptions. It rejected Uber's request to settle the dispute through arbitration, allowing drivers to proceed with a class action lawsuit. The decision points to the need for further analysis of the rights of drivers and possible changes in legislation, laying the groundwork for a discussion about the rights of workers in the gig economy. The decision in the O'Connor case is significant for the legal framework of work in the gig economy.

At the end there were two contradictory decisions in domestic court practice. In the case of the High Court in Belgrade, number 15 P 98/2021, the question of the responsibility of the CarGo company, which is not exempted from responsibility for damage, while driving was considered, considering the obligation to confirm the driver and the condition of the vehicle. The applicable law in that case relies on the Law on Obligations, which defines the responsibility of intermediaries in the provision of services.

In the case of the High Court in Belgrade, number 12 P 147/2020, the classification of CarGo drivers is considered. The court ruled that drivers can be classified as employees, giving them access to rights such as health insurance and minimum wage. This decision highlights CarGo's direct supervision of drivers, indicating the characteristics of an employment relationship. The applicable law in this case relies on the Labor Law of the Republic of Serbia, which defines the rights and obligations of employees. The decision contributes to the development of legal regulation in the field of gig economy in Serbia.

Both cases deal with the issue of worker classification, but with different outcomes. Previously, also in O'Connor case, it was left open for some drivers to remain classified as independent contractors, while in CarGo the ruling found that the drivers were employees. These decisions are crucial for understanding the rights of workers in the gig economy and adapting the legal framework to modern business models.

9. Conclusion

The judgments presented in the paper show the complexity of the challenges that courts face in resolving disputes in modern business. On the example of Uber Company we presented evolution of legal framework in line with new technologies and business models.

The legal framework needs to ensure legal certainty and protection for all parties involved in transactions. Using new technologies is changing legal perception. The obligations and responsibility of modern intermediaries in the modern business world must be intensified in order to protect consumers.

The use of artificial intelligence cannot cure them, and somebody has to take responsibility on decisions made by computers (Spalević & Ilić, 2024). Hence, the role of an intermediary in a commercial contract shifts to a role of a party in main contract on which the intermediation is carried out. The decisions made by computers have to be attributed to one party in the contract. The intermediary has to intermediate between two legal persons, not between computer and legal person. If he use platform in realizing of the contract then its role shifts to a party of a basic contract with regard to which intermediary arises. It is obvious on Uber example that intermediary contract shifts to a contract for the provision of services. However, the service is about the carriage of passengers and it demand special requests in order to protect passengers as a weaker party of a contract. These involve application of set of both collision and mandatory norms that have to be considered in regulation of ride-sharing.

Considering that the issue of security is also involved, local and state authorities are also interested in this issue and its mandatory rules have to be taken into account.

However, as technology develops and the volume of business grows, it is necessary to constantly review and adapt the legal framework to ensure accountability in all transactions, as well as to ensure the protection of all participants.

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PROMENA PRAVNOG SVETA – VEŠTAČKA INTELIGENCIJA I UGOVORI O TRGOVINSKOM POSREDOVANJU U TRANSPORTU

APSTRAKT: Veštačka inteligencija je izazov za savremene pravne sisteme koji kao društveni fenomen predstavlja nadgradnju društvene realnosti. Svesni činjenice da se društvena realnost usled tehnološkog napretka ubrzano menja, mi s pravom postavljamo pitanje da li su postojeći pravni instituti dovoljni i adekvatni da apsorbuju promene koje se dešavaju na

polju veštačke inteligencije. Naime, subjekti prava i obaveza jesu fizička i pravna lica. Možemo li danas govoriti samo o ove dve kategorije, kada kompjuteri opremljeni najmodernijim programima veštačke inteligencije igraju sve značajniju ulogu u donošenju odluka koje imaju i pravne posledice? U radu ćemo se fokusirati na analizu savremenih društvenih trendova i njihov odnos na postojeći pravni okvir služeći se evolutivnim tumačenjem pravnih instituta. Na primeru fizičkih i pravnih lica koja posluju kao posrednici u pružanju usluga posmatraćemo navedenu pojavu i moguće pravce daljeg razvoja. U tom smislu, rad će se fokusirati na sudsku praksu u predmetima vezanim za Uber.

***Ključne reči**: Veštačka inteligencija, Ugovor o posredovanju transportu, Merodavno pravo, Uber.*

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LEGAL CHALLENGES OF THE IMPLEMENTATION OF BLOCKCHAIN TECHNOLOGY IN THE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

ABSTRACT: The reform of collective management of copyright and related rights, along with the organization structures, is being carried out within the framework of the European Union and at the domestic legislative level. All of the legislative activities can be viewed in two ways: one part focuses on establishing a solid framework for organizations to manage collective copyright and related rights, while the other aims to adapt this institute to the circumstances where the internet and digital content prevail. Blockchain is an open-source innovation that, through a revolutionary approach, can change the execution of transactions between individuals, legal entities, and machines. The establishment of a clear legislative framework in the domain of digital property creates the assumption that this type of technology can be applied in many areas of social life, with the emphasis placed on its implementation in the domain of collective management of copyright and related rights to improve the work and functioning of organizations. Blockchain technology could be used as a tool to overcome certain problems in the operations of collective copyright and related rights organizations, primarily: inefficiency, lack of economy, and lack of transparency. On the other hand, we must not overlook the possibilities aimed at improving the status of authors and

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ensuring adequate compensation for the use of their works on the internet. The challenges of implementation are multifaceted and essentially of a legal and technical nature, and the terms blockchain, smart contracts, and cryptocurrency are currently subjects of intense debate in legal theory and practice around the world.

***Keywords**: collective management, copyright, blockchain technology, EU legislation, Internet.*

1. Introduction

In the recent period, no new technology has attracted as much attention and interest from the public as blockchain. Blockchain represents an open-source innovation with a revolutionary approach. It can change the execution of transactions between individuals, legal entities, and even machines. The concept of this technology represents a new computer architecture designed to coordinate all human activities on a much larger scale than was previously possible (Savelyev, 2018).

The establishment of legislative framework in the domain of digital property has created the possibility that this type of technology can be used in many areas of social life in Republic of Serbia (Law on Digital Property of the Republic of Serbia, 2020). The basic hypothesis of the paper is that the crisis in the functioning traditional concept of copyright in the digital era is in direct correlation with the exponential development of information and communication technologies, and that it is possible that science and the development of technologies will offer potential solutions for overcoming the existing conflict (Marković, 2014). Emphasis in the work is placed on implementing the blockchain technology in the domain of collective management of copyright and related rights to improve the functioning of organizations. On the other hand, we should not lose sight of the possibilities that this type of technology enables, aimed at improving the status of authors, i.e. providing adequate compensation for the use of their works on the Internet.

The first part of the paper is devoted to the presentation of legislative activities at the international and domestic level, which aims to improve the collective management of copyright via the Internet. The second part includes an overview of the possibility of improving the concept of management of copyright through the implementation of innovative blockchain technology. Finally, the last part deals with the analysis of some legal issues, which the implementation of this technology entails.

2. Reform of the system of collective management of copyright

Due to the exponential development of information and communication technologies and the increasing use of author's works on the Internet, as well as more and more reasoned criticism directed at the efficiency in work of collective management organizations (hereinafter CMOs), a redefinition of certain segments in the work of CMOs has been started. The European Parliament adopted Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market (hereinafter: Directive on collective management of copyright). The main reason for the adoption is that the European legislator sees in the necessity of harmonizing regulations concerning the functioning of CMOs in EU member states. Special attention is directed to the articles of the directive that regulate the lack of transparency in the work of CMOs towards their members and right holders. Therefore, the non-transparency is reflected in the inability of the authors to review all data related to the use of their author's works, income and distribution, primarily due to the technical inefficiency of such a check. Also, ineffective financial management of income collected by CMOs represents a weak point in their work. If you add to all this the fact that the Internet as a global network knows no borders, a situation arises those results in the fragmentation of the online music services market in the EU. The existing situation is further complicated if we consider the high consumer demand for access to digital content and innovative services, including those that transcend national borders (Directive 2014/26/EU).

Regardless of the innovative approaches and certain revolutionary concepts that are reflected in the introduction of competition among CMOs, we can state that the mentioned EU reform was carried out with a lot of caution. The argument for the claim is based on several facts. First, the long discussions about the reform of the collective management system, the fact that the subject matter was dealt with first by a recommendation, then by a resolution (Commission Recommendation 2005, European Parliament resolution, 2007). The significant support in the EU Parliament that was present during the adoption of Directive 2014/26/EU on the collective management of copyright suggests that it is the result of a wider dialogue and consensus on the directions in which the collective management of copyright

should be developed in the future. Another aspect is the limited scope of the Directive, which is limited in many ways – it refers to the internet, i.e. online rights to music content in several national areas. Therefore, other author's works are excluded from the scope of the Directive. One of the reasons lies in the fact that the distribution and use of music content is perhaps the most common in the online environment. The next reason is perhaps of a practical nature. If the European legislator has thought long-term, it is to be expected that the model that is now applied exclusively to musical works on the Internet, if it proves to be effective, will be applied in the future to collective management of other author's works. Essentially, we can regard this initiative as an experiment intended to guide future legislative efforts. Competition among CMOs has been formally introduced. However, during the standardization process, considerable attention has been given to the potential negative impact on the status of smaller CMOs. There are significant concerns regarding whether the "European passport" concept will genuinely safeguard smaller European CMOs from the pressures of a free market. Without such protection, these organizations may struggle to find a role with the complexities of multi-territorial licensing, potentially leading to their extinction. Consequently, it remains unclear if the "European passport" can prevent the further weakening of small CMOs, especially given their limited presence in the online market. The challenges raised call into question the effectiveness of the "European passport" in preserving Europe's cultural diversity and protecting the interests of economically weak participants in the competitive market (Vujičić, 2022).

At the beginning of 2019, amendments to the Copyright Act of the Republic of Serbia (Law on copyright and related rights, 2009) were adopted, which introduce novelties with the aim of better, more efficient and economical functioning of CMOs. The changes and additions mentioned to the law went in the direction of closer regulation of areas that were the subject of long-standing discussions and misunderstandings between authors, users and representatives of CMOs. It is more precisely determined what should be contained in the distribution plan, as a basis for the distribution of collected fees (Article 165). This amendment aims to prevent the arbitrariness of individuals or organs of the CMOs when assessing the distribution of collected revenues. The issue of costs incurred by CMOs in their work is clearly defined, with the aim of ensuring that the CMOs spend the collected funds economically, without jeopardizing the basic function (Article 184). Also, the goal of this amendment is to ensure that CMOs manage the rights of their members in a quality and efficient manner, exclusively in their interest. Furthermore, the

content of the report submitted by the CMOs to the supervisory authority, which must be based on clear and verifiable data, is regulated in detail. Such reports should ensure transparency in the work of CMOs, as one of the basic principles in the work of these entities and enable the competent authority to perform quality and efficient supervision (Article 190). Finally, the determination of fee tariffs is regulated in more detail as one of the most important issues for establishing an efficient and effective system of collective management of copyright (Articles 170 and 171).

3. Legal challenges of blockchain technology implementation

No one can remain indifferent to the possibilities and scope of blockchain technology, but it is necessary to thoroughly approach the problems and unknowns that are a consequence of the application of this technology. Namely, the terms blockchain, smart contract, cryptocurrencies are currently the subject of lively discussions in legal theory and practice around the world. No one can remain indifferent to the possibilities and scope of blockchain technology, but it is necessary to approach the problems and challenges that are a consequence of the application of this technology. Although much of the public is excited about the possibilities of blockchain, there are many challenges related to cryptocurrencies and the risks associated with them. It could be said that cryptocurrencies form an essential part of the blockchain system.

The use of cryptocurrencies has facilitated the global payment system, which is freed from the complicated formalities associated with opening a bank account and other details related to international transactions. Although the concept of cryptocurrencies itself is often disputed and their speculative nature is emphasized, the fact that bitcoin and ether have real market value and liquidity cannot be disputed. In addition to the above, this financial instrument does not require the fulfillment of any formalities, has a global character and is available to anyone with internet access. This type of currency does not have an inflationary character, precisely because it was initially determined that no more than twenty-one million bitcoins could exist. A large number of the above characteristics of cryptocurrencies make them an ideal payment instrument on the Internet (Savelyev, 2018). As we have already stated, the domestic legislator (Article 2, paragraph 1, Item 2) has regulated the area of digital property according to which: “virtual currency is a type of digital asset that has not been issued and the value of which is not guaranteed by the central bank or other public authority, which is not necessarily linked to legal

tender and does not have the legal status of money or currency, but is accepted by persons or companies as a means of exchange and can be bought, sold, exchanged, transferred and stored electronically" (Law on Digital Property of the Republic of Serbia, 2020).

Perhaps the most significant legal issue in the context of this analysis is the establishment of a legal framework that would regulate "smart contracts". The term "smart contract" is of recent date and could be defined as a set of rights and obligations expressed in program code. Therefore, such contracts represent a part of the programming code stored in the blockchain database, which allows for recording and reading transactions. The main characteristic that distinguishes "smart contracts" from classic ones is precisely the digital form, that is, the fact that these contracts are made in program code. Another characteristic is their automatic effect on the obligations of the contracting parties within the blockchain, in that its conclusion and implementation are taken care of by the program code. In technical terms, this means that when predefined conditions are met, then the defined logic can be executed in the form of a transaction. The software is programmed to maintain the obligation of one party until the fulfillment of the contractual obligation and thus represents an instrument that overcomes the problem of lack of trust between contracting parties who are physically distant (Savelyev, 2018).

The Law on Digital Assets in Article 2, Paragraph 1, Item 39 defines a smart contract in more detail as: a computer program or protocol, based on distributed database technology or similar technologies, which, in whole or in part, automatically executes, controls or documents legally relevant events and actions in accordance with an already concluded contract, whereby that contract may be concluded electronically through that program or protocol. If we look at "smart contracts" within the existing concept of contract law, the question arises how to apply the traditional rules related to termination, amendments and additions to the contract of the contract, as well as actions if the contracting party does not respect the assumed obligations? Furthermore, the question arises how to define the responsibility of the parties if the "smart contract" does not work due to faulty code or a malicious IT attack? For now, there are no adequate answers to the above-mentioned questions.

It should be noted that the Republic of Serbia is among the first countries in the world to create a comprehensive regulatory framework for the field of digital assets, which is a basic assumption for the implementation of blockchain technology. On the other hand, the terms blockchain, "smart contract" and "cryptocurrency" do not have a universal definition at the international level. What inspires optimism is the fact that the International Organization for

Standardization (ISO) is currently working on the analysis of certain aspects of smart contracts from both a technical and an appropriate legal perspective. Given the scope and topic of the research, it is unlikely that results will be available in the short term. In addition, ISO documents are not binding but will be significant for analysis in the context of drafting legal solutions in individual legal systems (Savelyev, 2018).

4. Collective management of copyright and related rights and the possibility of blockchain technology implementation

The fundamental principles of modern business are grounded in a diverse array of transactions. One of the primary challenges in conducting these transactions is the mistrust that often exists between contracting parties, which has been mitigated through the institution of mediation. The globalization of markets and the advent of the global computer network have enabled businesses to expand beyond national borders, further complicating the entire business environment. Given these limitations and challenges, there is a growing need for technology that can facilitate the liberalization of transactional business models while ensuring security, speed, efficiency, and resistance to fraud. This technology, known as blockchain, is characterized by its structure: it comprises numerous records grouped into blocks, and these blocks are linked together to form a chain. As the network of these blocks and chains essentially functions as a digital database, the term "digital ledger" has also come to describe this technology. In this context, blockchain can be viewed as a financial ledger that reliably records who possesses how much money and details past financial transactions between parties. By significantly altering the current approach to transaction execution, blockchain offers solutions to these challenges, making the entire process more accessible and publicly verifiable (Minović, 2017).

Bearing in mind the existence of a new legislative framework for CMOs, it would be useful to explore other possibilities that could further improve their functioning. Blockchain technology has introduced many revolutionary elements in a very short period and its application has been recognized in many spheres of social life. Considering the above, in this part of the paper, the research is focused on the possibility of applying this technology, to facilitate the functioning of the system of collective management of copyright.

