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ENFORCEMENT IN FAMILY RELATIONS – THE HANDING OVER AND TAKING AWAY OF A CHILD, WITH EMPHASIS ON THE ROLE OF THE GUARDIANSHIP AUTHORITY

ABSTRACT: The enforcement of court decisions in family matters is becoming increasingly important in the legal system of the Republic of Serbia, which is a direct consequence of the rise in divorces and the growing need to regulate parental relationships after the dissolution of marriage or extramarital unions. It is expected that these provisions of the Law on Enforcement and Securing of Claims will be applied more frequently in the future, which necessitates their detailed consideration and analysis. Special attention should be paid to the specific enforcement mechanisms used in these cases, as well as to the impact that the enforcement of court decisions has on the child, parents, and other family members. The best interests of the child must remain the key criterion in enforcement proceedings in family matters, especially in cases concerning child custody, the regulation of personal contact with parents, and child support. Although the Law on Enforcement and Securing of Claims has specifically regulated this area, numerous dilemmas arise in practice, especially regarding the relationship between the court and the guardianship authority. The specificity of this

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procedure lies in the fact that, in certain situations, the court becomes an auxiliary body to the guardianship authority, even though its traditional role is the opposite — to make decisions that administrative bodies implement. This legal solution raises certain practical concerns and requires further consideration. This paper aims to analyze the legal framework for enforcement in family relations through the provisions of Articles 368–381 of the Law on Enforcement and Securing of Claims, with a critical review of the challenges in their application. Through the analysis of judicial practice and a comparison with potential alternative enforcement models, the paper highlights possible directions for improving the system to ensure greater legal certainty, protection of the child's rights, and efficiency of the enforcement procedure.

Keywords: *enforcement, children's rights, guardianship authority, child custody, child support, family relations, Law on Enforcement and Securing of Claims, judicial practice.*

1. Introduction

The enforcement of court decisions in family relations represents one of the most delicate and most complex segments of an enforcement procedure as it directly relates to the protection of the respective interests and rights of a child, of the child's parents and of other family members. Unlike other enforcement forms, which are primarily aimed at fulfilling some property-related requests, enforcement in family relations entails, in addition to the collection of outstanding contributions to support, the implementation of decisions on one's personal status, on child care and on parental rights and obligations, which considerably complicates its implementation in practice. Modern world requires that each individual must be recognized the right to satisfy their own unique subjectivity (Đikanović, 2020, p. 617). The essential uniqueness of the procedure of enforcement in family relations is reflected in the fact that the enforcement object refers to the child's personality. In the procedures referring to a child, the enforcement of measures need to conform to the principles of the protection of the child's human rights and best interests. Therefore a child cannot be observed as an enforcement object in the classic sense, but rather as an active holder of a right whose integrity, dignity and welfare needs to be protected throughout the enforcement procedure.

This question is given special importance in the context of the current social changes, including a significant rise in the number of divorces and an

increasing number of cases in which parents are unable to reach agreement on the exercise of a parental right, support and maintenance of personal relations with their children.[1] The aforesaid data indicate a need for the analysis of a legal framework, the efficacy of current enforcement mechanisms and possible improvements aimed at securing consistent implementation of court decisions, with a maximum protection of the child's best interests.

The legal framework of enforcement in family relations in the Republic of Serbia has been established by the Law on Enforcement and Securing of Claims (2015) and special rules have been stipulated by articles 368–381. These provisions stipulate specific mechanisms for the enforcement of court decisions on child custody, on the method of maintenance of personal relations with the parent not excercising the parental right, on obligations of support and on other issues in the field of family law. The reason why this segment of the enforcement procedure stands out is the fact that its basic goal does not amount to formal implementation of a court decision, but it also includes the protection of a child's best interests, which is the key principle of international and national legal standards in this field.

One of the specific features stemming from the current legal framework is the relation between the court and the guardianship authority in these procedures. Although it is the court that is, traditionally, a decision-making authority, whereas administrative authorities and social welfare services implement the court's decisions, in the event of enforcement in family relations, the situation is partly an opposite one – it is the guardianship authority that has the leading role in the procedure, whereas the court, in certain cases, becomes an ancillary authority. In practice, this legal solution is conducive to numerous dilemmas, especially when competences, court actions and the efficacy of the implementation of court decisions are concerned.

Besides, in practice, the implementation of current mechanisms of enforcement in family relations is often encumbered with numerous problems. One of the main challenges is obstruction on the part of a parent who does not agree with the court's decision, which may lead to some long-lasting

[1] The data show that the number of divorces in the Republic of Serbia has been continuously increasing. In 2021, there were 32,757 marriages concluded in the Republic of Serbia (which is an increase by 38.8% in comparison to the previous year and 9,790 marriages were dissolved (which is a 12.7% increase in comparison to the previous year). In 2022, 32,821 marriages were concluded (an increase by 0.2% compared with the previous year) and 9,813 were dissolved (an increase by 0.2% compared with the previous year). In 2023, 31,670 marriages were concluded (a drop of 3.5% compared with the previous year) and 10,175 were dissolved (an increase by 3.7% compared with the previous year). Statistical Office of the Republic of Serbia. Search "Divorce". Downloaded 2025, May 10 from https://www.stat.gov.rs/sr-Cyrl/search?q=%D1%80%D0%B0%D0%B7%D0%B2%D0%BE%D0%B4

procedures that may be detrimental to the child. Also, certain enforcement measures, such as fines or police assistance, may be counterproductive if not applied according to the specific features of each individual case.

Unlike the classic execution procedure, in which execution is carried out on property objects such as money, movable or immovable things, in execution procedures from family relations, the essential question of the nature of the object, that is, the object of execution, is raised. A child, as a subject of law, cannot be treated as an object of execution in the same sense as a thing or property, but it is the obligation of the parents or other legal representative in connection with the exercise of the child's rights. Enforcement in these procedures is carried out exclusively for the purpose of protecting and realizing the rights of the child, with full respect for the principle of the best interest of the child as a basic principle.

2. The Legal Framework of Enforcement in Family Relations

The Law, in articles 368-380 particularly regulates child handover, enforcement aimed at maintenance of personal relations with one's child and enforcement aimed at protection from family violence and protection of the child's rights and other decisions in the sphere of family relations.

In 2009, the Ministry of Labour and Social Policy issued an instruction on the method of work of guardianship authorities or psychologists in the procedure of enforcement of decisions in the field of family law – the handing over and taking away of a child, which regulates the entire procedure in detail, from the planning stage to the enforcement and enforcement completion stage (Ministry of Labour and Social Policy, 2009).

One of the key challenges emerging in this relation is the question of the competence and role of various institutions. A court is the decision-making authority; however, the role of a guardianship authority appears very often in the enforcement procedure, this authority being authorized to provide professional support and to act as a mediator in the enforcement procedure. Due to such division of competence, in some situations, the court acts as an authority that is ancillary to the guardianship authority, which is not typical of the classic enforcement system, in which the court is the primary authority in a procedure.

3. The Best Interests of the Child

The Family Law (2005) stipulates, in Art. 205, an investigative principle in procedures related to family relations. This principle ought to be applied

by the court to the highest extent possible, with a view to issuing a decision that is in the best interests of a child. In family disputes, the party disposition principle is limited and the court's active role is emphasized and thus the court is obliged to have the proceedings develop in the best interests of the child, with active participation of the court and other professional authorities. This means that the court may establish facts even if they are not disputable between the parties and may investigate, on its own, the facts that no party has presented.[2]

The best interests of an underage child is a legal standard which is appreciated on the basis of the circumstances of each case, the assessment elements being, among others: the child's age and sex, the child's desires and feelings considering the child's age and maturity, the child's needs, namely those related to education, housing, food, clothes, health care, etc., and the parents' ability to satisfy the established needs of the child. Acting in accordance with the best interests of the child is the making of a decision which the child would make for himself or herself if he or she were capable of doing that.[3]

When procedural rules and the best interests of a child are in conflict, it is the best interests of the child that always win and the court should bear them in mind above everything else. The best interests of the child impose both on the first-instance and on the second-instance court to, ex officio, attend to the exercise of all the child's rights that are guaranteed to the child by the Family Law and also by international documents protecting children's rights (Lazarević, 2011, p. 344). It is correct to decide that conditions have been created for a change of a previously established model of contact between an underage child and the parent with whom the child does not live if such a decision is guided by the fact of the best interests of the child.[4]

4. Standing in the Submission of a Motion for Enforcement

The parties in an enforcement procedure are determined according to the contents of the enforcement document. The property of an enforcement creditor is related to the property of the legal owner of the claims (who is determined according to substantive law). An enforcement debtor is deterimined according to procedural law, as a person against whom the claims

[2] Rešenje Vrhovnog suda [Supreme Court decision], Rev.2331/2023 od 14.09.2023. godine.

[3] Presuda Vrhovnog kasacionog suda [Judgment of the Supreme Court of Cassation], Rev.1201/2023 od 01.02.2023. godine.

[4] Presuda Vrhovnog suda Srbije [Judgment of the Supreme Court of Serbia], Rev. 154/2007 od 01.02.2007. godine.

are realized (Jakšić, 2022, p. 899).

It is the legal representatives, the parents or the institution to which the child has been entrusted for custody or upbringing, or an adoptive parent, guardian or foster parent, that is entitled to submit a motion to enforce the handing over of the child.

According to our national law, a guardianship authority is the universal protector of a family and an authorized body in this procedure (Šarkić, Radulović & Počuča, 2019, p. 99). In accordance with the general rules of enforcement law, a guardianship authority will always have the role of the enforcement creditor in the procedures of enforcement of a decision issued with a view to benefiting or protecting the person safeguarded by them according to an explicit legal authority when such an enforcement document has been enacted in a proceeding in which the guardianship authority participated as a party initiating the proceeding (Vujović, 2018, p. 235).

An enforcement decision should contain all the data from Art. 30 of the Law on Enforcement and Securing of Claims. It is especially important to enter the unique master citizen number. If the enforcement decision contains a printing error in the name of the enforcement debtor, this does not represent an obstacle to the implementation of the decision as at issue is a removable and evident printing error and, next to the name, there is a master citizen number, which is unique for each person.[5] Even if the motion for enforcement does not specify the parties' respective dates of birth, but the parties' respective unique master citizen numbers have been correctly entered, the former cannot be underlined as a fault as such a motion for enforcement is regular and actionable.[6]

5. The Role of the Guardianship Authority's Psychologist

A guardianship authority is especially significant in the process of providing a family with legal protection (Milovanović, 2023, p. 107). A guardianship authority plays a key part in the enforcement of decisions on child custody and contacts with one's child. Its role is multiple in nature and it includes numerous activities that are essential for securing the best interests of a child. Centres for social work are the holders of professional work in the field of social welfare (Šarkić & Počuča, 2020, p. 21). The legislator

[5] Rešenje Višeg suda u Pančevu [Decision of the High Court in Pančevo], Gži.135/2019 od 25. 06.2019. godine.

[6] Rešenje Višeg suda u Pančevu [Decision of the High Court in Pančevo], Gži. 27/2020 od 21.01.2020. godine.

did not distinguish precisely between the organization of a centre for social work as an administrative and professional authority and the existence of a guardianship authority as a professional authority within the former authority. A guardianship authority is a professional body operating within a centre for social work and performing various tasks in the sphere of family-related legal protection (Počuča & Šarkić, 2019, p. 362). In the domestic legal system, a centre for social work is the basic holder of complex family-related legal protection and it realizes this role in the functions of a guardianship authority (Vujović, 2019, p. 210).

The task of a guardianship authority's psychologist is to establish the emotional status of a child, the way in which the child reacts to stress and the mechanisms of overcoming such stress, the speed of adaptation to changes, the emotional relations between the child and the person with whom the child lives, as well as with the person to whom the child is to be handed over, and other facts important for the organization of enforcement actions; their role is also to provide information and consultations to the person with whom the child lives and to try to bring about a voluntary handover of the child (by advising the person of the fact that a voluntary handover of a child serves to prevent any traumatic reactions of the child and any consequences that might harm the child's growth and development, etc.). On the basis of their psychologist's work results, a guardianship authority may propose that the judge should specify in more detail the child handover method and the conditions in the area in which the enforcement is implemented. The guardianship authority's psychologist should be guided with the best interests of the child (Art. 375 of the Law on Enforcement and Securing of Claims) both before and during the enforcement implementation. It is essential that, by taking certain meaasures, the guardianship authority's professionals should endeavour to enable the establishment of relation of closeness and trust between the child and the parent who has been invested with the exercise of a parental right (Stanković, 2013, p. 17).

6. The Guardianship Authority as an Ancillary or Main Authority in the Procedure of Enforcement in Family Relations

The Law on Enforcement and Securing of Claims quite poorly defines the role of a guardianship authority as some contradictions appear here. The Law stipulates that the implementation of enforcement by taking the child away shall fall into the competence of a guardianship authority. It stipulates that the

taking away and handing over of a child should be enforced by the guardianship authority in the court's presence and under the court's supervision (Art. 378 of the Law on Enforcement and Securing of Claims). Such a provision is contrary to the court enforcement procedure concept (Šarkić & Počuča, 2020, p. 26). It seems that the stipulation of the competence of the guardianship authority in the Law on Enforcement and Securing of Claims in the implementation of enforcement through the taking away of a child is *contra naturam processus executivi*. A decision related to child welfare shall not suffer the absence of judicial authority. Judicial authority is a priority in the enactment of final decisions on the issue of child protection (Rajić & Mirić, 2023, p. 245). A court should not relieve itself of the obligation of taking a chikd away as that is a specific procedure, which needs to be performed by an enforcement judge. Of course, an enforcement judge should be assisted by the guardianship authority and also by psychologists, pedagogues and other professionals in the implementation of enforcement through the taking away of a child. A court cannot be an ancillary authority in the enforcement procedure – it ought to retain its traditional role of the principal authority in an enforcement procedure as enforcement falls within the court's competence. Competence in the implementation of enforcement through the taking away of a child must not be delegated to an administrative authority as the administrative authority has not been entrusted with public competences int that sense – enforcement needs to be implemented by the court only, i.e. by the judge. As it has already been mentioned in this paper, an enforcement judge ought to have specialized qualifications for work in proceedings like this.

Also, the law regulating enforcement should not determine the obligations of a guardianship authority. It would have been a much better and more practical option if the legislator had been dedicated to the harmonization of the regulations and that they have stipulated the obligations of a guardianship authority in an enforcement procedure by a law regulating the work of a guardianship authority, with only some relevant provisions of that law being included in the Law on Enforcement and Securing of Claims. Not only does a systemic mistransfer of authorities from a court to a guardianship authority undermine the systemic logicality of an enforcrement procedure – it may also lead to the legal insecurity of the parties. If the competences are not clearly divided, there is a risk that the protection of the child's best interests may remain just verbal, without an adequate procedural base.

Such indications should shed lifht on certain omissions of the legislator, in order that, in the forthcoming period, when enacting new laws or when amending some current ones, they be able to regulate those spheres in a more practical and pragmatic manner and rectify any omissions or errors.

7. The Handing Over and Taking Away of the Child

As for the legal issues referring to child handover, the contents of the text show that it is also the actions of the taking away of the child that are at issue here (Nikolić & Šarkić, 2022, p. 697). In order to realize enforced child handover, it is necessary to take the child away from the parent who prevents the other parent from exercising their parental right and who does not obey the court's decision (Vavan, 2019, p. 151).

The court has exclusive competence in the execution of enforcement documents on family relations, except for the collection of legal maintenance amounts (Art. 4., para 1 of the Law on Enforcement and Securing of Claims). Although the Law on Enforcement and Securing of Claims does not specify any required professional qualifications of enforcement judges for acting in family relations matters, there is an opinion prevailing in legal theory that enforcement judges, just like contentious ones, should be specialized qualification-wise for acting in such proceedings (Stanković, Palačković & Trešnjev, 2018, p. 1110).

If the parents fail to reach agreement on the method of maintenance of personal relations with their child, the court will, when deciding on this issue, and guided with the best interests of the child, take into consideration all the circumstances of the specific case and especially the child's age, sex, needs, etc. (Jović, 2012). In practice, such decisions are often difficult to enforce, particularly when one of the parents prevents the other parent from communicating with the child. This is especially important when one bears in mind the emotional and psychological aspects related to the child.

A child's natural right to parental care is secured in the company of both parents and in the union in which they live together and the child's separation from one or both parents is allowed only if such separation is necessary and in the child's interest, on which the court decides on the basis of the law and an appropriate procedure.[7]

Child handover entails a peaceful and amicable solution, which implies order in the relations between the parents themselves and also between parents and their children, whereas the taking away of a child implies that the child's life or health have been threatened or that the child's integrity or the child's mental, physical or development potentials have been seriously endangered (Šarkić, Radulović & Počuča, 2019, p. 96).

[7] Rešenje Vrhovnog kasacionog suda [Decision of the Supreme Court of Cassation], Rev. 4758/2020 od 29.10.2020. godine.

According to the Law on Enforcement and Securing of Claims, if any of the parents will not allow the other parent to contact the child, an enforcement procedure may be initiated. In this procedure, the court may issue measures which will compel the former parent to fulfill their obligations. A fine and a sentence of imprisonment have been stipulated by the law for those who prevent the court from implementing the enforcement.

Also, the court will decide that the enforcement is supervised by a guardianship authority, which will provide, in cooperation with the court, the correct implementation of the decision and the protection of the child's interests.

7.1. Enforcement of the Decision on Child Handover

The enforcement of court decisions relating to child handover is one of the most delicate and most complex spheres of enforcement law as it directly influences the child's rights and welfare. An enforcement procedure like this should be aimed at harmonizing the factual situation with the legal situation, with the taking of enforcement actions in such a way as to adapt them to the child's age and physical and mental maturity (Nikolić, 2016, p. 100). This occurs in the situations when a parent refuses to hand the child over to the other parent contrary to a court decision on the exercise of a parental right or a contact regime. The Constitution of the Republic of Serbia (2006) stipulates, in Art. 65., para. 1, that the parents are entitled and obliged to support, bring up and educate their child on an equal footing. It is, according to the law (Art. 65, para. 2), only by a court decision that one or both parents may be deprived of all the rights, or any of the rights, or that such rights may be restricted, if that is in the best interest of the child. The enforcement court shall protect, in an efficient manner, not only the parents' rights, but also the best interests of their underage children.[8] A failure to enforce a final and enforcement judgement regulating the method of maintenance of contact between a child and the parent with whom the child does not live may exert negative influence on their mutual relations, which may call in question the parent's capability of exerting their parental rights without restrictions and of fulfilling their parental duties and so, in a case like this, both the parents' and the children's rights guaranteed by the Constitution are infringed upon.[9]

[8] Odluka Ustavnog suda [Decision of the Constitutional Court], Už.14395/2018 od 26.12.2019. godine.

[9] Odluka Ustavnog suda [Decision of the Constitutional Court], Už.8266/2020 od 28.10.2021. godine.

The jurisdiction on the motion to enforce a child handover lies with a court in the place of the permanent or temporary residence or of the head office of the party submitting the motion or with a court in the place of the permanent or temporary residence or of the head office of the party against whom the motion has been submitted or with a court in the area in which the child is located. The taking away of a child shall be enforced by a court in the area in which the child is located at that moment and the enforcement is implemented either *ex officio* or at the request of the party submitting the motion for enforcement. The court which has jurisdiction in the matter of deciding on a motion for enforcement may entrust certain enforcement actions to a court which does not have jurisdiction in the implementation of the enforcement (Art. 368 of the Law on Enforcement and Securing of Claims).

The object of enforcement in the procedure of the handing over and taking away of a child is an underage child who has been entrusted, by a court decision, to one of their parents, to another person or to an institution for custody, care and upbringing (Stanković & Trgovčević Prokić, 2020, p. 306).

A motion for enforcement may be submitted by the parent who has been entrusted with the exercise of a parental right or by another person or an institution to whom/which the child has been entrusted for custody, care and upbringing and by a guardianship authority (Art. 369 of the Law on Enforcement and Securing of Claims).

A motion to enforce child handover need not specify the enforcement instrument or if it does, the court is not bound thereby (Art. 370 of the Law on Enforcement and Securing of Claims). In the procedure of enforcement of a decision on the exercise of a parental right, the court should demand that the a guardianship authority take a proactive stand, with a view to enabling the realization of contact with the child, at least in controlled circumstances, until conditions have been created for the contact to be realized in the manner stipulated by the enforcement document.[10] The enforcement instruments used for the implementation of decisions on the entrusting of a child and on contacts with the child ought to be balanced and as harmless as possible when the child is concerned, this field of law being rather delicate. The law stipulates various measures to be applied in the event of obstruction on the part of a parent.

Thus, having examined the circumstances, the court shall determine the following enforcement instruments in the enforcement decision: 1) enforced taking away and handing over of the child, 2) fine, 3) sentence of imprisonment.

[10] Odluka Ustavnog suda [Decision of the Constitutional Court], Už.15000/2021 od 21.04.2022. godine.

These measures may be determined and applied to a person who, contrary to a court order, refuses to hand over a child, a person who obstructs or prevents child handover, a person who keeps the child or a person on whose personal decision the child handover depends. The court may change enforcement instruments until enforcement has been completed (Art. 373 of the Law on Enforcement and Securing of Claims). All the aforesaid measures may be combined and applied to any person who refuses to act upon court order and hand over the child (Nikolić & Šarkić, 2022, p. 661). If a dispute on the exercise of a parental right has been completed in an authoritative manner, with a final court decision, the court has the discretonary authority to select the enforcement instruments that conform to the circumstances and participants in the procedure, in order that enforcement be carried out.[11]

The circumstance according to which these measures may be determined and applied to a person who, contrary to a court order, refuses to hand over a child, a person who obstructs or prevents child handover, a person who keeps the child or a person on whose personal decision the child handover depends indicates a deviation from the formal legality principle.

An appeal against an enforcement decision may by no means indicate the purposefulness and regularity of an enacted court decision in the part referring to the entrusting of an underage child, i.e. the same are not to ne relevant for decision-making ina proceeding based on an appeal against a decision on enforcement aimed at child handover.[12] Such appeal-related reasons may be relevant in a contentious proceeding conducted with a view to entrusting an underage child and regulating the contacts.[13] The enactment of an enforcement decision on the maintenance of personal contacts with one's underage children is well-founded and justified only if the enforcement debtor prevents, with their actions, the realization of contacts between the children and the other parent.[14]

An enforcement decision stipulates that the enforcement debtor should hand the child over to the enforcement creditor within a certain period as of the enactment of the decision. Should the enforcement debtor fail to hand the child over to the enforcement creditor within the stipulated period, a fine shall

[11] Rešenje Višeg suda u Subotici [Decision of the High Court in Subotica], Gž1. 101/2018 od 12.10.2018. godine.

[12] Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gži. 25/2020 od 21.01.2020. godine.

[13] Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gž. 791/2016 od 27.12.2016. godine.

[14] Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gži. 427/2020 od 23.06.2020. godine.

be pronounced against them, which the court will implement *ex officio*, under the threat of enactment of a new enforcement decision and the pronouncement of an increased fine. If enforcement cannot be conducted in this manner, it will be implemented through the taking away of the child by a court official and with the help of the guardianship authority.[15]

When the Centre for Social Work informs the court that the enforcement debtor fails to comply with their obligations and refuses to cooperate with the Centre for Social Work for the purpose of child handover, the court will issue a decision determining, *ex officio*, a fine to the enforcement debtor. By the same decision – if the debtor fails to pay the fine within the stipulated period – the court shall determine enforcement with a view to charging the fine and, at the same time, shall order the enforcement debtor to obey the court's decision and the order of the Centre for Social Work for the purpose of child handover. Should the enforcement debtor fail to fulfil the aforesaid obligation and hand over the child, the court shall pronounce a new and increased fine against them.[16]

It is important to emphasize that it is a first-instance court panel that decides on the legality of the decision on a fine after such a decision has been regularly submitted to the parties' respective attorneys.[17]

The court shall especially ensure that the child's interests be protected as much as possible. The court may schedule an extraordinary hearing if that is in the best interests of the child (Art. 371 of the Law on Enforcement and Securing of Claims). It stems from the aforesaid that a court schedules a hearing only in exceptional circumstances, which depends on the court's assessment.[18] Conditions for the enactment of an enforcement decision on the maintenance of personal contacts between parents and their children have been fulfilled only in the situation when the cooperation of the other parent, as an enforcement debtor, amounts to compliance with the scheduled dates and hours, but does not include the act of preparing a child to see the other parent.[19] Also, we may also speak of the undermining of a right guaranteed

[15] Rešenje o izvršenju Osnovnog suda u Pančevu [Decision on Enforcement of the Basic Court in Pancevo], I-184/2020 of 30/09/2020, which became final on 13 October 2020 and which was enacted on the basis of enforcement document Gž.1693/09 of the District Court in Pančevo od 21.10 2009. godine.

[16] Rešenje Osnovnog suda u Pančevu [Decision of the Basic Court in Pančevo], I-138/2019 od 05.06.2019. godine.

[17] Rešenje Višeg suda u Beogradu [Decision of the High Court in Belgrade], Gži 3057/17 od 15.11.2017. godine.

[18] Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gži. 467/2020 od 31.07.2020. godine.

[19] Rešenje Višeg suda u Valjevu [Decision of the High Court in Valjevo], Gž1. 15/2020 od 03.07.2020. godine.

by the Constitution if one of the parents has been prevented from having any contact with their child for a long time although the child has come of age meanwhile.[20]

If an enforcement document does not stipulate child handover, the enforcement decision shall order the party against whom the enforcement is conducted to hand over the child immediately or to hand them over within a specified period. Child handover may be ordered by an enforcement decision also to a person to whom the enforcement document refers, to a person on whose personal decision the child handover depends or to any other person who keeps the child at the moment of the enactment of the enforcement decision or during enforcement implementation.

The procedure aimed at taking the child away is conducted *ex officio*. The court shall initiate it if it assesses that the child's life, health or integrity have been threatened or if it assesses that the child is being kept in the surroundings that might be detrimental to the child's further development. The European Court for Human Rights underlines the importance of paying special attention to the impact of the duration of such procedures on the exercise of a right to family life.[21] With a view to protection of this right, in the case of illegal actions on the part of the parent with whom the child lives, one must not exclude sanctions, although the use of punitive measures is not desirable in this field.[22] The implementation of the court decision itself may not be prevented, revoked or unduly delayed.[23]

If the enforcement debtor has initiated a procedure for a change of a decision on the exercise of a parental right and the procedure has not been completed yet, this cannot exert any influence on the implementation of enforcement of child handover. As long as it is in legal force, the decision on the entrusting of the child must be obeyed.[24]

[20] Odluka Ustavnog suda [Decision of the Constitutional Court], Už. 7150/2021 od 16.03.2023. godine.
[21] V.A.M. vs Serbia, submission no. 39177/05 od 05.03.2007. godine, para. 99–100.
[22] Felbab vs Serbia, submission no. 14011/07 od 14.04. 2009, godine, para. 67–69.
[23] Damnjanović vs Serbia, submission no. 5222/07 od 18.11.2008. godine, para. 67.
[24] Rešenje Višeg suda u Pančevu [Decision of the High Court in Pancevo], Gži.163/23 od 07.11.2023. godine.

7.2. Conducting Enforcement if an Immediate Child Handover Has Been Ordered

The order that a child should be handed over immediately shall be given, above all, if the child's life, health or mental and physical development have been threatened or if the enforcement document stipulates the handover of a child who has been illegally taken away or retained with a view to being returned to a foreign country (international child abduction) or with a view to reestablishment of a relation of custody or communication between a parent and theri child in a foreign country (Art. 372 of the Law on Enforcement and Securing of Claims). Here the Law on Enforcement and Securing of Claims distinguishes between child handover and the order that the child be handed over immediately and mentions, rather awkwardly, that, if an enforcement decision does not order child handover, the relevant party shall be ordered to hand over the child immediately or within a specified period (Počuča, 2018, p. 273).

When an enforcement decision orders that a child be handed over immediately, the decision is submitted to the person from whom the child shall be taken away during the first enforcement measures. If that person is not present during the act of taking away, the enforcement decision shall be submitted to them at a later data. If a child is taken away from a person to whom the enforcement document does not refer, the enforcement decision and a protocol on the taking away of the child shall be submitted to them. The absence of the person from whom the child is to be taken away shall not prevent the taking away of the child (Art. 377 of the Law on Enforcement and Securing of Claims).

At the relevant party's proposal, the court shall reimplement the same enforcement decision if, within 60 days, contrary to the enforcement decision, the child is again found at the place of the person from whom they were taken away. (Art. 378 of the Law on Enforcement and Securing of Claims).

The same procedure applies in the case of *international child abduction* – the case when a child has been illegally taken away and kept in Serbia although, on the basis of a local or foreign legal document, the child has been entrusted to the parent who lives with the child abroad.

8. Conclusion

The enforcement of decisions in family matters represents an extremely important aspect of the legal system as it directly influences the rights and interests of the most vulnerable category – children. Children's rights, and parents' rights as well, must be protected not only through legal norms, but also through their efficient implementation. Through the analysis of the enforcement of decisions on the entrusting of a child and on contacts with the child and of decisions on maintenance, we can see that the Serbian legal framework in this field has been well developed in general, but that there are still numerous challenges when its practical implementation is concerned.

It has been already emphasized in this paper that the Law on Enforcement and Securing of Claims stipulates numerous measures for the enforcement of decisions in family matters, such as enforcement implementation, fines and provisional restrictions of parental rights, the very implementation of these measures often encounters considerable obstacles. Apart from enforcement officers and the court, a key role in the enforcement proces is played by the guardianship authorities and the centres for social work, which, in numerous cases, are the first points of contact for families in conflict. However, although the system provides mechanism for a quick and efficient resolution of disputes, the lack of coordination between the institutions, as well as slow proceedings, represent some major obstacles.

One of the key aspects that need to be highlighted is the best interest of the child, which is the primary objective in all the procedures of enforcement in family relations. For that reason, each step in the enforcement process must be aimed at minimizing any damage that may be inflicted on the child and at securing the child's welfare. To this end, it is necessary to additionally improve cooperation between various institutions, to speed up proceedings and to enable additional education for all the participants in the process.

The proposed measures for the improvement of the enforcement system, such as the development of electronic tools, the intensification of training of enforcement officers and judges and the introduction of alternatives to enforcement may significantly improve the efficacy of the process and secure justice for all the parties. It is essential to create, in the context of an increase in the number of divorces and family conflicts, a legal framework which is to be flexible enough and adapted to the needs of modern society.

Finally, as a key recommendation, it is necessary to focus more attention to the development of systemic solutions that will secure a better functioning of judicial and social systems, as well as citizens' trust in the legal system,

which, in these delicate family matters, will be the true protector of the rights and interests of both the child and the parents.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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IZVRŠENJE U PORODIČNIM ODNOSIMA – PREDAJA I ODUZIMANJE DETETA, SA OSVRTOM NA ULOGU ORGANA STARATELJSTVA

APSTRAKT: Izvršenje sudskih odluka u porodičnim odnosima postaje sve značajnije u pravnom sistemu Republike Srbije, što je direktna posledica porasta broja razvoda i povećane potrebe za regulisanjem roditeljskih odnosa nakon prestanka bračne ili vanbračne zajednice. Očekuje se da će u budućnosti ove odredbe Zakona o izvršenju i obezbeđenju biti sve češće primenjivane, što nameće potrebu za njihovim detaljnim razmatranjem i analizom. Posebnu pažnju treba posvetiti specifičnim izvršnim mehanizmima koji se koriste u ovim slučajevima, ali i uticaju koji izvršenje

sudskih odluka ima na dete, roditelje i druge članove porodice. Najbolji interes deteta mora biti ključni kriterijum prilikom izvršenja u porodičnim odnosima, što se posebno odnosi na postupke koji se tiču poveravanja deteta, određivanja načina održavanja ličnih odnosa sa roditeljima i izdržavanja. Iako je Zakon o izvršenju i obezbeđenju posebno regulisao ovu materiju, u praksi se javljaju brojne dileme, naročito u vezi sa odnosom suda i organa starateljstva. Specifičnost ovog postupka ogleda se u činjenici da sud u određenim situacijama postaje pomoćni organ organu starateljstva, iako je njegova uloga tradicionalno suprotna – da donosi odluke koje organi uprave sprovode. Ovo pravno rešenje u praksi izaziva određene nedoumice i zahteva dalje razmatranje. Ovaj rad ima za cilj da analizira pravni okvir izvršenja u porodičnim odnosima kroz odredbe članova 368–381 Zakona o izvršenju i obezbeđenju, uz kritički osvrt na izazove u njihovoj primeni. Kroz analizu sudske prakse i poređenje sa potencijalnim alternativnim modelima izvršenja, ukazaće se na moguće pravce unapređenja sistema, kako bi se osigurala veća pravna sigurnost, zaštita prava deteta i efikasnost samog postupka.

***Ključne reči**: izvršenje, prava deteta, organ starateljstva, poveravanje deteta, izdržavanje, porodični odnosi, Zakon o izvršenju i obezbeđenju, sudska praksa.*

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THE EMERGENCE OF DIGITAL IDENTITY AS A NEW LEGAL CONCEPT

ABSTRACT: With the development of modern digital society, the degree of interaction among subjects taking place in the digital space is increasing. This interaction is based on the use of personal data between subjects for the purpose of confirming and verifying their identity. The issue of applying personal identity in the digital space has created the reality of the *de facto* existence of digital identity as a new form of personal identification. Digital identity is an identity composed of information stored and transmitted in digital form. Therefore, the question arises as to how the new concept of personal identity, as digital identity, can be encompassed by legal rules in order to enable transactions. The authors argue that digital technology calls for a new philosophy of identity. They further argue that digital identity necessarily requires a redefinition of the traditional legal framework. In the following discussion, the paper will examine who may be treated as a legal subject in transactions conducted through digital identity. It will also consider how legal presumptions may change to include new realities, and,

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most importantly, it will present the legal treatment of the technical structure that constitutes digital identity.

Keywords: *digital identity, transactional identity, personal data, legal transactions, registered identity, digital citizenship.*

1. Introduction

Personal identity is a traditional and established legal institute that serves for the legally secure identification of subjects in legal transactions. With the emergence of digital space as surroundings for legal transactions, personal identity has showed itself with limited reach for the needs of interaction. However, the frequency of the usage of personal identity in digital space is reflection of its importance for the digital society.

With the development of modern society as digital, the degree of interaction of subjects that takes place in the digital space is increasing, both in form of interaction of legal and natural persons with public authorities, as well as their mutual interaction. The interaction that takes place in digital transactions and digital economy is based on the usage of personal data between subjects, in order to confirm and verify their identity. The issue of the application of personal identity in the digital space has created the reality of de facto existence of digital identity as a new form of personal identification (Zwitter, Gstrein & Yap, 2020). Digital identity (DI) is an identity which is composed of information stored and transmitted in digital form. A specific DI is now emerging as governments around the world move their services and transactions on-line, taking steps towards providing digital identities to their beneficiaries.

So, the question emerges as to how can new concept of personal identity as digital identity be comprehended by the legal rules, in order to enable transactions? We argue that digital technology invokes new philosophy of identity. We also argue that digital identity as necessity redefines traditional law framework. In the following discussion in this paper, we will see who can be treated as legal subject in transactions that are conducted via digital identity. We shall discuss how can legal presumptions alter to include new realities. And most important, we shall present legal treatment of technical structure that digital identity is comprised of. The paper will present and analyze doctrinal points of view regarding the legal treatment of personal identity in digital space as digital identity, with the aim of providing legal

understanding for changes that digital economy inevitably brings. The aim of the paper is to further clarify changes that the law must undergone in order to keep pace with the development of digital society.

2. Digitalization of government transactions and data-driven economy

Digital or computer technology is today embedded in processes fundamental to economic and social order and has positioned itself as a whole new and primary environment for interaction. Modern digital economy makes individuals, businesses and governments increasingly dependent on technology in their transactions, as well as their daily tasks. Compared to just a few years ago, it is now a relatively common occurrence to be asked for proof of identity for transactions which take place on-line. Digital age made new technologies as primary mediators for identity verification and identification of individuals.

A transaction, in the sense of legal relations, is a relationship for which an individual or a natural person, must prove his identity, whether it takes place in person (face to face) or through other forms of communication. The identity for the purposes of transactions, which is designated as a transactional identity, implies the usage in order to establish a relationship between an individual and a state authority or a commercial entity, and it can be for the purpose of just an inquiry or for the purpose of conclusion of a contract, but does not include non-business interactions (such as social networks or social interactions).

In modern society emerges the new legal concept of identity that consists of database identity and the subset of information that is identity used for transactions with government or inter-partes. As dealings previously conducted in-person are replaced by dealings conducted without a history of personal acquaintance, and frequently without person to person interaction, the requirement to establish identity for transactional purposes has increased (Dash & Sharma, 2021, p. 2). Digital identity (DI) is the means by which an individual is recognised and can transact in the digital realm, digital identity becomes individual's officially recognized identity for transactional purposes.

A specific DI is now emerging as governments around the world move their services and transactions on-line. States across the world are taking steps towards digitalization of their public distribution systems which are based on providing digital identities to beneficiaries. State-led and public–private

initiatives use technology to provide official identification, to control and secure external borders, and to distribute humanitarian aid to populations in need. Digital identity is emerging as a distinct new legal concept in countries that move to fully digitalize government transactions. This new form of identity is the primary means by which a natural person can access these services. This is a fundamental principle of e-government as many countries now require that an individual must have a digital identity to access government services and for transactions with government departments and agencies. These schemes are significant because they establish one identity, initially for use in transactions with government, but with the long-term consequence of also extending to transactions with the private sector (Sullivan, 2013, p. 125). In the context of using state services, the concept of "one person, one identity" prevails precisely in order to reduce the possibility of abuse. In the domain of private communications, this need is not so pronounced and it is common for a person to have multiple identities for the purposes of communication and using different platforms.

Further in the paper, we will show that in the modern digital society and within the electronic transactions of the data-driven economy, a new legal concept of identity is emerging which is made up exclusively of a corpus of information or data and which the law has recognized as a legal subject, and which aims to redefine the legal understanding of the identity of individuals. Within computer science, information or data has its own function and meaning, and machine intelligence can make decisions and in that context act like a human being, bearing in mind the effects of that in real life.

3. Redefining personal identity in digital society – new philosophy of identity

Identity, in the context of DI, is an essential legal concept, related to individual elements of a legal or natural person that are provided by regulations as elements that make up and on the basis of which identity is determined. Digital identification means identification on the Internet in the form of a group of different data such as username, first name, last name, e-mail address, place of residence or a combination of other data that uniquely describe us. This data stored on networks constitutes a digital identity such as a web or network identity that an individual, organization or electronic device possesses to enter cyberspace. Digital identity is an identity which is composed of information stored and transmitted in digital form. DI is all the information digitally recorded about an individual. It is arguable if an

individual can have more than one DI. Digital identity has its significant implications in both commercial and legal surroundings, which must be accompanied by the adequate normative framework. Legal professions are in ongoing process of finding ways to adequately protect this new concept of identity as well as legal interests of individuals intertwined (Bwana, 2024, pp. 84–85). It is the task of the lawmakers to find an effective way to regulate rights and duties arising from digital identity, while effectuating both the legal and commercial significance of DI.

Identity in the sense of a legal concept means a set of digitally stored and transferable information, in the sense of an "identity database", which has been given legal force, i.e. recognized a specific legal effect through a specific state regulation. Access is provided under certain conditions. Digital identity means an identity that consists of information that is stored and transmitted digitally, that is, that was created in digital form or exists in such a form, and is transmitted and handled in this way. Access to the information that makes up the digital identity implies certain procedural steps, the so-called „access schemes" in the technological sense. In the context of the digital society, or digital environment (the so-called digital space), information as a concept also includes data, in the sense that every piece of information about a legal or natural person is considered information, but not every piece of information is considered data. On the other hand, in the context of the digital space of the digital society, data is a legally regulated concept with its own special legal regime of protection. Identification of individuals for the purposes of using digital services is called authentication and is a prerequisite for access to digital content, and is done through a username and password, a one-time SMS password, a fingerprint, and a digital certificate. Authentication is based, in a technical sense, usually on at least two mutually independent elements: something only the user has (e.g. phone or smart card), something only the user knows (e.g. PIN code or password), and something that uniquely identifies the user (e.g. fingerprint or iris).

In the technical sense, digital identity consists of two levels - the so-called. transactional identity, which implies a smaller volume, but precisely defined, of information with which the transaction is carried out, or interaction, and only after their presentation in the prescribed manner, and the so-called other information, which is larger in scope and contains additional data and information (registered identity). Transactional identity, as a part of DI, is its essential part, but at the same time a static part because it rests on information and data that are not of a variable character, or are not subject to frequent changes - full name, gender, date of birth and usually one "identifying" piece of information such as

a signature or numerical sequence, image or biometric data (fingerprint, pupil) is added to them (Finck, 2018, p. 25). The identifying information has the role of enabling the transactional identity to connect the entire DI with a certain individual, through an appropriate technical authentication process that takes place on a certain platform where the registered digital identity is registered. The matching of this information for the purposes of interaction in the digital space is what is the subject of personal data protection, for example, the transactional part of the DI is private, while the data that forms the DI is mostly public and are freely used and disposed of by the individual in public, i.e. they are not subject to strict privacy protection (Wang & De Filippi, 2020, pp. 3–4). In this sense, transactional identity is a gate-keeper and a barrier to access to other information. The information that makes up the registered identity is broader in its scope than the information on which the transactional identity rests, it is not usually part of the public domain and is subject to protection under the rules on the protection of privacy or personal data. This set of information is accessed through a transactional identity, i.e. by entering information that is part of the transactional identity. Thus, digital identity consists of transactional identity and registered digital identity, as two sets of digitally stored information, the relationship of which is defined so that transactional identity connects digital identity with a physical individual (virtually represented through digital identity) through registered digital identity.

The purpose of identification is to establish identity for transaction purposes. Unlike transactions that take place on the basis of traditional, paper, identity certificates, where the individual is personally the actor of the transaction (physically present), in the case of digital transactions, the individual is not at the center, but the DI itself, or rather the transactional identity as its segment, plays a key role (Sullivan, 2014, p. 73). In this sense, transactional identity is more than just information, it enables a transaction to take place and is a gateway to further information about an individual. DI is the direct actor of the transaction, which takes place between two machines, through matching sets of information and data.

In the context of digital identity, we distinguish between authentication and identity verification. Authentication means an action that is performed on the basis of entering information during registration, i.e. after authentication, the identity is recorded or entered into the system. Verification is a process that is carried out at the level of transactional identity, that is, transactional identity is verified when the presented or entered information matches the registered information (matching information to information). Only then, on the basis of the verified transactional identity, transactions for the purpose of legal

traffic in the digital space can be verified. As a novelty, a legal presumption is introduced that the transactional identity is used only by the person whose data is stored within the registered identity, but the system cannot ensure this as absolute, so the presumption is rebuttable for the purposes of proving possible abuses.

At the moment when a transaction takes place, the identity is verified when all the displayed information from the domain of the transactional identity whose entry, or other form of presentation of the request, matches, i.e. when the matching is confirmed, with the information contained in the identity register that was created during the identity registration. In this sense, the identity is verified not by matching to the human being, or legal person, in question, but by matching the information presented at the time of the transaction with the information entered at the time of registration (Immorlica, Jackson & Weyl, 2019). For this reason, the transactional identity is often defined as a "token" identity (token identity), since at the time of the transaction, the identity is a token, i.e. sign, symbol, proof of identity. Therefore, we can make a distinction between traditional and transactional identity. Traditional identification documents, such as passports, are submitted in person when determining identity, i.e. a person is physically present for the purpose of establishing his identity, and the decision of the authorized person who determines the identity is based on his personal discretion. On the other hand, transactional identity is based on stored information about a person, and information are the subject of matching. And that information is not only for the needs of identifying a person, as in the case of traditional identification documents, but furthermore for the interaction of the system with the registered identity, and ultimately the transaction itself based on them.

The question can be raised as to who is the person with legal personality in the transaction that takes place on the basis of confirmation of the transactional identity, i.e. who is the entity entering into the legal relationship. Is it the person whose data was entered during registration or the person who enters the data of the transaction identity, because it does not have to be the same person, although most often it is? Is the transaction identity itself, as a set of information, a legal entity? Transactional identity is an abstract and artificial creation, and a human being is linked to a registered, or transactional, identity through a signature or biometric data, and it is used for remote transactions, which take place without personal contact of the participants (Sullivan & Stalla-Bourdillon, 2015, pp. 6–8). Therefore, such circumstances indicate that legal capacity and capacity for judgment are not part of the information in the scope of transactional identity, because they do not affect transactional

identity (if it is a minor, it would be obvious from the date of birth, as well as in the case of persons who are marked in the system as persons deprived of legal capacity). Transactional identity exists only as an abstract idea to function within legal transactions because law itself benefits from such a concept. For the existence of a legal subject, i.e. the treatment of any entity as a legal subject, it is sufficient for the legislator to decide in that direction, i.e. to grant the status of a legal subject by legal rules. In that case, the legislator only follows changes in business and legal practice.

In electronic transactions, proof of identity implies identity verification in two steps: first, some of the information that makes up the transactional identity is presented in order to establish the identity, and then, in the second step, the presented information is compared with the information stored or recorded in the register (chip on the ID card, or online register). After completing the two described steps, we can say that the transactional identity has acquired legal subjectivity. Here's why. Legal relations are established between the registered identity (through the transactional identity) and a public or private entity, as another participant in the transaction. The rights and obligations that arise on the basis of the completed transaction are first of all related to the transaction identity, and then to the registered identity, and not necessarily to the individual who is connected to the registered identity, i.e. the individual whose data constitutes the registered identity, nor with the individual who represents or enters the data that constitutes the transactional identity. Therefore, if we look at a contract that can be created electronically, the contract is concluded with a registered identity. Therefore, we can say that identity in the context of modern digital transactions consists of digitally stored information that is authentic and to which the law has assigned legal subjectivity (Sullivan, 2009, pp. 232–234).

Manufacturers and other stakeholders in modern, data-driven and digital, economy collect and refine raw personal data collected via their devices and capitalize on the resulting information assets. Regular users are usually completely unaware of the monetary value of their personal data and tend to underestimate their economic power within the data-driven economy and to passively succumb to the propertization of their digital identity. Academics and policy makers are increasingly aware of how data mining creates new privacy risks through identification and re-identification, therefore it is their job to introduce these risks to public (Beduschi, 2019). Personal data of individuals represent monetary value in the data-driven economy and are often considered a counter performance for "free" digital services or for discounts for online products and services, customer data and profiling algorithms are considered

a business asset. At the same time, individuals do not seem to be fully aware of. From the aspect of legal treatment of possible abuses of digital identities themselves, or individual data that make up a digital identity, it is possible to imagine the fraudulent use of someone else's transactional identity, that is, the data that make it up. In that case, the individual can prove an objective impossibility that he personally presented his transactional identity, that is, the information that constitutes it. In that context, it is necessary to create certain legal assumptions in law for such situations, but at the same time this does not dispute the fact that the contract or other legal relationship was created with a registered identity as the other party, even though it could be proven as flawed or destructible from the aspect of potential fraud.

In the context of the protection of human rights, we are talking about the right to identity, consequently related to the inadequacy of the application of the right to privacy in the context of DI, because transactional identity is precisely based on information that is largely public. It is debatable to what extent information about a personal name, date of birth or death, picture, and even a signature can be subject to privacy protection. What is the difference between the right to privacy and the right to identity? The right to privacy implies an individual's control over the collection, publication and use of his personal data (Goodell & Aste, 2019, pp. 16–18). The theoretical concept of the right to identity implies autonomy in the sense of recognition and recognition and treatment as a unique individual. In relation to the public interest, privacy has its limits, while identity should not legitimately be unilaterally taken away, changed or conditioned for reasons of public interest. The right to identity is threatened by false or untrue indications of identity, while the right to privacy is threatened by restrictions and interference with individuals' control over the collection, disclosure or use of personal information. The privacy of an individual can be limited in the public interest, i.e. it can be subordinated to it (for example in the case of security risks), while the right to identity cannot be subordinated to the public interest.

4. Concluding remarks - digital identity as determinant of the development of digital society

Digital identity as a modern form of human identity is primarily machine related. Telephone numbers, e-mail inboxes, or Internet Protocol (IP)-addresses, as digital aspects of identity, today gain importance with the omnipresence of digital space as a prime area for transactions. Today, routine transactions take

place almost entirely through computer technology, which is an integral part of trade and other transactions. The system recognizes the transactional identity and enters into legal interaction with the registered identity, and not with the individual as a physical entity. The individual whose data constitutes the registered identity is represented in the transaction through the registered identity, as a set of digitally stored information, which is the other side of the legal relationship. This is a common consumer transaction scheme today. Transactional identity determines the right of a natural person to be recognized as an individual, that is, the subject of a transaction, and to enter into a legal relationship, that is, a transaction (Balani, 2024, pp. 3–4). This implies the assumption that the person who possesses transactional identity information is indeed the person whose data constitutes the registered identity and that it is he who performs the transaction, that is, that person enters into a contractual relationship. Precisely in the systems that are based on the communication of transactional identities, the largest segment of trust is invested in an automated process, with minimal or even no influence of the human factor. In a system created in this way, digital information is the key player, not a human being. It is the computer, automated process or algorithm that performs intelligent functions and makes decisions, which cannot be implemented by human operational action.

In May 2024, the European Union adopted an updated version of the eRegulation (EU) No. 910/2014 (e-IDAS), known as eIDAS 2.0. The aim of the new version is to establish a European framework for digital identity, while also enabling the free use of qualified electronic signatures for citizens for non-professional purposes, as well as at the same time providing for the necessary measures to prevent natural persons from using qualified electronic signatures for professional purposes free of charge. In addition, eIDAS 2.0 introduces a number of new provisions relating to electronic identification, electronic signatures and the general security of digital transactions. The establishment of a European framework for digital identity is aimed at enabling a secure and interoperable digital identity for access to public and private services, both online and offline. This framework also introduces the European Digital Identity Wallet with the aim to enable citizens and businesses to securely store and share digital documents and digital identification data, as well as to sign documents using a qualified electronic signature. This scheme also includes the introduction of a digital identity cards, which would allow citizens to securely store and share their data, as well as to use a qualified electronic signature.

The digital society has brought new forms of communication, and what we call digital identity today appears on two tracks - in private digital interactions of individuals and legal entities for the purposes of advertising,

social networks, informal communication, etc (Gstrein & Kochenov, 2020). Every individual who once acted within the digital space has left a digital footprint on the basis of which they can be identified. The structure of information that constitutes a digital identity for these needs is determined by the parameters and rules set by the platforms that enable communication or other types of interaction in the digital space. On the other hand, the state moves its services into the digital space, requiring citizens to create a digital identity for the needs of accessing and using those services. More and more state services are provided via the Internet, which led to the creation of the concept of "digital citizenship" (Sullivan, 2014, p. 76). Following the example of traditional social theories, the concept of a digital social contract is discussed, precisely with the aim of achieving the integrity of the digital identity. This implies a joint venture of citizens, business entities and the state in creating a joint model of responsible digital citizenship. Regardless of whether the digital identity occurs in the context of private communication or government services, the same requirement for ensuring its integrity and security is the same. Also, regardless of the context in which DI occurs, it has significant personal, commercial and legal segments.

With the emergence of different forms of digital identities, both for individuals and legal entities, emerges a new concept of the so-called digital citizenship. Digital citizenship, which implies a certain degree of responsibility, i.e. the only model that is sustainable is the model of responsible digital citizenship, which is based on a digital social contract. Understanding the digital social contract rests on the rights, obligations and responsibilities that are distributed between individuals and entities that provide different services in the digital space. Rights, obligations and responsibilities are defined by various internal acts that regulate business in the digital space, as well as by public law regulations of national and supranational origin (such as data protection, choice of governing law, license validity, etc.). The development of digital identities, and the creation of a new category of digital citizenship, is part of the world's digital future.

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Conflict of Interest

The authors declare no conflict of interest.

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DIGITALNI IDENTITET KAO NOV PRAVNI KONCEPT

APSTRAKT: Sa razvojem savremenog digitalnog društva povećava se stepen interakcije subjekata koja se odvija u digitalnom prostoru, a sama interakcija se zasniva na korišćenju ličnih podataka između subjekata, u cilju potvrđivanja i verifikacije njihovog identiteta. Pitanje primene ličnog identiteta u digitalnom prostoru stvorilo je realnost *de facto* postojanja digitalnog identiteta kao novog oblika lične identifikacije. Digitalni identitet je identitet koji se sastoji od informacija koje se čuvaju i prenose u digitalnom obliku. Dakle, postavlja se pitanje kako se novi koncept ličnog identiteta kao digitalnog identiteta može obuhvatiti pravnim pravilima, da bi se omogućile transakcije. Autori tvrde da digitalna tehnologija

poziva na novu filozofiju identiteta. Takođe tvrdimo da digitalni identitet nužno iziskuje redefinisanje tradicionalnog pravnog okvira. U nastavku rasprave u ovom radu videćemo ko se može tretirati kao pravni subjekt u transakcijama koje se sprovode putem digitalnog identiteta. Razmotriće se i pitanje kako se zakonske pretpostavke mogu promeniti da bi uključile nove realnosti, a kao najvažniji deo, predstavićemo pravni tretman tehničke strukture od koje se sastoji digitalni identitet.

Ključne reči: *digitalni identitet, transakcioni identitet, lični podaci, pravne transakcije, registrovan identitet, digitalno građanstvo*.

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CHANGE IN THE TRAFFIC CRIME RATE IN THE REPUBLIC OF SERBIA DURING THE FIRST DECADE OF THE GLOBAL ACTION FOR ROAD SAFETY

ABSTRACT: With the adoption of the Law on Road Traffic Safety in the past decade, better known as the *Decade of Global Action for Road Safety*, normative frameworks were established for successful and efficient progress in the field of road safety, requiring strategic and systemic action in the prevention of traffic offenses. The basic task of traffic safety policy lies in establishing a protective system that will have long-term effects in reducing the number of committed traffic offenses and their consequences. In this regard, traffic safety management policy has a direct impact on the criminal policy of combating traffic crime. These two policies intertwine and form a unified system with inseparable connections, since greater success in the field of traffic safety management means greater safety, fewer violations of traffic regulations, and consequently a reduction in the number of traffic offenses. Today, as we enter the second *Decade of*

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Global Action for Road Safety, we can look back on the effects of the first decade. Analyses of the impact of numerous measures on road safety in the previous decade show that the establishment of a protective system in traffic contributed to a reduction in the number of traffic accidents and accident victims. However, the analysis of traffic crime rates has not been addressed. Therefore, this paper examines how changes in the normative framework and its application in the Republic of Serbia during the first decade affected traffic crime. Using statistical methods, the trend of traffic crime from 2010 to 2019 was analyzed. The research findings indicate that, in the observed period, the traffic crime rate was declining.