CMOs are not a commercial or business company established for the purpose of making a profit. Therefore, the organizations do not have a lucrative goal, but are specialized in accordance with the statute, for the management

of certain rights regarding certain copyrighted works. To achieve its goals and fulfill its tasks, the organization obtains funds from: membership fees, voluntary contributions, the budget of the socio-economic community, as well as other sources in accordance with the law. The income that the organization collects in the form of a fee for the use of the copyrighted works belongs to the right holders. However, a certain amount that the organization collects is retained by it to cover operating costs. It is usually an approximate amount of between 15 and 30% of the total funds collected. The difference between the amount that the organization collects in the name of copyright and the amount of its operating costs is a room for discussion about the efficiency of the organization's work (Marković, 2011).

Business efficiency is a requirement placed on CMOs. The online services market is primarily dynamic and is not subject to excessive delays, given the dynamic market competition. Inefficiency of organizations is often the main topic of criticism of these entities. There is an undeniable need for greater efficiency and faster licensing, but sometimes negotiations with streaming providers need to cover all the most important aspects to adequately protect the position of authors or rights holders. The above necessarily requires a longer period. Given the above, we could conclude that the speed and efficiency of organizations should in no way jeopardize the position of authors/right holders. As for transparency in the work of organizations, the impression is that this is an area that causes major problems in the relationship between rightsholder's, users and the organization itself. Directive 2014/26/EU on the collective management of copyright should ensure the smooth functioning of CMOs, as well as the creation of conditions for greater transparency in the operations of these entities. CMOs are, among other things, obliged to establish an adequate system that should enable their members to participate in the decision-making process and ensure a high level of financial management (Vujičić, 2022).

We can conclude that main shortcomings in the work of the CMOs are listed as: uneconomical, inefficient, as well as lack of transparency in work. Bearing in mind the superiority of blockchain technology in the segment of forming autonomous databases, this possibility could be used to form a central database of author's works with all the necessary information, which would be available to the public. Namely, the absence of a central database that contains information about copyright and related rights creates significant problems when trying to determine the right holder to enable the use of such content. Information about holders of copyright and related rights is scattered in various databases of publishers and other entities, which have no interest

in sharing them. All this results in considerable transaction costs for the users of such digital content, who sometimes must refrain from using a certain author's work due to unclear legal status. Considering the interest of the public and bearing in mind the large amount of information on the authors' work at their disposal, it would be expedient to create a central database of copyright works, based on blockchain technology, of course, in accordance with the scope of work of an CMOs (Savelyev, 2018).

The biggest misunderstandings among authors are created by the principle of distribution of compensation, which in some cases can be unfair, that is, in disagreement with the factual situation. As one of the principles during distribution, present in many CMOs, the scope of use of the work is taken, and not the fact of how much the user values an individual work (Milić, 2018). In many CMOs, there is a system in which the minutes of use of works classified as artistic are multiplied by a special coefficient, so that the authors of less commercial works receive a higher fee. The mechanism is, therefore, conceived on the principle of solidarity, to enable the authors to enjoy the advantages of this form of management of rights and to have the possibility to live from their work.

There is a noticeable trend of bureaucratization of CMOs for the collective management of copyright, which results in an excessive number of employees in these entities, and accordingly, it is often mentioned that the labor costs are disproportionately high. The implementation of blockchain technology could overcome some of the shortcomings mentioned. An algorithm, or program code, could replace the engaged workforce in certain work processes, which would significantly lower the costs of CMOs and reduce the risk of errors that are the product of the human factor. On the other hand, collection and redistribution of income to authors' accounts could be done in real time, which would further improve the current functioning system. Each transaction, that is, a record in the blockchain network, after confirmation, becomes permanent without the possibility of deletion and is directly linked to the previous transaction. This fact has the effect that all records on the blockchain network are chronologically ordered from the date of creation and are available through access to the distributed network. Therefore, the transparency in the application of this technology is indisputable, and with its implementation, the collection of fees, as well as the distribution to authors, could be visible to all interested parties online (Milić, 2018).

Particular attention should be paid to payments that would be made using blockchain through cryptocurrencies. Namely, this type of payment could be a potential solution to the problem of fair compensation for authors in the

context of using works on the Internet. An important factor is the possibility of using smart contracts that would enable automatic and immediate payments to contracting parties, as well as control of license expiration after the scheduled time. Through research, we examine certain characteristics of smart contracts that are relevant to the topic of the paper. Smart contracts enable automation of licensing and royalty distribution. When an author's work is used (for example, a song is streamed or a e-book is downloaded), the terms encoded in the smart contract automatically trigger specific actions, such as payments to the copyright holders, which eliminates the need for intermediaries like CMOs or publishers. This can significantly reduce delays, errors, and administrative costs in royalty payments. For example, if a song is played on a streaming platform, a smart contract could automatically execute a payment to the songwriter, performer, and any other rightsholders based on predefined terms. On the other hand, cross-border copyright issues are complex, with different countries having varying laws and enforcement mechanisms. Smart contracts, based on blockchain technology, can offer a universal platform for copyright management that transcends national borders. Once the terms of the smart contract are encoded, they can be applied globally, which may simplify enforcement and reduce jurisdictional issues.

So, fees for the use of author's work could be designed to offer fairer conditions for authors, as well as all other subjects, holders of copyright and related rights. This type of application has already seen its form in the form of a service prototype, based on the blockchain. Namely, it is the *Peer Tracks* website (https://peertracks.com/), which allows authors to menage their copyright and related rights individually. The service works by attaching a "smart contract" every time a piece of music is uploaded to the specified platform and generates income in accordance with the contractual obligations. This type of service enables absolute transparency, and rights holders can monitor the realization of their income, but also communicate with the users of their work (Savelyev, 2018).

Reaffirmation of individual management of copyright is present in the modern period, especially in activities related to the Internet. It is conditioned by technological progress that significantly reduced the transaction costs of individual management and made it more acceptable for authors. In addition, it is conditioned by sociological, cultural and political factors that are reflected differently. Internet actors – authors and copyright holders, whose work has greater commercial potential, strive to eliminate intermediaries to achieve greater profits. Others, on the other hand, strive to share their original work with as wide an audience as possible, while not giving importance to the

commercial effect of the work. The third again strives for non-realization of the right, which is reflected in the sharing of protected objects with a special type of licensing, without compensation. This form of exploitation of the author's work is widely used in the digital age and offers numerous possibilities so far. Regardless of the above, individual management in the Internet environment does not have the potential (at least not soon) to significantly threaten the system of collective management of copyright and related rights.

5. Conclusion

The pandemic of the COVID-19 virus has disrupted the global economy and undoubtedly left consequences for almost every segment of social life. Remote work in environments when national states close their borders to prevent the spread of the virus, has resulted in the accelerated development of digitalization of business, so that business entities can carry out the process appropriately in the new environment. Bearing in mind the above, blockchain technology could be used as an instrument to overcome certain problems in the work of CMOs. Without a doubt, blockchain has enabled the formation of a central database within the scope of the CMOs work, providing a new model for data storage security, which is based on the principle of decentralization. Its main feature is transparency, which means that all data within the blockchain is public, cannot be arbitrarily changed, and can be easily reviewed. Changing a record in the blockchain is difficult, almost impossible, and requires consensus according to the protocol, from most users. Thus, the integrity of the record is ensured by the basic properties of the underlying code, not through the identity of the system operator. The program code could replace the engaged workforce in certain segments of work. The collection and redistribution of income to the authors' accounts could be done in real time and be visible to all interested parties online. Payment of royalties for the use of author's work, which would be carried out using blockchain through cryptocurrencies, could be a potential solution to the problem of fair remuneration for authors in the context of the use of works on the Internet. An important factor in the application of this technology is the possibility of using smart contracts that would enable automatic and immediate payments to contracting parties. In addition to all the possibilities mentioned, it should be emphasized that in the future, the blockchain could enable individual management of copyright and related rights in situations where it could not be effectively applied until now. The reform of the collective management of copyright and the functioning of

CMOs is carried out both at the level of the European Union and in domestic legislation. All the legislative activities can be viewed in two ways: one part is aimed at designing a solid framework of CMOs, while the other is aimed at adapting this institute to the circumstances dominated by the Internet and the use of digital content. We are witnessing fundamental changes in the traditional concept of collective management of copyright in the last period, in terms of establishing a more efficient and economic framework for the functioning of CMOs, greater transparency in the work of these entities, as well as adapting to the digital age. Changes at the level of the European Union have been accompanied mostly in the domestic legislative system with the same aspiration – to provide answers to the challenges of the modern era.

The fact is that the articles of the Directive 2014/26/EU on the collective management of copyright, which foresee the possibility of entrusting certain tasks of representing the musical repertoire on the Internet for multi-territorial licensing, have not been fully implemented in Serbian Law. This attitude is understandable for several reasons. The first is the fact that the mentioned model is recent, innovative, and its effects cannot yet be objectively predicted. Another reason lies in the fact that the Republic of Serbia is not formally a member of the European Union and that the obligation to implement acts is of limited scope. The third and perhaps the most important reason is the need to protect national CMOs from market competition in which they would be unequal competitors. If the economic strength of individual EU member states and their CMOs is considered, a significant disproportion in material, logistical, technical-organizational terms is noticeable when comparing CMOs from the territory of the Republic of Serbia.

Although blockchain offers the possibility of improving the work of CMOs in terms of greater transparency, efficiency and economy in work, we must look at the potential challenges when using the mentioned technology. First, this technology requires significant financial resources for implementation, i.e. adapting the algorithm to business processes. Another important thing is the fact that the technology mentioned is of recent date and that it takes time to notice potential flaws in its software architecture. The third and perhaps the most important is the unstable cryptocurrency market, bearing in mind that we are witnessing almost daily oscillations in their value. If blockchain technology is implemented, it is necessary to carry out the entire procedure cautiously, while respecting the specifics of the collective management of copyright, the interests of authors and users of the author's work.

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PRAVNI IZAZOVI PRIMENE BLOKČEJN TEHNOLOGIJE NA OSTVARIVANJE AUTORSKOG I SRODNIH PRAVA

APSTRAKT: Reforma kolektivnog ostvarivanja autorskog i srodnih prava i ustrojstva organizacija, se vrši u okviru Evropske unije i na domaćem zakonodavnom nivou. Sve navedene zakonodavne aktivnosti, mogu se posmatrati dvojako: jedan deo je usmeren na uspostavljanje čvrstog okvira organizacija za kolektivno ostvarivanje autorskog i srodnih prava, dok je drugi usmeren na prilagođavanje ovog instituta okolnostima u kojima dominira internet i korišćenje digitalnog sadržaja. Blokčejn predstavlja inovaciju otvorenog koda koja revolucionarnim pristupom može da promeni izvršavanje transakcija između pojedinca, pravnih lica i mašina. Uspostavljanje jasnog zakonodavnog okvira u domenu digitalne imovine stvara pretpostavku da se ovaj vid tehnologije primeni u mnogim oblastima društvenog života, a akcenat je stavljen na implementaciji u domenu kolektivnog ostvarivanja autorskog i srodnih prava u cilju unapređenja rada i funkcionisanja organizacija. Blokčejn tehnologija bi mogla biti iskorišćenja kao instrument pomoću kojeg bi se prevazišli određeni problemi u radu organizacija za kolektivno ostvarivanje autorskog i srodnih prava, a pre svega: neekonomičnost, neefikasnost, kao i nedostatak transparentnosti u radu. S druge strane ne treba izgubiti iz vida mogućnosti koje su usmerene ka poboljšanju statusa autora, odnosno obezbeđivanja adekvatne naknade za korišćenje njihovih dela na internetu. Izazovi koje primena sa sobom nosi su višeznačni i višeslojni i u suštini su pravne i tehničke prirode, a pojmovi blokčejn, pametni ugovor i kriptovaluta su trenutno predmet žustrih rasprava u pravnoj teoriji i praksi širom sveta.

***Ključne reči**: kolektivno ostvarivanje, autorsko pravo, blokčejn tehnologija, zakonodavstvo EU, internet.*

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LEGAL ASPECTS OF DIGITAL BANKING

ABSTRACT: The rapid development of digital banking has fundamentally transformed the capabilities of the financial sector, offering a range of new opportunities and challenges. This paper explores the legal aspects of the transformation of the financial sector through digital banking. It analyzes the regulatory framework that impacts the development and implementation of digital banking services, focusing on key laws, regulations, and legal standards that shape this area. The paper also addresses issues of data security, privacy protection, user authentication, and liability in cases of fraud or abuse. The research aims to provide deeper insights into the legal challenges and opportunities arising from the digital transformation of the financial sector, as well as identify potential legal frameworks and strategies for improving the efficiency and transparency of digital banking. The paper further examines the impact of digital banking on traditional banking practices, including customer service, operational efficiency, and revenue-generation models. Special attention is given to exploring the implications of digital banking for financial inclusion, particularly in underserved and remote communities, and its role in fostering economic development.

Keywords: *Internet law, digital banking, commercial law, data protection.*

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1. Introductory remarks

The banking sector plays a crucial role in the economic stability and development of every country, including Serbia. Traditional banking, which involves the physical presence of clients in banks, has gradually evolved under the influence of technological innovations. In recent years, digital banking has experienced significant growth, enabling users to conduct financial transactions quickly and efficiently via the internet and mobile applications.

Digital banking offers numerous advantages, such as greater accessibility of services, reduced operational costs, and increased business efficiency. However, along with these benefits come new challenges, particularly in the context of legal regulations and security aspects. Digital financial transactions raise questions of data protection, fraud prevention, and compliance with the existing legal framework.

During the transitional period, the banking sector faced significant challenges, including a high level of non-performing loans, lack of adequate regulation and supervision, as well as a lack of capital and technological infrastructure. These challenges resulted in weak stability of the banking system and limited access to financial services for citizens and businesses, consequently causing numerous legal issues.

However, over the past decade, the banking sector in Serbia has undergone significant changes and progress. Driven by reforms, strengthening of the regulatory framework, and investment in modernization, the banking sector has become more stable, efficient, and competitive.

The significance of digitalization in banking is reflected in several factors. Digitalization opens the banking sector to new players, including financial technology companies (FinTech) and tech giants, who offer new products and services. Digital technologies enable banks to personalize their offerings and provide a better user experience. Through the analysis of user behavior data, banks can offer personalized products and services that meet the specific needs and preferences of each user (Madir, 2024, p. 112).

This paper aims to provide a comprehensive analysis of the legal aspects of banking in Serbia, with a special focus on digital banking. By exploring the current regulatory framework related to digital banking, identifying major legal challenges, and analyzing how these challenges can be overcome, this paper will also review relevant laws and regulations, including the Banking Law, the Law on Payment Services, and other regulations governing this area.

2. Legal Framework of Banking in Serbia

The banking sector in Serbia is regulated by a series of laws and regulations aimed at ensuring the stability, transparency, and efficiency of the financial system. The key laws regulating banking in Serbia include:

- The Law on Banks[1]
- The Law on the National Bank of Serbia (NBS)[2]
- The Law on Payment Services and Electronic Money[3]
- The Law on the Prevention of Money Laundering and Financing of Terrorism.[4]

In Serbia, the competent institutions and regulatory bodies responsible for the regulation and supervision of the banking sector include:

- The National Bank of Serbia (NBS): The main institution responsible for the regulation and supervision of the banking sector, which implements monetary policy, oversees financial stability, and ensures the application of regulations in the banking field.
- The Ministry of Finance of the Republic of Serbia: Has jurisdiction over the financial sector and is responsible for enacting laws, regulations, and policies in the field of banking.
- The Securities Commission: Responsible for regulating the capital market and supervising brokerage firms and investment funds.
- The Deposit Insurance Agency: Oversees the deposit insurance system and provides protection to depositors in case of bank bankruptcy.

The main characteristics of the legal status of a bank are: It is established exclusively in the legal form of a joint-stock company. Headquarters must be

[1] This law defines the basic principles and conditions for the establishment, operation, and termination of banks in Serbia. It regulates the structure, organization, capital, management, supervision, and cessation of banks, ensuring the stability and integrity of the banking sector.

[2] This law regulates the organization, powers, and functions of the National Bank of Serbia as the main regulatory body in the field of banking. The NBS is responsible for implementing monetary policy, supervising financial stability, regulating and overseeing banks, as well as protecting the interests of users of financial services.

[3] This law regulates the provision of payment services, including electronic money, payment cards, money transfers, and other electronic transactions. The aim of the law is to ensure the security, transparency, and efficiency of payment systems in Serbia.

[4] This law aims to prevent the abuse of the financial system for money laundering and terrorist financing purposes. It regulates the obligation of banks to apply appropriate measures for the identification, monitoring, and reporting of suspicious transactions.

located within the domestic territory. It must have a work permit (consent for establishment) from the National Bank of Serbia.

Its activities include performing deposit and credit operations (mandatory activities), and it may also perform other activities in accordance with the law (optional activities).

As I said before, banks are established exclusively in the legal form of a joint-stock company by domestic and foreign legal and natural persons (founders). The process of establishing a bank involves two phases: the first phase is the establishment of the bank in a narrower sense, and the second phase is the registration (i.e., legalization) of the bank (registration in the register of business entities), at which point the bank acquires the status of a legal entity (Carić, Vitez, Dukić Mijatović & Veselinović, 2016, pp. 112–113).

3. Digitization of Banking

The development of the information and communication sector influences dynamic changes in the economy, primarily transforming the banking sector. The effects are manifold, ranging from increased operational efficiency and reduced data processing costs to lowering service costs for customers (Raičević, Matijašević & Ignjatijević, 2012, p. 108).

Digital banking represents the application of digital technologies in providing financial services, enabling users to conduct banking transactions through digital channels such as the internet, mobile applications, and electronic platforms. This encompasses a wide range of activities, including account opening, financial management, payments, money transfers, investments, and obtaining loans, all through electronic devices.

It transforms the way banks communicate with their clients, providing them with greater flexibility, convenience, and speed in conducting financial transactions. Additionally, digital banking opens doors for innovations and new business models, offering users personalized experiences and products tailored to their specific needs.

In many developed countries, digital banking is currently experiencing rapid growth, with a trend towards establishing advanced e-banking transactions (Warf, 20018, p. 67).

The development of this type of banking can be traced through several key phases. Starting from the emergence of the first internet banking systems at the end of the 20th century, digital banking has experienced rapid growth and evolution over the past few decades. The development of mobile technologies and the expansion of internet access via smartphones have contributed to the

expansion of mobile banking, enabling users to conduct banking transactions wherever they are. Additionally, phenomena such as cryptocurrencies and blockchain technology have further expanded the horizons of digital banking, opening up new possibilities for secure and transparent transactions (Vijay & Chandrasekar, 2019, p. 11).

Digital banking involves conducting banking transactions through a direct connection between the client and the bank using specialized software. Thus, special software installed on the client's computer is required to perform transactions and store data on the changes made. (Stamatia & Angelos 2020, p. 145).

Banks utilizing digital banking enjoy numerous advantages, some of which are particularly significant. Establishing the image of an innovative company capable of offering its customers the latest technological solutions is crucial. Additionally, there are greater and better interactive possibilities – for a bank competing for each client in market conditions, communication with them is vital. There is also the potential for rationalizing the bank's potential – by transferring certain services to the internet, the bank reduces operating costs because it does not need to open new business premises, equip them, and hire new employees to increase the number of clients. This is especially interesting for geographic regions where the bank does not have a network of branches or has a small number of clients. Self-service banking is beneficial for both the bank and the client because the client has services available 24 hours a day, 7 days a week, while the bank operates 365 days a year without increasing the number of employees. By appearing on the internet, the bank proves its competitive capabilities and its development as a solid, stable, and technologically advanced company (Vuksanović, 2006, p. 218).

3.1. Legal Aspects of Digital Banking and Protection

Digital banking, as part of the digital transformation of the banking sector, is subject to strict regulation in Serbia to ensure security, transparency, and user protection. The main laws and regulations governing online banking include: Law on Electronic Document, Electronic Signature, and Data Protection in Electronic Business (2017) – This law regulates the rules of electronic business, including online banking, electronic transactions, and data protection.

Law on Personal Data Protection (2018) – This law prescribes rules for the processing and protection of personal data, which is crucial for online banking and user information security.

The National Bank of Serbia issues orders and guidelines related to online banking, including security standards, user identification procedures, risk management, and mandatory data protection protocols. These laws and regulations ensure that online banking in Serbia is under strict supervision and that banks adhere to the highest standards in user and data protection.

The security of digital banking in Serbia is ensured through the implementation of various security mechanisms:

User authentication is a highly successful mechanism. Banks use multi-factor authentication, such as username, password, one-time tokens, biometric data, or SMS confirmations, to ensure that only authorized users access their accounts.

Data encryption provides a higher level of security. All transactions and communications between users and banks are encrypted using strong encryption algorithms to protect data from unauthorized access. The encryption process can be likened to an "online safe."

Protection against cyber attacks is essential to prevent "online robbery." Banks implement security systems that detect and prevent cyber attacks such as phishing, malware, and DDoS attacks to protect users and their systems. Banks regularly update their software and systems to eliminate vulnerabilities and ensure that users have the latest security features (Komlen-Nikolić, et al., 2010, p. 45).

Banking systems are so complex, that it is essential for a court to fully understand the weaknesses to be able to assess the evidence when faced with dealing with disputed transactions involving ATMs and on-line banking (Mason, 2013, p. 1).

Protection of user data and privacy is a key component of online banking in Serbia, and banks are obliged to implement appropriate measures to protect the sensitive information of their users. Banks establish clear privacy policies that describe in detail how user data is collected, used, and protected, in accordance with legal requirements (Petrović, 2004).

Before collecting and processing user data, banks obtain user consent and clearly inform them of the purpose of data collection. Banks apply strict access controls to ensure that only authorized employees have access to sensitive user data. Bank staff are regularly trained on how to handle user data properly and how to recognize and respond to potential data security threats.

These security mechanisms, together with strict regulation, form the basis for user and data protection within digital banking in Serbia.

Unlike other criminals, cybercriminals use very smart techniques to prepare and commit crimes, making it very difficult to track them down. Detecting this

type of crime and gathering evidence against perpetrators is quite specific. Namely, due to the lack of physical evidence such as a body, blood, jewelry, fingerprints, etc., it is difficult to direct and conduct an investigation. Most cybercrime offenses are discovered accidentally or shortly after they occur, but still, the number of detected offenses is not negligible (Bjelajac, 2013, p. 296).

4. Challenges and Limitations of Digital Banking in Serbia

One of the main challenges of digital banking in Serbia is the lack of infrastructure and low digital literacy among the population. Although internet penetration is increasing, there is still a significant portion of the population that lacks access to the internet or mobile devices. Additionally, many users are not sufficiently trained or familiar with digital technologies, making them unprepared to use digital banking services. This situation creates barriers to the expansion of digital banking in rural areas and among older citizens who struggle to adapt to new technologies. Lack of infrastructure, such as fast and reliable internet connection, can also limit access to digital banking services in less developed regions.

Security risks and fraud pose a serious challenge to digital banking in Serbia. The rapid development of technology opens up new opportunities for cyber attacks, phishing, malware, and other forms of fraud. Users face the risk of identity theft, unauthorized access to their bank accounts, and misuse of personal data. Additionally, there is a risk of technical errors and system failures in online banking systems that can lead to data loss or financial losses. Banks are, therefore, under pressure to constantly improve their security measures and educate users about the latest threats and protection methods (Craig, 2012, p. 82).

Another challenge of digital banking in Serbia is the issue of access and inclusivity. While digital technologies enable greater accessibility to banking services, there are population groups that are marginalized or excluded from digital banking. This includes older people, people with disabilities, minority groups, and socially vulnerable communities who may not have access to or the ability to use digital channels. This lack of inclusivity can further deepen the financial inclusion gap and make it harder for economically vulnerable individuals to access banking services. Banks and regulatory bodies must work on developing strategies to ensure that digital banking is accessible to all citizens, regardless of their social or economic circumstances.

The legal framework for digital banking in Serbia faces challenges in terms of regulations that are not fully aligned with the rapid development

of technology. Existing laws, such as the Law on Payment Services and the Law on Electronic Document, Identification, and Trust Services in Electronic Business, provide a basis for regulating digital banking, but often lag behind technological innovations. This creates legal uncertainty and may slow down the further development of digital services.

The state, through the National Bank of Serbia and other regulatory agencies, plays a key role in setting the legal framework and supervising the banking sector. Central banks are mostly nationalized or under strict state control, directly interfering in the business activities that banks can engage in. This includes regulating interest rates, determining credit priorities, and ensuring financial system stability. In the context of digital banking, this regulation is particularly important for protecting users and preserving trust in digital banking services.

A cybercriminal's ability to use technology and exploit the Internet to directly access, manipulate and communicate electronic data is a basic challenge, in the commission of cybercrime and other illicit or criminal behaviours. Internet related technology can be used to commit crime either entirely within a technical environment, or to facilitate conventional crime by using various elements of networked technology (Hunton, 2012, p. 4).

Overcoming these challenges requires collaboration between banks, government authorities, regulatory bodies, technology companies, and civil society to ensure that digital banking in Serbia is safe, accessible, and inclusive for all citizens. Developing integrated strategies to improve infrastructure, increase digital literacy, and strengthen the legal framework is crucial for the long-term success of digital banking in Serbia (Kojić, 2015, p. 96).

5. Enhancement of Legal Regulation of Digital Banking

One of the key recommendations for improving legal regulation in the field of digital banking in is strengthening user protection. This could be achieved through enhancing transparency; banks should clearly communicate with users about the terms of using digital banking services, tariffs, risks, and user rights (Matijašević & Petrović, 2015).

Regulatory bodies should set strict standards for data and transaction security in digital banking, including mandatory implementation of multi-factor authentication and data encryption. Additionally, developing effective mechanisms for resolving disputes between banks and users of digital banking services to ensure fair and prompt solutions in case of issues is necessary to implement (Ferrari, 2022, p. 5).

The modernization of legislation and regulation itself is crucial for adapting to rapid changes in digital banking. The revision of existing laws, where regulatory bodies regularly review and update laws and regulations governing digital banking to respond to new technological and market trends, is essential. A more adaptable legal framework enables faster implementation of innovations and technological changes, thereby encouraging innovation and the development of new banking products and services. Authorities, in close collaboration with banks, FinTech companies, technology experts, and other stakeholders, develop optimal regulations for digital banking (Buckley, Arner & Zetzsche, 2023, p. 69).

Encouraging innovation and competition is crucial for the development of a dynamic and competitive digital banking market. Open API platforms would enable FinTech companies to develop innovative products and services that utilize banking data and infrastructure. Authorities can provide financial incentives, subsidies, or tax breaks for companies developing innovative solutions in the field of digital banking.

Ensuring fair competition in the digital banking market prevents monopolies and unfair practices, thereby promoting innovation and utilizing market competition to improve services and lower prices. To properly understand the channels through which digital banking can pose a threat to monetary sovereignty, it is important to introduce the two key design features of digital money: the stabilization mechanisms and the collateralization (Martino, 2024, p. 3).

These are some of the ideal conditions for creating a favorable environment for the development of digital banking in Serbia, encompassing all legal aspects, which will benefit both banks and the financial sector, as well as end-users of financial services.

6. Concluding considerations

Digital banking represents a key segment of the modern financial sector, which has a significant impact on how users access and utilize banking services. In Serbia, digital banking is experiencing growing expansion and development, bringing numerous benefits such as greater accessibility, efficiency, and innovation in delivering financial services.

However, despite these advantages, there are challenges and limitations that digital banking in faces. Lack of infrastructure and digital literacy, security risks and fraud, as well as issues of access and inclusivity, are key obstacles

that need to be overcome to ensure sustainable and inclusive digital banking for all citizens.

Therefore, enhancing legal regulation in the field of digital banking plays a crucial role in addressing these challenges and creating a favorable environment for further sector development. Strengthening user protection, modernizing legislation, and promoting innovation and competition are key recommendations that can contribute to improving digital banking.

Harmonizing domestic legislation with European standards, such as the PSD2 directive, can enhance the security and efficiency of digital banking. This includes stricter standards for user authentication and regulation of new services such as open banking.

The implementation and oversight of laws related to data protection, such as GDPR, are of paramount importance. It is necessary to ensure that banks implement the latest data protection standards and that users are adequately informed about their rights and ways to protect their data. The state and banks should invest in citizen education programs to increase digital literacy. This is particularly important for elderly citizens and residents of rural areas to reduce the digital divide and enable broader access to digital banking services. Regulatory bodies should ensure that digital banking is inclusive and accessible to all segments of society, including persons with disabilities, minority groups, and socially disadvantaged communities. This may involve developing accessible digital platforms and providing user support through various channels.

Collaboration between banks, regulatory bodies, government, and technology companies is crucial for addressing security issues and improving digital banking. Joint efforts to develop cybersecurity standards and protocols can reduce the risk of fraud and cyber attacks (Craig, 2012, p. 87).

Overcoming the challenges of digital banking in Serbia requires a holistic approach that includes legal, technological, and social aspects. With proper regulation, infrastructure strengthening, and increased digital literacy, digital banking can become a powerful tool for economic inclusion and enhancement of financial services in Serbia.

Global world can create a robust digital banking ecosystem that benefits all citizens and drives economic growth.

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PRAVNI ASPEKTI DIGITALNOG BANKARSTVA

APSTRAKT: Brzi razvoj digitalnog bankarstva temeljno je promenio mogućnosti finansijskog sektora, pružajući niz novih prilika i izazova. Ovaj rad istražuje pravne aspekte transformacije finansijskog sektora putem digitalnog bankarstva. Analizira regulatorni okvir koji utiče na razvoj i implementaciju digitalnih bankarskih usluga, fokusirajući se na ključne zakone, propise i pravne standarde koji oblikuju ovo područje. Rad takođe adresira pitanja bezbednosti podataka, zaštite privatnosti, autentifikacije korisnika i odgovornosti u slučajevima prevare ili zloupotrebe. Istraživanje ima za cilj pružanje dubljih uvida u pravne izazove i prilike koje proizilaze iz digitalne transformacije finansijskog sektora, kao i identifikaciju mogućih pravnih okvira i strategija za unapređenje efikasnosti i transparentnosti digitalnog bankarstva. Rad se bavi i uticajem digitalnog bankarstva na tradicionalne bankarske prakse, uključujući pružanje usluga korisnicima, operativnu efikasnost i modele generisanja prihoda. Posebna pažnja posvećuje se ispitivanju implikacija digitalnog bankarstva za finansijsku inkluziju, posebno u nedovoljno servisiranim i udaljenim zajednicama, i njegovoj ulozi u podsticanju ekonomskog razvoja.

***Ključne reči**: Internet pravo, digitalno bankarstvo, privredno pravo, zaštita podataka.*

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CONVERSION OF THE RIGHT OF USE ON CONSTRUCTION LAND INTO THE RIGHT OF OWNERSHIP IN THE POSITIVE LAW OF THE REPUBLIC OF SERBIA

ABSTRACT: This paper analyzes the legal situation concerning civil matters related to the conversion of the right of use on construction land into the right of ownership under the positive law of the Republic of Serbia. This is a complex civil law issue that, for many years, was not adequately regulated within Serbia's legal system, resulting in legal uncertainty and the failure to resolve several tens of thousands of cases. By applying historical, comparative legal, and dogmatic legal methods, as well as content analysis of relevant legal documents, the paper presents an argumentative examination of the provisions of numerous laws that address this matter both directly and indirectly. Specifically, it focuses on the provisions of the Law on Planning and Construction, the Law on Legalization of Buildings, and provisions of other related laws. The paper offers a reasoned legal interpretation of several legal acts, overcoming the imprecision in the regulation of this important civil law matter, and proposes a solution for the accumulated cases involving the conversion of the right of use into the right of ownership for residential buildings constructed without a building permit, as well as the construction land on which these buildings were erected, allocated for use with a fee by the relevant state administrative bodies of local self-government.

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1. Introduction

The legal term "construction land" was established by the adoption of the (Law on Nationalization of Buildings for Rent and Construction Land, 1952) and the (Federal Law on Expropriation, 1957). The owner of a building on construction land had the right to use the land under the building necessary for the regular use of the building. This right to use the land cannot be transferred independently; it is transferred by transferring the constructed object, that is, the building on the

This paper will discuss the complex civil legal issue of converting the right of use on construction land into a property right under the positive law of the Republic of Serbia. In the scientific consideration of this important legal issue, the logical, fragmentary historical, dogmatic legal, and comparative legal methods were employed. Additionally, the economic method was used to examine the economic effects of some proposals, and the method of qualitative analysis, including induction and deduction, was applied to the content of relevant legal documents listed in the consulted literature.

Roman law faced this question and answered it by prescribing and applying the principle of *superficies solo cedit* (Gaj, 1982, II 73. p. 107). According to this principle, all buildings that are constructed of solid material and are permanently connected to the land are considered a legal unity and are the property of the landowner. "In Roman law and later in legal orders based on the Roman legal tradition, this separation was carried out by superficiary law, and in the Germanic legal area, by construction law" (Lazić, 1991. p. 220).