Keywords: *traffic crime rate, traffic crime, traffic delinquency.*

1. Introduction

Casualties in traffic accidents have become a growing global problem, which has been pointed out by the United Nations General Assembly (UN) and the World Health Organization (WHO), among others. In its report for 2009, the Commission for Global Road Safety proposed the launch of a Decade of Global Action for Road Safety (hereinafter: The Decade). The UN Secretary General, in his 2009 report to the General Assembly, encouraged member states to support efforts to establish a Decade, which would represent an opportunity for long-term and coordinated activities to support regional, national and local road safety. In March 2010, the General Assembly of the United Nations declared the "Decade of Global Action for Traffic Safety 2011-2020" (UN/RES/64/255). In this regard, the World Health Organization recommended that all national governments adopt comprehensive laws to protect all road users.

The enforcement and application of regulations on traffic safety is defined as a field of activity, the goal of which is to control the behaviour of road users through comprehensive preventive and repressive measures in order to influence safe and efficient movement in traffic (OECD, 1994). Based on statements in the literature, it is estimated that the application of legal regulations in traffic could reduce the number of traffic accidents by up to 50%, in cases of the most optimal application of the law (European Transport Safety Council, ETSC, 1999, p. 42). In other researches, a significantly smaller percentage (up to 10%) was determined, which the application of traffic laws can have on the prevention of traffic accidents. According to the results of another researches, it was estimated that only permanent efforts and well-prepared law enforcement strategies could

significantly contribute to traffic safety, that is, reduce the number of traffic accidents by up to 25% (Zaidel, 2002, p. 3).

By establishing international standards and recommendations to member states, the United Nations has influenced numerous states to incorporate into their legislation measures that have been proven to be effective in the research and practice of the most traffic-developed countries. Following the aforementioned recommendations and standards, the Republic of Serbia adopted the Law on Road Traffic Safety (2009) (hereinafter referred to as the LRTS), which has been in force since December 10, 2009, with numerous amendments. LRTS is a reform and systemic law, with accepted solutions from international standards and recommendations, obligations from ratified international conventions and agreements, this legal text creates a normative framework for systemic and strategic improvement of the level of traffic safety.

In numerous statistical reports of the Traffic Safety Agency of the Republic of Serbia (2025), as well as in the Traffic Safety Strategy of the Republic of Serbia for the period from 2023 to 2030 (2018) with the Action Plan for 2023 to 2025 (2023), it is pointed out that in the Republic of Serbia, a stable downward trend in the number of people killed in traffic accidents has been established, while the trend of injured persons oscillates. The implementation of legal measures in the field of traffic also had an impact on the reduction of the number of traffic accidents in the analysed period. In 2019, a quarter fewer traffic accidents were registered than in 2010 (Petrović, 2021, p. 246). However, despite this, in the period from 2016 to 2020, there were 730 deaths (of which 66 were children) and 5,122 seriously injured persons more than was forecast by the first National Strategy of the RS, so it can be concluded that its goals were not achieved (Strategy for traffic safety of the Republic of Serbia, 2018, pp. 1–5).

Apart from detailed and numerous statistical analyses of the impact of the application of legal measures on reducing the number of traffic accidents, it is extremely important to investigate the impact of their application on the change in the rate of traffic crime in the Republic of Serbia in the first decade. This is particularly supported by the following:

1. In our legal system, almost all the norms that prescribe the rules of behaviour in traffic are found in legal and by-laws of traffic regulations, i.e. outside the realm of criminal law. Those behaviours "enter" the criminal law zone through blanketness, when the perpetrator achieves the elements of a criminal offense by violating traffic regulations. Hence the criminal law importance of analysing the effectiveness of the application of Traffic Safety Law to the prevention of traffic

crimes. Traffic accidents can be prevented or their consequences mitigated by the legal regulation of traffic safety rules on the roads. Depending on the resulting consequences and the fulfilment of legal requirements, traffic accidents can be legally qualified as criminal offenses against the safety of public traffic. It follows from the above that the analysis of the impact of the application of legal measures in the field of traffic on the reduction of the number of committed traffic crimes - can be observed in correlation with the number and trend of traffic accidents in the Republic of Serbia (Petrović, 2021, p. 46).

2. Statistical data on the number and consequences of traffic accidents in the period from 2010 to 2019 can be significant indicators of the impact of the implementation of legal measures in the field of traffic on the reduction of the number of committed traffic crimes, for two more reasons:
   - the number of traffic accidents is correlated with the number of committed crimes against the safety of public traffic (Petrović, 2019, p. 46), primarily with the criminal offense from Article 289 of the Criminal Code, endangering public traffic and
   - the number of traffic accidents with dead or seriously injured persons is correlated with the number of serious offenses against the safety of public traffic from Article 297 of the Criminal Code.

2. Research subject and methods

The subject of research in this paper is Criminal offenses against the safety of public transport. In order to establish complete protection of the safe and secure flow of traffic, both in general and in certain types of traffic, positive criminal legislation foresees "traffic crimes" (Jovašević, 2000, pp. 205–210). Criminal offenses against the safety of public transport are provided for in Chapter XXVI of the Criminal Code of the Republic of Serbia (2005). They represent the most dangerous and difficult, and therefore the most significant type of traffic offences, i.e. considered in a narrower sense, traffic crime. These acts, as a rule, "arise" from actions that violate traffic regulations and are manifested in jeopardizing (endangering) certain values (life and bodies of people or material goods in public traffic), (Jovašević & Simović, 2016, p. 81). Therefore, through blanketness, only when the legal conditions are met, responsibility is transferred from the area of misdemeanour to the area of criminal legislation. For example, only when a certain perpetrator, "by violating

traffic safety regulations, endangers public traffic in such a way that it endangers the life or body of people or property of a larger scale, and as a result, a slight bodily injury occurs to another person or causes property damage that exceeds the amount of two hundred thousand dinars..." (Article 289 paragraph 1, CC). Therefore, traffic offenses touch criminal law only in their most serious forms and consequences. This reflects the protective function of criminal law, which occurs when the act has already been committed, post factum, i.e. when the protected goods are already threatened, damaged or injured.

From the above follows the logical sequence of the connection of research of the impact of the application of legal measures in the field of traffic safety on the prevention of traffic crimes, especially bearing in mind the fact that in the structure of traffic crime in road traffic, the crime of endangering public traffic occurs most often, followed by serious crimes against public traffic safety, while other crimes occur in insignificant numbers (Petrović, 2021, p. 102). The present paper analysed statistical data based on the number of legally binding court decisions, which determined the commission of some of the traffic crimes, as legally relevant indicators of the number of committed traffic crimes. In this sense, a statistical method was used, i.e. an analysis of statistical data on the number of legally convicted persons for crimes against public traffic safety, in the period from 2010 to 2019 in the Republic of Serbia, which exactly coincides with the period of the first Decade of Action for Traffic Safety (part of the research results from the doctoral dissertation Petrović, 2021 was used). The year 2020 was not included in the research, because due to the global pandemic of the corona virus, a state of emergency was introduced in that year, which significantly reduced the mobility of the population.

In addition to the absolute indicators of the number of persons convicted of traffic crimes, the rate of persons convicted of traffic crimes per 100,000 inhabitants and per 100,000 registered vehicles is also shown. It is another important indicator in order to see absolute data on the number of traffic crimes independently of changes in the number of registered motor vehicles and changes in the number of inhabitants (Petrović, 2021, p. 227).

In addition to the statistical method, the research used the method of content analysis (which included different reports - annual and periodic, which specifically focus on the problem that is the subject of this research), the method of deduction and induction, as well as the comparative method that was used in order to compare different data and results relevant to the research, especially when studying the effectiveness of legal regulations in suppressing traffic offenses, but also for the purpose of assessing the reliability of the applied method, when drawing conclusions.

3. Statistical data on traffic crimes in the period from 2010 to 2019

In the period 2010–2019, in the territory of the Republic of Serbia, by legally binding court decisions, a total of 28,579 persons were convicted for criminal offenses against the safety of public traffic. Compared to 2010, when there were a total of 3,063 convicted persons, in 2019 that number was 2,158.

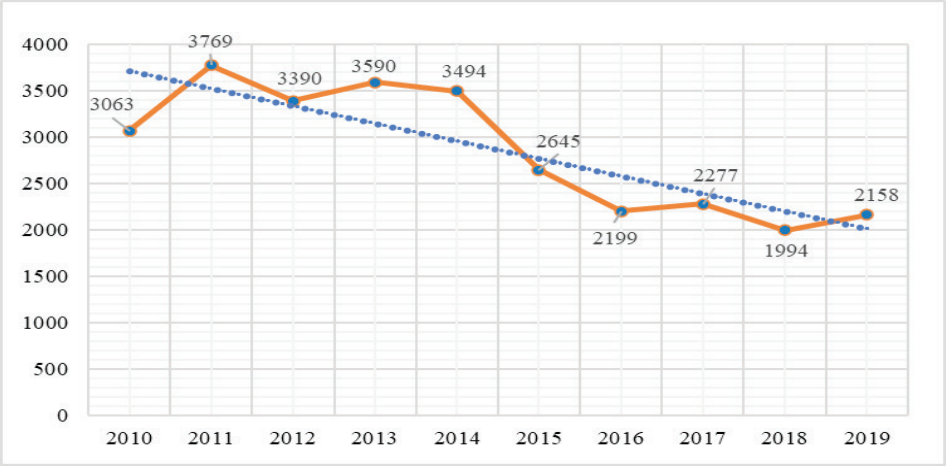
Table 1. Number, trend and rate of crimes against public traffic safety according to the number of convicted persons in the Republic of Serbia in the period from 2010 to 2019

Year	Number of convicted adults	Number of convicted minors	Total number of convicted persons	Rate of convicted persons per 100.000 inhabitants	Rate of convicted persons per 100.000 registered vehicles
2010	3003	60	3063	42,01	169,25
2011	3693	76	3769	52,08	194,99
2012	3323	67	3390	47,07	171,45
2013	3508	82	3590	50,09	165,42
2014	3461	33	3494	48,99	156,04
2015	2616	29	2645	37,28	115,57
2016	2176	23	2199	31,15	93,58
2017	2250	27	2277	32,43	94,14
2018	1974	20	1994	28,56	81,05
2019	2134	24	2158	31,07	83,59
Total	28138	441	28579	/	/

Source*:* Republic Institute for Statistics of the Republic of Serbia (2025).

From the above, it can be concluded that the number of convictions for traffic offenses in 2019 decreased by a third compared to 2010 (29.54% fewer convicted persons). Based on the data in the table, the decrease in the total number of convicted persons for criminal offenses against public traffic safety in the analysed period is shown graphically (Chart 1.).

Chart 1. Presentation of the number of crimes against public traffic safety according to the number of convicted persons in the Republic of Serbia in the period from 2000 to 2019



Source: Republic Institute for Statistics of the Republic of Serbia (2025).

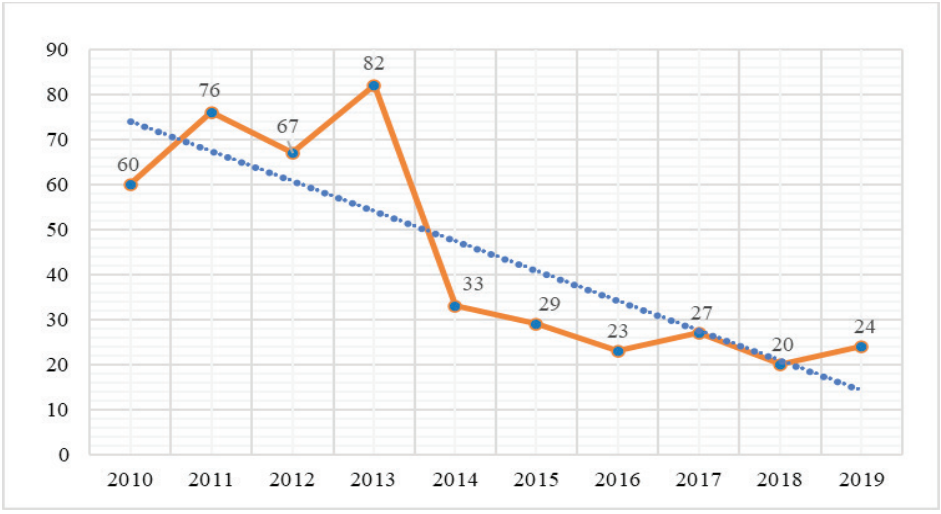
If the illustrated data by year is considered in more detail, it can be concluded that this decline is not linear, but there are certain "jumps" in the number of convicted persons. The lowest number of convictions was recorded in 2018 (1,994 convicted persons), while the highest number was recorded in 2011 (3,769 convicted persons).

In the structure of convicted persons, adults make up 98.46%, and minors make up 1.64%. If the number of minors, who were found guilty of crimes against public traffic safety, is observed separately, a downward trend can also be noted. However, in the case of minors who have been declared guilty, a significant decrease has been recorded since 2014, which continues with smaller oscillations until 2019, (Chart 2).

The graphic shows that compared to 2010, the number of convicted minors in 2019 is lower by two thirds (about 60%). The highest number of juvenile convicts was in 2013 (82%), and the lowest in 2018 (20%).

In the last two columns of table 1, the rate of convicted persons for traffic offenses is shown. The rate of convicted persons per 100,000 inhabitants is decreasing in the period 2010-2019. year. In 2010, it was 42.01%, while in 2019 it was 31.07%. If data from 2010 and 2019 are compared, the rate of convicted persons per 100,000 inhabitants decreased by one quarter (26.04%).

Chart 2. Presentation of criminal offenses against public traffic safety according to the number of minors declared guilty in the period from 2010 to 2019 in the Republic of Serbia



Source: Republic Institute for Statistics of the Republic of Serbia (2025).

Even more significant is the decrease in the rate of convicted persons per 100,000 registered motor vehicles. In 2010, the rate was 169.25, while in 2019, the rate was 83.59. If we compare 2010 and 2019, we can conclude that the rate of convicted persons per 100,000. of registered motor vehicles fell by more than 50%. In all indicators, the declining trend is not linear, but contains oscillations, which shows that the decline is not fixed but varies over the years.

A decrease was also recorded in the quota of convicted persons for traffic offenses in the analysed period (Table 2). From the total number of legally convicted persons for criminal offenses in the Republic of Serbia for the period 2010-2019, persons convicted of traffic offenses accounted for 13.13% in 2010 and 7.24% in 2019. Based on this, it can be concluded that the share of traffic crime in 2019 was significantly reduced in total crime in the Republic of Serbia (about 50%) compared to 2010. There is also a decrease in the quota for the number of accused persons, while the quota for the number of filed criminal charges for criminal offenses against traffic safety in the analysed period is on the rise.

Table 2. Quota of traffic crime in the period from 2000 to 2019 in the Republic of Serbia

Year	Submitted criminal charges			Accused persons			Convicted persons		
	Total	For traffic offences		Total	For traffic offences		Total	For traffic offences	
	Number	Number	%	Number	Number	%	Number	Number	%
2000	87601	6346	7,24	46475	6382	13,73	34223	5692	16,63
2001	97071	7526	7,75	48136	6443	13,38	35566	5753	16,18
2002	107312	7243	6,75	51535	6792	13,18	35997	6017	16,72
2003	98148	6519	6,64	46680	6025	12,91	35097	5451	15,53
2004	91573	6902	7,54	47607	6161	12,94	36222	5543	15,30
2005	103481	6747	6,52	51102	6200	12,13	39135	5590	14,28
2006	108742	7115	6,54	57636	6282	10,90	42988	5748	13,37
2007	102136	7834	7,67	51404	5963	11,60	40690	5488	13,49
2008	105808	8990	8,50	55868	6850	12,26	44367	6228	14,04
2009	103523	8506	8,22	52869	6812	12,88	42782	6105	14,27
2010	78026	5418	6,94	30065	3405	11,33	23321	3063	13,13
2011	92530	6609	7,14	42579	4359	10,24	33097	3769	11,39
2012	96792	7311	7,55	44567	4052	9,09	33624	3390	10,08
2013	95255	7896	8,29	49004	4392	8,96	34889	3590	10,29
2014	95710	7509	7,85	50947	4176	8,20	37410	3494	9,34
2015	112114	7923	7,07	44565	3065	6,88	35115	2645	7,53
2016	99880	7863	7,87	42115	2542	6,04	34557	2199	6,36
2017	93813	7800	8,31	39744	2523	6,35	33392	2277	6,82
2018	95546	8481	8,88	36995	2186	5,91	31298	1994	6,37
2019	95700	8744	9,14	34362	2329	6,78	29788	2158	7,24

Source: Republic Institute for Statistics of the Republic of Serbia (2025).

4. The number of traffic crimes in the period from 2000 to 2019

By comparing the number of persons convicted for traffic crimes, in a longer period of time from 2000 to 2019, an even more significant trend of decreasing traffic crime is noticeable (Table 3). This analysis is particularly important in order to observe changes in the trend of traffic crimes in the Republic of Serbia, before and after the beginning of the implementation of LRTS.

Table 3. The number and trends of persons convicted of crimes against public transport safety in the Republic of Serbia in the period from 2000 to 2019

Year	Total number of convicted persons	Increase/decrease in % compared to 2000.	Change (increase/ decrease) in % compared to the previous year
2000	5692	100	0,00
2001	5753	101,07	1,07
2002	6017	105,71	4,59
2003	5451	95,77	-9,41
2004	5543	97,38	1,69
2005	5590	98,21	0,85
2006	5748	100,98	2,83
2007	5488	96,416	-4,52
2008	6228	109,42	13,48
2009	6105	107,25	-1,97
2010	3063	53,81	-49,83
2011	3769	66,21	23,05
2012	3390	59,56	-10,06
2013	3590	63,07	5,90
2014	3494	61,38	-2,67
2015	2645	46,47	-24,30
2016	2199	38,63	-16,86
2017	2277	40,00	3,55
2018	1994	35,03	-12,43
2019	2158	37,91	8,22

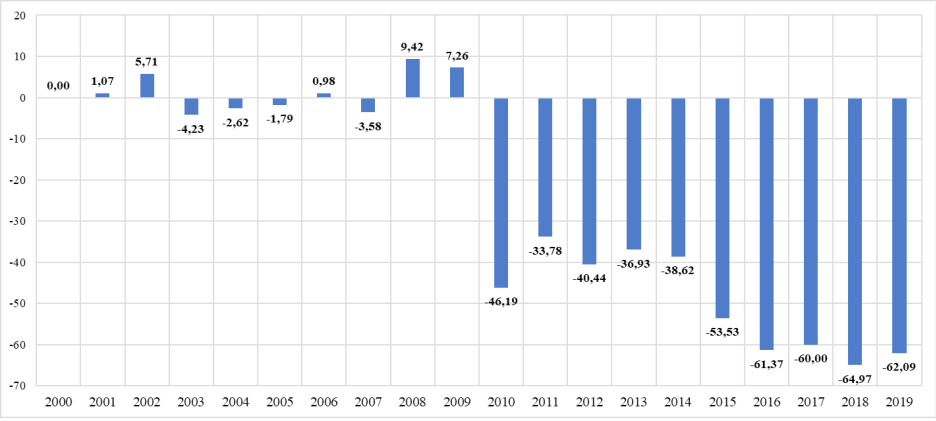
Source: Republic Institute for Statistics of the Republic of Serbia (2025).

The total number of persons convicted for traffic offenses in 2000 was 5,692, while in 2009 it increased to 6,105, and in 2010 the number of persons convicted was halved to 3,063. In 2019, there were 2,158 convicted persons, which is one third less than in 2010 and two thirds less than in 2009.

The second column of table 3 shows the base index (increase/decrease in percentages compared to 2000). The changes show that in 2019 there was a decrease in the number of criminal offenses by 62.09%, compared to 2000. It is even more significant to point out that from 2000 to 2009 there

was an increasing trend in the number of convicted persons (7.26% more in 2009 compared to 2000). After that, there was a significant drop in 2010 (by 46.19% compared to 2000). According to these data, it is clearly observed that in 2019 the number of convicted persons for this group of crimes decreased by 62.09% (Chart 3).

Chart 3. Change in the trend (base index) of convicted crimes against public traffic safety in the Republic of Serbia in the period from 2000 to 2019 compared to 2000



Source: Republic Institute for Statistics of the Republic of Serbia (2025).

The last column of aTable 3 shows the change in the chain index (change in percentage increase/decrease compared to the previous year). The trend of growth (2000–2009) and decline (2010–2019) of traffic crimes is not linear, but there are variations in the trend of traffic crimes in the Republic of Serbia in the analysed period.

5. Conclusion

Implementation of legal measures in the field of traffic, in the period 2010-2019, had an impact on the reduction of the number of committed traffic offenses in the Republic of Serbia. If the number of final convictions for traffic offenses is analysed, in 2019 the number of traffic offenses decreased by 29.54% compared to 2010. The decreasing trend is even more significant if the period before the implementation of LRTS is analysed. Thus, in 2019, the number of traffic crimes decreased by 64.65% compared to 2009. This

is supported by other indicators presented in the research part - the rate of traffic crime and the quota of traffic crime. If the data in the analysed period are compared, it can be concluded that in 2019 the rate of traffic crime per 100,000 registered motor vehicles decreased by more than 50%, while the traffic crime rate per 100,000 inhabitants decreased by one quarter (26.04%), compared to 2010. Also, the traffic crime rate in 2019 is half of that in 2010.

Along with the above conclusion, it is necessary to point out the following facts. First, the trend of reducing the rate of traffic crime is not linear, but has certain oscillations. This means that the declining trend exists, but it is not fixed, because it varies from year to year in the analysed period (which is proven by the analysis of the change in the chain index). Second, the impact of the application of legal measures in the field of traffic on the reduction of the number of committed traffic crimes is indirect and stems from the blanket nature of criminal law norms. Thirdly, the basis for the aforementioned conclusion also stems from the fact that in the analysed period there were no changes to the Criminal Code (2005) related to criminal offenses against public traffic safety (tightening of sanctions or narrowing the criminal zone), so in this sense the results of the research can be linked to the effects of the application of legislation in the field of traffic safety.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, A.P., S.A. and J.D.; methodology, A.P.; resources, A.P.; formal analysis, A.P.; writing - original draft preparation, A.P.; writing - review and editing, A.P., S.A. and J.D. All authors have read and agreed to the published version of the manuscript.

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PROMENA STOPE SAOBRAĆAJNOG KRIMINALITETA U REPUBLICI SRBIJI U PRVOJ DEKADI GLOBALNE AKCIJE ZA BEZBEDNOST NA PUTEVIMA

APSTRAKT: Usvajanjem Zakona o bezbednosti saobraćaja na putevima u prošloj deceniji, poznatijoj kao *Dekada globalne akcije za bezbednost na putevima*, stvoreni su normativni okviri za uspešan i efikasan napredak u oblasti bezbednosti saobraćaja na putevima, koji zahtevaju strateško i sistemsko delovanje u sprečavanju saobraćajnih delikata. Osnovni zadatak politike bezbednosti saobraćaja leži u uspostavljanju takvog zaštitnog sistema koji će imati dugoročne efekte u pogledu smanjenja broja izvršenih saobraćajnih delikata i njihovih posledica. U tom smislu, politika upravljanja bezbednošću saobraćaja ima neposredan uticaj na kriminalnu politiku suzbijanja saobraćajnog kriminaliteta. Ove dve politike se međusobno prožimaju i čine jedinstveni sistem sa neraskidivim vezama, jer veći uspeh na polju upravljanja bezbednošću saobraćaja znači veću bezbednost, uz manje kršenja saobraćajnih propisa, pa samim tim i smanjenje broja saobraćajnih delikata. Danas, kada se nalazimo u drugoj *Dekadi globalne akcije za bezbednost na putevima*, možemo se osvrnuti na efekte prve Dekade. Analize uticaja brojnih mera na bezbednost saobraćaja na putevima u prethodnoj deceniji pokazuju da je uspostavljanje zaštitnog sistema u saobraćaju uticalo na smanjenje broja saobraćajnih nezgoda

na putevima i žrtava u nezgodama. Međutim, analiza kretanja stope saobraćajnog kriminaliteta nije bila predmet razmatranja. Stoga se u ovom radu analizira na koji način je promena normativnog okvira i njegova primena u Republici Srbiji, u okviru prve Dekade, uticala na saobraćajni kriminalitet. Koristeći statistički metod analiziran je trend kretanja saobraćajnog kriminaliteta u periodu od 2010 do 2019. godine. Na osnovu izvršenog istraživanja došlo se do zaključka da je u analiziranom periodu stopa saobraćajnog kriminaliteta bila u opadanju.

Ključne reči: *stopa saobraćajnog kriminaliteta, saobraćajni kriminalitet, saobraćajna delinkvencija.*

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NEW PUBLIC MANAGEMENT AND LOCAL GOVERNMENT – AUTONOMY OF LOCAL PUBLIC SERVICE MANAGERS

ABSTRACT: This paper addresses the question of the autonomy of managers of entities that provide local public services (companies established by local self-government units for the performance of communal activities), inspired by the principles of new public management. It analyzes the extent of their autonomy, with particular emphasis on the influence of political factors and managerial capacities. On the theoretical level, the paper examines the relationship (dichotomy) between public authorities and the governing bodies of local utility companies, as well as the types of autonomy that arise from this relationship. The empirical part of the study is based on data collected through a survey conducted in 36 utility companies in the Republic of Croatia during 2023. The aim of the paper is to answer whether public authorities influence the managerial activities and autonomy of local public service managers, and how their roles and functions are interconnected. It has been concluded that clearly defined goals, the establishment of accountability, and constructive cooperation are crucial for the effective delivery of quality and accessible services that meet the needs of the local community.

Keywords: *managerial autonomy, local public services, companies established by local self-government units, new public management, meritocracy.*

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1. Introduction

The concept of new public management (hereinafter: NPM) was founded in an effort to overcome the structural weaknesses of traditional public administration, which is predominantly determined by strict hierarchical organization, limited flexibility in management, slow adaptability to changes and normative stiffness. By introducing managerial principles and practices taken from the private sector, it seeks to improve the performance of the public sector, through achieving greater efficiency, cost-effectiveness and effectiveness (the so-called 3E approach), while strengthening responsibility and orientation towards results. Gębczyńska and Brajer-Marczak (2020) state that the measurement of public administration performance is based on the definition of criteria, whereby two related but different models are most often used – 3E (economy, efficiency and effectiveness) and IOO (input, output, outcome), whereby the 3E model serves managers to assess and improve efficiency (p. 7). Greater emphasis on the professionalization and realization of the formulated goals, than on the processes of their implementation, is the fundamental requirement of the NJM, so one of the key features of the NPM reforms presupposes greater autonomy[1] of managers of entities performing local public services.[2] The effective performance of local public services depends both on the integrated policies of the holders of local public authorities and on the knowledge, skills and expertise of public managers who perform these tasks. Pérez-López, Prior and Zafra-Gómez (2015) state that "achieving efficient public service delivery is the main political objective at all levels of public administration" (p. 1176). According to Kettl (1997), the basic idea of reforms inspired by the new public management is "*let the managers manage", that is,* focus them on the problems that need to be solved and, in accordance with the set goals, provide them with flexibility in these activities (p. 447). It is important to point out here that changes in the public sector are far more difficult to realize than the private sector. Since the agents of change in the public sector operate in a much narrower discretion compared to private sector entrepreneurs (Nieto Morales, Wittek & Heyse, 2013, p. 742), the latter have a greater degree of organizational autonomy, shorter and more efficient decision-making procedures and a greater ability to adapt in a timely manner to changes in the external environment.

[1] For the purposes of this paper, in addition to the term "managers of local public services", the term "public managers" will also be used.

[2] For the purposes of this paper, in addition to the terms "local public services", " companies establishing local self-government units for the purpose of performing utility activities" will also be used the term "public utility companies".

Directly elected holders of local public authorities cannot be passive and insufficiently informed observers of the process of realization of strategic goals of public utility companies, since they define political priorities and direct the development of policies of public interest. In this context, public managers are expected not only to implement the objectives technically and operationally but also to proactively identify, design and implement practical and innovative solutions in line with the principles of managerial autonomy. In this regard, this autonomy must be realized within a clearly defined institutional framework, which includes mechanisms of political oversight, accountability and transparency, all to ensure that the actions of the public manager remain aligned with the legitimate interests/needs of the public and the strategic direction of the local unit. Kettl (1997) believes that public authorities should primarily focus on setting and monitoring general strategic goals, while managers are given discretion on how to implement these goals, thus "allowing managers to manage" (p. 449). In this sense, Hood points out that one of the central topics of the NPM is "emphasizing the importance of discretionary space of public managers or freedom of management" (Hood, 2000, p. 1). Perko Šeparović (2002) states that public corporations are considered ineffective and incompetent organizations that will become effective only through privatization, the influence of management, characteristic of the private sector, and that this managerial reason is the basic guiding principle of the new public management (p. 41).

However, the key problem stems from the perception that the interests of public managers are potentially not fully aligned with the political goals of the holders of public authority, and such a mismatch may raise doubts about the justification and effectiveness of their autonomy, as it raises the question of the extent to which autonomous managers act in the public interest, and to what extent they pursue their own or limited interests. Therefore, the effect of autonomy depends not only on the formal level of freedom in decision-making, but also on how holders of public authority perceive and interpret this autonomy – as a tool for professionalizing governance and achieving the strategic goals of the organization aligned with the public interest, or as a risk that may lead to the loss of political control and difficult direction of public policies.

2. Dichotomy of policy and managerial management

The conflicting roles of politicians-bearers of public authority and managers of local public services are the subject of numerous scientific discussions (Shleifer & Vishny, 1997, pp. 767–768; Bourdeaux, 2008; Aucoin, 2012, p.

178; Wynen & Verhoest, 2015; Krause & Van Thiel, 2019; Van de Walle, 2019; Jacobsen, 2022; Đulabić, 2022, p. 108). The reason for this can be attributed to one of the most significant contemporary challenges faced by public managers, and relates to striking a balance between two opposing axes: on the one hand, meeting the political requirements of public authorities, and on the other hand, flexible, efficient and autonomous performance of tasks, taking responsibility for decisions made and activities carried out. Public authorities and managers of local public services are perceived through different roles: as actors of the process with separate functions, whereby the former should decide on strategic issues and create goals, while the latter are expected to realize them in the most efficient way (Liguori, Sicilia & Steccolini, 2009, p. 311). As Nielsen (2013) points out, the selected holders of public authority are primarily focused on formulating organizational goals and then on monitoring the measurable achievements and effectiveness of managers responsible for the realization of such goals (p. 433). According to Norman (2001), public managers must "balance and control the tensions between freedom and limitation, between empowerment and responsibility, between the *top to down* direction and the *down to top* creativity between experimentation and efficiency (p. 69).

Paradoxically, reforms within the concept of the NPM were on the one hand aimed at strengthening the autonomy and accountability of public managers, while at the same time they were accompanied by efforts to establish stricter political control over these same management structures. While on the one hand too much autonomy and too little control can jeopardize coordination and prevent the delivery of the envisaged services, on the other hand, too much control contributes to the demotivation of those who are "furthest from the sources of power", which in turn results in the development of passivity and lack of initiative in undertaking appropriate activities related to the realization of goals (Norman, 2001, p. 67). This paradox has been resolved by the approach by which public managers are granted extended management powers, enabling them to effectively implement the goals arising from the policies of public authorities, while at the same time clearly defining the responsibility for achieving these goals. However, the gradual strengthening of political control over time has evolved into a form of politicization, which has led to a violation of traditional values and principles of impartiality and non-partisan governance in public services (Aucoin, 2012, p. 178).

The question of how much public managers in local utilities can really be responsible for achieving the set goals – efficient provision of utilities, becomes problematic when they are not provided with adequate flexibility and autonomy in technical and operational activities. In conditions where

political uncertainty and the possibility of changing local government directly affect the continuity of leadership, public managers are often focused on achieving short-term goals that can be realized within the duration of the political mandate. This disregards long-term, strategically important activities aimed at the public interest, further undermining institutional stability and sustainable management capacity. Smith (1993), explains the meaning of the syntagm *managerial myopia* that arises as a result of the lack of coordination "between the time horizon of the manager and the time horizon of the projects for which he or she is responsible" (p. 143). As a rule, changes in management structures occur after local elections, as a result of the impact of the policy, which often results in difficult continuity of services. A survey conducted by Aragão and Fontana (2022), on a sample of 51 public managers in Brazil, shows that newly elected public managers will not continue those activities performed by their predecessor primarily for the reason of meeting the needs of politicians who have secured their current status (p. 68).

Namely, the short-term planning perspective primarily stems from the strong influence of political factors, among which the manner of appointing a public manager stands out. Since the holder of public authority – in the role of a representative of a member in the assembly of a company – de facto and de jure appoints a public manager, and his legitimacy depends on the election cycle, it is understandable that the public manager will direct management activities towards the realization of those plans that can be realized within one term, i.e. over a period of up to four years. The politicization of administrative structures, manifested through the appointment of politically close individuals to key management positions in the public sector, represents a serious challenge for building a professional, meritocratically based and institutionally stable organization, and personnel practice, guided by political loyalty instead of professional criteria, encourages clientelistic relations within the system, that public functions are used for political control and not for the achievement of the common good. In conclusion, instead of adopting the principles of the NPM – such as efficiency, transparency, market logic, accountability to citizens and managed on the basis of results – such systems remain closed and subject to short-term political interests and changes in the electoral cycle. In this sense, Peters and Pierre (2004) define the concept of politicization as "the replacement of political criteria for criteria based on merit in the selection, retention, promotion, rewarding and disciplining of members of public services" (p. 2). Weller (1989) believes that politicization manifests itself in the forms of using public services for political purposes and appointing and promoting public officials under the influence of politics (p. 371).

3. Concept and types of autonomy

The concept of autonomy, in the relevant literature and in the context of the NPM, is described as the "delegated capacity of the organizational entity", which includes the adoption and implementation of decisions without additional consent of the holders of authority, which is becoming less and less if the actions of the entities are further limited by political, legal, structural or interventionist measures (Berge & Torsteinsen, 2021, p. 4). The professional literature defines it as the ability of managers to manage processes flexibly and independently, with an emphasis on the smooth implementation of individual initiatives without significant external constraints (Bjørnholt, Boye & Hansen 2021, p. 3). Furthermore, Islam (1993) further emphasizes "the independence of managers from the government in day-to-day decision-making" (p. 132) as a key aspect of autonomy, while similar forms of operational autonomy are extensively written by numerous authors, emphasizing the importance of manager autonomy as a fundamental prerequisite for effective management and adaptation within different organizations (Maniatis, 1968, p. 518; Bezes and Jeannot, 2018, p. 3; Van de Walle, 2019, p. 3; Öberg and Wockelberg, 2021), etc.

The concept of "management autonomy" encompasses the different types of autonomy that organizations may have. Voorn, Borst, and Blom (2020) identify three types of management autonomy with a special emphasis on companies founded by local units, namely: strategic autonomy - determines who has control over the formulation of long-term strategies and goals, financial management autonomy - defines the extent to which organizations have control over their budget, costs, and investments, and human resource management autonomy - conditions the discretion that organizations have in human resource management matters. All listed types of management autonomy make it difficult for public authorities to directly manage or influence these entities in the performance of local public services, while at the same time ensuring greater freedom of these entities in the provision of services, in a way that is potentially more efficient, than if it were managed by local units (p. 663).

4. Research and measurement coverage

The empirical research was conducted through a questionnaire, which included utility companies, which were designated by selected local self-

government units in the Republic of Croatia[3] as one of the organizational forms of performing utility activities in the cities and municipalities from the sample (article 5, paragraph 1, item 2 of the Utility Economy Act, (hereinafter: ZKG). During 2023, the questionnaire was sent to 86 official e-mail addresses of the mentioned entities, and it was completed by 36 utility companies. The questionnaire sought to obtain information on the relationship between public managers and holders of public authority and the potential impact of the latter on management autonomy. The questions were asked in the form of an assessment of agreement with the statements, i.e. indicating the level of agreement with the proposed possibilities, which were answered by the directors/members of the management boards (hereinafter: respondents) of the subject entities. According to the provisions on the classification of entrepreneurs, the utility companies in the sample predominantly belonged to the group of medium-sized entrepreneurs (article 5 of the Accounting Act). The results of the research related to two complementary research dimensions are presented and analyzed below: the nature of the relationship between public managers and holders of public authority is explored, taking into account the fact that holders of public authority, as representatives of a member of the assembly of a local utility company, appoint public managers for a specific mandate, which can potentially directly or indirectly influence the process of making business decisions and seeks to determine the level of autonomy of public managers in the daily management of these entities.

5. Results and discussion

The results presented below are analyzed in two thematic units that correspond to the previously defined research dimensions: the relationship between public managers and public authorities (Table 1), and the level of management autonomy in local utility companies (Table 2). The analysis of the results of descriptive statistics aims to provide insight into the way respondents perceive each other's roles, limits of responsibility and decision-making opportunities, thus raising questions about the balance between political control and managerial autonomy, as one of the areas of NPM.

[3] The special questionnaire covers 143 local self-government units, or 26% of the total number of local units in the Republic of Croatia. Data were collected for 23 cities (large cities and cities with county seats), which represents (18% in relation to the total number of cities) and 120 municipalities (28% in relation to the total number of municipalities), whereby the municipalities covered by the survey were distributed in all 20 counties in the territory of the Republic of Croatia, by size - number of inhabitants, namely the three smallest and three largest municipalities in each county.

Table 1. A set of claims concerning the relationship between public managers and holders of public authority

1. The management of the utility company shares business information with the holder of public authority (mayor/mayor of the municipality)

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	4 - Mostly agree	12	33.3	33.3	33.3
	5 = Strongly Agree	24	66.7	66.7	100.0
	Total	36	100.0	100.0	

2. The management of the utility company adapts to the requirements coming from the holders of public authority (mayor/mayor of the municipality)

Valid	Neither agree nor disagree	2	5.6	5.6	5.6
	4 - Mostly agree	15	41.7	41.7	47,2
	5 = Strongly Agree	19	52.8	52.8	100.0
	Total	36	100.0	100.0	

3. The relationship between the Utility Administration and the holder of public authority (mayor/mayor of the municipality) shows a high level of mutual trust

Valid	2 - Mostly disagree	1	2.8	2.8	2.8
	Neither agree nor disagree	3	8.3	8.3	11.1
	4 - Mostly agree	4	11.1	11.1	22.2
	5 = Strongly Agree	28	77.8	77.8	100.0
	Total	36	100.0	100.0	

4. It is more important for the management of the utility company to meet the requirements of service users than the requirements of the holder of public authority (mayor/mayor of the municipality)

Valid	2 - Mostly disagree	3	8.3	8.3	8.3
	Neither agree nor disagree	17	47,2	47,2	55.6
	4 - Mostly agree	12	33.3	33.3	88.9
	5 = Strongly Agree	4	11.1	11.1	100.0
	Total	36	100.0	100.0	

5. Fluctuation of the Utilities Management Board is higher if there is a change in the holder of public authority (mayor/head)

Valid	1 - Do not agree at all	3	8.3	8.3	8.3
	2 - Mostly disagree	1	2.8	2.8	11.1
	Neither agree nor disagree	7	19.4	19.4	30.6
	4 - Mostly agree	14	38.9	38.9	69.4
	5 = Strongly Agree	11	30.6	30.6	100.0
	Total	36	100.0	100.0	

6. The newly elected public authority holder (mayor/head) changes the existing Management Board of the utility company solely for the purpose of improving the organization of the Company					
Valid	1 - Do not agree at all	7	19.4	19.4	19.4
	2 - Mostly disagree	8	22.2	22.2	41.7
	Neither agree nor disagree	11	30.6	30.6	72.2
	4 - Mostly agree	9	25.0	25.0	97,2
	5 = Strongly Agree	1	2.8	2.8	100.0
	Total	36	100.0	100.0	
7. The newly elected public authority holder (mayor/head) appreciates the performance of the existing Utility Management Board and does not change it					
Valid	1 - Do not agree at all	3	8.3	8.3	8.3
	2 - Mostly disagree	5	13,9	13,9	22.2
	Neither agree nor disagree	17	47,2	47,2	69.4
	4 - Mostly agree	6	16.7	16.7	86,1
	5 = Strongly Agree	5	13,9	13,9	100.0
	Total	36	100.0	100.0	
8. Electoral-political changes at the local level (of the mayor/mayor of the municipality) have a weaker effect on the change of the existing Administration of utility companies, if this company achieves positive results					
Valid	1 - Do not agree at all	6	16.7	16.7	16.7
	2 - Mostly disagree	9	25.0	25.0	41.7
	Neither agree nor disagree	10	27.8	27.8	69.4
	4 - Mostly agree	7	19.4	19.4	88.9
	5 = Strongly Agree	4	11.1	11.1	100.0
	Total	36	100.0	100.0	
9. To what extent are the changes in the management boards of utility companies taking place under the influence of the holders of public authority?					
Valid	Very rare	7	19.4	19.4	19.4
	Rarely	5	13,9	13,9	33.3
	Occasionally	8	22.2	22.2	55.6
	Often	5	13,9	13,9	69.4
	Very often	11	30.6	30.6	100.0
	Total	36	100.0	100.0	

Source: Results of the author's research

Respondents most often replied "I completely agree" to the first three statements, in percentages ranging from 55.2% to 77.8%. Based on the results of descriptive statistics, it can be concluded that a positive atmosphere prevails in the relations between public managers and holders of public authority, marked by a mutual orientation towards common goals and

public values, which contributes to the successful provision of an efficient public service.

Interesting insights are provided by the respondents' answers related to the perception of the relationship between the requirements of utility users and the requirements of the holder of public authority. To the claim *"4. It is more important for the Management Board of the Company to meet the requirements of service users than the requirements of public authorities",* the largest number of respondents (47.2%) took a neutral position ("neither agree nor disagree"). This response can be interpreted as a pronounced need to balance between two levels of responsibility: those towards end users of services and those towards the founder of the local utility company – the holder of public authority.

However, it is important to emphasize that the requirements of these two actors are not always harmonized, nor necessarily equally directed towards the public interest. The interests of end-users (citizens) generally include the availability, quality and economic affordability of services. In contrast, the demands of public authorities can be politically conditioned – for example, aimed at implementing short-term political goals, improving personal or party image, or achieving fiscal goals through unpopular measures such as increasing service prices – and thus come into conflict with citizens' expectations. For example, in the City of Zagreb, during the restructuring process of Zagrebački holding d.o.o. after the local elections in 2021, an increase in the prices of certain utility services, including waste disposal and transport, was announced. Such a decision provoked resistance from some citizens who perceived it as a reduction in public service standards without adequately improving their quality. This example clearly shows how citizens' demands for affordable and quality services may conflict with the political agenda of the city administration, whereby the management of the utility company acts as an implementing body of political will, rather than as an independent representative of the public interest.[4] In such a context, the role of the public manager becomes extremely complex – he is expected to respect political guidelines and protect the interests of citizens at the same time, often without institutional mechanisms that would guarantee decision-making independence and responsibility based on expertise and professionalism.

[4] See articles: *Due to salary increases in Holding and ZET, part of the utilities in Zagreb will increase in price*. Downloaded 2025, July 5 from https://www.poslovni.hr/hrvatska/zbog-dizanja-placa-u-holdingu-i-zet-u-poskupit-ce-dio-komunalnih-usluga-u-zagrebu-4374063; *The price of transport is increasing in Zagreb***.** Downloaded 2025, July 5 from https://net.hr/danas/vijesti/u-zagrebu-raste-cijena-odvoza

30.6% of respondents expressed full consent *to the statement "Fluctuation in the management boards of utility companies increases after the change of public authority holders"*. However, the majority of respondents took a neutral position ("neither agree nor disagree") on issues related to the impact of political election cycles on changes in the management structures of utility companies. The basis for these claims should primarily be sought in the impact of the policy on the appointment and revocation of management structures of local public services. Public authorities undoubtedly play a significant role in the process of appointing and recalling public managers, which is often associated with the emergence of political revanchism. Practice shows that the new elected local government holders, despite the good results of the previous management of the utility company, often change the existing management. Such changes, motivated by political patronage, ideological reasons or personal preferences, lead to the appointment, as a rule, of persons from the same political option in whom the holder of power has personal confidence.

These procedures do not constitute a legally impermissible action, especially if the newly appointed public managers, in addition to political-personal characteristics, possess the necessary experience, expertise, knowledge and skills necessary for the effective performance of all relevant activities related to the operation of utility companies and the provision of public services. However, if their appointment is based solely on the criteria of clientelism, nepotism and similar forms of political favoritism, such an approach inevitably leads to a decrease in efficiency in the provision of utilities.

Claims *"7. The newly elected public authority holder (Mayor/Head) appreciates the success of the existing Management Board of the utility company and does not change them" and "8. Electoral-political changes at the local level (of the Mayor/Head) have a weaker effect on the change of the existing Administration of utility companies, if the Company achieves positive results* are especially interesting because the largest share of respondents pragmatically opted for a neutral position, expressed through the answer "neither agree nor disagree".

The observation that the newly elected public authority holder appreciates the performance of the existing management of the utility company and does not implement changes in its composition can be viewed through the prism of rational and responsible management of public resources. Decisions to retain or modify management structures depend on a number of factors, including the achievement of strategic objectives, organizational capacity,

cost-effectiveness, and overall operating results. In cases where the existing administration achieves satisfactory or above-average results, the newly elected public authority holder may, taking into account the principles of continuity, institutional stability and public interest, make a decision on its retention. Such an approach implies that policy changes do not necessarily result in changes in management positions, especially when previous administrations have demonstrated functionality and effectiveness in the implementation of public policies and services.

Recent practice in the management of local utility companies in the Republic of Croatia indicates the frequent occurrence of recalls of managers of utility companies, often motivated by political reasons.[5] Such moves most often serve as an instrument of political positioning of newly elected public authorities, enabling them to express political dominance and direct the actions of these companies in accordance with their own program goals and strategies, so these changes are often justified by the thesis of the need for stronger control over the utility system, despite the possibly positive results of the previous management. The findings of this research, taking into account the possibility that respondents' responses reflect a certain level of opportunism - either with the aim of preserving their own position, avoiding conflicts with executive holders or as an expression of political conformism - open up space for further empirical research, which should be aimed at a deeper understanding of the real autonomy of local utility administrations and mechanisms of political influence.

This is a complex institutional-legal issue that requires deeper theoretical and empirical analysis, especially in the context of the current regulatory framework that allows local public authority holders the right to appoint and/or revoke local utility management. Although such powers are legally founded and stem from the political legitimacy acquired in the elections, the question arises to what extent their politically motivated application can limit the professionalization of corporate governance, impair continuity in the management of the local utility company and in the long run affect its efficiency and sustainability.

[5] The example of the City of Zagreb after the local elections in 2021. illustrates the described situation. Although some utility companies, including Zagrebački holding d.o.o., recorded positive business results in certain segments, the newly elected city administration initiated a wide reorganization and dismissal of utility companies' management boards. The changes are explained by the need to increase transparency, efficiency and compliance with the new political agenda, which raises an important issue of institutional balance between, on the one hand, the legitimate right of political actors to exercise electoral will and, on the other hand, the need for professionalization, continuity and depoliticization of public enterprises.

The central objective of the research was to examine the extent to which public managers perceive the existence of a close connection between the political influence of public authorities and management activities within utility companies, so a special focus was placed on the dynamics of changes in management structures that occur as a result of election-political cycles at the local level. To the question asked: *"9. To what extent do the changes of the Company's Management Board take place under the influence of the holders of public authority?"*, 30.6% of respondents answered that such changes take place "very often", while 19.4% of them considered that they happen "very rarely". These results indicate a relatively high degree of perception of political influence on management changes in utilities.

It is indisputable that the holders of public authority, when acting as the founder of a local utility company, exercise their rights and competences as a member's representative in the assembly of that company, which according to the Companies Act (1993) is one of the three fundamental bodies of the corporate structure of the company (with the management and supervisory board). Within these powers, they are legitimately entitled to appoint and recall members of the management board, thereby exercising an immediate institutional influence on the management and strategic direction of the entities in question. However, although these powers are clearly defined by the relevant and applicable regulations, the frequency of their use in politically sensitive moments (for example after local elections) can cause dilemmas related to the alignment of political interests with the need to preserve expertise, continuity and independence in the management of utility companies.

The key question in the analysis of personnel changes in the management structures of utility companies is to what extent these changes are truly based on objective criteria, and to what extent they are used as an instrument of political control. In other words, whether the principle of meritocracy applies in this context or whether the so-called *spoil system* (political booty system) dominates. If the changes are based solely on subjective assessments or distrust of the existing leadership, without an objective evaluation of their results and transparency of work, such an approach calls into question the principles of transparency and impartiality, which can adversely affect the public interest and potentially jeopardize the stability of the operations of utility companies.

The next set of questions focuses on respondents' perceptions of their own level of autonomy in day-to-day management, including decision-making on organisational, financial and personnel issues.

Table 2. Managerial autonomy of managers of local utilities

		Frequency	Percent	Valid Percent	Cumulative Percent
1. To what extent can the Management of the utility company autonomously decide on the promotion of employees?					
Valid	Somewhat	4	11.1	11.1	11.1
	Full	7	19.4	19.4	30.6
	Completely	25	69.4	69.4	100.0
	Total	36	100.0	100.0	
2. To what extent can the Management Board of the utility company autonomously decide on the employment of employees in the Company?					
Valid	A little	1	2.8	2.8	2.8
	Somewhat	8	22.2	22.2	25.0
	Full	9	25.0	25.0	50.0
	Completely	18	50.0	50.0	100.0
	Total	36	100.0	100.0	
3. To what extent can the Management of the utility company autonomously decide on the sanctioning of employees?					
Valid	A little	1	2.8	2.8	2.8
	Somewhat	3	8.3	8.3	11.1
	Full	6	16.7	16.7	27.8
	Completely	26	72.2	72.2	100.0
	Total	36	100.0	100.0	
4. To what extent can the Utility Management decide autonomously on employee pay and remuneration policies?					
Valid	Somewhat	10	27.8	27.8	27.8
	Full	14	38.9	38.9	66.7
	Completely	12	33.3	33.3	100.0
	Total	36	100.0	100.0	
5. To what extent can the Utility Management decide autonomously on employee evaluation?					
Valid	Full	8	22.2	22.2	22.2
	Completely	28	77.8	77.8	100.0
	Total	36	100.0	100.0	

6. To what extent can the Utility Management decide on investment policies autonomously?					
Valid	A little	3	8.3	8.3	8.3
	Somewhat	12	33.3	33.3	41.7
	Full	15	41.7	41.7	83.3
	Completely	6	16.7	16.7	100.0
	Total	36	100.0	100.0	

7. To what extent can the Management Board of the utility company autonomously decide on forms of borrowing for loans, bond issues, etc.?					
Valid	A little	5	13,9	13,9	13,9
	A little	9	25.0	25.0	38.9
	Somewhat	12	33.3	33.3	72.2
	Full	9	25.0	25.0	97,2
	Completely	1	2.8	2.8	100.0
	Total	36	100.0	100.0	

8. To what extent can the Utility Management decide autonomously on utility or product pricing policies?					
Valid	A little	7	19.4	19.4	19.4
	A little	8	22.2	22.2	41.7
	Somewhat	12	33.3	33.3	75.0
	Full	6	16.7	16.7	91.7
	Completely	3	8.3	8.3	100.0
	Total	36	100.0	100.0	

Source: Results of the author's research

Question bank „1.*To what extent can the Management Board of the Company autonomously decide on the promotion of employees?", "2. To what extent can the Management Board of the Company autonomously decide on the employment of employees in the Company?", "3. To what extent can the Management Board of the Company autonomously decide on the sanctioning of employees?"* refer to the area of autonomy in human resources *management (*hereinafter: HRM*)*, to which the largest number of respondents answered in the affirmative, stating that the Management Board of the Company "fully" has such autonomy. Similarly, to the questions *"4. To what extent can the Management Board of the Company autonomously decide on employee pay and remuneration policies?"* and 5 *To what extent can the Management Board of the Company autonomously decide on the evaluation of employees*?"

affirmative responses also dominated, suggesting a high level of autonomy of the Management Board in key aspects of human resources management.

The analysis of the collected answers indicates that respondents perceive a reduced intensity of political influence of public authorities on personnel decisions in local utility companies, which allows them greater autonomy in the field of HRM, thus achieving a more flexible adaptation of personnel policy to the specific needs of the community/requirements of citizens and efficient provision of utilities. Such reduced involvement of the mayor or the mayor of the municipality in personnel processes can have positive effects, but at the same time it is important to ensure that the increased autonomy of local public managers does not result in negative phenomena such as reduced transparency in hiring. Therefore, it is necessary to establish clearly defined standards, guidelines, supervisory mechanisms that will prevent potential conflicts of interest within the described processes. The fundamental principle of meritocracy, which ensures that the selection of candidates is based solely on their professional competencies, knowledge and skills, promotes objectivity, fairness and professionalism in the recruitment process, and such an approach also increases transparency and accountability, reducing the risk of political influence and strengthening confidence in the work of the public administration.

Regarding the autonomous management of the entities' finances *(financial management autonomy)*, the results point to certain challenges and limitations in independent decision-making, especially in areas such as pricing of services and financial borrowing. Thus, the largest number of respondents (33.3%) "somewhat" agree with the possibility of independently deciding on utility or product pricing policies (question 8). These results are not unexpected, as utility pricing policies, in accordance with applicable and applicable regulations, are subject to control by local public authorities (under Article 37 of the ZKG, it is stipulated that the price of the utility service and the method of calculation and payment are determined by the utility service provider and that the mayor or the head must give consent to the utility service provider for the price list of utility services (if it is not manifested within 60 days - it is considered that the consent has been given)). It is important to emphasize that this is not just a formal tool, but an extremely important management instrument on the basis of which the holders of public authority can influence the business results of the utility company. Namely, the head of the local self-government unit has the right to adopt or reject the proposals of the public manager for, for example, a proposal to increase the price of the service - taking into account the obligation to protect consumers, the

principles of economy and efficiency and the principles of acceptability of the price of utility services (Article 4 (1) (11) and (15) -ZKG).