Spatial planning of Paris was carried out in the middle of the 19th century. "The first regulations on mandatory spatial planning of cities, which represented a limitation of ownership rights on urban land, were passed in the second half of the 19th century and the beginning of the 20th century. Sweden passed such regulations in 1874, and the Netherlands in 1901". Furthermore, for the purposes of planned construction, "in capitalist societies, this problem was solved by land expropriation and the right to build" (Simonetti, 1983, pp. 36–38). In socialist societies, the problem was solved by nationalization; in Serbia, this was achieved by socializing construction land.

Comparatively speaking, in our environment in the Republic of Croatia, the amendment of the Law on Basic Ownership-Legal Relations (abbreviated as ZOSPO) replaced the right of use with the right of ownership. Additionally, the legal unity of buildings with land was established by the adoption of the Law on Ownership and Other Real Rights of the Republic of Croatia in 1996.

In the Republic of BiH in 1995, specifically in the Federation of BiH with the adoption of ZOSPO, it was prescribed that urban construction land could be in both state and private ownership. The legal unity of real estate was addressed by the adoption of the ZGZ FBiH, which provided for denationalization but not restitution. "However, this happened through inversion: from the building to the land" (Povlakić, 2009. p. 149).

Today, in the Republic of Serbia, with the introduction of superficiary law, the process of converting state and public property on construction land, on which private property has been built, into private property is underway.

Laws passed after 1989 only gradually prescribed legal relationships, and the changes were not fast enough. In recent times, there are current provisions addressing this issue, such as the (Law on Planning and Construction of the Republic of Serbia, 2009). The amendments to this law enabled the conversion of the right of use to direct ownership (hereinafter: the Law on Planning and Construction). Additionally, there are provisions like the (Law on Conversion of the Right of Use into the Right of Ownership on Construction Land with Compensation, 2015), which ceased to be valid with the adoption of the (Amendment to the Law on Planning and Construction, 2023) and the (Law on Legitimation of Buildings, 2015). Upon the entry into force of these amendments, the (Law on Legalization of Buildings, 2013) and the (Law on Special Conditions for Registration of Ownership Rights on Buildings Built Without a Building Permit, 2013) also ceased to be valid.

Plot, parcelization (i.e., reparcelation), determination, and formation of a cadastral plot (hereinafter referred to as KP) are fundamental and important aspects for defining this right. If the separation of the cadastral parcel was carried out on the ground but was not entered in the cadastral books, it is necessary to request a certificate from the authority responsible for state surveying and cadastre. This certificate should confirm whether the marking was carried out, the formation of the KP, and on what basis (Article 70, paragraph 11 of the Law on Planning and Construction, 2009). We will return to the issue of subdivision later in this paper.

2. Instances of Converting the Right of Use on Construction Land into Ownership Rights

The earlier and latest amendments to the current 2009 Law on Planning and Construction have made visible progress.

First, if a building with several special (residential) units was constructed after obtaining a building permit, and the ownership rights of the housing

units were registered, but the co-ownership was not registered. Co-ownership is the property of two or more persons on the same thing and the right of each co-owner is ideally determined, but it refers to the whole thing and to every smallest part of it (Mirosavić, 2019. p. 91). in the cadastral parcel where the building was constructed, and there is a registered right of use on state-owned land, it is sufficient to submit a request to the Republic Geodetic Institute for the registration of the right of ownership, i.e., co-ownership, which will be carried out ex officio.

Let us add that if it concerns nationalized built-up land, the restitution of the built-up land will not be carried out; instead, compensation will be paid (Mirosavić, 2020. p. 123.). In the database of the reported property, less than 20% of the area of the land that was confiscated is claimed, and with restitution, the state would become the legitimate owner of over 80% of the construction land. (Glišić, 2024, p. 72).

Secondly, in the event that a building was constructed based on a building permit, but the investor never carried out the technical acceptance of the building, which is unfortunately a frequent occurrence in Belgrade and Serbia, and without consequences for the investor, if there is no urban planning project of the completed works that defines the square footage owned by the parties, the right of ownership of the object or part of the object, and joint ownership of the common premises, or if there is no geodetic study on the plot on which the object is built, then it is not possible to make an entry in the cadastral book of the object or to determine the KP for regular use of the facility. In this case, it is not about legalization, but it is necessary to prepare the mentioned documentation with the urban project of the completed works and the geodetic study of the plot, perform the technical acceptance of the building, and enter the building and the plot on which the building is built in the cadastral books. Only then can individual owners, both of the building and parts of the building, be registered as holders of ownership rights, with which the right of joint ownership of the common premises is inextricably linked, as well as the right of co-ownership of the KP on which the building is built, permanent co-ovnership (Mirosavić, 2019. p. 99).

Buyers and citizens, in their desire to solve the housing issue, have been entering into unresolved, unregistered property relations for decades, just to secure a crucial need—a roof over their heads. Meanwhile, state authorities have calmly watched as investors failed to fulfill their obligations to obtain use permits and register the properties in the cadastral books. This neglect has compromised the quality of constructed works and compliance with construction norms and rules, such as protection against earthquakes, fires,

and insulation quality. Since the mid-20th century, the state has defined the process of obtaining a building permit as an administrative relationship between the investor and the administrative body. However, it has left the execution of the final obligation to obtain a use permit to the civil relations of the parties and the regular court system. Instead of effectively controlling investors through the right of supervision and obliging them under the threat of serious penalties in a swift procedure, the state has failed to enforce these obligations. By doing so, it would have contributed to the achievement of legal order and protected the legal framework.

In cases where a construction facility owned by a single owner, or a large building with twenty, thirty, or more apartments, needs to obtain a use permit—or re-obtain a use permit due to minor deviations in the building's dimensions from the construction permit, or with a temporary construction permit, temporary until the settlement of property relations and the definition of KP for the regular use of the building—together with the geodetic study in order to register the owner's property on the building or part of the building and the land under the building, it is necessary to re-order, pay for, and prepare the documentation and carry out the technical acceptance of the facility again. In these various situations, especially when there are only a few owners in one building, it is difficult to reach an agreement, most often because the preparation of the urban project of the completed works and the geodetic study is costly.

If the building permit was deviated from and a different square footage was built in height, then legalization must be sought, because there is no building permit for that part. Thirdly, in the case of legalization, the legalization of objects often results in a decision on the legalization of the object being obtained. The competent authority can designate construction land under the building as land for regular use. In that case, Article 70, Paragraph 2 of the new Law on Planning and Construction stipulates the obligation of the interested party to initiate the procedure for determining the KP for the regular use of the facility within five years from the legalization decision. If the land is in public ownership, the consent of the Republic Directorate for Property is required.

Fourth, at this point, we make a note regarding the pre-parcellation procedure, which requires a project approved by the competent authority. There is an exception provided by Art. 68 of the Planning and Construction Act (2009) when no pre-planning project is required, but only an elaboration of geodetic works. The mentioned article in the first paragraph reads:

"The correction of the boundaries of neighboring cadastral plots, the merging of neighboring cadastral plots of the same owner, the merging of

neighboring plots where the same person is the owner or long-term tenant based on earlier regulations, as well as the creation of a larger number of building plots according to the planned or existing construction, i.e., the planned or existing purpose of the building plot, is carried out on the basis of geodetic works. ”Therefore, in this case, it is necessary to have the consent of all the owners, ensure that the property relations have been resolved, and obtain the consent of the competent attorney if the neighboring plot is public property.

Further in paragraphs 5 and 6:

“The plot owner, after preparing the geodetic work report, submits a request for the correction of the plot boundaries to the authority responsible for the state survey and cadastre.

Along with the request mentioned in paragraph 5 of this article, the owner submits proof of resolved property legal relations.”

Fifth: Conversion of Public Property on Construction Land. With the entry into force of the Law on Planning and Construction on September 11, 2009, the right of use ceases and transitions into the right of ownership in favor of the Republic of Serbia, the autonomous province, or the unit of local self-government, without compensation. This provision of the Law was certainly a step forward in its application. However, in some cases, which we will discuss further, this solution led to a legal gap: how to transfer the right of ownership to certain persons who have the right of use, who bought it from the KP state, separated it on the ground, but it was not marked or registered in the cadastre.

It is also prescribed by the same Law on Planning and Construction (2009), Article 102, Paragraphs 1 and 2, that the right of use on construction land is converted into the right of ownership without compensation, and it is acquired on the day this law enters into force. Paragraph three:

“The property right on the cadastral plot is registered in favor of the person who is registered as the owner of the building, that is, the buildings located on that plot, or the person who is registered as the holder of the right of use on the cadastral plot of undeveloped construction land…” with certain exceptions not relevant here.

During the legalization of buildings and the formation of KP, the decision determines the termination of the right of use. Through direct negotiation, the right of ownership is acquired at the market price. However, if the plot was formed before September 11, 2009, the competent authority of the local self-government for property-legal affairs will accept this fact as an acquired right. Consequently, the property right will be registered in the cadastral books in accordance with Article 70 of the Law on Planning and Construction.

The Law on Planning and Construction distinguishes between acquiring ownership of a plot of land that is in public ownership and other forms of ownership. It prescribes a regime for converting the right of use on construction land into public ownership. If a building is constructed on another person's land, based on regulations on property relations, proof of the corresponding right to the building land, a legally binding court judgment, contract, or other legally valid document is required (Act on Legalization of Buildings, 1996, Article 10).

The conversion of the right of use of the parties into the right of ownership of KP in public property is achieved through freight traffic, public advertisement, direct negotiation, and prescribed exceptions.

Alienation of undeveloped construction land in public ownership is carried out by public bidding. However, it can be leased by direct contract in certain cases, provided that a planning document has been adopted on the basis of which location conditions are issued, i.e., a building permit, based on Articles 99 and 100 of the Act on Planning and Construction (2009).

Exceptionally, public construction land can be alienated at a price lower than the market price, or without compensation, under specific circumstances. These circumstances include fulfilling contractual obligations that occurred before the entry into force of this law, the realization of projects for the construction of buildings of importance for the Republic of Serbia, and mutual dispositions between owners in public property, as stated in Article 99, paragraph 12 of the same law.

3. One special case of the acquisition of property on KP that involves individuals who have the right to use property that is in public ownership

One special case of the acquisition of property on KP that is in public ownership involves persons who have the right to use it. For the purposes of this paper, we cite a specific example of the city municipality of Zemun, in the settlements of Busije and Grmovac (cadastral municipality of Ugrinovci) and the settlements of Plavi Horizonti and Altina. Although there are a number of such cases, this example is particularly illustrative. In 1997, based on a public announcement and in accordance with the regulations of the time, this municipality granted the right of use for 99 years with compensation for the construction of residential buildings to a large number of expelled, escaped, or displaced Serbian people from Croatia, Bosnia and Herzegovina, and Kosovo and Metochia. This was done through public advertising and the splitting of

several large cadastral parcels. With the aforementioned amendments to the Law on Land Use and Development, the right of ownership of the State of Serbia was registered on that KP. Although the users were given plots of 6 and 7 ares with the sale of the right of use in accordance with the regulations of the time, the compensation for the assigned plots was close to the real market price of the greenhouses in those locations. This situation involves several tens of thousands of users of allocated plots purchased with a real monetary fee, who could not even register the right of use because the property-legal relations on the plots in question between the state and the company in privatization had not been resolved. One such example is the Agricultural Combine Belgrade (PKB).

By dividing the plots and assigning them to the parties, the key points (KPs) formed and marked on the ground were not entered into the cadastral books. They probably intended to address the humanitarian aspect of the project, which aimed to provide shelter for refugees. However, today, over 20,000 rights holders and about 100,000 users are affected in one way or another by its non-resolution.

It is straightforward to comply with the legally binding decision of the state administrative body regarding the right of use on construction land on a separate plot. If the party has fulfilled the obligations outlined in the decision, paid the required fee, and built the residential facility within the time limit determined by the competent authority, the final decision should be adhered to. Our current law does not recognize the sale of the right of use for 99 years while the same person is the owner of the real estate on the plot. Comparative property law does not recognize such a case either. The stated facts should be interpreted most naturally as the sale of the right of use on the plot. With the adoption of the latest Law on Planning and Construction, and especially its latest amendments from 2023, this right of use turns into the party's property right. Article 103 of the Law on Planning and Construction provides for the conversion of the right to lease construction land for at least 50 years, of land in public ownership into private ownership without compensation if the lease has been paid. This provision enables, through a systemic interpretation, the free conversion of the right of use for 99 years into the right of private property in the above case, if it was acquired through freight work and compensation has been paid.

It is possible that the legislator at the end of the 20th century assumed there would be a regulation of building rights in our legal system, but the development went in a different direction.

In the case of the city municipality of Zemun, the parties acquired the right of use and maintenance on a different basis. Specifically, the Act

on Amendments to the Act on Basic Ownership Relations (29/96) deleted Article 29, which stipulated that the right of ownership of things in social property could not be acquired by maintenance. Since the entry into force of the aforementioned amendment on July 4, 1996, ownership rights can also be acquired on land in social, or later state, ownership. Since then, the terms for maintenance have been running. The parties who received the Decision for the use of construction plots since 1997 have acquired the right of ownership by maintenance in accordance with the law. Moreover, the legal deadline for extraordinary maintenance of 20 years has passed. The parties have been in a peaceful and undisturbed state of land since the settlement was obtained in 1997. As the decision was conditional, only those who did not fulfill the condition—who did not pay the compensation or did not start the construction of a residential building to solve their housing issue within the stipulated period—did not start the maintenance period, and it should be interpreted on a case-by-case basis. At the competition, based on Article 21 of the then-valid Act on Construction Land (1979), other persons were given the use of a certain plot of land to solve the housing issue, with the obligation to pay compensation and build a residential building. In this factual situation, the conclusion follows that the right of use is acquired by decision and maintenance and can quite legally be converted into the right of ownership without compensation for persons who have built a residential building.

A potential problem may be the pre-parceling of already parceled plots, but that is a completely different issue that the state can systematically solve within a reasonable time, in accordance with the legal and educational professions and practices in legally regulated countries.

The provisions of the decision of the administrative body on the provision of KP for use can also be interpreted as the provisions of a bilateral freight contract, in which the obligations of the parties, as well as the subject of the contract, are determined. In accordance with the above-mentioned exception in point two of Article 99, paragraph 12 of the Planning Act, the conversion of the right of use of KP into the ownership right of the owner of the building can be done without compensation, since the fee for acquiring the right of use has been paid.

This is because, in the past, this category of citizens addressed the housing issue through their own work and resources, earning them the support of the state without waiting for it to solve their existential problems. Since the right of use has already been paid for, it would be unfair to interpret the situation differently. The state must serve its citizens by addressing their needs, including the issues discussed in this work. In principle, the regulation

of public records, such as cadastral books, which is the state's obligation, is a prerequisite for the proper functioning of the legal order and economic operations.

Throughout this legal situation, the state faced an unjustified dilemma on how to initiate the procedure. It was as if there was a legal gap because municipalities, as holders of property rights, did not take any action, and geodetic organizations claimed that the issue could only be resolved by conducting a geodetic study for all parcels simultaneously. Consequently, individuals could not take any action. Various requests submitted to municipal authorities remained pending.

Starting from our Constitution, in which Article 58 guarantees the peaceful enjoyment of property, as well as the provisions of the Law on Obligations, which state that the seller transfers the right of ownership of the subject of the contract to the buyer, and therefore must create the conditions for the said transfer, the state had a reason to initiate the procedure for the transfer of the right of public ownership to private property of customers.

We can propose, in accordance with the observation of the state as a service for citizens, as a welfare state, in that spirit and obligation of the state, to amend the Law on Planning and Construction in Article 99 by adding paragraphs 14 and 15, which would read:

"The Republic of Serbia, an autonomous province and a local self-government unit, can alienate construction land without compensation when fulfilling contractual obligations. This includes the sale of the right of use on construction land to individuals and legal entities, based on the decision of the administrative body of local self-government made before the entry into force of this law. Additionally, it is based on the decision of the state body to divide large plots of land into smaller cadastral plots to address the housing needs of the population and for other purposes.

The authority responsible for property law affairs within the local self-government is obliged, no later than three years from the date of adoption of these amendments, to make a decision on initiating the procedure for the transfer of property on construction land, as specified in paragraph 14 of this law, in favor of the persons who built the facilities. Based on this decision, the authority must hire a geodetic organization for parceling and subsequently make a decision on the transfer of the first ownership of the construction land and its registration in the cadastral books."