In conclusion, to the questions *"6. To what extent can the Management Board of the Company autonomously decide on investment policies?"* and „7. *To what extent can the Management Board of the Company autonomously decide on forms of borrowing for loans, bond issues, etc.?"* a majority (33%) of respondents expressed the view that they "somewhat" agreed with the claim of autonomy. These are expected results as any form of potentially irrational borrowing – whether through loans, bond issuance or the use of other financial instruments – can have a negative impact on the financial stability of the utility. With the aim of preserving fiscal sustainability, business transparency and protecting the public interest, various mechanisms of supervision and control over financial decisions of utility companies have been established. For example, for certain types of debts, the obligation to obtain the prior consent of the local self-government unit, the assembly of the company and/or the representative body is prescribed, all in order to ensure responsible financial management and prevent possible fiscal risks.[6]

6. Conclusion

The management of local utilities within the concept of NPM implies a careful harmonization of the autonomy of public managers and the supervision of public authorities, whereby a balance that enables professional and effective decision-making within clearly defined institutional and political frameworks is crucial. It emphasizes the importance of autonomy of public managers in

[6] Below is an overview of several conclusions adopted by the representative body of the local self-government unit (City Assembly of the City of Zagreb). See: Conclusion on granting consent to the company Zagrebački holding d.o.o. for long-term borrowing and refinancing of existing credit obligations and granting a guarantee for long-term borrowing. Downloaded 2025, July 3 from https://www1.zagreb.hr/sluzbeni-glasnik/#/app/akt?id=efb530d9-e9c1-495f-8950-26f7edb09ce3; Conclusion on repealing the Conclusion on the initiative for amending the Regulation on criteria, criteria and procedure for deferral of payments, instalment repayment of debt and sale, write-off or partial write-off of receivables and granting consent to Zagrebački holding d.o.o. and related companies, for granting deferral of payment and instalment repayment of debt. Downloaded 2025, July 3 from https://www1.zagreb.hr/sluzbeni-glasnik/#/app/akt?id=ebf46e66-66fa-49b9-a4bf-5d4eb5657525; Conclusion on granting consent to the company Zagrebački velesajam d.o.o. for long-term borrowing with Erste&Steiermärkische Bank d.d. Downloaded 2025, July 3 from https://www1.zagreb.hr/sluzbeni-glasnik/#/app/akt?id=c58d2d7c-ea6d-484d-bbda-92440a7f200d; Conclusion on granting consent to the company Zagrebački električni tramvaj d.o.o. for long-term borrowing with Zagrebačka banka d.d. Zagreb. Downloaded 2025, July 3 from https://www1.zagreb.hr/sluzbeni-glasnik/#/app/akt?id=0dc6c4b7-21e5-4f6c-acf0-3097db4ab98a, etc

operational management and strategic adaptation to the needs of end users, but this autonomy is not absolute and is limited by the legitimate right of holders of public authority, who, as elected representatives of citizens in local elections, are responsible for setting policies and supervision in accordance with the public interest. Namely, it is indisputable that greater autonomy of public managers provides the necessary flexibility and innovation for strategic management and adaptation to the specific needs of end users of utilities, but without appropriate control mechanisms, space can potentially be opened for abuses and deviations from community goals. On the other hand, excessive or inappropriate control of public authorities can jeopardize operational efficiency and innovation in management.

Therefore, it is necessary to establish clearly defined, measurable and achievable goals, transparent procedures and effective accountability and institutional oversight mechanisms, whereby the role of public authorities is to define, precisely on the basis of democratic legitimacy, strategic guidelines in accordance with the public interest, while public managers are responsible for their operational implementation, while ensuring the quality and availability of services and building citizens' trust in the effectiveness and integrity of local government.

In conclusion, it is extremely important, both in order to protect the general interest and to strengthen citizens' trust in public institutions, that both holders of public authority and managers of utility companies consistently adhere to the principles of meritocracy, which require that all key management and professional functions be entrusted to candidates based on their expertise, knowledge, competencies and skills, since such an approach contributes to the professionalization of the public sector, thus ensuring the adoption of sustainable decisions aimed at the needs of end users of public services and the achievement of strategic goals of the local community.

Conflict of Interest

The author declare no conflict of interest.

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NOVI JAVNI MENADŽMENT I LOKALNA VLAST – AUTONOMIJA RUKOVODITELJA LOKALNIH JAVNIH SLUŽBI

APSTRAKT: Rad se bavi pitanjem autonomije rukovodilaca subjekata koji obavljaju lokalne javne usluge (privrednih društava koja osnivaju jedinice lokalne samouprave radi obavljanja komunalnih delatnosti), inspirisan principima novog javnog menadžmenta. Analizira se nivo njihove autonomije sa posebnim naglaskom na uticaj političkih činilaca i upravljačkih kapaciteta. Na teorijskom nivou prikazuje se odnos (dihotomija) između nosilaca javne vlasti i upravljačkih tela lokalnih komunalnih društava, kao i vrste autonomije koje iz tog odnosa proističu. Empirijski deo rada zasniva se na podacima prikupljenim anketom sprovedenom u 36 komunalnih društava u Republici Hrvatskoj tokom 2023. godine. Svrha rada je da odgovori na pitanja da li nosioci javne vlasti utiču na upravljačke aktivnosti i na autonomiju rukovodilaca lokalnih javnih službi, kao i na koji su način njihove uloge i funkcije međusobno povezane. Zaključuje se da su jasno definisani ciljevi, uspostavljanje odgovornosti i konstruktivna saradnja ključni za efikasno pružanje kvalitetnih i dostupnih usluga koje odgovaraju potrebama lokalne zajednice.

Ključne reči: *upravljačka autonomija, lokalne javne službe, privredna društva koja osnivaju jedinice lokalne samouprave, novi javni menadžment, meritokratija.*

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34. *Zaključak o davanju suglasnosti trgovačkom društvu Zagrebački holding d.o.o. na dugoročno zaduživanje i refinanciranje postojećih kreditnih obveza i davanju jamstva za dugoročno zaduživanje* [*Conclusion on granting consent to the company Zagrebački holding d.o.o. for long-term borrowing and refinancing of existing credit obligations and granting a guarantee for long-term borrowing*]. Downloaded 2025, July 3 from https://www1.zagreb.hr/sluzbeni-glasnik/#/app/akt?id=efb530d9-e9c1-495f-8950-26f7edb09ce3
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THE IMPORTANCE OF INVESTMENT MOTIVES AND FINANCIAL STRATEGIES IN MERGER AND ACQUISITION (M&A) PROCESSES IN TRANSITION COUNTRIES WITH REFERENCE TO THE REGULATORY FRAMEWORK – A MULTIDISCIPLINARY ANALYSIS

ABSTRACT: Mergers and acquisitions (M&A) are among the key strategies for the growth and development of companies, particularly in transition countries, where they significantly contribute to economic growth. This is especially relevant in the period following the crisis of M&A transactions caused by the COVID-19 pandemic and the military conflict in Ukraine. Therefore, the aim of this research is to identify the key investment motives, taking into account financial strategies and risks, with reference to the institutional framework in transition countries. By applying the Systematic Literature Review (SLR) method and a multidisciplinary analysis of the factors influencing M&A activities in these economies, the research seeks to contribute to a better understanding of the key drivers of

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these processes and to provide relevant implications for company managers and policymakers. The findings point to three dominant motives for M&A in transition countries. They expand the knowledge of M&A motives in transition economies and highlight the need for further research on this topic, given the complexity of the market and its turbulent dynamics, as evident also in the sphere of innovative technologies.

Keywords: *mergers and acquisitions (M&A), transition countries, M&A investment motives, financial strategies, regulatory factor, institutional factor, risk management.*

1. Introduction

Mergers and acquisitions (M&A) are strategic business processes in which two or more companies merge or one company buys another. M&As are established with the aim of achieving certain business synergies, economies of scale, business diversification, market share growth, or other strategic and financial goals. Both processes, i.e. merger, which implies the merger of two or more companies, and acquisition, which implies the absolute purchase of one company, aim to increase competitiveness, business diversification, synergistic effects and company growth. Therefore, M&A are transactions in which companies merge or buy one another in order to achieve strategic and financial goals (e.g. Nestorović, 2015; Perić, 2023). Key M&A trends in transition countries play an important role in the dynamics of global M&A activities and flows. Therefore, the aim of this research is to establish key investment motives, considering financial strategies and risks in transition economies.

2. Literature review

On the one hand, the defining feature of M&A in the context of global capital flows in the literature is that M&A is a strategic tool for companies, as it allows them to capitalize on global capital flows and diversify their operations (Mauboussin, 2010; Hossain, 2021). Cross-border M&As, in particular, allow companies to access new sources of capital, technology and talent, which can improve their overall competitiveness (Hitt & Pisano, 2004; Li, Li & Wang, 2016; Zheng, Wei, Zhang & Yang 2016; Christofi, Vrontis, Thrassou & Shams 2019) and profitability (Hitt & Pisano, 2004; Li, Li & Wang, 2016). On the other hand, the success of M&A in the context of global capital flows is not guaranteed,

as there are challenges that companies face. The most relevant challenges in this sense are cultural differences, regulatory obstacles and integration challenges (Moschieri, Ragozzino & Campa, 2014; Vanwalleghem, Yildirim & Mukanya, 2020; Wójcik, Keenan, Pažitka, Urban & Wu 2022).

Regarding M&A in transition economies, i.e. in those countries undergoing economic and political transitions, M&A are often particularly complex and challenging. The reason for this is that the mentioned transitions include privatization, deregulation, development of legal and regulatory frameworks, development of institutional framework, development of innovative technologies and the like (e.g. Uhlenbruck & Castro, 2000). However, the success of M&A in the context of these countries often depends on determinants such as the quality of institutions, the level of political and economic stability, and the ability of companies to manage a complex regulatory and cultural environment. These determinants together represent challenges for foreign investors (Moschieri, Ragozzino & Campa, 2014; Nestorović, 2015; Perić, 2023; Stefanović, Vapa-Tankosić & Mirjanić, 2025).

Regarding investment decisions in the context of M&A, they are critical, as they can have significant implications for the success or failure of the transaction. The increasing complexity of the global business environment and the growing importance of factors such as sustainability, technological changes and geopolitical risk indicate that it is necessary to pay considerable attention during the process and in making decisions about M&A (e.g. Denčić-Mihajlov, 2020; Alkaraan, 2021; Perić, 2023, pp. 28–36). Also, the stability of the banking system of the host country plays a relevant role (Vapa Tankosić & Vukosavljević, 2021).

2.1. Regulatory framework: institutions efficiency in the context of M&A

Institutional and regulatory obstacles belong to the group of dominant impediments to M&A development in transition economies, compared to other barriers. For example, many transition economies have adopted or revised competition laws to prevent increased industry concentration and market power but the effective enforcement of these laws remains a challenge. Regrading privatization regulation, privatization acquisitions differ from conventional acquisitions due to constraints imposed by the privatization context, the depth of subsequent restructuring, and the sensitivity required toward the local context and societal changes (Lebedev, Peng, Xie & Stevens, 2015). Besides competition and privatization regulation, there are many others related to M&A such as intitutional distance, FDI restrictions in many

countries, EU and international regulations that interfere with national laws etc., that represent the challenge for FDI expansion.

Expansion of M&A is one of the crucial goals for companies. Nonetheless, their expansion differ regarding time frames, strategic decisions, success factors, activities, competitive advantages, and legal regulations in the target market (Stefanović, Vapa-Tankosić & Mirjanić, 2025, p. 38). In Serbia, M&A activities declined in the late 20th century due to political turmoil but increased in the early 21st century as stability returned, making the country more attractive for foreign investment. Taking banking sector as an example, over the past two decades, the banking sector in Serbia has faced significant challenges, including slow economic recovery, the global financial crisis, and political instability. M&A have been crucial for Serbian banks to adapt to these challenges. Since 2000, the presence of foreign banks has increased, leading to the acquisition of domestic institutions and a decline in the number of banks from 50 in 2002 to 20 in 2024. Foreign banks, mainly from the EU, have played a dominant role, driving ownership changes and enhancing sector efficiency through new business models and innovations. A notable example includes NLB Bank's acquisition of Kontinental Banka and subsequent merger with NLB LHB Banka in 2008. These processes have modernized Serbia's financial sector, improved competition, and increased service quality for consumers (Stefanović, Vapa-Tankosić & Mirjanić, 2025).

That institutional and regulatry framework is crucial for M&A is also evidenced by research all over the globe. For example, Reddy (2016) aimed to outline the institutional laws governing (M&As) in India with the scope to propose guidelines for institutions and multinational managers engaged in foreign investment and acquisition activities. The author engaged in reviewing, summarizing, and analyzing the legal framework that regulates M&As, takeovers, and foreign investments, and conluded that high-valuation inbound deals have been delayed or unsuccessful due to inadequate financial infrastructure, unpredictable government officials, and political interference. Government, therefore, is invited to attract greater investment inflows from developed and emerging markets by simplifying investment regulations and providing tax incentives.

3. Research methodology

This study aims to examine key factors or motives that encourage M&A activities. To identify the dominant motives of M&A with particular reference to transition economies, the specifics of financial strategies are also investigated. The first hypothesis of this research refers to the investment motives of M&A

in countries in transition. The second hypothesis is closely related to the first hypothesis because it refers to the obstacles to the development of M&A in countries in transition.

H1: The dominant investment motives for M&A in transition countries are market share acquisition, vertical integration, diversification and economies of scale, compared to other motives.

H2: The dominant obstacle in the development of M&A in countries in transition is of institutional and regulatory type, compared to other obstacles.

Justification: In accordance with the theoretical explanation of this hypothesis, it is assumed that companies operating transition economies face specific challenges such as unfinished privatization processes, weak competition, insufficiently developed capital markets and an underdeveloped system of institutions. In such a business environment, the key investment motives for M&A differ from those in developed market economies. In insufficiently competitive countries, i.e. transition economies, companies use M&A to quickly increase their market share and gain a dominant position on the market. This motive is particularly pronounced in industries with high entry barriers for new market players.

The third hypothesis is related to M&A financial strategies (and underlying financial risks) transition economies. The fourth hypothesis is closely related to the third one and refers to the evaluation of the M&A implementation as a financial strategy for the development of countries in transition.

H3: Investment motives of foreign investors have a significant influence on the choice of financial strategies and financial risk management in M&A processes in transition countries.

H4: The evaluation of the M&A implementation in transition countries is dominantly based on financial risks.

Justification: Foreign investors motivation for accessing the market of transition countries, such as access to local resources, markets and technologies, can influence their choice of financial strategies and approach to financial risk management in M&A transactions. In accordance with the third hypothesis, the dominant financial strategies of foreign investors (M&A) in these countries can be looked at in more detail, namely the diversification of funding sources (e.g. combining domestic and international funding sources), structured financial transactions (due to increased risk), foreign exchange risk management (e.g. use of hedging instruments and other derivatives), corporate restructuring (e.g. optimization of business processes, cost reduction and efficiency increase). Also, the most common financial risks faced by foreign investors can be seen such as foreign exchange risk, liquidity risk, regulatory

and political risk, country risk, business partner risk, etc.

This paper relies on theoretical evidence published in academic M&A journals through SLR. SLR as a method was also used because it allows a sample of publications to be systematically reviewed. Moreover, the use of the SLR method enables the improvement of knowledge about the analyzed topics from a certain area that is available in the academic literature, through study and careful analysis. In addition, the method of locating, the method of analysis and the method of synthesis of research results are used.

The stages of research that are characteristic of the SLR method are as follows (Dezi, Battisti, Ferraris & Papa, 2018): Phase 1: Defining keywords to search the database; Phase 2: Search for articles (papers) in the database; Phase 3: Reading and selection of titles and abstracts; Phase 4: Reading and selection of articles (papers); Phase 5: Analysis of articles (papers) for research purposes.

In Phase 1, the main keywords used to search the literature, i.e. articles (Phase 2), are "M&A main motives", "M&A drivers", "M&A main motives in transition economies", "M&A drivers in countries in transition", "M&A main financial risks", "M&A financial risks transition economies". During Phase 3, titles were selected, while summaries of all papers found during Phase 2 we selected later. After selecting titles and summaries, papers were selected for complete reading (Phase 4). In other words, the papers whose content is of greatest interest for the analysis in this paper have been selected. In the last phase, Phase 5, the papers extracted in the penultimate phase of the research were analyzed, during which Table 2 (in the results section) was created for the purpose of greater transparency of the research proceedings. This was repeated several times, due to the multidisciplinary approach presented in the next section of the paper.

4. Research results

In this section it follows the research results and its interpretation. Table 1 shows the identification of selected papers that were considered for analysis in this research. Namely, 100 papers on the topic "M&A motives in transition economies" were identified, of which 31 were published in the period from 2014 to 2024. Of the mentioned 31 papers, 20 were selected for detailed analysis, due to their nature of research related to this one. For each article, information such as the source, journal, year of publication, as well as the research method used and the results were extracted. In the period 2019-2024, 50% (n=10) of the papers were published, while in 2018 n=2 papers were published, in 2016 n=3 papers, in 2015 n=1 paper, and in 2014 n=2 papers.

Table 1. SLR and a multidisciplinary approach

Author(s)	Year	Journal	Discipline
Hitt & Pisano	2004	*Mergers and acquisitions: Creating integrative knowledge*	Management
Glaister & Ahammad	2010	*Mergers and acquisitions in practice*	Management
Estrin & Uvalić	2014	*Economics of Transition*	International economy
Francis et al.	2014	*Journal of Corporate Finance*	Corporative finance
Nestorović	2015	*Ekonomske teme* [*Economic Themes*]	Macroeconomy
Li, Li & Wang	2016	*International Business Review*	International business
Zheng	2016	*International Business Review*	International business
Buckley et al.	2016	*Journal of World Business*	International business
Caccia & Baleix	2018	*Revista de economía mundial*	International economy
Riepina et al.	2018	*Financial and credit activity problems of theory and practice*	Finance
Christofi et al.	2019	*Technological Forecasting and Social Change*	Technology and Sociology
Dikova, Panibratov & Veselova	2019	*International Business Review*	International business
Denčić-Mihajlov	2020	*Ekonomika poljoprivrede* [*Economics of agriculture*]	Agriculture
Perić	2020	*Management: Journal of Sustainable Business and Management Solutions in Emerging Economies*	Management
Vertakova, Vselenskaya & Plotnikov	2021	*Journal of Risk and Financial Management*	Finance
Zámborský et al.	2021	*Journal of Risk and Financial Management*	Finance
Niemczyk et al.	2022	*Energies*	Technology and energetics
Perić	2023	*Repository Singidunum University*	Business economy
Hajiyev et al.	2024	*International Journal of Sustainable Development & Planning*	Sustainable economy
Xiao, Peng & He	2024	*International Review of Financial Analysis*	Finance

Source: Authors' elaboration

For the purposes of a more comprehensive discussion of the results, all the research hypotheses of this paper are reviewed alongside the evidence from the literature that supports them. It follows the systematic review of relevant M&A research (SLR results). Table 2 summarizes hypotheses confirmation.

Table 2. Hypothesis confirmation of SLR results

Author (Year)	**Hypothesis confirmation**	**Author (Year)**	**Hypothesis confirmation**	**Author (Year)**	**Hypothesis confirmation**
Hitt and Pisano (2004)	**H2; H4.**	Glaister and Ahammad (2010)	**H1**	Francis et al. (2014)	**H1 –** especially the first determinant
Nestorović (2015)	**H4** partially	Li, Li & Wang (2016)	**H4; H2.**	Zheng et al. (2016)	**H1**
Buckley et al. (2016)	**H1; H3.**	Caccia & Baleix (2018)	**H2; H4.**	Riepina et al. (2018)	**H3; H4.**
Dikova, Panibratov & Veselova (2019)	**H1** partially**; H2.**	Duan et al. (2019)	**H3**; **H4**.	Denčić-Mihajlov (2020)	**H1**
Vertakova, Vselenskaya & Plotnikov (2021)	**H4**	Zámborský et al. (2021)	**H1; H2**.	Niemczyk et al. (2022)	**H1** partially
Perić (2023)	**H1; H2; H3.**	Hajiyev et al. (2024)	**H3**; **H4**.	Xiao, Peng & He (2024)	**H1**

Source: Authors' elaboration

In their study, Hitt and Pisano (2004) analyse cross-border M&A. As a result of their theoretical work, which confirms H2 and H4, they claim that cross-border M&A provide access to new capital, technology, and talent, enhancing competitiveness and profitability. However, M&A are accompanied by significant integration challenges such as cultural differences and regulatory barriers. Glaister and Ahammad (2010) analyzed the strategic motivation of cross-border M&A on the sample of 591 British companies that acquired firms in North America and Europe (survey data for 2000–2004). They employed a survey research and factor analysis, and variables such as strategic motives for cross-border M&A, i.e., synergies, market development, target improvement, market power, product diversification to identify key M&A motives. Key motives identified were: access to new markets, faster entry, international

expansion, and resource acquisition. No hierarchy established – all motives rated equally important, confirming H1. Similarily, applying qualitative analysis (case studies, semi-structured interviews, and secondary data review), Zheng et al. (2016) analysed cross-border M&A of Chinese multinational companies in developed economies (US/EU) through main determinats such as presence of strategic resources in the target company (e.g., advanced technology, well-known brand, specific knowledge), and decision by the Chinese company to proceed with acquisition for resource acquisition (yes/no, frequency of such acquisitions). Their study provides empirical evidence that confirms H1, i.e. that acquiring strategic resources and technologies are key motives for M&A, and that Chinese multinational companies are strategically and resource-oriented regarding M&A to strengthen their competitiveness. H1 was also confirmed based on Denčić-Mihajlov (2020), where the author used 11 M&A transactions in the food sector in Serbia. In his case study, where sustainability factors in M&A (ESG criteria) and identified key motives for M&A in the sample before and after merging were the main determinants, the author found that key motives for M&A in transition countries are aligned with strategic and sustainable goals. The main motives are asset acquisition and equity acquisition (shares) that follow sustainability trends – market expansion and strengthening company credibility while respecting ESG aspects. Differently, H1 was only partially confirmed according to Niemczyk et al. (2022). Namely, they analysed M&A in the energy sector of Western Europe and other countries (Singapore, New Zealand, GCC) after 2015. In their qualitative analysis (literature review and comparative analysis) the factors such as types of energy investment motives, i.e. traditional (related to fossil fuels) vs. „green“ motives (aligned with the transition to renewable sources) were established. Business risk diversification through the transition from fossil to renewable energy sources was identified as the most common motive for M&A, confirming the importance of diversification as a motive for M&A.

Caccia and Baleix (2018) conducted a literature and secondary data analysis to examine motives and impact of FDI/M&A from developing countries on host economies, focusing on the role of institutions and regulation. Confirming H2 nad H4, it was established that M&A from developing economies can improve the performance of acquired firms (access to markets, technologies). However, an inadequate institutional environment in the host country can severely limit the success of M&A. Using secondary data analysis, Riepina, Vostriakova, Chukhraieva and Bril (2018) examined M&A transactions in Ukraine (various sectors such as oil and gas, agro-industry, banking, telecommunications, real estate), for the 2013–2017 period.

Determinants they used were financial leverage (degree of debt), and financial performance indicators of M&A (e.g., total shareholder return, total business return). Their results show that high average returns were noted after M&A in various sectors. The success of M&A significantly depends on the level of debt (financial leverage). Companies with optimal capital structure better manage financial risks and achieve better post-M&A results. The importance of financial strategy (capital structure optimization) for M&A success was highlighted. Therefore, the outcomes of Riepina et al. (2018) confirm H3 and H4 of this research. Similarly, H3 and H4 were also confirmend in experimental study of Duan, Ye and Liu (2019) who examined 200 M&A data. This author employed regression analysis, where dependent variable was overall risk level and success of the M&A process, and independent ones were risk factors in the M&A process (financial, operational, market, etc.). Risk assessment is conducted at all stages of M&A (before, during, and after acquisition). Six key types of risks are identified in the integration phase (including financial risk, highlighting the importance of financial risk management). The failure rate of acquisitions is high (over 50% of cases) due to unaddressed risks, so systemic risk management is crucial for success. Vertakova, Vselenskaya and Plotnikov (2021) conducted a SLR using factors such as categories of risk in M&A (e.g., strategic, financial, market, operational, legal, regulatory, etc.), and level and significance of these risks (risk ranking and assessment of potential impact on M&A success). They found that managers pay the most attention to financial risks when evaluating M&A, which alines with H4.

Estrin and Uvalić (2014) analysed determinants of FDI/M&A inflow in 17 transition economies, for the 1990–2011 period. Employing regression analysis (gravity model), where FDI inflow through M&A is dependent, and GDP, distance, wages, resources, institutions, EU membership, Western Balkans non-EU members are independent variables, they found that (1) natural resources, (2) new market takeover, (3) strategically oriented, (4) efficiency increase are four main categories of M&A motives in transition economies, confitming H1. Zámborský, Yan, Sbaï and Larsen (2021) analysed 713 cross-border M&A, i.e., European firms acquired by companies from 11 Asia-Pacific countries (2007–2017). Regression analysis (logistic models) were employed, where increase scale, cross-border/expand geographic footprint, and add products/expand offerings were dependent, and potential motives for M&A (15 possible motives identified) we independent variables. The findings suggest the main cross-border M&A motives in transition economies are three: (1) increase in business volume, (2) expansion of geographic footprint (entry into new markets), and (3) expansion of offerings. The quality of the regulatory environment in the buyer's

home country significantly impacts the company's motives. Therefore, H1 and H2 are confirmed.

Using regression (OLS models) as well, Francis, Hasan, Sun and Waisman (2014) analysed 543 M&A deals (US acquirers) in 43 developing market economies, for 1993–2010 period. Detemining observational learning, i.e. Cumulative Abnormal Return (CAR), market adjusted five year Buy-and-Hold Return (BHAR), and the change in post-merger performance (ΔROA) as dependent, and performance and decisions in own M&A, i.e. acquirer, target country, deal characteristics, and fixed effects, annual, as independent variables, they confirmed H1 (especially the first determinant) of this paper. In other words, companies can learn by observing – by watching others' cross-border acquisitions. They gain knowledge for successful execution of their own M&A. A motive for leaving a global footprint (presence in the global market for prestige and legacy) identified, not necessarily linked to short-term profit but to long-term expansion goals (Francis et al., 2014). Similarily, Nestorović (2015) used regression (panel model) to analyse FDI and M&A in 16 transition economies (2001–2011), determining GDP growth rate as dependent, and FDI inflow, GDP per capita, inflation, domestic loans, exports, imports, gross savings, labor force, and corruption (CPI) as independent variables. He found that FDI, including M&A, have a positive effect on GDP growth in transition economies, confirming H4 partially; results support the general significance of M&A (H4) in a broader sense. Using a much larger sample, Buckley, Munjal, Enderwick and Forsans (2016) analysed 1138 cross-border acquisitions made by 515 Indian MNEs (2000–2013), while detemining value of foreign acquisitions, and number of foreign acquisitions as dependent, and experience and knowledge from previous international acquisitions (experimental/learning by doing vs. inexperienced knowledge – technological know-how), as well as Own Financial Resource, Own Technical Resources, Business Group, FDI, Foreign Equity, Firm Age, and Firm Size as independent variables. The results of their regression (panel models) analysis show that Indian companies with prior acquisition experience more easily integrate new firms, reduce costs (e.g., utilize cheaper labor), and more quickly access new markets and technologies, thus increasing their profitability and competitiveness. This study essentially shows that acquiring knowledge and technologies is an important motive for M&A (consistent with the motive for resource/competence access), and that the success of M&A depends on the learning and knowledge utilization strategy (knowledge investment motive affects financial strategy and acquisition outcome), confirming H1 and H3 of this paper. Applying regression analysis (linear and nonlinear models), Dikova, Panibratov and Veselova (2019)

investigated over Russian MNE and their M&A (two data sets – 322 country-level observations, and 318 individual M&A transactions, both for 2007–2013 period). Dependent variable used were outcomes of M&A (total number of M&A at the country level) and ownership structure in individual acquisitions (fully or partially owned), while independent variables were investment motives according to the OLI paradigm. Russian MNE best utilize M&A when combining location advantages (e.g., wealth of natural resources in the target country) with internalization (full ownership of the acquired firm). Common motives for M&A (e.g., resource, market) were found, but they are strongly conditioned by the institutional framework, confirming H1 partially and H2. Russia and Azerbaijan (examples of cross-border M&A in a competitive financial market; e.g., acquisitions in the banking sector) were used as a sample in Hajiyev et al. (2024) research. The results of their literature review suggest that there are four key strategies that companies apply in the M&A process to become market leaders were identified: (1) organizational, (2) innovative, (3) investment, and (4) financial. It was also found that investment motives are closely linked to the choice of M&A strategy; and that a properly selected M&A strategy leads to transaction success and economic progress, confirming H3 and H4.