Based on this authorization, the Decision on Construction Land of the City of Belgrade would be amended, and other local governments would make their own decisions. These decisions would prescribe the procedure for

engaging geodetic offices and organizations in the parcelling of the parcels in question and undertaking all other actions, such as obtaining the consent of the public advocate and others. This would enable the adoption of a decision on the transfer of property rights without compensation to the parties, based on which the entry in the cadastral books would be made.

In addition to the benefits of updating the cadastral books, such as bringing order to property relations on real estate, enabling wider traffic, reviving the market, and other public interests, the economic effect of the proposed changes for the state body should not be ignored. If we analyze that there are approximately 20,000 parties in this position in Belgrade (the exact number is not known) and if the fee for making a decision would be 10,000 dinars with an additional 3-5 thousand dinars for the cost of a surveyor's work, in KP up to 10 ares, and in larger and higher areas, then we easily get the amount of 200,000,000 dinars along with the payment for the service of geometric shops, for the budget of the City of Belgrade. This amounts to almost two million euros. This proposed work of the state would pay for itself and contribute many times over to the state budget, which is all the more reason to accept the proposed changes.

4. Conclusion

Based on the above, it can be concluded that the conversion of the right to use construction land into the right of ownership should be done in accordance with Article 102, paragraphs 1, 2, and 3 of the Law on Planning and Construction. The right of use on construction land is transformed into the right of ownership without compensation on the date of entry into force of this law, specifically the amendment of the law from 2023, in favor of the person who is registered as the owner of the building or who is registered as the holder of the right of use on the KP on undeveloped construction land, based on Article 106, paragraph 1.

In connection with the problem of high costs for parcelling, including pre-parcelling, the preparation of a geodetic study, and the preparation of an urban project of completed works, it is necessary for the state to issue a regulation, decision, or amendment to the Planning Act. This should address situations where there is an initiative by a housing association in building or citizens' associations in connection with the plots. Considering the level of income of employees and pensioners in our country, the state should cover the registration costs for pensioners below a certain pension threshold, as well as for other citizens who have an income below the national average or

the prescribed minimum income. Additionally, the state should perform the administrative work associated with these processes.

For decades, the state did not fully perform its role as a seller until the end of the property acquisition process by buyers, nor did it adequately control the execution of issued building permits according to the construction permit. Now, it must correct that. This would not only establish the principle of legality in the legal system and increase the value of real estate in Belgrade but also contribute to the reduction of undeveloped construction land and derelict buildings in Belgrade and other cities in Serbia. It would lead to better application of building regulations, enhance the legal and general safety of citizens, and ensure the functioning of the legal order.

Finally, it is necessary to conclude that this way of writing legal norms, as seen in the Law on Planning, does not contribute to the spread of the principle of legality. This law had to undergo a series of changes to gain precision and applicability of legal norms. Eugen Huber wrote a draft of the civil laws of Switzerland in 1902 in which the legal norm must be comprehensible and clear, such that it can only have three paragraphs, each containing one sentence (Stanković & Vodinelić, 2007. p. 27). Our Planning Act contains over twenty paragraphs in individual articles and remains unclear on certain issues. It would be even more unclear if there had been no changes and additions in the last ten years. The numerous positions presented do not follow a chronological thread. The positions are neither precise nor clear, nor are they sufficiently synthesized methodologically and methodically. This has led to the writing of numerous extensive positions and references to many previous positions, addressing individual questions partially and without chronological order. As a result, the reader loses the thread of understanding the text.

Construction on construction land is an important fact of the general development of the market economy, and the investor must be clear about his obligations, duties and rights. Otherwise, on the contrary, legal regulation becomes instead of a framework and a guardian of the environment of the market economy and economic operations, a braking factor, which is not its purpose and goal (Tabaroši, 2006, p. 25).

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PRETVARANJE PRAVA KORIŠĆENJA NA GRAĐEVINSKOM ZEMLJIŠTU U PRAVO SVOJINE U POZITIVNOM PRAVU REPUBLIKE SRBIJE

APSTRAKT: Predmet rada je analiza stanja u oblasti građanskostvarne materije koja se odnosi na pretvaranje prava korišćenja na građevinskom zemljištu u pravo svojine u pozitivnom pravu Republike Srbije. Radi se o veoma složenom građanskopravnom pitanju koje duži niz godina nije bilo na adekvatan način regulisano u pravnom sistemu Srbije, što je dovelo do pravne nesigurnosti i nerešavanja nekoliko desetina hiljada slučajeva. Primenom istorijske, komparativnopravne i dogmatsko pravne metode, kao i metode analize sadžaja relevantnih pozitivnopravnih dokumenata, u radu su na argumentovani način prezentovane odredbe brojnih zakona, koji na direktan i indirektan način tretiraju ovu pravnu materiju, pre svega, odredbe Zakona o planiranju i izgradnji, Zakona o ozakonjenju objekata, i odredbe drugih zakona. U radu je izneto argumentovano pravno tumačenje odredbi više zakonskih akata koje prevazilazi situaciju nepreciznog propisivanja ove važne građanskopravne stvari i ponuđen predlog rešenja nagomilanih slučajeva pretvaranja prava korišćenja u pravo svojine objekata za stanovanje izgrađenih bez građevinske dozvole i građevinskog zemljišta na kojem su izgrađeni ti objekti, dodeljenog na korišćenje uz naknadu od strane nadležnog državnog upravnog organa lokalne samouprave.

Ključne reči: *pravo korišćenja, pravo svojine, pretvaranje.*

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PATENT INFRINGEMENT AND CRIMINAL LAW PATENT PROTECTION

ABSTRACT: The field of patents is the most important within industrial property, as it protects inventions and the position of inventors and patent holders. The interests of investors, scientists, researchers, and inventors must be somehow united in a legal system that benefits all these stakeholders, as the future of innovative creation depends on them. A patent is a right granted to the inventor and patent holder, providing certain benefits related to the invention they have patented. Thus, the patent system aims to reward the effort, knowledge, creativity, time, and money invested in creating new inventions, which leads to an expansion of knowledge in the field of industrial property, subsequently driving industrial progress. Since there are no rights without legal protection, the issue of legal certainty is linked to the development of the patent system. Various protection mechanisms are available to the inventor and patent holder through administrative procedures, as well as mechanisms to protect against infringements. What particularly interests us is which protection mechanism is most suitable in a specific situation, especially in the modern era.

Keywords: *Industrial Property, Patent, Patent law, Patent Protection, IT Law*.

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1. Introduction

It is not possible to absolutely determine the exact share of patent revenues in the economy of a country, nor the share of innovations in the country's GDP, but regardless of that, the fact is that economies tend to be based on newly created value. Patents primarily protect the invention, and secondary patents protect the inventor, and the patent holder, because of their invention. Industrial property, and especially patents, generate new value in two ways. The first is that the patent holder can independently produce goods and put them on the market in accordance with the protected patent, i.e., patent documentation. Another way is to give permission to others to do it, and in return collect a fee, which we call licensing or giving a license. Therefore, one patent for a business entity means not only direct income from the sale of the product, but also passive income from the licensee. It also means the value it creates without the effort to organize the production process or invest in any further work. Also, the possession of a patent for a business entity often means increased overall value of that business entity on the market, growth of shares of that business entity, creation of space for new employment. The advantages of having a patent are not exhausted by this enumeration, and some are also in the intangible sphere, for example the reputation of a business entity and recognition among consumers. We cannot measure how much money flow comes as a direct consequence of the above-mentioned.

Taking into account all above-mentioned advantages that a patent brings, it is quite clear that the real economic battlefield is in the field of innovation. Companies always try to be innovative in certain areas, to bring new improvements and new technologies, and in the end, all this is in the service of the progress of the whole society, and the progress of civilization. The path from an idea to a patent, which sets a business entity apart from the competition, is sometimes long for decades, and some business entities seriously prepare documents called "Intellectual Property Development Strategies", in which they plan the development of the innovation sector decades in advance. Such projects often involve whole teams, or even institutions.

Because of this indisputable weight of patents, but also because of the complexity and cost of a development procedure, it is of utmost importance to focus our attention on the creation and understanding of the patent law system, and especially the area of patent protection.

When it comes to patent protection and mechanisms suitable for specific situations, we will try to make a systematic approach and point out practical

knowledge. These are practical questions that lawyers and legal advisors in business law or IT law frequently encounter.

The scientific benefit of this kind of paper is certainly important, given that there are not enough sources on patent law and patent protection, and many topics are still unexplored by legal science in our country.

The social benefit of such a paper should derive from the scientific benefit, given that scientific activity must have its imprint in practice. The connection between knowledge and the solution of a specific problem should be established clearly in this paper. The new knowledge that we strive to achieve should be applicable, especially to the reader who is wondering how to protect his subjective rights to patent. This paper tends to give lawyers and patent holders new insights.

The methods employed in this paper are grounded in the nature of the legal topics being addressed. This means that the basic method is the analysis of legal acts and literature in the field of patent law. We supplement this with experiences from practice.

2. Patent protection

In accordance with the logic of the general legal principle that states: "There is no right without a legal means of protecting it", in this paper we focus on the legal mechanisms of protection of rights to patent. In this chapter we are talking about the forms of protection of inventors and patent holders in individual cases, which they can use to protect their individual rights regarding their patent.

But first we must define patent: "Not every invention can be protected by a patent. For this to be possible, the invention must be: 1. from any field of technology, 2. new and involve an inventive step, 3. industrially applicable, and 4. patentable" (Krivokapić, 2022, p. 215).

The Patent Legal Act (hereinafter: PLA), the Special Powers for Effective Protection of Intellectual Property Legal Act (hereinafter: SPEPIPLA, the General Administrative Procedure Legal Act (hereinafter: GAPLA), the Civil Procedure Legal Act (hereinafter: CPLA) apply to this area. Criminal Code (hereinafter: CC), the Criminal Procedure Legal Act (hereinafter: CPLA), and the Misdemeanors Legal Act (hereinafter: MLA) are important when we talk about criminal mechanisms of protection.

This is still a matter of the internal legal order of a country, although globalization in the era of the Fourth industrial revolution has internationalized threats to the legal system. "There have been only sporadic

attempts to regulate online crimes in the EU. The reason is simple: criminal matters are still mainly the responsibility of the member states" (Savin, 2020, p. 451).

The mechanisms of protection of individual rights regarding patents can be divided into three major areas:

1. Administrative protection.
2. Crime law protection.
3. Civil protection.

The protection of rights through administrative mechanisms includes all procedures that an individual or the state authorities themselves can initiate before the state administrative bodies, with the aim of protecting the individual right to patent. The patent owner is choosing a way he will protect his intellectual property for the future. In terms of patent application, this means a lot of paperwork and groundwork for patent protection.

Criminal protection includes all criminal proceedings (criminal, misdemeanor and proceedings for economic offenses) that can be applied, and it comes after a violation of individual patent rights.

Civil protection is another protection mechanism that takes place after a violation, or during it. This includes protection before courts of general jurisdiction, but also before commercial courts, when the dispute is between legal entities.

The legal rules that apply in the field of intellectual property protection, including patent law, are divided into two major areas:

1. General legal rules (criminal law, criminal procedural law, misdemeanor law, obligation law, property law, civil procedural law, administrative law, administrative procedural law);
2. Special legal rules, namely:
   - Broader – Intellectual property law;
   - Narrower – Patent law.

We will start with general legal rules, guided by the legal logic and doctrine that a law governing a specific subject matter (*lex specialis*) overrides a law governing only general matters (*lex generalis*). Thus, we will highlight the direct application of patent law and specifics in this area as the most important facts, and we will deal with general rules to the extent that we need to understand the area of patent law. We will be guided by the assumption that the educated reader knows general law.

And then there are modern tendencies (that are still not a part of legislative), especially the topic of AI generated patents. "Although among the hundreds of thousands of patented inventions in the field of artificial intelligence, only one case (keyword: DABUS) has arisen that raised the question of whether artificial intelligence can be considered an inventor as the original holder of patent protection rights, the public has sensationally embraced it as the central issue of patent law in the fourth industrial revolution" (Marković, 2024, p. 108).

3. Infrigements of right to patent

Monopoly position is generally prohibited, but it represents a justified tool in intellectual property law and the theorists of this area of law has not yet found better solutions to stimulate and continue to find relationships, research activities, investments, initiatives, and progress overall.

Patent law basically creates a monopoly in favor of the patent holder, so that he can exclude others from making, using, importing, and selling the patented innovation for a limited period of time. That is why the patent right is an absolute and exclusive right. Absoluteness means that it acts towards everyone. While exclusion gives the right to prohibit the use of the object of protection to anyone against whom the right applies. Everyone is prohibited from using the subject matter of the patent. By combining these two characteristics of patent law, we get a monopoly position for its owner, and that monopoly position is the biggest stimulus for technological development. This monopoly position guarantees it`s owner an enviable market position. Interest is the biggest stimulus for large business entities that invest money and time in research and development.

When trying to establish exclusion in patents, two concepts arise:

- Management of the patent – The extended interest of the patent holder to transfer the right to another and gain profit over time, limiting his involvement for the benefit of another person. The patent holder receives a fee in return. We call it licensing.
- Compulsory license – A license granted by a judicial authority, limiting the exclusion of the patent holder against his will.

"Intellectual property is an old concept. The Venetian Legal Act from 1474 is often referred to as the first systematic approach to protecting inventions by a form of patent, as it stipulated an exclusive right of an individual which limited the public interest for the first time. Sixteenth-century Tudor England

already had a patent system, and the Statute of Monopolies in 1624 was the first written law which provided for the grant of a monopoly for an invention for a limited period of time" (Idris, 2003, p. 13).

"A patent is a subjective intellectual property right that provides its holder with time-limited exclusivity in terms of the economic use of the patented invention" (Marković, 2018, p. 113).

Two questions arise: Against whom patent infringement actions could be aimed? Which actions constitute a violation?

An action for infringement of a subjective patent right may be initiated by:

- The patent holder.
- The person to whom he transferred the right to use the patent (usually through a license).

Infringement actions are all actions that prevent the holder of the patent right or the person to whom he has transferred the right to use this right unhindered. An act of infringement is always unlawful. And infringement actions can be legally opposed by the patent holder and the licensee, each to the extent of the rights they possess.

Actions of patent infringement are permanent in nature, they are not done by one single action, but are expressed in long-term frequent actions. We can analyze the language (verbs) used by the legislator. Actions of production and putting into circulation are given in the form of continuous verbs. The length of the infringement does not affect whether there is an infringement, but it potentially affects the severity of the infringement, i.e. the amount of damage caused to the holder of the patent right.

In the Patent Legal Act, the legislator defines infringement of patent rights by defining and enumerating the acts of infringement. The definition of infringement of patent rights is set out in Article 132, para. 1. in the following manner: "Any unauthorized undertaking of actions referred to in Art. 14 of this legal act." – This refers us to art. 14 of this legal act, that leads us to the explanation of the content of the patent right and the exhaustive list of actions that represent a violation: "The holder of a patent or small patent has the exclusive right to: use the protected invention in production, put on the market objects made according to the protected invention, dispose of the patent or small patent. In exercising his exclusive right to the economic exploitation of a protected invention, the holder of a patent or small patent has the right to prevent any third party who does not have his consent to: produce, offer, put into circulation or use a product made according to the protected invention or to import or store that product for the stated purposes, applies a process that

is protected by a patent, produces, offers, puts into circulation, uses, imports or stores for these purposes a product directly obtained by a process that is protected by a patent, offers and delivers products that constitute essential elements of the invention to unauthorized person for the use of that invention, if the offeror or supplier knows or should have known from the circumstances of the case that the product is intended for the application of someone else's invention (Patent Legal Act, article 14)."

The content of the patent and the content of the patent right are closely related to acts of infringement. From the content of the patent, we see what exactly the patent is protected for, while from the content of the patent right it can be concluded which rights the patent holder has. When we study those two terms, we will be able to come to a conclusion what will represent an action of infringement in a specific situation. Extent of owner's right is the potential violation of the right by a third party, who can only commit the violation by entering the content of the right without authorization (legal basis) to do so.