Even three hypotheses were confirmed (H1, H2, and H3) through the analysis of Perić (2023). She conducted a research over 58 upper-middle income countries (1991–2019), with a special focus on Serbia. Quantitative part of analysis (OLS and LMM regression models) used labor market indicators, i.e. employment rate, wages, income inequality as dependent, and FDI inflow and annual variations as independent variables, while qualitative part of the analysis (case study: Serbia) used in-depth interviews with 102 foreign companies (2020–2022). Perić found that FDI has a significant but small positive effect on employment (new job creation, reduction in unemployment), the impact of FDI on wages is mixed, and the effect of FDI on income inequality is not clearly established. Findings also confirm the existence of dominant motives for M&A and institutional barriers in transition countries, as well as the impact of investment motives on the choice of financial strategy.

In their event study, Li, Li and Wang (2016) analysed 367 M&A of Chinese companies (2000–2011), determining change in company value after acquisition announcement (stock price reaction and later financial results) as dependent, and Hofstede's Cultural Dimensions, and Greater China plus Singapore Dummy (GCS), and characteristics of Chinese companies and their acquisitions (e.g., firm size, prior experience, sector) as independent

variables. Their results confirm H4 and H2 mostly by showing that Chinese firms on average see an increase in stock value after international acquisition announcements, especially when acquiring firms with valuable resources (technology, brands) in developed countries. Greater international experience and lower cultural/institutional distance contribute to successful integration and value creation. M&A can thus create value (measured by financial indicators), but the outcome correlates with strategic and institutional factors. Another study regarding China was conducted by Xiao, Peng and He (2024) in which the authors used private listed companies in China (with CEOs from rural backgrounds), for 2007–2018 period. In the correlation and regression analysis, dependent variables were reflected in main motives for M&A in the company, while independent ones were "rural experience" of top managers (CEOs raised in rural areas; degree of influence of that background on values in the company). CEOs with rural upbringing show a tendency toward unconventional motives for M&A. Specifically, one of the main explanations for their acquisitions is leaving a global footprint – international expansion to create a lasting legacy and prestige for the company, even when this move is not directly related to maximizing short-term profit. According to the findings of Xiao, Peng and He (2024), H1 is once again confirmed.

5. Discussion

We found that the dominant motives of M&A in transition economies are access to new sources and resources, international expansion and diversification. Therefore, the first hypothesis of this research is partially confirmed, which is in accordance with Glaister and Ahammad (2010), Francis et al. (2014), Buckley et al. (2016), Caccia and Baleix (2018), Dikova, Panibratov and Veselova (2019), Zámborský et al. (2021), and Perić, (2023). Vertical integration, as a separate M&A motive in these countries, is associated with the dominant three motives, but it was not found to be among the dominant motives. Also, it was determined that the dominant obstacles for the development of M&A are institutional and regulatory type, which fully confirms the second hypothesis of this research and which is in accordance with Caccia and Baleix (2018) and Perić (2023). Regarding the third hypothesis, it was determined that the investment motives of foreign investors have a significant influence on the choice of financial strategies in M&A processes and transactions, especially in the first phase of M&A, as well as that the management of financial risks in M&A processes relies on the motives of investors. This confirms the third hypothesis, which is in accordance with e.g. Duan et al. (2019). Moreover,

company managers evaluate the implementation of M&A based on numerous factors, and most often on the basis of financial risks, confirming the fourth hypothesis of this research, which is in accordance with Riepina et al. (2018) and Vertakova, Vselenskaya and Plotnikov (2021). It was found that the main financial risks in this context are reflected in the pricing and examination of the target company, the financing of M&A transactions, the method and instruments of payment, as well as the integration of financial systems (Vertakova, Vselenskaya & Plotnikov, 2021).

Generally, the findings largely confirm all four hypotheses which highlights their theoretical and practical importance for M&A activities transition economies. The identification of access to new resources, international expansion and diversification as dominant motives confirms expectations from previous research, shows that companies in transition economies pursue similar strategic goals as those in developed economies, and emphasizes how crucial these factors are for their economic growth. Contemporarily, the observation of institutional and regulatory obstacles as the main limiting factors indicates that the structural characteristics of the markets of transition economies have a significant influence on the success of M&A transactions, which is in line with the findings of previous studies and implies the need to improve the investment climate. Furthermore, the confirmed impact of foreign investors' motives on the choice of financial strategies illuminates the dynamic relationship among the reasons for which these transactions are carried out and the way they are financed. Such a connection, also observed in earlier works (e.g. Duan et al., 2019), underlines the importance of an integrated approach when planning M&A. Finally, the fact that managers pay the most attention to financial risks when evaluating M&A confirms the central role of risk management in these processes, which was emphasized by Riepina et al. (2018) and Vertakova, Vselenskaya and Plotnikov (2021).

6. Conclusion

The aim of this paper was to examine the dominant motives that encourage M&A activities in transition economies, with reference to financial strategies and basic risks. The main result of this research indicates that the dominant motives of M&A are: access to new sources and resources, international expansion and diversification, as well as that the financial risks of M&A depend a lot on investment motives.

This research significantly contributes to increasing the quantum of knowledge and understanding of the key motives of M&A transition countries. The contribution of this research is reflected in the systematization and analysis of the main factors that motivate investment, which can be of great importance for company managers and researchers. Such insight into the key drivers of investment decisions can serve as an incentive for conducting additional research and formulating successful business strategies.

The limitations of this research are reflected in the sample of only 20 papers and it is limited only to transition economies in a general sense. Therefore, the academic community is encouraged to further research and question the generalizability of the results of this research, not only because of the sample but also because transition countries, although similar, may be different in terms of their economic, social and institutional differences.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, J.G.; methodology, J.V.T. and B.L.; formal analysis, B.L.; funding acquisition, B.L.; investigation, B.L.; project administration, J.G.; resources, J.G.; supervision; J.V.T., J.G., and B.L.; validation, J.V.T.; visualization, J.G.; writing - original draft preparation, B.L.; writing - review and editing, B.L., J.V.T. and J.G. All authors have read and agreed to the published version of the manuscript.

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ZNAČAJ INVESTICIONIH MOTIVA I FINANSIJSKIH STRATEGIJA U PROCESIMA SPAJANJA I KUPOVINE U ZEMLJAMA U TRANZICIJI SA OSVRTOM NA REGULATORNI OKVIR – MULTIDISCIPLINARNA ANALIZA

APSTRAKT: Procesi spajanja i kupovine *(eng. M&A)* su jedna od ključnih strategija rasta i razvoja kompanija, naročito kompanija u zemljama u tranziciji, što umnogome doprinosi ekonomskom rastu ovih zemalja, naročito nakon krize M&A transakcija tokom perioda pandemije COVID-19 i vojnog sukoba u Ukrajini. Stoga je cilj ovog istraživanja ustanoviti ključne investicione motive, razmatrajući finansijske strategije i rizike, a sve to uz osvrt na institucionalni okvir u zemljama u tranziciji. Koristeći metod sistematskog pregleda literature *(eng. Systematic Literature Review – SLR)* i multidisciplinarne analize faktora koji utiču na M&A aktivnosti u zemljama u tranziciji, nastoji se doprineti boljem razumevanju ključnih pokretača ovih procesa i omogućiti relevantne implikacije za menadžere kompanija i donosioce odluka. Rezultati ovog istraživanja ukazuju na tri dominantna M&A motiva u zemljama u tranziciji. Saznanja do kojih se došlo proširuju znanje o M&A motivima u zemljama u tranziciji, ali i naglašavaju potrebu za daljim istraživanjima o

ovoj temi zbog komplesnog tržišta i njegove turbulentne dinamike, kakva je evidentna i u sferi inovativnih tehnologija.

***Ključne reči**: spajanja i kupovine (M&A), zemlje u tranziciji, investicioni* M&A *motivi, finansijske strategije, regulatorni faktor, institucionalni faktor, upravljanje rizicima.*

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RECENT DEVELOPMENTS OF DIGITAL CONSTITUTIONALISM IN EUROPE

ABSTRACT: The influence of modern digital technologies on contemporary constitutional law, both at the national and comparative level, has been steadily increasing. Having emerged in the early 21st century, digital constitutionalism, although one of the youngest categories of public law, significantly affects constitutional principles and values, particularly in Europe. Digital constitutionalism is especially significant because its existence and original development require at least a partial redefinition of constitutional law, particularly in the context of protecting fundamental rights and freedoms. This paper examines the normative framework for the European Digital Constitution (EDC), which encompasses the extensive set of digital law regulations adopted by the European Union (EU) and the Council of Europe (CoE). The paper also analyzes the Venice Commission's Principles for a Fundamental Rights–Compliant Use of Digital Technologies in Electoral Processes. The concept of the EDC is elaborated, along with its main objectives.

Keywords: *European digital constitution, digital constitutionalism, European Union, digital law.*

Introduction

Digital constitutionalism represents one of the most recent notions in the field of constitutional law. If it tends to remain in appropriate relation with

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modern societal tendencies, constitutionalism must necessarily convolute with digital transformations and innovations. However, there remains an urgent need to explore what the phrase actually englobes. In order to find the answer, the existing normative framework needs to be explored, as well as the more-than-ever-important notion of artificial intelligence (hereinafter: AI), an area in which the protection of basic rights "have shaped Europe's digital constitution" (Bradford, 2023, p. 18). The task is of particular significance because determining what digital constitutionalism *is* represents a part of a much more composed assignment – partial redefinition of constitutional law in general.

Expressed perhaps in the most accurate and concise way, by the words of De Gregorio and Radu (2022), "digital technologies are profoundly intertwined with constitutionalism" (p. 68). Digital constitutionalism, in fact, "does not advocate a *tabula rasa* of our core constitutional values", because it is "deeply rooted in these foundational principles" (Celeste, 2020, p. 23). We can assume that principal constitutional values englobe the rule of law, the separation of powers, effective guarantees and mechanisms for the protection of human rights, as well as a legally pre-ordained ways to enable a society to peacefully evolve and prosper. The advancing digital world and the constitutionalism mutually communicate in the process of the creation of a "digital constitutional law" (Teubner & Golia, 2023, p. 2). Both key components of the term are designed to be gradually transformed, one (the digital realm) presumably faster than the other (constitutional law). Constitutionalism is "a historical concept, whose main values and principles have constantly evolved, and are still evolving today", whereas digital constitutionalism is also characterized by "the transformative character" (Celeste, 2020, p. 23). The tendency of internationalization of the constitutional law addresses one of the more impressive puzzles in the direction of these transformations, and it is a duty of digital constitutionalism "to look beyond the still dominant state-centricity of constitutional principles" (Teubner & Golia, 2023, p. 3).

In addition to numerous other factors, constitutional law has been modified by the existence and constate evolvement of the Internet, including its unwelcome abuses. The Internet "provides a societal foundation for connecting humans, advancing relationships and embedding social values" (De Gregorio & Radu, 2022, p. 80). Because of the rising importance of the Internet, it appears to be necessary to search for "ways to re-frame the fundamental institutions of constitutionalism in the digital sphere" (Teubner & Golia, 2023, p. 12). Constitutional scholars need to bear in mind that "the governance of platforms raises fundamental constitutional concerns", particularly because of ways "how these social spaces are constituted and how the exercise of power ought to be constrained" (Suzor, 2018, p. 2). Digital revolution is

"violently shaking the existing constitutional architecture", because "existing constitutional norms, which were shaped for an analogue society, are under unprecedented stress" (Celeste, 2020, p. 32). Expansive regulation of digital law is activating the transformative potential of constitutionalism. But the pace needs to be kept because "analogue constitutional principles cannot anymore solve all the challenges of the digital society" (Celeste, 2020, p. 29), clearing the ground for the "digital space" to become a "new non-state sector of global society that needs comprehensive constitutionalization" (Teubner & Golia, 2023, p. 3). These facts call the science of constitutional law to adapt to the growing dynamism of developments in cyber-space.

This paper is based on research of challenges imposed to the exercise of fundamental rights and freedoms in the context of digitization of society, when it comes to enhancing democracy and the rule of law. Relationships between European digital constitutionalism and restrictions of the Internet content are also explored. The aim of the paper is to explore whether digital constitutionalism in Europe is put in the global comparative perspective, with particular regard to the relevant United Nations' (hereinafter: the UN) and regional organizations' legal framework, but also to assess the state of the actual tendencies occurring in the United States of America (hereinafter: the US), as the leading international political, economic, and technological innovation actor. Global influence of the European digital constitution is elaborated, as is the regulatory soft power of the EU.

1. Normative Framework for the European Digital Constitution

The basis for legal nourishment of the dichotomous perspective of the digital constitutionalism is laid in the ever-extending EU normative framework. Relevant documents include: the EU Charter of Fundamental Rights from 2000 (hereinafter: the Charter), the EU General Data Protection Regulation, from 2016 (hereinafter: the GDPR), and the two acts adopted in 2022 – the European Declaration on Digital Rights and Principles for the Digital Decade (hereinafter: the European Declaration), and the EU Regulation on a Single Market For Digital Services, dubbed the Digital Services Act (2022) (hereinafter: the DSA). These represent the essential ingredients of the EDC, the EU's "expansive set of digital regulations", which "engrains Europe's human-centric, rights-preserving, democracy-enhancing, and redistributive vision for the digital economy into binding law" (Bradford, 2023, p. 1).

The list of relevant legal acts starts with *the Charter*. Although it was adopted in 2000, its legal effects had had to wait until 2009 and the entry into force of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (hereinafter: the TEU). The Charter's effects were recognized by the TEU as a true EU "bill of rights" (De Gregorio, 2023). Its Preamble (Para. 2) claims that the EU "places the individual at the heart of its activities". The Charter also states that there is a necessity "to strengthen the protection of fundamental rights in the light of (...) technological developments by making those rights more visible" (Preamble, Para. 4). It guarantees the right to the integrity of the person (Article 3), and respect for private and family life (Article 7). Protection of personal data is *also* guaranteed by the Charter (Article 8), as is the consumer protection (Article 18). While the GDPR (2016) has served to introduce further safeguards and increase accountability in the field of personal data (De Gregorio, 2023), the European Declaration (2022) states that "digital transformation (...) presents challenges for our democratic societies, our economies and for individuals", which, in response, create the duty for the EU to apply "its values and fundamental rights applicable offline" in "the digital environment" (Para. 3 of the Preamble). Article 1 of the European Declaration (2022) reminds that "technology should serve and benefit all people living in the EU and empower them to pursue their aspirations, in full security and respect for their fundamental rights". Similarly, "[AI] should serve as a tool for people, with the ultimate aim of increasing human well-being" (Article 8). Finally, in addition to enhancing transparency, the DSA's main aim is "to modernize the regulatory framework for digital services, addressing the challenges and opportunities presented by the evolving digital landscape" (Frosio & Geiger, 2024).

Besides the four enumerated documents, we have to outline a specific contribution of the Venice Commission. This advisory body of the CoE adopted in 2020 a document named *Principles for a Fundamental Rights-Compliant Use of Digital Technologies in Electoral Processes* (hereinafter: the Principles). Composed of nine bedrock propositions in the field of digital law, and recognizing the shifting context of digital constitutionalism, the Principles specifically outline the *freedom of expression in digital space* and *the right to data privacy* (Venice Commission, 2020, p. 3). The document stresses that "the borderless nature of the Internet and the private ownership of the information highways render the current challenges to democracy and electoral processes particularly complex" (Venice Commission, 2020, p. 11). In addition, "international cooperation and involvement of the relevant

private actors are (…) indispensable to face these challenges and to ensure the right to free elections and the functioning of democracy in the future" (Venice Commission, 2020, p. 12). As digital constitutionalism remains an open-textured term, one can justifiably expect that the coming developments can be expected to be followed by further and even more advanced commentaries and propositions of the Venice Commission.

The rights and freedoms, whose protection is necessary in the context of the EDC, include the *freedom of information*, which may easily be endangered "by misleading, manipulative and false information" (Venice Commission, 2020, p. 7). No less paramount is the *privacy* as one of the constitutionally guaranteed rights which are exceptionally threatened in the digital age. The right to privacy of individuals encompasses "a right to share – and decline to share – information about themselves, know and control who has access to that information, and understand how it is used" (Gill, Redeker & Gasser, 2015, p. 8). Citizens also enjoy the *right to be forgotten*, a sort of a corollary of the right to privacy, recognized by the Article 17 of the GDPR (2016). This is "a right to request the removal of personal information from websites or search engines, particularly when that information is irrelevant, outdated, harmful, or violates an individual's privacy or dignity" (Gill, Redeker & Gasser, 2015, p. 8). Also, more meaningful protection and enhanced transparency of the *consumer protection* might provide a higher degree of "control over [consumers'] digital experiences and improved safeguarding of their rights" (Frosio & Geiger, 2024). The *consent* users give to advertisers in order for them to explore their personal data might endanger their privacy in a very direct and menacing way. Therefore, while allocating "a great deal of power" to the operators, "contractual Terms of Service play an important constitutional role in the governance of everyday life", having for result that "users have very little legal redress for complaints about how platforms are governed" (Suzor, 2018, p. 3). The same is the case with the *secrecy of voting*, *free elections*, and the *accuracy and legitimacy of election results*. An effective right to vote is scarcely efficient in the age in which "new digital tools may be used against elections [,] political parties, (…) traditional and social media to spread disinformation and propaganda, hampering transparency and secrecy of vote" (Venice Commission, 2020, p. 4). Thus, the election process becomes "thwarted by the creation and mass dissemination of false information (Venice Commission, 2020, p. 8). It can be summed up that the EDC directly aims, among other perspectives it offers, at the maintenance of democracy, particularly in times when it seems imperiled globally.

2. Digital Law as a Tool of Transforming European Constitutionalism

Digital constitutionalism englobes "constellation of initiatives that have sought to articulate a set of political rights, governance norms, and limitations on the exercise of power on the Internet" (Gill, Redeker & Gasser, 2015, p. 2). It serves to answer to the dylema whether fundamental principles of constitutionalism "can also be established in the digital world" (Teubner & Golia, 2023, p. 1). Its purpose is "to realise a common aim: translating the core principles of contemporary constitutionalism in the context of the digital society" (Celeste, 2020, p. 24), or to achieve a "more responsible digital environment", by "advancing a process of constitutionalisation of Internet governance" (Frosio & Geiger, 2024).

From the perspective of basic rights' protection, the main purpose of EDC is to recognize "the existence of a plurality of normative instruments translating constitutional values in the digital society" (Celeste, 2020, p. 28). It serves as "a long-term, proactive strategy to protect democratic values in the algorithmic society from being eroded by unaccountable powers" (De Gregorio, 2023), and it reminds us that digital developments do not generate a "secluded world where individuals are not entitled to their quintessential guarantees", because EDC is "a reconfiguration of the constitutional framework" (Celeste, 2020, p. 31). EDC does not take precedence over digital development, nor the two have competing claims of authority. Rather, they are intercoupled and mutually supportive.

Besides the protection of potentially (or actually) curtailed freedoms and human rights, EDC needs to be based on certain *values*, which represent the foundation of the European political project, and which are enumerated in Article 2 of the TEU, and in Para. 3 of the Preamble of the CoE Statute (1949). These include: protection of fundamental rights and freedoms, rule of law, separation of powers, and other core ingredients of the European political identity. Obviously, the assertion that "European digital regulation reflects a host of values consistent with the ethos of the broader European economic and political project" (Bradford, 2023, p. 8), represents a claim which must be accorded weight. These values provide certain parameters through which one can "evaluate the legitimacy of online governance", particularly when it comes to the apparition of the Terms of Service on numerous Internet platforms, which "are almost universally designed to maximize their discretionary power and minimize their accountability" (Suzor, 2018, pp. 1–2 and 8). Similarly, *corporations* are responsible "to deal fairly and honestly with

users and respect their rights on the Internet", and to "engage in transparent contractual practices and make terms available in plain, accessible language" (Gill, Redeker & Gasser, 2015, p. 10). In addition, European values "call for restricting online content whenever such restrictions are needed to protect human dignity, data privacy, or democratic discourse", although "Europe's digital constitution reflects the belief that excessive content removal can lead to harmful censorship that is inconsistent with the EU's commitment to democracy and freedoms" (Bradford, 2023, p. 3 & 26). Core constitutional values need to be rendered useful to restrict content on the Internet which intrudes the area of personal privacy, democracy, and the rule of law. It is exactly the Terms of service (notorious *cookies* on websites) that may easily be exploited by large firms. This is the point at which EDC needs to take a firm stand in the direction of protecting basic rights. EDC serves as a prototype for raising global awaraness of the risks on the field of the enjoyment of individual rights and freedoms which are to be curtailed by digital law.

3. European Digital Constitutionalism put into Global Perspective

The statement that "adaptations and transformations have always been integral components of the vital cycle of constitutionalism" (Celeste, 2020, p. 32) invites the necessity for constitutionalism to evolve and modify. Constitutional law transforms in various specific ways *inter alia* by mutual influences carried out between national constitutions. It also gains new structures, content, and perspectives by the methods of its internalization. National legal regimes and international normative framework are probably starting to get indissolubly linked together, especially because a national "state (and its law) is slowly replaced by supranational rules defined by new institutions based on principles and values that transcend territorial borders" (De Gregorio & Radu, 2022, p. 77).

Digital constitutionalism can not avoid its own frame of reference being redefined once in a while by combining "nation-state, global, and societal perspectives" (Teubner & Golia, 2023, p. 2). The magnitude of this tendency should not be overstated, but it is far from being negliegible. In this part of the paper a summarized insight into the following list of international documents is constructed: the Universal Declaration of Human Rights (hereinafter: the UDHR), the Charter of Human Rights and Principles for the Internet (2014) (hereinafter: the HR Charter), the African Declaration on Internet Rights

and Freedoms (2013) (hereinafter: the African Declaration), and the "Joint Declaration: Challenges to Freedom of Expression in the Next Decade" (2019) (hereinafter: the Joint Declaration). In addition, influences of EDC on the digital law of the US and China are examined.

The UDHR is one of the most significant UN documents to be in touch with silhouettes of a *future* digital constitutionalism, although mostly in a vague manner. It indirectly introduces the notion of "the inherent dignity" of "all members of the human family" in the constitutional vocabulary, but, more importantly, reminds that, "whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression", human rights "should be protected by the rule of law"; the UDHR reminds the UN member states that they "have pledged themselves to achieve, in co-operation with [the UN], the promotion of universal respect for and observance of human rights and fundamental freedoms" (Preamble, Paras. 1, 3 and 6). From the perspective of digital constitutionalism, fundamental rights protected by the UDHR include: the dignity of human beings, the right to security of person, the right to an effective remedy for acts violating the fundamental rights, the right to freedom of opinion and expression, and the right to participate in the cultural life of the community (Articles 1, 3, 8, 19, and 27 respectively). Probably the most noticeable provision of the UDHR in this regard is the protection of everyone from "arbitrary interference with his privacy, family, home or correspondence", coupled with the "right to the protection of the law against such interference or attacks" (Article 12).

Digital constitutionalism has not yet achieved comparable status worldwide. The HR Charter, drafted by a UN Internet Governance Forum-led group of experts, contains principles in the field of personal protection from unwanted Internet interference. It invites caution regarding "increasing public concern" about the protection of human rights in the online environment, which calls for providing "a coherent and necessary framework for developing internet governance principles" (Charter of Human Rights and Principles for the Internet, 2014, p. 3). The properly reminds its readers that "online we have rights too", and continues wih setting out some more authentic formulations contained in the 10 principles it enshrines, as is the "right to access and use a secure and open Internet", "the right to seek, receive, and impart information freely on the Internet without censorship or other interference", "freedom from surveillance, the right to use encryption", and the prohibition of "filtering or traffic control on commercial, political or other grounds, followed by the concluding proclamation in accordance to which "human rights and social

justice must form the legal and normative foundations upon which the Internet operates and is governed" (Principles 3, 4, 5, 8 & 10 respectively).

Particular importance of the African Declaration pertains to the fact that "access to the Internet is increasing rapidly across the African continent", leading to a heavily influenced Internet environment throughout the continent (African Declaration on Internet Rights and Freedoms, 2013, p. 3). The document establishes and promotes 13 distinct principles in the field of realization of human rights online. Its most important recommendations aim at establishing foundations for "an open and distributed architecture" of the Internet, freedom of unrestricted *online* expression, and the right of individuals and communities to development and to relevant knowledge accessible in the Internet; the document also calls for a "democratic multi-stakeholder Internet governance" (Principles 1, 3, 7, & 12 respectively). The most recent international document adopted in relation to digital constitutionalism is the Joint Declaration (2019). It it stated in it that the basic principles stand in connection to "democracy, sustainable development, the protection of all other rights, and efforts to counter terrorism, propaganda and incitement to violence", within the context of the growing "concern about the ongoing and deepening threats to media diversity and independence" (Preamble, Paras. 4 & 8). The text sets explicit demands in order for relevant actions to be made for: promoting media diversity in the Internet, and prohibition of unlawful or arbitrary surveillance (Article 1 ("c" & "h")), "building and maintaining a free, open and inclusive Internet" (Article 2), and limiting "private control as a threat to freedom of expression" (Article 3). In an interesting choice of words, the right "to access and use the Internet" is is explicitly recognised as "a human right" and "an essential condition for the exercise of the right to freedom of expression" (Article 2 ("a")).

Finally, EDC needs to be observed from the point of view of its comparison with entanglements between the digital transformations of another significantly important political and economic actor – the US. Namely, EDC is "in stark contrast to the US, which has traditionally protected markets' self-regulation", and has been based on "a technolibertarian view, which emphasizes the primacy of free markets, free speech, and the free internet (Bradford, 2023, p. 1). Cognizant of this difference in approach, EDC sets "a paradigm shift that could potentially widen a transatlantic divide", by trying to "modernize the digital market's regulatory framework, addressing contemporary challenges like online harm and platform influence" (Frosio & Geiger, 2024). Pointing at the mutual differences between the two concepts of digital regulation, one author reminds that the US "liberal approach leads [technological] giants to

dominate digital markets, and continue to extend their power to new sectors according to their business logic", whereas "the European approach reflects a strategy that primarily focuses on the protection of fundamental rights and democratic values" (De Gregorio, 2023). In addition, "creating a global standard for digital governance remains a formidable challenge, given the divergent legal and cultural contexts across regions" (Frosio & Geiger, 2024), in the context in which another influential world power (China) "is pursuing a model of technological developments oriented towards surveillance and public control" (De Gregorio, 2023).