3"A patent, in general, grants the patent owner the exclusive right to control who makes, uses, sells, offers for sale and/or imports any product or process defined by the patent's claims. Patent claims are sets of sentences that define the invention being protected. To obtain a patent, claims must typically be for an invention that is new (novel), involves inventive step (is nonobvious) in view of the "prior art" and is industrially applicable (useful). Prior art is a technical term that generally refers to all the knowledge available to the public at the time of filing of the patent application" (WIPO Patent Drafting Manual, 2022, p. 12).

Types of patent infringements are:

- Direct – Direct infringement is an infringement of a person who directly places on the market a product that infringes a patent right;
- Indirect – Indirect infringement is patent infringement by the person who provides part of the product that infringes the patent right, and for the direct infringer who will later put the product directly on the market and thereby directly infringe the patent right.

"The existence of an immediate violation of rights has the following characteristics:

1. It was made without the permission of the right holder (the perpetrator is an unauthorized person);
2. The act of doing corresponds to the content of at least one exclusive authorization of the right holder;

3. It refers to an invention that is the subject of protection (necessary connection between the perpetrator, the act of execution and the object of infringement);
4. The violation was committed in the territory of validity of the right and during the duration of the right;
5. The enforcement action must not be covered by any limitation of protection (Raičević, 2009, p. 100)."

Acts of infringement can infringe a patent in whole or in a part (just certain patent claims). Considering that patents are more and more complex today, patent infringements can be based on the misuse of only a part of the patent. A patent consists of patent claims, and if we take as a patent formula for a patent with three patent claims, that formula would look like: A+B+C. Infringing the entire patent would mean abusing the entire formula. While a partial patent infringement would mean, for example, the use of one or two of the patent claims. The infringement of only patent claim A or A+B.

The social danger that comes from infringement of patent rights is twofold. It does not stop at the fact that there is no legal security for an individual and that his rights are violated, and his property is reduced, but it discourages that individual from further creation and investment in research and invention. It reinforces the idea of protection through informal channels of protection, i.e., through a trade secret, instead of a patent. This ultimately does not make knowledge publicly available to all of humanity. Because a patent is published publicly and after the expiration of 20 years it becomes a public good, so anyone can use it. In same time the nature of a trade secret is colored by its tends to remain undisclosed.

Understanding the acts that constitute a patent infringement brings us to a position from which we can evaluate specific situation in order to decide which legal mechanism is the best to use to protect individual patent rights.

4. Forms of patent protection

After dealing with acts of violation of subjective patent rights, in this part of the paper, we are interested in the mechanisms of patent law protection. The most important question now is: "What protection mechanisms are at our disposal when we notice a violation of patent rights?"

We have already stated in chapter 1 of this paper that these mechanisms can be classified into three different groups:

– Administrative protection of patents;

– Criminal law protection of patents;
– Civil protection of patents.

There are several stages that need to take place in order to effectively protect a patent right:

– Phase of detection of infringement acts;
– Phase of preventive action – removal of products from the market, prevention of further production, prevention of service provision, etc.;
– Phase of providing evidence for possible criminal or civil proceedings;
– Phase of criminal and civil proceedings.

At different stages of the process of patent law protection, different state authorities will be involved, different protection mechanisms will be employed.

4.1. Criminal law patent protection

Criminal law covers all criminal offenses in our system: criminal acts, misdemeanors and economic offenses. Legislation in Serbia prescribes one criminal offense and two misdemeanors.

Regarding criminal acts, the Criminal Code provides in Article 201, the act "Infringement of Inventive Right", which states:

– "Whoever without authorization produces, imports, exports, offers for marketing, puts into circulation, stores or uses in commercial circulation a product or process protected by a patent, shall be punished by a fine or imprisonment for up to three years.
– If, in part from paragraph 1 of this article, property benefit was obtained or damage was caused in an amount exceeding one million dinars, the perpetrator will be punished with imprisonment from one to eight years.
– Whoever publishes or otherwise makes available the essence of someone else's reported invention before this invention has been published in the manner established by law, shall be punished by a fine or imprisonment for up to two years.
– Whoever submits a patent application without authorization or does not specify or falsely specifies the inventor in the application, will be punished with imprisonment from six months to five years.
– Subjects from paragraph 1 and 2 will be confiscated and destroyed (Criminal Code, article 201)."

Analyzing the relevant article of the law, we see that this criminal offense incriminates a large number of acts of acts: production, import, export, offering for sale, sale, storage or use in commercial transactions, as well as publishing and making available someone else's invention, as well as unauthorized application submission. For each of these positions, we present the same result of the analysis regarding the basic concepts, so the subject is an indefinite person, considering the impersonal pronoun "Who", and the object of the criminal act is a product or process protected by a patent. As far as procedural issues are concerned, a shortened procedure is applied, the Basic Public Prosecutor's Office is competent, and the indictment is an indictment proposal. This criminal offense is prosecuted ex officio, and the jurisdiction is a single judge and the Basic Court. It is also necessary to point out that negligence and attempt are not punished for this criminal act (Pejčić, 2021, pp. 31–33).

The Patents Legal Act, in the section on penal provisions, provides for two offenses:

1. Article 170.:

"A legal entity that produces, imports and/or exports without authorization, offers it for sale, puts it on sale, stores or uses for commercial purposes a product or process protected by a patent or small patent shall be fined for a misdemeanor from 100,000 to 2,000,000 dinars, contrary to the provisions of this law.

For the following from paragraph 1 of this article, the entrepreneur will also be fined in the amount of 50,000 to 500,000 dinars.

For the actions referred to in paragraph 1 of this article, a physical person or a responsible person in a legal entity will be fined for a misdemeanor in the amount of 50,000 to 150,000 dinars." (Patents Legal Act, article 170).

1. Article 171.:

"A legal entity that engages in representation in the exercise of rights from Art. 5 of this law,

For the actions referred to in paragraph 1 of this article, a natural person or a responsible person in a legal entity shall be fined in the amount of 10,000 to 50,000 dinars." (Patents Legal Act, article 170).

Criminal proceedings can be initiated by other state bodies ex officio, by informing the competent prosecution office of violations of intellectual property, i.e. patent rights, which they have encountered in their work, or patent holders can do so through a private report.

The choice of which procedure to initiate should be made in such a way that the most serious criminal offense, that is, the criminal offense, is taken into account first. If the infringement of the patent right does not satisfy the existence of a criminal offense, then the misdemeanor law should be consulted. When making a choice, you should know that the *ne bis in idem* rule can lead to the fact that if misdemeanor proceedings are initiated first, this stops the possibility of initiating criminal proceedings in connection with the given violation, considering that the misdemeanor from Article 170 and the criminal offense cover similar or even same acts of infringement.

5. Conclusion

Patent law enable the holder of the rights to have a monopoly position on the content of this right. It is an absolute right, which applies to everyone. The content of the patent right includes the right to use in the production of the protected invention, placing on the market objects made according to the protected invention and disposal of the patent (granting a license, for example).

Any act by which an unauthorized person exercises patent authorization without the permission of the patent holder is an act of infringement of patent rights. Actions of violation of rights can be indirect and direct. Patent can also be partially infringed. Actions of violation of right are permanent by their nature.

Without the protection of rights, there are no rights. The protection of patent rights, the protection of the rights of inventors and patent holders, is a priority of the patent law system. There, the right of intellectual property rests on general legal areas. The existence of rights protection mechanisms is also a way to stimulate creativity, innovation, and progress of society while new aspects are emerging in the modern age with the hasty development of IT technologies. “Likewise, humans can misuse artificial intelligence. Humans can be benevolent or malevolent, technology cannot. But a more powerful tool can do more harm when misused” (Tul, 2024, p. 760).

Our legal system incorporetes several patent protection mechanisms that can be used independently or combined for more complete protection. We divide all protection mechanisms into three groups: administrative protection, criminal protection, and civil protection.

Criminal law primarily has the task of dealing with punishment, which has an indirect effect on prevention, due to the fear of punishment and on the resocialization of the perpetrator. It reduces the social danger of perpetrators

repeating the crime. Criminal law within the framework of patent law recognizes the criminal offense stated as "Infringement of invention rights", and two misdemeanors prescribed in the Patent Legal Act.

For any of the mechanisms to be used, it is necessary to ignite the initial spark. It is necessary to detect the acts of violation. Infringing actions can be discovered by a state authority within the scope of its work, or by a private person, most often a rights holder who is directly interested in monitoring the market and discovering if someone is abusing his patent.

The protection of patent rights is very complex and there are many mechanisms for the protection of patent rights. Considering the type of infringement, the acts of infringement, different forms of patent protection can be advised. Criminal law protection, however, addresses the most severe forms of patent law violations. Upon detection of violations, it will usually be possible to alert one of the administrative authorities and start the supervision procedure. After which, in the event of a violation of rights, that authority should exclude the goods from the market and thereby prevent further violations. After that, the rights holder has the option to alert the criminal law authorities, so that the violators are penalized and refrain from possible future patent violations. The ultimate interest of the right holder is to be economically compensated (civil law) for the damages caused to him. It rounds off the protection mechanisms with their purposes, and patent right holder have a chance to combine them at the right moments and in the right way.

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POVREDE PATENATA I KAZNENO-PRAVNA PATENTNA ZAŠTITA

APSTRAKT: Oblast patenata je najvažnija oblast u okviru industrijske svojine, jer ova oblast štiti pronalazaštvo i poziciju pronalazača i nosioca patenta. Interese investitora, naučnika, istraživača, pronalazača moramo na neki način ujediniti u pravnom sistemu koji pogoduje svim ovim subjektima, jer od njih zavisi budućnost inovativnog stvaralaštva.

Patent je pravo koje se garantuje pronalazaču i nosiocu patenta određene pogodnosti povodom pronalaska koji su patentirali. Dakle, patentni sistem ima za cilj da nagradi za uložen rad, znanje, kreativnost, vreme, novac koji dovode do stvaranja novih pronalazaka i time širenja obima znanja u oblasti industrijske svojine, koje će zatim usloviti industrijski napredak. Kako prava nema bez pravne zaštite pitanje pravne sigurnosti vezuje se za razvoj patentnog sistema. Pronalazaču i nosiocu patenta stavljaju se na raspolaganje različiti mehanizmi zaštite kroz upravni postupak, a zatim i mehanizmi zaštite u slučaju povrede istog. Ono što nas posebno interesuje jeste koji je mehanizam zaštite podoban u konkretnoj situaciji, a pogotovo u modernom dobu.

Ključne reči: *Industrijska svojina, patent, patentno pravao, zaštita patenata, IT pravo*.

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TRANSFORMATION AND ECONOMIC ASPECTS OF SOFTWARE ENGINEERING THROUGH THE IMPLEMENTATION OF THE EU AI ACT

ABSTRACT: The EU AI Act of 2024 represents the first comprehensive legal framework for regulating artificial intelligence, introducing a classification of AI systems based on risk levels and specific requirements for high-risk applications. This paper analyzes the transformative impact of this regulation on software engineering, focusing on economic aspects such as compliance costs, new opportunities for innovation, and changes in labor market dynamics. Special attention is given to the potential harmonization with the legislation of the Republic of Serbia, identifying key points of alignment and possible legal conflicts. The significance of this paper lies in its contribution to understanding how the EU AI Act shapes global AI regulation and provides a framework for adapting local legislation in Serbia, thereby fostering technological and legal advancement.

Keywords: *EU AI Act, Software Engineering, Economic Impact, Artificial Intelligence Regulation*.

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1. Introduction

Artificial intelligence (AI) has revolutionized nearly every domain of technological development, including software engineering. Traditional approaches to software development, grounded in well, defined principles, are becoming increasingly less relevant as AI takes a leading role in solving complex problems, automating processes, and facilitating decision, making (Mantaci & Yunès, 2024). However, the growing adoption of AI technologies also challenges fundamental principles of programming, such as determinism, modularity, and code readability. For example, while traditional programming relies on clear inputs and predictable outputs, AI models, such as neural networksm often produce results that cannot be fully explained or reconstructed, introducing an element of indeterminacy to processes that were once deterministic. The European Union, as a global leader in digital technology regulation, has recognized the need for a comprehensive legal framework to ensure the responsible use of artificial intelligence. With the adoption of the EU AI Act (2024/1689) (European Parliament, Artificial Intelligence Act: MEPs adopt landmark law, 2024), the EU has become the first jurisdiction in the world to enact legislation specifically aimed at regulating AI systems. This law establishes clear standards for the development, deployment, and use of AI technologies, taking into account the risks they pose to fundamental human rights, privacy, and social equity. One of the key challenges stemming from the implementation of this law concerns the economic aspects of software engineering. By introducing a strict classification of AI systems based on risk levels, from prohibited systems, such as manipulative technologies and social scoring, to high risk systems in sectors like healthcare and justice, the EU AI Act significantly alters how software companies design, test, and market their products. For software development companies, this entails not only adapting to technical standards but also restructuring business models to ensure compliance with the regulation.

These changes particularly affect small and medium sized enterprises (SMEs), which often lack the resources to implement complex mechanisms for transparency, risk assessment, and human oversight of AI systems. On the other hand, the regulation creates opportunities for innovation in the development of AI tools for compliance, as well as for specialized consulting services. At the global level, the EU AI Act lays the groundwork for harmonizing standards, which could lead to increased costs for companies seeking to operate in the European market but also foster fair market conditions for local players. The fundamental principle of programming,

determinism, also faces serious challenges in the era of artificial intelligence (Naganjaneyulu, 2022). AI systems not only disrupt this predictability but also introduce new complexities that traditional debugging and testing tools cannot manage. Modularity and code readability, which have been essential for sustainable software development, are now evolving to accommodate AI models that often function as "black boxes." This directly impacts the economic sustainability of software companies by increasing maintenance, training, and development costs. For instance, high risk AI systems, such as those used in healthcare or justice, are now subject to strict requirements for transparency and human oversight. This necessitates additional human resources, the implementation of complex algorithms for monitoring and evaluating performance, and compliance with legal procedures that were not previously part of traditional software engineering. While large companies can absorb these costs, smaller entities face significant barriers to market entry. Furthermore, the EU AI Act requires companies to provide tools for risk assessment, directly influencing software development costs. For example, AI systems used in education or employment must ensure high levels of transparency, which requires additional investments in employee training and the development of technologies for explaining AI driven decisions. This raises questions about the long term profitability of software companies and their capacity for innovation in a strictly regulated environment. Despite these economic challenges, the EU AI Act also offers significant opportunities. As the market adapts to the new rules, numerous possibilities emerge for companies developing tools for risk assessment, process automation, and human oversight of AI systems. For example, the development of specialized software solutions for risk data analysis and the implementation of transparent AI models could become a new market segment. Additionally, the regulation could encourage European companies to focus on the ethical development of AI technologies, potentially giving them an edge in the global race for innovation.

Given the transformative impact of artificial intelligence on software engineering and economics, as well as the significance of the EU AI Act in establishing a regulatory framework, it is crucial to investigate how these changes influence business models, development processes, and the global competitiveness of software companies. This paper aims to highlight the key economic challenges and opportunities arising from the implementation of this regulation, providing a foundation for further research and discussions on the sustainable development of software engineering in the age of artificial intelligence.

2. EU AI Act – Regulation (EU) 2024/1689

The Rationale Behind the Legislation

The European Parliament adopted the Artificial Intelligence Act (EU AI Act) on March 13, 2024 (European Parliament, Artificial Intelligence Act: MEPs adopt landmark law, 2024). Subsequently, the Act was published in the Official Journal of the European Union on July 12, 2024, and came into force on August 1, 2024 (Regulation (EU), 2024). However, due to the phased implementation process, most of the provisions of the Act will take effect on August 2, 2026. The EU AI Act represents the first comprehensive legal framework in the world dedicated to regulating artificial intelligence, aiming to address the growing challenges posed by AI technologies. The decision to enact this law stems from the need to protect fundamental human rights, privacy, and security at a time when AI is becoming increasingly prevalent in critical sectors such as healthcare, justice, employment, and education. In the absence of clear regulations, the irresponsible use of AI could lead to social inequalities, user manipulation, and violations of human rights. The Act not only establishes standards for the ethical development of AI technologies but also seeks to ensure fair market competition and foster innovation in line with the societal values of the European Union.

Key Risk Categories Defined by the Act

The EU AI Act categorizes artificial intelligence systems into four risk levels based on the threats they pose to individuals and society: prohibited AI systems, high risk systems, limited risk systems, and minimal risk systems. Each category is clearly defined, with specific regulatory requirements for their development, deployment, and use. This classification serves as a cornerstone of the legislation and directly correlates with the potential consequences these AI systems might cause.

1. Prohibited AI Systems

Prohibited AI systems represent the highest risk level and are outright banned under the EU AI Act due to their direct threat to fundamental human rights and freedoms. These technologies are deemed unacceptable as they violate ethical norms and disrupt social balance. Key areas within this category include:

– Biometric Surveillance in Public Spaces

This technology uses cameras and AI algorithms to identify and track individuals in real time. While potentially beneficial for public safety, the Act permits exceptions only in specific cases, such as law enforcement operations aimed at preventing serious criminal activities. The restriction arises from

concerns that such systems infringe on privacy rights, freedom of movement, and create a sense of mass surveillance, which could be abused in repressive regimes.

– Manipulative Techniques That Undermine Users' Free Will

Manipulative AI systems employ psychological techniques to control and influence user behavior without their awareness. For instance, "dark patterns" in digital interfaces are designed to coerce users into making decisions against their interests, such as purchasing unwanted products or agreeing to undesirable terms of service. This also includes emotional manipulation using biometric data (e.g., facial expressions, tone of voice) to provoke certain reactions, such as urgency during purchases. The Act identifies these practices as violations of users' right to autonomy.

– Social Scoring Systems

Prohibited systems include those that evaluate individuals based on their behavior or other personal characteristics, assigning a "score" that impacts their rights and opportunities. Inspired by the Chinese social credit system, the EU AI Act strictly bans such systems due to their potential to cause discrimination, social segregation, and violations of human dignity. For example, insurance companies are prohibited from using driving behavior data to increase policy prices.

2. High Risk AI Systems

High risk systems have significant potential to impact individuals and society, particularly in critical domains such as healthcare, employment, education, infrastructure, and justice. While these systems are not prohibited, they are subject to strict regulations and procedures to mitigate potential risks. Key requirements include risk assessments, human oversight, and system transparency. Examples include:

– AI in Healthcare

AI systems used for diagnostics, treatment, or medical evaluation are considered high risk because they directly impact human health and life. The EU AI Act mandates that such systems operate transparently and produce outputs that can be verified by professionals. For instance, an algorithm analyzing X-ray images must allow doctors to understand how decisions were reached.

– AI in Employment and Education

AI tools used for candidate selection, employee performance evaluation, or tailoring educational content are subject to strict rules. Concerns include potential biases favoring certain groups or individuals, thereby increasing discrimination. For example, recruitment algorithms must not favor male candidates over female candidates due to historically biased datasets.

– AI in Critical Infrastructure

Systems managing traffic, water supply, or energy grids are classified as high risk due to the severe consequences errors could cause, including safety threats and economic losses. The law requires the implementation of safety mechanisms and regular testing of such systems to prevent potential incidents.

– AI in Justice Systems

AI tools supporting legal document analysis, sentencing, or penalty recommendations are deemed high risk due to their direct impact on justice and human rights. The Act mandates human oversight to ensure impartiality and accuracy in these processes.

3. Limited Risk AI Systems

This category includes AI systems with a moderate impact on users and society. Although not banned or subject to the strict procedures applicable to high risk systems, the law imposes certain transparency obligations. For instance, users must be informed when interacting with an AI system rather than a human agent. Examples include AI chatbots or personalized product recommendation systems in e-commerce. The transparency requirement ensures that users are aware of when they are engaging with AI to prevent manipulation and deception. For example, if a virtual assistant schedules appointments, it must be clear that the interaction is with an AI system, not a human. While this category carries lower risks, the law allows for potential revision if significant negative consequences are identified over time.

4. Minimal Risk AI Systems

Minimal risk systems include tools such as spam filters, AI powered gaming applications, and content recommendation systems in entertainment platforms. These systems have negligible impact on individuals and society and are not subject to specific regulatory requirements. However, the Act acknowledges the possibility of misuse even in this category, particularly concerning algorithms designed to maximize user engagement or create addictive behaviors. For instance, infinite scrolling on social media platforms, powered by AI, can negatively affect mental health by encouraging excessive use. Although detailed risk assessments are not mandatory for these systems, the EU AI Act emphasizes the importance of adhering to ethical principles during their development. This allows companies to innovate in less critical domains while still aligning with basic legislative guidelines.

Implications for Software Engineering

The EU AI Act has a profound impact on software engineering by introducing new requirements for the development, testing, and deployment of AI systems. Traditional programming principles, such as determinism and modularity, face challenges as AI models often function as "black boxes." The legislation mandates risk assessments, the implementation of human oversight, and ensuring transparency, which significantly alters the software development paradigm. These changes require additional investments in team training, the development of specialized tools, and the adaptation of business models to ensure compliance with legal requirements. While the Act poses challenges, it also fosters innovation and provides companies with the opportunity to stand out by developing ethical and responsible AI technologies.

3. Phased Implementation

With the adoption of the Artificial Intelligence Act (AI Act), the European Union has laid the foundation for the world's first comprehensive legal framework aimed at regulating artificial intelligence (AI). As part of its digital strategy, this legislation represents a pioneering effort to address the risks associated with AI technologies while positioning Europe as a global leader in AI governance (European Digital Strategy, "AI Act", 2024). AI systems classified as high risk are permitted but must comply with strict requirements to ensure their safe and ethical use. These requirements include the implementation of risk management systems, the use of high quality data to mitigate risks and discriminatory outcomes, detailed documentation to ensure transparency, and oversight by human operators. Examples of high risk AI systems include those used in critical infrastructure, education, employment processes, essential public and private services, law enforcement, and border control (EU Artificial Intelligence Act, "The EU Artificial Intelligence Act: Up to date developments and analyses of the EU AI Act", 2024). Applications classified as low or minimal risk are not subject to stringent regulations under the Act. However, the legislation encourages the voluntary adoption of codes of conduct that promote transparency and ethical use of such systems. This multi layered regulatory approach aims to balance reducing risks associated with AI while fostering innovation and technological advancement in the EU (European Digital Strategy, "AI Act", 2024). The legislative process leading to the adoption of the AI Act began with the publication of the "White Paper on Artificial Intelligence – A European Approach to Excellence and Trust" by the European Commission in February 2020. Following extensive consultations

and debates, the Commission formally proposed the legislation on April 21, 2021. The European Parliament adopted the Act on March 13, 2024, and the Council of the European Union approved it on May 21, 2024. The law was published in the Official Journal of the European Union on July 12, 2024, and came into force on August 1, 2024. The implementation of specific provisions is planned in phases, ranging from six months to three years, depending on the requirements of each provision (European Digital Strategy, "AI Act", 2024). The AI Act establishes obligations for various stakeholders in the AI ecosystem, including suppliers, users, importers, distributors, and manufacturers of AI related products within the EU market. This broad scope ensures that AI systems developed or used outside the EU, but producing results within its jurisdiction, are also subject to the legislation (Hickman, 2024). Non-compliance with the AI Act carries significant penalties. Depending on the nature and severity of the infringement, fines range from €7.5 million or 1.5% of annual global turnover for minor offenses to €35 million or 7% of annual global turnover for the most severe violations (European Digital Strategy, "AI Act", 2024) (IBM, "What is the Artificial Intelligence Act of the European Union (EU AI Act)?", 2024). The adoption of the AI Act has elicited mixed reactions from stakeholders. While the law applies within the EU, experts predict it could have far-reaching consequences for international companies aiming to operate in the EU, potentially influencing global standards for managing AI technologies. On the one hand, some industry observers have expressed concerns that the Act's strict requirements could pose challenges for startups and smaller firms, potentially undermining their competitiveness compared to companies operating in regions with less stringent regulations. On the other hand, proponents of the legislation argue that it provides much-needed clarity and a harmonized framework that could foster trust and innovation in AI technologies (European Commission, "Proposal for a Regulation laying down harmonized rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union legislative acts", 2021). Human rights organizations have criticized the Act for not imposing a full ban on certain AI applications, such as real-time facial recognition technologies, citing potential risks to civil liberties and privacy. Additionally, concerns have been raised about the export of AI technologies to jurisdictions that may misuse them to violate human rights (Hupont, Fernández-Llorca, Baldassarri & Gómez, 2024, p. 2). The AI Act is envisioned as a potential model for global AI regulation. Its comprehensive approach to risk categorization and the establishment of corresponding obligations sets a precedent that other jurisdictions may consider when developing their own frameworks for AI governance. This extraterritorial influence underscores the

EU's role in shaping global standards for emerging technologies, akin to the impact of the General Data Protection Regulation (GDPR) in the domain of data privacy (IBM, "What is the Artificial Intelligence Act of the European Union (EU AI Act)?", 2024).

4. Economic Aspects of the New Regulation

The EU AI Act (2024) introduces significant changes to the economic landscape, particularly for industries utilizing artificial intelligence. The regulation seeks to balance rapid technological advancement with the protection of fundamental societal values such as privacy, security, and market fairness. This balance brings a range of economic implications, including increased compliance costs, shifts in labor market structures, higher innovation costs, and new opportunities for specialized services and technology development.

Compliance and Adaptation Costs

One of the primary economic impacts of the EU AI Act is the cost incurred by businesses in aligning their processes with the new requirements. Under the regulation, high risk AI systems must meet strict criteria related to risk assessment, transparency, and human oversight (Comunale & Manera, 2024). These requirements impose additional costs for implementing new tools and testing methods, hiring risk assessment experts, and training staff to comply with regulatory standards. Small and medium sized enterprises (SMEs), which often lack the resources needed for such adjustments, are particularly affected. According to a report by the International Monetary Fund (IMF), SMEs face challenges in securing financing and implementing the necessary standards for regulatory compliance (Comunale & Manera, 2024). For example, companies developing high risk systems, such as diagnostic tools for healthcare, must invest in complex verification processes, potentially leading to higher prices for their products and services.

Impact on the Labor Market

The EU AI Act significantly alters labor market dynamics. Studies suggest that artificial intelligence has the potential to replace many routine jobs while creating new opportunities in high skill areas such as data analysis and AI system development (Buijsman, 2024). However, these effects are not evenly distributed highly skilled workers are more likely to benefit from AI technologies, while lower-skilled workers face a higher risk of job displacement. For instance, employees in industries such as finance and administration, where AI can

automate tasks like data entry or basic analysis, face increased job insecurity. At the same time, compliance requirements for high risk systems drive demand for specialists in risk management and regulatory implementation (Tartaro, 2024). This asymmetry may further deepen social and economic inequalities.

Fostering Innovation and New Opportunities

While the regulation presents challenges, it also creates opportunities for innovation. The introduction of obligations for risk assessment, transparency, and the development of AI generated content detectors fosters a market for specialized tools and services (Knott, et al., 2024). Companies that focus on developing compliance technologies, such as data analysis and risk assessment tools, could gain a significant competitive advantage. Moreover, the EU AI Act promotes the development of ethical AI technologies, which could spur innovations addressing specific societal challenges. For example, AI systems in healthcare that meet regulatory requirements may offer greater reliability and safety, encouraging broader adoption in clinical practice. On a global level, the EU AI Act may serve as a model for other jurisdictions, providing European companies with an opportunity to position themselves as leaders in the development of responsible AI technologies.

Economic Harmonization and Global Competitiveness

The introduction of the EU AI Act could have a profound impact on the global competitiveness of European companies. Reports suggest that setting regulatory standards may increase costs for foreign companies seeking to operate in the European market, ensuring fair market competition ("Artificial Intelligence Act: MEPs adopt landmark law,", 2024). However, this harmonization of standards may also pressure global players to adopt similar regulations, raising costs across the industry. By positioning the EU as a leader in AI governance, the regulation encourages a level playing field while reinforcing Europe's role in shaping global AI standards. European companies, particularly those already aligned with the new regulatory requirements, could gain a competitive edge in the global marketplace.

5. Harmonization of the EU AI Act and the Legislation of the Republic of Serbia

The European Union, with the adoption of the Artificial Intelligence Act (EU AI Act), has established a comprehensive legal framework for regulating artificial intelligence, aiming to balance the promotion of innovation with the

protection of fundamental human rights, security, and societal values. This Act introduces a classification model for AI applications based on risk levels unacceptable, high, limited, and minimal and imposes specific obligations for each category, including outright bans, strict regulatory requirements, and voluntary guidelines for low risk systems. In the context of Serbia, which currently lacks a dedicated AI law but has relevant legislation such as the Law on Personal Data Protection (ZZPL), the Law on Electronic Government, and the Law on Consumer Protection, the question arises of how to harmonize its legal framework with the requirements of the EU AI Act and address potential points of conflict. Under the EU AI Act, unacceptable risk systems include practices such as social scoring and manipulative techniques targeting vulnerable groups. While Serbia does not explicitly prohibit these practices, the ZZPL provides restrictions on data processing that could lead to discrimination, and Article 3 of the ZZPL establishes rules to ensure privacy and protect personal data, indirectly implying a ban on social scoring (European Parliament, Artificial Intelligence Act: MEPs adopt landmark law, 2024; Law on Personal Data Protection, 2018). However, the lack of specificity in the current legal framework necessitates amendments to explicitly ban such systems and ensure harmonization with the EU AI Act. For high risk systems, the EU AI Act imposes stringent requirements on risk assessment, transparency, human oversight, and the use of high quality data to minimize discriminatory outcomes. These requirements apply particularly to critical sectors such as healthcare, education, employment, and critical infrastructure. In contrast, Serbian legislation does not provide explicit standards for high risk AI systems. However, provisions in the ZZPL governing data processing in the public sector offer a foundation for developing such rules (Law on Personal Data Protection 2018; Consumer Protection Act, 2021). For instance, Articles 10–15 of the ZZPL, which address the legality and purpose of data processing, could be expanded to include specific procedures for risk assessment and human oversight in AI development. Nonetheless, further normative precision is required to ensure full harmonization with the EU AI Act. Limited risk systems, such as chatbots and recommendation systems, are required by the EU AI Act to ensure basic transparency for users. In Serbia, the Law on Consumer Protection provides a general framework for protecting users from deceptive practices but lacks specific provisions related to AI systems (Consumer Protection Act, 2021; The law of contract and torts, 1978). This gap could be addressed through amendments to explicitly define requirements for informing users about the use of AI systems and their core functionalities. Minimal risk systems, such as spam filters and AI tools for

gaming, are not regulated under the EU AI Act but are encouraged to adopt voluntary codes of conduct. Serbia currently lacks a legal framework for voluntary codes of conduct for AI systems. However, such frameworks could be developed in collaboration with the IT sector and academic institutions (Law on Personal Data Protection, 2018). The EU AI Act clearly defines the responsibilities of various stakeholders in the AI ecosystem, including providers, users, and distributors. Serbian legislation, however, does not specify the roles and responsibilities of these actors. Existing laws, such as the Law on Obligations and the Law on Consumer Protection, provide a basis for liability in digital transactions but are not tailored to the specificities of the AI sector (The law of contract and torts, 1978; Comunale & Manera, 2024). Serbia should amend these laws to explicitly define the roles and responsibilities of all parties involved in the development and deployment of AI systems. The EU AI Act imposes strict penalties for non-compliance, reaching up to €35 million or 7% of a company's annual global revenue. In Serbia, there are no equivalent penalty provisions related to the misuse of AI technologies (European Parliament, Artificial Intelligence Act: MEPs adopt landmark law, 2024; Consumer Protection Act, 2021). Harmonization in this area would require the introduction of detailed sanctions for failing to meet legal standards in the AI domain. The EU AI Act mandates that AI systems be free from bias and discriminatory practices. Serbia's Law on Protection Against Discrimination provides a general framework for combating discrimination but does not include specific mechanisms for addressing bias in AI systems (Law on Personal Data Protection, 2018; Consumer Protection Act, 2021). Expanding this law to cover AI technologies would ensure compliance with European standards. The EU AI Act establishes detailed requirements for transparency and risk assessment, whereas Serbia's provisions in this area are significantly broader. Amendments to the Law on Electronic Government and the ZZPL would be necessary to include specific procedures for risk assessment and obligations to provide transparent information to users about the functioning of AI systems.