Universally organized digital governance may not be as unimaginable as the patchwork of national constitutions looking as much similar one to another as possible. Still, from the global vantage point, EDC reflects the highest actual attainment achieved so far in the field of strengthening constitutionalism by the means of restraining perils brought upon by ongoing digital transformations. At the same time, the enumerated international documents "are increasingly advanced by prominent international bodies" (Gill, Redeker & Gasser, 2015, p. 11), while, up to 2023, "nearly 150 countries have adopted domestic privacy laws, most of them resembling the GDPR" (Bradford, 2023, p. 6). This is an encouraging thought in the context of the possible internalization of constitutional law in the field of online protection of the rule of law, democracy, and basic rights, and in gaining a teritorrialy expanded influence of EDC, as a piece of the EU regulatory softpower.

4. Conclusion

Digital constitutionalism is a recently constructed public law category. Still, it is destined to make a sensible influence on the values and principles of European constitutionalism, which must cope with the innovations of the digital world, as well as with its perils. This tendency will inevitably lead to redefining of the constitutional law, in particular when it comes to protecting basic individual rights, which are, almost with no exception, widely guaranteed by constitutions, regional and universal legal acts.

Promoting human rights in relation to the development of the Internet, ever more subtle digital technologies, and AI, resiliently remains the core element of the European digital constitutionalism. Even from the wider, international perspective, the unquiet concerning the safeguarding personal rights and liberties has increased. This is evidenced by a growing list of supranational documents related to the bringing into being of digital constitutionalism and its perpetuation and firmer establishment.

Digital transformations are swiftly changing the constitutional landscape on European soil. European constitutionalism has so far been more or less entrenched within firmly set contours that have evolved over traditional liberal and democratic concepts. Enrichment of the constitutional substance might not always appear to be a menacing occurrence. Strengthening the instruments for protection of fundamental rights, the rule of law, and democracy, by the means of cautiously established and constantly reinvigorated connection between the constitutionalism and the growing digital world may appear to be more than welcome a development. The velocity of digital tools' evolution tacitly invites constitutional scholars and political decision-makers to prepare a well-measured basis for a favorable development of events in the field of digital law.

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Conflict of Interest

The author declares no conflict of interest.

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NEDAVNI RAZVOJ DIGITALNE USTAVNOSTI U EVROPI

APSTRAKT: Svedočimo stabilnom porastu uticaja savremenih digitalnih tehnologija na ustavno pravo, kako na državnom tako i na uporednom nivou. Premda je digitalna ustavnost, nastala u ranom 21. veku, jedna od najmlađih kategorija javnog prava, ona vrši značajan uticaj na ustavna načela i vrednosti, naročito u Evropi. Digitalna ustavnost ispoljava svoj

uticaj jer njeno postojanje i izvorni razvoj zahtevaju delimičnu redefiniciju ustavnog prava, posebno u kontekstu zaštite temeljnih prava i sloboda.
U radu se istražuje pravni okvir za evropski digitalni ustav, koji uključuje širok spisak propisa Evropske unije i Saveta Evrope u oblasti digitalnog prava. Izložena je i analiza *Načela za upotrebu digitalnih tehnologija u izbornim postupcima u skladu sa zaštitom temeljnih prava*, koja je usvojila Venecijanska komisija. Takođe, obrađuje se pojam evropskog digitalnog ustava, kao i njegovi glavni ciljevi.

Ključne reči: *evropski digitalni ustav, digitalna ustavnost, Evropska unija, digitalno pravo.*

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ENTREPRENEURS AND ENTREPRENEURSHIP IN THE LEGAL SYSTEM OF THE REPUBLIC OF SERBIA

ABSTRACT: An entrepreneur, as a natural person engaged in a specific economic activity for the purpose of generating profit, can be analyzed and considered from various perspectives, including economic, legal (commercial law, labor law, etc.), social, and others. This paper presents some of the specific characteristics of an entrepreneur as a business entity, as well as the features that distinguish them from other types of companies, highlighting the advantages and disadvantages associated with this form of business organization. A significant number of entrepreneurs in the Republic of Serbia, along with the persons they employ, underscores the importance of analyzing and defining the basic concepts, as well as determining the role of entrepreneurs and entrepreneurship within the legal system. A historical and legal review of the emergence and development of entrepreneurship is also necessary to provide a clearer understanding of the position entrepreneurs occupy in the modern economy and their legal and regulatory framework.

Keywords: *business entity, natural person, entrepreneurship, entrepreneur.*

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1. Introduction

The legal status of entrepreneurs is regulated by the Law on Companies, 2011, although opinions on the inclusion of entrepreneurs in the Law on Companies are divided, given that an entrepreneur has a different legal nature compared to other business entities organized in the form of legal entities (Škorić, 2016, p. 88). An entrepreneur is a legally capable natural person who carries out activities with the aim of generating income and who is registered as such in accordance with the law on registration. In order to carry out independent activities, an entrepreneur establishes a business, i.e. an appropriate form of business. Namely, an entrepreneur is a natural person who, through registration for a fixed or indefinite period, becomes a business entity, but does not obtain the status of a legal entity that carries out activities with the aim of making a profit (Law on Business Companies, 2011, Art. 83). A natural person registered in a special register, who performs a liberal profession regulated by a special regulation, is considered an entrepreneur within the meaning of the law, if so determined by that regulation. An individual farmer is not an entrepreneur within the meaning of this law, unless otherwise regulated by a special law.

Entrepreneurial activity has changed its forms and essence in accordance with the specifics of social circumstances in different historical periods, so in the early Middle Ages we have merchants - adventurers like Marco Polo, while in the 20th century entrepreneurs emerge as managers and innovators. The term entrepreneurship comes from the English word of French origin "entrepreneur", which in translation means: "one who takes between" or "to go between". An entrepreneur is considered to be "an individual who takes risks in order to start something new", (Hisrich, Peters & Shepherd, 2011, p. 5). An entrepreneur is, therefore, someone who is capable of successfully running their own business, although this success is learned. The mentality of expecting that it is necessary for the state to solve all problems, instead of tackling business and development problems with one's own strength, is a legacy and a remnant of the time of self-management socialism in our country.

2. Entrepreneur and Entrepreneurship

From a legal perspective, the central subject of this paper is the entrepreneur, while in a broader context he represents part of a system that we call entrepreneurship. Although at first glance it may seem that this is a similar

institute, their mutual relationship is actually a relationship of the general and the particular, where entrepreneurship is more broadly defined and more a subject of economic science and management (Dudić, 2022, p. 7).

The founder of the theory of entrepreneurship, Richard Cantillon, believed that "an entrepreneur is ready to take risks and to engage in independent action to make a profit" (Cantillon, 2001, p. 14). The basis of his approach is the risk that an entrepreneur bears when buying at known prices and selling at unknown ones, i.e. prices that will be formed in the future. To this day, theorists cite risk as the main characteristic of entrepreneurship. Cantillon first used the word entrepreneur in 1734 in his work "Discourse on the Nature of Trade", where he classified economic entities into three types – landowners, entrepreneurs and tenants. One of the greatest authorities in the field of entrepreneurship, Howard Stevenson, provides a generally accepted definition of the modern understanding of entrepreneurship – "Entrepreneurship is the effort to exploit an opportunity, regardless of the resources currently possessed" (Stevenson, 1983, p. 12).

From an economic perspective, according to available and comparable data for the period from 2020 to 2022, there has been a noticeable increase in the number of entrepreneurs throughout the territory of the Republic of Serbia. Also, according to other macroeconomic indicators, it can be concluded that entrepreneurs and their businesses have a significant impact on the overall economy in the Republic of Serbia and its development.

Table 1. Selected macroeconomic indicators for enterprises by size and entrepreneurs, 2020-2022[1]

Republic of Serbia Amounts in million RSD (except for VAT per employee)

	Enterpreneurs	Micro enterprises	Small businesses	Medium-sized enterprises	MSME/SME	Large companies
			2020			
No. of business entities	**298 279**	90 106	12 187	2 716	403 288	584
No. of employees	**272 446**	167 316	246 883	278 816	965 461	518 409
Trade exchange	**1 565 289**	1 696 645	2 470 617	2 772 480	8 505 031	4 308 590

[1] Indicators that are not relevant to the research subject of this paper have been omitted from the original table.

VAT	**416 499**	271 227	477 248	604 631	1 769 605	1 218 454
VAT per employee	**729,8**	1621	1933,1	2168,6	1400,3	2350,4
No. of exporters	**3 240**	6 719	3 877	1 367	15 203	384
Export of goods	**19 737**	140 412	213 973	410 289	784 411	1 201 597
No. of importers	**4 073**	12 371	5 547	1 852	23 843	472
Import of goods	**23 659**	290 238	493 746	625 444	1 433 087	1 186 197
Basic capital	/	965 551	583 167	694 803	2 243 521	2 282 556
2021						
No. of business entities	**303 300**	89 655	12 607	2 800	408 362	612
No. of employees	**280 387**	166 634	254 584	287 853	989 458	546 176
Trade exchange	**1 953 472**	2 014 141	3 036 410	3 347 769	10 351 792	5 270 548
VAT	**530 258**	329 690	600 131	754 221	2 214 300	1 527 088
VAT per employee	**908,5**	1978,5	2357,3	2620,2	1712,9	2796
No. of exporters	**3 520**	6 655	4 000	1 414	15 589	409
Export of goods	**23 969**	171 699	275 310	460 698	931 675	1 560 106
No. of importers	**4 469**	12 363	5 725	1 905	24 462	490
Import of goods	**29 249**	322 677	618 284	768 520	1 738 730	1 511 869
Basic capital	/	947 553	543 430	756 174	2 247 157	2 400 348
2022						
No. of business entities	**317 148**	92 239	12 540	2 913	424 840	624
No. od employees	**272 067**	170 339	254 322	299 259	995 987	564 571
Trade exchange	**2 255 191**	2 504 155	3 607 433	4 059 980	12 426 759	6 535 357
VAT	**648 822**	424 611	693 386	933 114	2 699 932	1 761 036
VAT per employee	**1101,2**	2492,7	2726,4	3188,1	2056,1	3119,2
No. of importers	**3 560**	7 058	3 974	1 463	16 055	425
Export of goods	**30 609**	228 320	301 552	588 054	1 148 535	1 986 009
No. of importers	**4 601**	12 559	5 579	1 975	24 714	509
Import of goods	**39 031**	419 119	700 628	980 145	2 138 923	2 171 255
Basic capital	/	995 971	546 228	741 933	2 284 132	2 521 021

Source: Burzanović, M. (2024), p. 15.

Table 2. Number of business entities – entrepreneurs (by activity), 2020-2022[2]

	2020	2021	2022
REPUBLIC OF SERBIA	**298 279**	**303 300**	**317 148**
Agriculture, forestry and fisheries	3 020	3 063	3 059
Mining	167	153	144
Processing industry	44 054	44 628	45 013
Electricity, gas and steam supply	47	49	56
Water supply and wastewater management	897	1 064	1 147
Construction	24 441	26 479	32 130
Wholesale and retail trade and repair of motor vehicles	63 818	62 968	61 392
Transportation and storage	32 529	32 818	33 515
Accommodation and food services	25 152	25 219	25 674
Information & Telecommunications	15 582	16 172	18 960
Financial and Insurance Activities	1 761	1 726	18 960
Real Estate Business	1 321	1 384	1 471
Professional, scientific, innovation and technical activities	41 566	42 789	46 174
Administrative and Auxiliary Services	8 461	8 828	9 473
State Administration and Compulsory Social Security	/	/	/
Education	2 609	2 944	3 314
Health and social protection	6 278	6 423	6 604
Arts, Entertainment & Recreation	3 323	3 540	4 209
Other service activities	23 253	23 053	23 094
The Role of the Household as an Employer	/	/	/
Activities of Extraterritorial Organizations and Bodies	/	/	/

Source: Burzanović, M. (2024)., p. 18.

As could be seen, there is a wide range of activities in which entrepreneurs operate, as well as a significant number of persons employed by entrepreneurs as employers. The literature often attempts to answer the question of why this is so? Why, if it is generally known, conditionally speaking, the main drawback

[2] Indicators that are not relevant to the research subject of this paper have been omitted from the original table.

of this form of business entity, which is that "The entrepreneur is liable for all obligations arising in connection with the performance of his activity with all his assets, and this asset also includes the assets acquired in connection with the performance of the activity. Liability for obligations under paragraph 1 of this article does not cease upon the entrepreneur's removal from the register" (Law on Business Companies, 2011, Art. 85).

Therefore, when starting a certain business, the entrepreneur consciously assumes responsibility and risk for possible bad business and losses, thus endangering his property that he acquired even before registration. However, available data indicate that a large number of people decide on this form of business organization. The answer to the question Why? can be found in the very definition of Entrepreneurship and what it represents. Namely, the available materials that analyze and explain entrepreneurship have in common that they view entrepreneurship in its entirety. Thus, there are the following definitions:

„There is no agreement on the definition of Entrepreneurship among the researchers since the field is on the organic phase of development" (Salman Shabbir & Md Kassimet, 2019, p. 585). Henry, Hill and Leitch (2005) made a valuable contribution by extending the work of authors who had previously dealt with this topic, which defined the phenomena as "someone who has the ability to see and evaluate business opportunities; gather the necessary resources to take advantage of them, and initiate appropriate action to secure success" (p. 99).

The European Commission's definition of entrepreneurship states that entrepreneurship is the ability of an individual to turn ideas into action, using creativity, innovation, and risk-taking (Bučalina Matić, Milanović & Vrcelj, 2016, p. 486). Entrepreneurship as a business activity involves identifying, assessing, and exploiting opportunities to create a new product, service, production process, new organizational structure, or market (Shane & Venkataraman, 2000, p. 218). Entrepreneurship exists when entrepreneurs have different ideas about the relative value of resources, that is, when resources move from inputs to outputs. According to these authors, entrepreneurship is based on different beliefs about the value of resources (Alvarez & Busenitz, 2001, p. 756).

Entrepreneurship as a growth factor and driver of development is present and has great importance in economies of different levels and degrees of development. However, the greatest impact of entrepreneurship on the above is noticeable in economies that are in transition (Bučalina Matić & Pejanović, 2022, pp. 244–245). Entrepreneurship can be defined as an innovative and

dynamic process of creating, organizing and developing a certain business venture with the aim of creating new value in a changing environment. As such, it involves noticing and exploiting opportunities from the environment in order to solve certain problems present in the market or industry in which they operate (Jovanović-Božinov, Živković, Langović & Veljković, 2004, p. 12). Entrepreneurship as a business activity influences the successful solution of problems that arise in consumption, influences the reduction of unemployment, and at the same time represents a path for the discovery and development of new markets. Based on all of the above, it can be said that entrepreneurship represents a new sector of the modern economy (Bučalina Matić & Pejanović, 2022, p. 245).

There are also authors who emphasize the social and economic impact of entrepreneurship in such a way that it is imperative that government support is provided to entrepreneurship in order for self-employment to flourish and prove fruitful. Entrepreneurship has seemed like an imperative socio-economic topic of academic investigation and debate in the last few decades (Fayolle, 2006).

From this it can be concluded that most definitions of entrepreneurship emphasize its advantages and emphasize innovation, as well as the special qualities that an entrepreneur should possess, and therein lies the answer to the question of why entrepreneurs exist, and that their number is increasing from year to year.

3. Specificities of an entrepreneur as a business entity

The positive legal position of entrepreneurs in the Republic of Serbia, as previously written, is regulated by the Law on Companies, which can be considered a certain legal nonsense, because an entrepreneur is a natural person, while companies are all, without exception, legal entities. Also, the very name of the Law - the Law on Companies - directly implies that it contains legal norms that regulate the legal position of companies, and then in these provisions we find the section Entrepreneur, which is not a company. However, this was not always the case. Before 2012, the legal position of entrepreneurs was regulated by the Law on Private Entrepreneurs, 1989.[3]

Positive legal provisions stipulate that an entrepreneur is established for a fixed or indefinite period of time and is entered in the business register

[3] Namely, starting in 2012, the Law on Private Entrepreneurs ceased to be valid, and the provisions regulating their status were incorporated into the Law on Companies, 2011.

maintained by the Business Registers Agency. As of January 1, 2018, as part of the digitalization project, electronic registration of the establishment of an entrepreneur is also possible at the Business Registers Agency. The possibility of submitting an electronic application was announced back in 2012, with the entry into force of the Law on the Registration Procedure in the Business Registers Agency, 2011, which stipulates that the electronic application is submitted to the Agency via a user application for receiving electronic applications, which ensures the receipt of electronic documents and proof of payment of the registration fee, and that the signing of the electronic application and documents, as well as the verification of electronic documents, is carried out in accordance with the regulations governing electronic signatures and electronic documents. However, the application of digital technologies in the registration and establishment of business entities is very significant and has existed far longer than e-registration. Along with the increasing application and importance of digital technologies in this area, some new dilemmas are opening up, new challenges are emerging that modern business entities face. The same applies to the new challenges facing the authorities authorized for registration (Škorić, 2020, p. 10). More than six years have passed since the possibility of its implementation, which has greatly facilitated the registration process, during which time both a software solution and a set of regulations were awaited to enable electronic registration, primarily those that regulated the issue of electronic signatures and electronic documents. If we compare the possibility of e-registration legally, it is, for example, also enabled in Slovenia and Croatia, thereby simplifying both the establishment of entrepreneurs and all subsequent changes, databases, etc[4].

A natural person, therefore, can carry out a certain business activity only if he or she acquires the status of an entrepreneur, because this right is not an integral part of the business capacity of every natural person and is not acquired by birth, but by the fact of registration in the legal form of an entrepreneur in the prescribed register. By registering, an entrepreneur also acquires a special business name, which must contain the entrepreneur's first and last name, the designation "enterprise" or "pr" and the place where the entrepreneur's registered office is located (Law on Business Companies, 2011, Art. 86). In accordance with the law, a business name may also contain the entrepreneur's name and business activity, all in accordance with the law and the principles that apply to the business name of every business entity.

[4] Croatia: eObrt, https://e-obrt.gov.hr/, Slovenia: Ajpes, https://www.ajpes.si/ - in Slovenia there is the possibility for users to search the European register of business entities on this portal.

The specificity of an entrepreneur in relation to other forms of business companies has already been mentioned, which concerns the entrepreneur's property and his liability for obligations undertaken in commercial transactions, where liability does not cease even after the entrepreneur is deleted from the business register. The Law on Business Companies does not regulate what constitutes the property of an entrepreneur. The concept of property is regulated by civil law regulations (Marković, 2015, p. 171). The Business Register Agency maintains a register of entrepreneurs and enters them only based on the request of a natural person who intends to carry out a business activity. Information about an entrepreneur must always be available to the public and, as a rule, an entrepreneur does not form separate property for carrying out the activity, but all the rights and obligations of the entrepreneur as a natural person constitute his unique property. The principle of the unity of the entrepreneur's property is the basic rule according to which the property used for carrying out the activity and the personal (private) property of a natural person that is not used for these purposes are equated. Domestic case law also goes in this direction, and it is considered that the founder of an entrepreneurial activity is liable with all his personal property for obligations arising in connection with the entrepreneurial activity until the moment of the entrepreneur's deletion from the competent register due to the continuation of the activity in the form of a company, (Liability of the founder of an entrepreneurial activity, the ruling of the Supreme Court of Cassation Rev 2493/2020 of 21.01.2021. adopted at the session of the Civil Department on 16 March 2021).[5] This fact does not exclude the obligations of a natural person arising in the period before he registered as an entrepreneur.

From a comparative point of view, the entrepreneur and his property are treated equally or very similarly in Croatia and Slovenia, with the exception that there are certain differences regarding the taxation of these economic entities, and Slovenia leads the way in the benefits for the Sole trader form, which is defined as: "A sole trader (s.p.) is a natural person independently pursuing a gainful activity on the market. Registering as a sole trader is quick, easy and free of charge. No initial capital is required." Therefore, in Slovenia, the legal form of an entrepreneur is called a sole trader, and legally it fully corresponds to the legal form that exists in Serbia, and in the Slovenian language the term "Samostojni podjetnik" is used (Act on Companies - ZGD-1, 2006), which would correspond to the Croatian term "Poduzetnik", that is, the Serbian "Preduzetnik". In the UK, there is also a form of Sole trader,

[5] Presuda Vrhovnog kasacionog suda [The Ruling of the Supreme Court of Cassation]. Rev 2493/2020 od 21.01.2021. godine.

with with the same legal designation as Entrepreneur (unlimited liability for assumed obligations, etc.), so it is not entirely clear whether there is also the form of Entrepreneur or if it is just a synonym and that both Sole trader and Entrepreneur represent the same form (see more: Set up business, 2025).

The law regulating compulsory enforcement regularly takes into account the social minimum of natural persons and their subsistence minimum. Thus, all exemptions in the enforcement procedure that apply to natural persons will be equally valid when enforcement is carried out against an entrepreneur, which is a direct impact of the principle of the sole property of an entrepreneur (Law on Enforcement and Security, 2015). If enforcement is carried out by blocking the current account of the entrepreneur but there are no funds on it, the creditor can also carry out enforcement on the accounts of the natural person, so entrepreneurs often mistakenly believe that by transferring funds from the entrepreneur's account to the account of the natural person before enforcement, they will be able to avoid collecting the claim.

Another situation is noticeable in practice, and that is the attempt to delete an entrepreneur. Namely, the blocking of an entrepreneur's account is not an obstacle to deleting the entity from the register, which entrepreneurs often do, and then register a new entrepreneur and continue with their activities, believing that they have avoided claims. However, creditors can also carry out enforcement on the property of a natural person, but precisely due to the principle of single property and on another entrepreneur that that natural person registers.

In civil proceedings, there was also a dilemma about what to do if an entrepreneur is deleted even though proceedings have been initiated against him. They continue even after deletion, so that the civil proceedings are completed against the natural person (Law on Civil Procedure, 2011).

The situation is similar with actual jurisdiction. If the civil proceedings are initiated before a commercial court due to the nature of the party, the loss of the status of an entrepreneur does not affect the jurisdiction of the commercial court, if the lawsuit was filed at the time when the entrepreneur had such legal status. On the other hand, if the lawsuit is filed for a claim that a creditor had against an entrepreneur, and he was later deleted from the register, the court of general jurisdiction over the defendant natural person will have jurisdiction, regardless of the nature of the debt, i.e. regardless of whether it arose in the course of carrying out business activities as an entrepreneur.

4. Conclusion

The role of entrepreneurs is becoming increasingly important and they are becoming an important factor in successful business in a market economy, as a result of changes in which, in addition to capital, the main source of income is knowledge and information. Entrepreneurs are increasingly initiating and creating products, implementing new technologies, developing services and contributing to the economic growth of the entire society. They also initiate changes in the wider environment through their actions.

Entrepreneurship in Serbia was once exclusively associated with old crafts and craftsmen. What has changed is that masters of their crafts are increasingly found in many fields that no longer bear old names such as blacksmith, carpenter, tailor, painter..., but new names, and even new services, which are equally recognized throughout the world, such as: "freelancer", "influencer", "digital marketing", "life coach", "consulting" and many others.

What inspires confidence are the new generations of capable entrepreneurs with positive characteristics and well-educated people, which speaks in favor of the fact that the future of entrepreneurial society in Serbia has a realistic perspective.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, S.Š. and N.P.; methodology, S.Š.; software, S.Š.; formal analysis, S. Š. and N.P.; writing - original draft preparation, S. Š. and N.P.; writing - review and editing, S.Š. All authors have read and agreed to the published version of the manuscript.

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PREDUZETNIK I PREDUZETNIŠTVO U PRAVNOM SISTEMU REPUBLIKE SRBIJE

APSTRAKT: Preduzetnik, kao fizičko lice koje obavlja određenu privrednu delatnost radi sticanja dobiti, može se analizirati i posmatrati sa različitih aspekata, kao što su ekonomski, pravni (privrednopravni, radnopravni i sl.), socijalni i drugi. U radu autori prikazuju neke specifičnosti vezane za preduzetnika kao privrednog subjekta na prvom mestu, a onda i njegove posebnosti koje ga izdvajaju od ostalih privrednih društava, sa brojnim prednostima i nedostacima koje ova vrsta privrednog organizovanja može da ima. Značajan broj preduzetnika u Republici Srbiji, kao i lica koja zapošljavaju preduzetnici, itekako opravdavaju analizu i definisanje osnovnih pojmova, kao i određivanje mesta preduzetnika i preduzetništva u pravnom sistemu. Istorijskopravni osvrt na nastanak i razvoj preduzetništva takođe se nužno nameće, kao i njegovo pravno i zakonsko uređenje, sa ciljem preciznijeg razumevanja položaja koji preduzetnik zauzima u savremenoj ekonomiji.

Ključne reči: *privredni subjekt, fizičko lice, preduzetništvo, preduzetnik.*

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LIMITS OF CONTRACTUAL EXCLUSION OF LIABILITY FOR LEGAL DEFECTS IN CONTRACTS OF SALE – BETWEEN FREEDOM OF CONTRACT AND BUYER PROTECTION

ABSTRACT: This paper analyzes the seller's liability for legal defects in contracts of sale, with particular emphasis on the limits of contractual exclusion of such liability. The focus is on the normative framework established in Articles 508–515 of the Law on Obligations of the Republic of Serbia, which sets out the conditions under which the seller is liable for third-party rights over the object of sale, as well as situations in which contractual provisions excluding liability have no legal effect. The paper examines the role of principles of contract law—primarily good faith, fair dealing, and freedom of contract—in interpreting and limiting contractual autonomy. Relevant case law is also analyzed, with particular reference to the Supreme Court of Serbia ruling Rev. 742/06, which confirms that the seller's liability cannot be excluded when the principle of good faith is breached and when the buyer was not informed of legally relevant facts. The comparative section highlights similar solutions in the legal systems of France, Germany, Slovenia, Croatia, and Bosnia and Herzegovina, as well as in the Vienna Convention (CISG), confirming a high degree of normative alignment in

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European and international contexts. Particular attention is given to *de lege ferenda* issues, especially concerning the clarification of time limits and the standardization of contractual provisions that ensure a fair allocation of risk.

Keywords: *seller's liability, legal defects, contract of sale, contractual autonomy, legal certainty.*

1. Introduction

The seller's liability for legal defects affecting the subject of sale represents one of the fundamental institutes of contract law, crucial for safeguarding trust in legal transactions. A legal defect entails the existence of third-party rights over the object of sale, which may limit, reduce, or entirely preclude the buyer's ability to use the object. Although this type of liability is commonly addressed through the notion of eviction, its meaning is broader in modern contract law. The issue of legal defects remains relevant in contemporary legal systems, particularly in international trade, where conflicting normative regimes of buyer protection may arise. The Vienna Convention on Contracts for the International Sale of Goods (CISG) (1980) provides a general framework for seller liability, while national legislations (e.g., the Serbian Law on Contracts and Torts, the German BGB, and the French Code civil) introduce different approaches to the interpretation and limitation of liability. Legal certainty and stability of contractual relationships constitute the foundation of legal trust and are essential for the smooth flow of goods and services in modern legal systems.