6. Conclusion

The European Union's Artificial Intelligence Act (EU AI Act) of 2024 represents a significant milestone in the regulation of artificial intelligence, setting global standards for the ethical and responsible application of AI technologies. Its risk based approach categorizing AI systems into prohibited, high risk, limited risk, and minimal risk levels has a profound impact on software engineering,

particularly in areas such as transparency, risk assessment, and human oversight. For software companies, the Act introduces increased compliance costs but also creates opportunities for innovation, especially in the development of compliance monitoring tools and ethical AI solutions. The economic impact of this regulation is particularly pronounced for small and medium-sized enterprises (SMEs), where stringent requirements for high risk systems may limit market access due to resource constraints. Conversely, larger companies have the opportunity to gain a competitive edge in the European market through compliance. Furthermore, the rising demand for AI specialists is creating new job opportunities in highly skilled sectors, though automation may threaten traditional roles in lower skilled areas. For Serbia, the EU AI Act offers a unique opportunity to enhance its legislative framework and improve its positioning in the global market. While the current legal framework through laws such as the Law on Personal Data Protection (ZZPL) and the Law on E-Government provides a foundation for AI regulation, amendments are required to better define responsibilities, risk assessment, and transparency for AI systems. Harmonization with European regulations would strengthen legal certainty, foster innovation, and boost the competitiveness of Serbia's software sector.

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TRANSFORMACIJA I EKONOMSKI ASPEKTI SOFTVERSKOG INŽENJERSTVA KROZ IMPLEMENTACIJU UREDBE EU O VEŠTAČKOJ INTELIGENCIJI

APSTRAKT: Uredba EU o veštačkoj inteligenciji iz 2024. predstavlja prvi sveobuhvatan pravni okvir za regulaciju veštačke inteligencije, uvodeći klasifikaciju sistema veštačke inteligencije prema nivou rizika i precizne zahteve za visokorizične aplikacije. Ovaj rukopis analizira transformativni uticaj regulative na softversko inženjerstvo, s fokusom na ekonomske aspekte, kao što su troškovi usklađivanja, nove mogućnosti za

inovacije i promena dinamike tržišta rada. Posebna pažnja posvećena je potencijalnoj harmonizaciji sa zakonodavstvom Republike Srbije, pri čemu su identifikovane ključne tačke potencijalnog usklađivanja i moguće pravne kolizije. Značaj ovog rukopisa leži u njegovom doprinosu razumevanju kako Uredba EU o veštačkoj inteligenciji oblikuje globalnu regulaciju veštačke inteligencije i pruža okvir za adaptaciju lokalnog zakonodavstva u Srbiji, čime se podstiče tehnološki i pravni napredak.

Ključne reči: *Uredba EU o veštačkoj inteligenciji, softversko inženjerstvo, ekonomski uticaj, regulacija veštačke inteligencije.*

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ISPRAVKA

U tekstu naučnog rada „Analiza primene veštačke inteligencije u nastavi socijalnog rada“, Galetin, M., & Škorić, J. (*Pravo – teorija i praksa, 2024, 41*(4), 165–179), DOI 10.5937/ptp2404165G na strani 176 nedostaje informacija da je rad rezultat projekta „Analiza primene veštačke inteligencije u nastavi socijalnog rada” finansiranog od strane Pokrajinskog sekretarijata za visoko obrazovanje i naučnoistraživačku delatnost (rešenje br. 000885712 2024 09418 003 000 000 001 04 003), od 29.04.2024. godine.

Izvinjavamo se autorima zbog greške i zahvaljujemo im se na saradnji.

CORRECTION

In the scientific paper titled “Analysis of the Application of Artificial Intelligence in Social Work Teaching,” by Galetin, M., & Škorić, J. (*Pravo – teorija i praksa, 2024, 41*(4), 165–179), DOI 10.5937/ptp2404165G, on page 176, it was omitted that the paper is the result of the project "Analysis of the Application of Artificial Intelligence in Social Work Teaching," funded by the Provincial Secretariat for Higher Education and Scientific Research (Decision No. 000885712 2024 09418 003 000 000 001 04 003), dated April 29, 2024)

We apologize to the authors for this oversight and thank them for their cooperation.

REGISTAR
sadržaja časopisa za 2024. godinu

THE REGISTER
of Journal Contents for the Year 2024

OBJAŠNJENJE: Prvi broj se odnosi na broj časopisa, drugi broj označava stranu u časopisu, dok treći broj označava godinu izdanja.
EXPLANATION: The first number refers to the issue number, the second number indicates the page in that issue of the journal, while the third number stands for the year of publication.

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The title page should contain the title of the paper in English, followed by the title in Serbian, with font size 14 pt, Bold. After a space, please provide the author's full name, title, affiliation (workplace **with the mandatory inclusion of the country)**, email address, and contact phone number, using font size 12 pt. If the author has an ORCID number, it should be included immediately after the author's name. For more information about ORCID iD, please visit: https://orcid.org and after registration, enter your ORCID iD number in the paper.

Next, leave a space and write an abstract, up to 250 words, in English, followed by the abstract in Serbian, both in size 12 pt. The abstract should provide a brief informative summary of the article, enabling readers to quickly and accurately assess its relevance. Authors should explain the

research objective or the reason for writing the article. Then, they need to describe the methods used in the research and briefly summarize the obtained results.

Keywords should be listed after one line of spacing below the abstract, in English, followed by the keywords in Serbian. There should be a maximum of five keywords, size 12 pt, Italic. Then leave a space of two lines before the main text of the paper begins.

Texts should be concise, written in a clear style, and follow a logical sequence that typically includes: an introduction, main body of the paper, and conclusion. The font size for the main text is 12 pt. Headings and subheadings in the text should be 12 pt, Bold.

The title and number of illustrations (diagrams, photographs, graphs/charts) should be centered above the illustration, size 12 pt. The title and number of tables should also be centered above the table, size 12 pt. The source must be stated ("Source: …") below the illustration or table, size 10 pt. If the results presented graphically or in tables are from the author's research, the source below the illustration or table should be: Author's research.

If the author wishes to include acknowledgments or references to project(s) under which the text was written, they should do so in a separate section titled "Acknowledgments", following the Conclusion in sequence and preceding the author's affiliation and the abstract in Serbian.

For writing references, use the APA (Publication Manual of the American Psychological Association) international standard for writing references. Notes or footnotes may contain additional explanations or comments related to the text. Footnotes should be written in Times New Roman font, size 10 pt.

In APA style, the source being cited is mentioned **within the text**, with the elements (author, year of publication, page number of the quoted section) enclosed in parentheses immediately before the period and separated by commas.

RULES FOR IN-TEXT CITATIONS

When citing a source written by a single author:

If the author's name appears in the sentence, the year of publication of the cited text is placed in parentheses immediately after the author's name, and the page number is provided at the end of the sentence:

Example:

As Besermenji (2007) highlights, “air pollution is a particularly prevalent issue, primarily due to an exceptionally low level of environmental awareness and a lack of professional education in the field of environmental protection” (p. 496).

If the author’s name does not appear in the sentence, the author’s last name, year of publication, and page number are placed in parentheses at the end of the sentence:

Example:

Also, “rural tourism is expected to act as one of the tools for sustainable rural development” (Ivolga, 2014, p. 331).

Note: If the citation is a paraphrase or summary, the page number is not necessary.

Example:

The environment encompasses everything that surrounds us, or everything that is directly or indirectly connected to human life and production activities (Hamidović, 2012).

When citing a source written by two authors:

Use “and” or “&” between the authors’ last names, depending on whether the authors are mentioned in the sentence.

Examples:

Chaudhry and Gupta (2010) state that as many as 75% of the world’s poor live in the rural areas, and more than one-third of rural areas are in arid and semiarid regions.

Hence, “rural development is considered as a complex mesh of networks in which resources are mobilized and in which the control of the process consists of interplay between local and external forces” (Papić & Bogdanov, 2015, p. 1080).

When citing a source written by 3-5 authors:

For the first-time citation, list all authors:

Example:

(Cvijanović, Matijašević Obradović, & Škorić, 2017)

For subsequent citations, list only the first author followed by “et al.”:

Example:
(Cvijanović et al., 2017)

When citing a source written by 6 or more authors:

For both the first and subsequent citations, list only the first author followed by "et al.":

Example:
(Savić et al., 2010)

When citing a text authored by an organization:

If the author of a paper is an organization, include the organization's name in parentheses as the author. If the organization has a known abbreviation, provide the abbreviation in square brackets after the full name in the first citation, and use only the abbreviation in all subsequent citations.

Example:
First citation: (Serbian Academy of Sciences and Arts [SASA], 2014)
Subsequent citations: (SASA, 2014)

When citing texts by authors with the same surname:

Use the authors' initials to avoid confusion.

Example:
The viewpoint expressed by D. Savić (2017) has been presented...

When citing multiple references by the same author from the same year:

If there are two or more references from the same author in the same year, add letter designations "a", "b", etc., after the year.

Example:
(Dragojlović, 2018a)
(Dragojlović, 2018b)

When citing two or more texts in one citation:

List the authors' last names in the order of publication and separate them with a semicolon.

Example:
Obviously, living and working in rural areas has always been connected with specific material and symbolic relations to nature (Milbourne, 2003; Castree & Braun, 2006).

When citing a newspaper article with a specified author:

Example:

It was reported in *NS uživo* (Dragojlović, 2021) that...

In the reference list, format this reference as follows:

Dragojlović, J. (2021). Anketirani Novosađani za vraćanje smrtne kazne u Ustav [Novi Sad residents surveyed to return the death penalty to the Constitution]. *NS uživo*, January 22.

When citing a newspaper article without a specified author:

Example:

As published in *Politika* (2012)

In the reference list, format this reference as follows:

Politika. (2012). Straževica gotova za dva meseca [Straževica finished in two months]. February 1.

When citing personal correspondence:

Example:

According to Nikolić (2020),

In the reference list, format this reference as follows:

Nikolić, A. (2020). Pismo autoru [Letter to the author], November 21

When citing a text in press:

At the end of the reference, before the period, add "in press."

When citing court decisions, the practice of the European Court of Human Rights, and other sources from domestic and international judicial practice:

The reference should contain as complete information as possible: type and number of the decision, date when the decision was brought, publication in which it was published.

Example in text:

(Decision of the High Court in Belgrade – Special Department K.Po1 no. 276/10 dated January 26, 2012)

Example in text: (Borodin v Russia, par. 166.)

Note:

Sources from judicial practice **should not be listed** in the reference list. The full reference **should be provided** in a footnote. When citing the practice of the European Court of Human Rights, the application number should also be included.

Example for reference in a footnote:

As stated in the Decision of the High Court in Belgrade – Special Department K.Po1 no. 276/10 from January 26, 2012. Intermex (2012). Bilten Višeg suda u Beogradu [Bulletin of the High Court in Belgrade], 87, p. 47.

Borodin v Russia, application no. 41867/04, ECHR judgment, February 6, 2013, par. 166.

When citing laws and other regulations:

When citing a legal text or other regulation, mention the full name of the law or regulation and the year it came into force.

Example:

(Criminal Procedure Code, 2011)

(Regulation on the Content of the Decision on the Implementation of Public Procurement Procedure by Multiple Clients, 2015)

This rule also applies to laws or other regulations that are no longer in force.

Example:

(Criminal Code of the Republic of Serbia, 1977)

When citing international regulations, it is sufficient to mention the abbreviated name of the document along with its number and the year it was adopted.

Example:

(Regulation No. 1052/2013) or (Directive 2013/32)

When citing a text with an unknown publication date or author:

For works with an unknown date, use "n.d." (non-dated) in place of the year.

Example:

Their significance for parliamentary processes is immeasurable (Ostrogorski, n.d.).

If the paper uses a reference to a paper by an unknown author, cite the title of the paper and include the year if known.

Example:

All that has been confirmed by a mixed, objective-subjective theory (Elements of a criminal offense, 1986, p. 13).

Important Note:

Cited sources (regardless of the language in which they are written) should not be translated into English, except for the titles of papers (publications, legal acts) which should be translated and written in square brackets.

Example:

1. Matijašević Obradović, J. (2017). Značaj zaštite životne sredine za razvoj ekoturizma u Srbiji [The importance of environmental protection for the development of ecotourism in Serbia]. *Agroekonomika*, *46*(75), pp. 21-30.
2. Jovašević, D. (2017). *Krivična dela ubistva* [*Murder as a Crime*]. Beograd: Institut za kriminološka i sociološka istraživanja.
3. Uredba o ekološkoj mreži Vlade Republike Srbije [The Ecological Network Decree of the Government of the Republic of Serbia]. *Službeni glasnik RS*, br. 102/10.
4. Zakon o turizmu [The Law on Tourism]. *Službeni glasnik RS*, br. 17/19.

References Section:

At the end of each manuscript, include a **"References"** section listing all the cited sources in alphabetical order. Titles in foreign languages that begin with definite or indefinite articles ("a", "the", "Die", etc.) should be listed as if the article does not exist. The list of references should include only works that are published or accepted for publication.

The editorial board emphasizes the usage of recent references whenever possible, which will be a key criterion when selecting manuscripts for publication. Each reference must include a DOI number if available. If the cited reference does not have a DOI number, the author may include a URL.

Example of referencing with a DOI number:

Počuča, M., & Matijašević Obradović, J. (2018). The Importance of Evidence Collection in Procedures for Criminal Acts in the Field of Economic Crime in Serbia. In: Meško, G., et al. (eds.), *Criminal Justice and Security in Central and Eastern Europe: From Common Sense to Evidence-based Policy-making* (pp. 671-681). Maribor: Faculty of Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286174-2

Example of referencing with a URL:

Milosavljević, B. (2015). Pravni okvir i praksa primene posebnih postupaka i mera za tajno prikupljanje podataka u Republici Srbiji [Legal framework and practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (Ed.), *Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse* [*Special measures for secret data collection: between law and case law*] (pp. 5-33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15, from https://bezbednost.org/wp-content/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podataka__vodic_.pdf.

Examples of references to be listed at the end of the manuscript:

References

1. Agencija za privredne registre. Privredna društva [Companies]. Downloaded 2020, January 10 from https://www.apr.gov.rs/o-agenciji.1902.html
2. California Secretary of State. Downloaded 2020, December 15 from https://www.sos.ca.gov/business-programs/
3. Dukić-Mijatović, M. (2011). Korporativno upravljanje i kompanijsko pravo Republike Srbije [Corporate Governance and Companies Business Law of the Republic of Serbia]. *Pravo – teorija i praksa*, *28* (1-3), pp. 15-22.

4. Dragojlović, J., & Bingulac, N. (2019). *Penologija između teorije i prakse* [*Penology between theory and practice*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
5. Dragojlović, J. (2021). Anketirani Novosađani za vraćanje smrtne kazne u Ustav [Novi Sad residents surveyed to return the death penalty to the Constitution]. NS uživo, January 22.
6. Gopalsamy, N. (2016). *A Guide to Corporate Governance.* New Delhi: New Age International.
7. Jesover, F., & Kirkpatrick, G. (2005). The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries. *Corporate Governance: An International Review*, *13* (2), pp. 127-136. DOI: 10.1111/j.14678683.2005.00412.x
8. Milosavljević, B. (2015). Pravni okvir i praksa primene posebnih postupaka i mera za tajno prikupljanje podataka u Republici Srbiji [Legal framework and practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (ured.), *Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse* [*Special measures for secret data collection: between law and case law*] (pp. 5-33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15 from https://bezbednost.org/wpcontent/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podataka_-_vodic_.pdf
9. Počuča M., & Matijašević Obradović, J. (2018). The Importance of Evidence Collection in Procedures for Criminal Acts in the Field of Economic Crime in Serbia. In: Meško, G., et al. (eds.), *Criminal Justice and Security in Central and Eastern Europe: From Common Sense to Evidence-based Policy-making* (pp. 671-681). Maribor: Faculty of Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286-174-2
10. Regulation (EU) No. 1052/2013 establishing the European Border Surveillance System (Eurosur), OJ L 295 of 6/11/2013.
11. Škorić, S. (2016). *Uticaj poslovnog imena privrednog društva na njegovo poslovanje – doktorska disertacija* [*The influence of the business name of the company on its business – doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
12. Škulić, M. (2007). *Krivično procesno pravo* [*Criminal Procedural Law*]. Beograd: Pravni fakultet Univerziteta u Beogradu i JP Službeni glasnik.

13. Uredba o ekološkoj mreži Vlade Republike Srbije [The Ecological Network Decree of the Government of the Republic of Serbia]. *Službeni glasnik RS*, br. 102/10.
14. Veljković, N. (2017). *Indikatori održivog razvoja: Srbija i svet* [*Sustainable development indicators: Serbia and the world*]. Downloaded 2017, October 22 from http://indicator.sepa.gov.rs/o-indikatori
15. Zakonik o krivičnom postupku [Criminal Procedure Code]. *Službeni glasnik RS*, br. 72/11, 101/11, 121/12, 32/2013, 45/13, 55/14 i 35/19.

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