It is important to recall that the issue of legal defects is not merely a contemporary theoretical concern. Over a century ago, Perić noted that "despite the principle that no one can dispose of another's rights, it may happen that a legal transaction, in which a third party did not participate, is not indifferent to that party," because the contracting parties included rights belonging to that third party (Perić, 1920, p. 13).

The aim of this paper is to analyze the legal framework governing the seller's liability for legal defects in contracts of sale, with special attention to the limits of contractual exclusion of such liability. The research will employ both dogmatic and comparative methods, through analysis of positive legal solutions in domestic and foreign legal systems, as well as current case law. Based on these issues, the paper will be structured into five main thematic sections: the concept and nature of legal defects; legal grounds of liability; possibilities of contractually excluding such liability; a comparative legal overview; and, finally, concluding considerations with *de lege ferenda* proposals.

2. Legal Nature of Liability for Legal Defects

The seller's liability for legal defects is rooted in the very structure of the contract of sale as a bilateral contract (Despotović, 2024, p. 21). The seller is obligated to transfer the object free of legal impediments originating from third parties, and if this obligation is not fulfilled, the seller is liable regardless of fault. The contract creates a legitimate expectation on the part of the buyer that they will be able to freely exercise the acquired right, and any breach of this expectation constitutes grounds for triggering the seller's liability.

This section examines the legal nature of liability for legal defects, the conditions under which it arises and is enforced, with particular attention to the concept of a legal defect, the moment it becomes legally relevant, and the resulting legal consequences.

2.1. Concept of Legal Defect and the Moment of Liability Arising

A legal defect arises when a third party holds a legally recognized right over the object of sale that may limit, exclude, or reduce the buyer's entitlements arising from the contract of sale. Legal doctrine emphasizes that a legal defect does not constitute an obstacle to the fulfillment of the contract as a whole, but only to the performance of a specific contractual obligation (Karanikić Mirić, 2024, p. 389). This occurs when the seller is not authorized to transfer the right stipulated in the contract because that right is already wholly or partially encumbered by third-party rights. As a result, the buyer acquires fewer rights than stipulated by the contract. This phenomenon is most commonly referred to as eviction, defined as legal disturbance of the buyer based on a right or legal claim of a third party, leading to exclusion, reduction, or limitation of the buyer's entitlements (Radišić, 2004, pp. 150–151).

For a legal defect to be considered relevant, it must exist at the moment the contract is concluded. The seller's liability is based on the fact that they sold more rights than they possessed, thereby violating the principle of legal certainty (Loza, 2000, p. 139). This also follows from the nature of the contract of sale as a bilateral contract: the seller must guarantee that the object is free from third-party rights; otherwise, they bear consequences for the existence of legal defects (Bikić, 2005, p. 9).

Legal defects include both real rights of third parties—such as ownership, pledge rights, and similar rights—and certain personal rights, provided they limit the buyer's ability to dispose of or use the item. In this respect, the buyer's

position as the holder of contractual rights is fundamentally compromised (Fišer Šobot, 2015, p. 461). The seller's liability for legal defects does not depend on fault but is based on an objective criterion aimed at protecting the buyer's interests and preserving legal certainty in legal transactions.

2.2. Eviction, Disturbance, and the Buyer's Legal Remedies

Eviction is a legal concept denoting the buyer's legal disturbance by a third party, based on that party's legally recognized right. The term third-party right encompasses all real and personal rights existing over the object, through which the third party may affect the item or limit the buyer's ability to use, exploit, or dispose of it (Bamberger & Roth, 2003, p. 2831). Legal disturbance differs from factual disturbance: it involves a third party asserting a right that challenges the buyer's entitlement to the item, either through legal proceedings or another binding legal mechanism. There is no legally relevant disturbance if the third party invokes a non-existent or unfounded right—mere assertion of a stronger right without legal basis does not constitute eviction or legal disturbance (Loza & Misita, 1988, p. 30).

Factual disturbance manifests in situations where a third party deprives the buyer of the item by force (vi), stealth (clam), or deceit (precario), following classical Roman law classifications of disturbance (Perić, 1920, p. 41). Although such cases rarely arise in contemporary contract law disputes, they highlight the broad concept of disturbance underpinning the seller's liability.

Liability for eviction exists regardless of whether the seller knew about the third party's right. The key criterion is that the legal defect existed at the time of contract formation. In such cases, the buyer is entitled to claim damages, terminate the contract, or seek an appropriate reduction in price, depending on the degree of limitation imposed on their rights. The buyer is obligated to notify the seller of the eviction within a reasonable period, in accordance with the principles of good faith and fair dealing (Zindović, 2010, p. 37). The absence of a formal deadline in the Law on Obligations (1978) does not relieve the buyer of the duty to act with the diligence of a prudent businessperson.

3. Contractual Exclusion of Liability for Legal Defects

The issue of contractually excluding liability for legal defects is one of the most delicate matters in the law of obligations, as it lies at the intersection of two fundamental principles: freedom of contract and legal certainty. While parties are free to regulate their mutual rights and obligations, such freedom cannot extend to the point of endangering basic guarantees that protect the weaker party in the contractual relationship. The seller's liability for legal defects cannot be fully derogated even when there is mutual consent between the parties, if such exclusion would violate the principles of good faith, prohibition of abuse of rights, or infringe upon the essential legal interests of the buyer. The following section analyzes the statutory framework regulating the exclusion of liability, as well as its boundaries from the perspective of case law and legal doctrine.

3.1. Statutory Framework and Limits of Exclusion

Article 513 of the Law on Obligations (hereinafter: LO) (1978) provides that the seller may be contractually released from liability for legal defects. However, it also clearly stipulates the circumstances under which such exclusion has no legal effect. The basis for the seller's liability is found in Article 508, which provides that the seller is liable if the item is subject to a third-party right that excludes, reduces, or restricts the buyer's right, and of which the buyer was neither informed nor gave consent. Furthermore, Article 515 prescribes that the buyer must exercise their rights arising from legal defects within one year from becoming aware of the third-party right, unless that third party initiates legal proceedings within that period—in which case, the buyer's right expires six months after the final conclusion of the proceedings. These provisions set both temporal and substantive limits to liability, thereby ensuring legal certainty in eviction protection.

The seller's liability cannot be excluded if they were aware of the third-party right and failed to inform the buyer, if the defect could not have remained unknown to them, or if the legal defect stems from fraud, gross negligence, or intentional concealment.

Of particular relevance are cases where the legal defect arises from public law restrictions. For instance, the designation of a property as cultural heritage has a declaratory character—its absence from a public register does not mean the designation does not exist. The buyer of real estate cannot acquire ownership free of such encumbrance merely because it was not registered.

Even if the property was not officially registered as cultural heritage at the time of sale, the buyer cannot rely on good faith to acquire the property free of that burden. If the seller is aware of such a restriction and fails to inform the buyer, they remain liable despite any contractually agreed exclusion of liability (Živković, 2021, pp. 174–175). In this respect, buyer protection is not based solely on contractual terms, but also on general principles of fairness and legal certainty in commerce.

Rule on the invalidity of liability exclusion in cases of seller's bad faith is also confirmed in international instruments, such as the Vienna Convention. While the Convention recognizes the principle of contractual autonomy, it also imposes on the seller the obligation to deliver goods free from any right or claim of third parties (Art. 41 CISG), provided the buyer has not been informed thereof.

3.2. Case Law and Factual Limitations

In legal theory, the seller's liability for legal defects is based on objective criteria, while case law plays a crucial role in delineating the limits of contractual exclusion of such liability. In this context, the ruling of the Supreme Court of Serbia,[1] serves as a relevant and illustrative example of judicial protection of the buyer in a case involving a legal defect arising from a public law restriction.

In the cited case, the buyer purchased a motor vehicle from an authorized seller, which was later confiscated by a competent state authority due to its prior importation in violation of customs regulations. Although the vehicle was physically functional and registered, its legal status was encumbered—there were grounds for its later confiscation. The seller did not inform the buyer of these circumstances, despite, according to the court's assessment, being under a duty to know about them.

The Supreme Court clearly stated that this constituted a legal defect, as the object was subject to a public law restriction that existed prior to the conclusion of the contract. The court applied Article 510(3) and Article 512 of the Law on Obligations (1978), emphasizing that the seller is liable even in cases where they were not traditionally acting in bad faith, but failed to disclose relevant circumstances affecting the acquisition and use of the item. It was thus confirmed that the seller's liability cannot be excluded by contract when the principles of good faith and buyer information are violated.

[1] Presuda Vrhovnog suda Srbije [Judgment of the Supreme Court of Serbia]. Rev. 742/06 od 28 Juna, 2006. godine.

Particularly important is the court's restrictive stance toward contractual autonomy — even if the contract contained a clause excluding liability, it would have no legal effect, as the seller was under a duty to be aware of the defect. This judgment thus confirms that contractual freedom has its limits, shaped around the principles of fairness, protection of the weaker party, and legal certainty in commerce.

Based on this ruling, it can be concluded that Serbian case law consistently holds that the seller's liability for legal defects cannot be contractually derogated when the seller withholds the existence or risk of a legal restriction affecting peaceful and lawful use of the object. Such a judicial stance aligns with the core values of contract law and contributes to stability and trust in legal transactions.

4. Comparative Legal Framework

Comparative legal analysis plays a crucial role in understanding the limits of contractual exclusion of liability for legal defects, particularly in the context of international trade in goods and the diversity of legal systems. A comparative approach allows for the identification of similarities and differences among various legal regimes, thereby deepening the understanding of domestic norms and highlighting potential directions for their development. The analysis begins with the solutions contained in the Vienna Convention (CISG), German and French law, followed by an examination of the legal systems of Bosnia and Herzegovina, Croatia, and Slovenia as representative frameworks from the regional legal context.

4.1. Comparative Solutions in German, French Law and the CISG

In modern contract law, standards of liability for legal defects in contracts of sale have largely been harmonized through international conventions and national legislative traditions. A review of relevant solutions in these three legal systems provides a foundation for a comparative understanding of liability standards.

The Vienna Convention on Contracts for the International Sale of Goods (CISG) establishes a precise and balanced system of seller liability for legal defects. According to Article 41 CISG, the seller must deliver goods free from any right or claim of a third party, unless the buyer has expressly agreed to accept the goods subject to such encumbrances. This provision establishes

the seller's objective liability, regardless of fault, closely paralleling civil law systems that affirm strict liability in connection with legal defects.

Article 42 further specifies that the seller is also liable for disturbances arising from intellectual property rights, provided that they knew or ought to have known of their existence. Liability is tied to rights recognized in the country where the goods are to be used, if such use was foreseeable at the time of contract conclusion, thereby introducing a standard of diligence and foreseeability in cross-border transactions.

According to Article 43, the buyer must notify the seller in a timely manner of the existence of third-party rights, or else loses the right to invoke the legal defect. This rule affirms the principle of good faith and fair dealing, enabling the seller to protect themselves or take appropriate measures

However, Article 44 introduces some flexibility: in cases where the buyer has a reasonable excuse for failing to notify the seller in time, they may still claim a price reduction or damages. This exceptional provision mitigates the strict procedural discipline and enables equitable dispute resolution, taking into account the specific circumstances of the case.

In the German Civil Code (BGB), seller liability for legal defects is defined in § 435. A legal defect exists if a third party has or may assert a right over the object that restricts the buyer's ownership. Under § 437 BGB, the buyer is entitled to repair, replacement, price reduction, contract termination, or damages. Similar to Serbian law, German law recognizes strict seller liability, but allows contractual exclusion only under certain conditions.

The French Code civil, in Articles 1625 to 1641, governs liability for so-called éviction—legal dispossession. Article 1626 states that the seller guarantees the buyer peaceful possession, while Article 1628 provides that the seller is liable for any interference by a third party with a right to the item, even if the seller was unaware of it. Article 1641 further declares that any contractual provision excluding liability is null and void if the seller knew of the defect. French law strongly emphasizes the guarantee obligation, and even a buyer acting in bad faith enjoys a degree of protection if unable to use the item in accordance with the contract.

The CISG, German, and French legal systems all start from the general assumption that the seller must guarantee legally unencumbered use of the item. While terminology and the scope of third-party rights constituting legal defects may differ, the core legal concept remains the same: the buyer has the right to acquire the item free from third-party claims unless explicitly agreed otherwise. A common element is the possibility of contractually limiting liability, but only under strictly defined conditions and in line with good faith

principles. This comparative basis serves as the foundation for further analysis of the legal frameworks of former Yugoslav republics.

4.2. Comparative Analysis with the Legislation of BiH, Croatia, and Slovenia

T he laws of Bosnia and Herzegovina, Croatia, and Slovenia, as successors of the Yugoslav system of obligations, have retained the fundamental structure and norms concerning the seller's liability for legal defects. However, certain differences in formulation and judicial interpretation open space for comparative analysis aimed at a more precise understanding of domestic law and potential *de lege ferenda* initiatives.

In Bosnia and Herzegovina, the entity-level laws on obligations remain in force, based on the text of the 1978 Federal Law on Obligations, with editorial changes and adaptations to each entity's legal framework. According to Article 513 of the Law on Obligations of the Republika Srpska (1993), the seller is liable if it turns out that a third-party right exists on the item, while paragraph 2 of the same article provides that a contractual provision excluding liability has no legal effect if the seller knew of that right and failed to inform the buyer. Legal literature emphasizes the importance of the principle of good faith and the seller's duty to ensure the buyer peaceful and unhindered use of the item, even when ownership is not explicitly guaranteed by contract.

The Croatian Obligations Act, in Articles 430 to 437, provides for seller liability for legal defects, particularly stressing the seller's obligation to guarantee that no third-party rights exist which could limit or exclude the buyer's ownership right (Slakoper, 2007, pp. 7 and 9). If the buyer did not know and could not have known of such a right, the seller is liable by operation of law, regardless of fault, while exclusion of liability is possible only if the buyer was expressly informed of the legal defect and consented to it. Croatian legal doctrine consistently holds that these norms are interpreted restrictively in favor of the buyer, especially in cases of standardized contracts and informational imbalance between the parties (Slakoper, 2007, p. 12).

The Slovenian Obligations Code (2001) contains corresponding norms on legal defects in Articles 488 to 495. According to Article 488 OZ, the seller is liable if a third-party right exists that excludes, reduces, or limits the buyer's right, unless the buyer knew and explicitly accepted that right. Article 493 OZ provides that contractual exclusion of liability may be agreed, but such exclusion has no legal effect if the seller knew or ought to have known

of the third-party right and failed to disclose it to the buyer. Slovenian legal literature and commentary emphasize the principle of fairness and the duty to inform, particularly valuing the conduct of the parties during negotiations and contract conclusion, especially in transactions involving professional sellers.

Compared to the aforementioned legal frameworks, it can be concluded that the regional laws largely share a common basis rooted in the 1978 Yugoslav Obligations Act, but differences in statutory formulations and interpretations highlight the need for continuous alignment with modern legal standards. All analyzed systems recognize the seller's objective liability for legal defects, allowing for contractual exclusion only under conditions of good faith and timely notification of the buyer about relevant circumstances. Judicial practice shows a tendency toward restrictive interpretation of contractual clauses that derogate statutory buyer protection, thereby affirming the public interest in preserving fairness and stability in legal transactions.

5. Conclusion

The seller's liability for legal defects in contracts of sale plays a crucial role in preserving trust in the legal order and the stability of contractual relations. Its purpose is not limited to the protection of the buyer's individual interests, but extends to maintaining the balance of obligations and the principle of fairness in commerce. The normative framework set out in Articles 508–515 of the Law on Obligations of the Republic of Serbia (1978) confirms that this is a case of objective seller liability, which may only be excluded under strictly defined conditions.

Article 508 serves as the cornerstone of this institution, establishing the seller's obligation to be liable if a third-party right exists over the item that limits or excludes the buyer's right, and about which the buyer was neither informed nor consented to. Article 513 allows for contractual exclusion of liability, but only within the boundaries defined by the principles of good faith, fairness, and loyalty between the contracting parties. In this regard, Article 512 categorically denies legal effect to any contractual provision when the seller knew, or ought to have known, of the third-party right and failed to inform the buyer. Finally, Article 515 specifies the deadlines for the buyer's claims—one year from discovering the legal defect, or six months from the final conclusion of legal proceedings if they had been initiated. Together, these provisions establish a balanced protection system that respects both freedom of contract and legal certainty.

In judicial practice, particularly through the ruling of the Supreme Court of Serbia Rev. 742/06, standards have been affirmed that limit the seller's ability to rely on contractual exclusion of liability if they have withheld legally relevant facts. Thus, the courts emphasize that contractual autonomy, though constitutionally and legally protected (Article 10 LO), must be exercised within the framework of good faith, fairness, and the prohibition of abuse of rights. The court cannot recognize the effect of clauses that disrupt the balance of obligations and the justified expectations of the party suffering the consequences of another's bad faith.

Comparative legal solutions further confirm the consistency of these principles. The legal systems of Germany and France, as well as the laws of Slovenia, Croatia, and Bosnia and Herzegovina, start from a common approach—seller liability for legal defects is objective in nature and can only be excluded if the seller acted in good faith, informed the buyer of the third-party right, and the buyer gave express, informed, and voluntary consent to the legal burden. In all analyzed legal frameworks, the buyer's right to acquire an item free from legal encumbrances prevails over contractual clauses that derogate statutory guarantees, especially in situations of information imbalance, denial of relevant information, and violation of the principle of trust. The Vienna Convention on Contracts for the International Sale of Goods (CISG), as an international legal standard, further reinforces these principles, emphasizing the seller's duty to deliver goods free from legal encumbrances, unless the buyer was duly informed and explicitly agreed to their existence

De lege ferenda, it would be beneficial to consider more precisely defining the relationship between the buyer's awareness of the legal defect and the commencement of the deadline under Article 515 LO, as well as introducing sanctions for the seller's failure to inform the buyer of relevant legal obstacles. In international contracts, special attention should be given to the standardization of contractual clauses that would enhance legal predictability and ensure a better balance of contractual rights and obligations.

The limits of contractual exclusion of liability for legal defects in contracts of sale must remain grounded in the systemic values of contract law: the principles of good faith, fairness, and legitimate reliance on trust in contractual dealings. Freedom of contract, as a fundamental element of dispositive contract law, must not be a source of legal imbalance but an instrument for achieving equality, stability, and legal certainty in contractual relations.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, D.D.; methodology, D.D,.; formal analysis, D.D.; writing - original draft preparation, D.D.; writing - review and editing, R.Ž. All authors have read and agreed to the published version of the manuscript.

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GRANICE UGOVORNOG ISKLJUČENJA ODGOVORNOSTI ZA PRAVNE NEDOSTATKE KOD UGOVORA O PRODAJI – IZMEĐU SLOBODE UGOVARANJA I ZAŠTITE KUPCA

APSTRAKT: Rad se bavi analizom odgovornosti prodavca za pravne nedostatke kod ugovora o prodaji, sa posebnim osvrtom na granice ugovornog isključenja te odgovornosti. U fokusu je normativni okvir sadržan u članovima 508–515 Zakona o obligacionim odnosima Republike Srbije, koji propisuje uslove pod kojima prodavac odgovara za postojanje prava trećih lica na stvari, kao i situacije u kojima ugovorne odredbe o isključenju odgovornosti nemaju pravno dejstvo. U radu se razmatra uloga načela obligacionog prava, prvenstveno savesnosti, poštenja i slobode ugovaranja, u tumačenju i ograničavanju ugovorne autonomije. Analizirana je i relevantna sudska praksa, s naglaskom na presudi Vrhovnog suda Srbije Rev. 742/06, koja potvrđuje da se odgovornost prodavca ne može isključiti kada je povređeno načelo savesnosti i kada je izostalo obaveštavanje kupca o pravno relevantnim činjenicama. Uporednopravni deo rada osvetljava slična rešenja u pravu Francuske, Nemačke, Slovenije, Hrvatske i Bosne

i Hercegovine, kao i u Bečkoj konvenciji (CISG), potvrđujući visok stepen normativne saglasnosti u evropskom i međunarodnom kontekstu. Posebna pažnja posvećena je pitanjima *de lege ferenda*, koja se odnose na preciziranje rokova i standardizaciju ugovornih odredaba koje osiguravaju pravičnu raspodelu rizika.

Ključne reči: *odgovornost prodavca, pravni nedostaci, ugovor o prodaji, ugovorna autonomija, pravna sigurnost.*

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SPECIAL LABOUR LAW PROTECTION FOR FOSTER PARENTS AND THE CHILD IN THEIR CARE

ABSTRACT: The labour law implications of establishing foster care are reflected in the special protection granted to foster parents in employment. This protection is designed to ensure, with additional and intensive support from society, that a child without parental care, or a child under parental care who has developmental disabilities or behavioural disorders and is temporarily unable to live with their parents, can achieve optimal development in a family environment. The ultimate goal is the child's return to the biological family, preparation for independent living and work, or the adjustment of protective measures. On the other hand, for the foster parent who directly cares for the child based on the decision of the guardianship authority, it is necessary to facilitate the reconciliation of family responsibilities with obligations towards the employer. This entails occasional leave from work for child care, as well as leave for special child care, job protection, and protection within the framework of working time regulations. This paper is based on the application of legal-dogmatic and comparative-legal methods, and aims to reaffirm the special protection of foster parents in employment, with an overview of the most important aspects of its regulation at the international and national levels.

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Keywords: *foster care, family responsibilities, leave from work for child care and special child care, job protection, protection within the framework of working time regulations.*

1. Introduction

The labour law status of foster carers is determined by conflict of two seemingly opposing demands – the demand for providing more complete care for the child and the person caring for them, and the demand for preventing and eliminating discrimination based on family obligations. The demand for providing more complete care for the child and the person caring for them is completely in accord with the purpose and effect of foster care. Foster care is a measure of protection of a child without parental care, i.e. a child under parental care who has disabilities in psychophysical development or a behavioral disorder, and temporarily cannot live with his parents. By establishing foster care, based on the decision of the guardianship authority, a relationship is established between the child and the foster parent which, in its content and quality, corresponds to the relationship between the child and the parents - the foster parent takes immediate care of the child and has the duty to take care of his health, development, upbringing and education in order to enable him to live and work independently (Matijašević Obradović & Stefanović, 2017, p. 21).

Accordingly, it highlights the efforts being made to ensure, together with intensive and additional support from society, that a child without parental care, or a child under parental care with disabilities or behavioral issues, being temporarily prevented from living with their parents, gets the opportunity for optimal development in a family environment. This aims to support the child's return to their biological family, prepare them for independent life and work, or change protective measures (Regulation on Foster Care, 2022). At the same time, it enables the foster carer of the child, upon decision of the guardianship authority, to reconcile family and work life more easily. As opposed to this demand, there is a demand for preventing and eliminating discrimination based on family responsibilities, due to deeply rooted prejudices and stereotypes about the limiting impact on fulfilling work responsibilities, as well as the intention of certain employers to place foster parents in a disadvantaged position compared to other employees in order to avoid additional costs and difficulties in organizing work inherent in implementing foster care. Therefore, reconciling these seemingly opposing demands poses a challenge for labour

law, which must adequately address all these issuesin order to support all roles that women and men hold in modern society, achieve equality in the workplace, improve dignified living and working conditions, ensure the wellbeing of the child, promote foster care, and so on.

2. Basic principles on special protection of foster parents in employment relationships

Special protection in employment relationships allows foster parents to affirm themselves as creative beings through their work, but also as individuals with all their needs. This is particularly important because the role they play in caring for the child, for whom they directly provide care based on the decision of the guardianship authority, causes a conflict between family responsibilities and responsibilities toward the employer. In fulfilling of this role, the foster carer facesnumerous challenges, especially when the child they care for, as based on decision of the guardianship authority, shows indifference or lack of interest, or lacks interpersonal and social skills to adapt to family life, and is ignorant of the way a functional family operates, or has experienced difficulties giving a distorted image of their potential. Therefore, the foster carer is expected to accept the child as they are, guide them toward achieving optimal development, and understand their behavior in view of the difficulties they have faced. In the context of these expectations, the challenges of foster care should be seen, as well as the weight of the foster parent's responsibility in caring for the child (Stefanović & Stanković, 2021, p. 44).

This situation imposes the need to choose between direct care for the child, as decided by the guardianship authority, and their employment, which is incompatible with their human needs – the need to give their best to care for the child, ensuring the child's health, development and upbringing (Grujić, Hadžović, Ivanišević & Tekić, 2009), and the need to provide material and social security for themselves and their immediate family through employment, by affirming themselves as creative beings and confirming their essential humanity (Jovanović, 2018. p. 167). Above all, it respects the need of the child, for whom the foster parent provides direct care based on the decision of the guardianship authority, and the conditions that support the optimal child development in the best way possible.[1] In this sense, it is considered one of the

[1] A child, in order to fully and harmoniously develop their personality, should be brought up in a family environment, in an atmosphere of love, happiness and understanding. If they are temporarily or permanently deprived of a family environment, or if they cannot remain in the family environment in their best interest, they are entitled to special protection and assistance

pillars of labour laws related to the protection of parenthood (Jovanović, 2018, p. 294) and its application, in line with the modern understanding of gender roles in child upbringing, excludes any differentiation among employees based on gender. Due to deeply rooted perceptions of the traditional role of women in society, the laws of many countries encourage men to participate more actively in child upbringing. For instance, the laws of Scandinavian countries allow for an increase in compensation during leave from work for childcare with a gender equality bonus, providing that both partners take leave for childcare. Furthermore, they stipulate that leave for men is non-transferable and paid if taken by them (Tanasijević, 2016, p. 62).

Its importance is evident also in preventing and eliminating discrimination based on family responsibilities. Without it, diverse situations in which certain employees find themselves would not be acknowledged, and it would only reinforce existing inequalities. Therefore, the differential treatment of employees resulting from its application is not seen as a violation, but rather as a premise of of non-discrimination principle. However, true equality in the workplace can only be achieved if such preferential treatment is aligned with nature and scope of support and assistance provided and/or existing discrimination. In this light, it should be subject to periodic assessment to determine whether it is still justified and necessary (Petrović, 2009).

2.1. Leave from work for childcare

Fulfilling the purpose of foster care corresponds to the obligation of the foster parent to provide adequate care for the child, in their direct care as decided by the guardianship authority, in order to ensure optimal child development. For this reason, it is necessary to allow leave from work for childcare.

At international level, there is no special form of leave from work for childcare as foster leave. However, a foster carer may use parental or a similar form of leave from work for the child in their direct care, based on the decision of the guardianship authority, especially since the establishment of foster care creates a relationship between the foster carer and the child, that in terms of quality and content, corresponds to the relationship between a parent and a child. Accordingly, the International Labour Organization (ILO) states that employees

from the state by providing alternative care. (Convention on the Rights of the Child). According to the United Nations Guidelines for the Alternative Care of Children, the use of institutional care should be limited only to cases where particularly appropriate, necessary, and constructive for the child, and when in their best interest (UNICEF, 2010).

with family responsibilities should be allowed to return to work after taking leave due to those responsibilities (Convention No. 156/1981), i.e. the use of parental leave (Recommendation No.165/1981). Following the example of this organization, the Council of Europe requires member states to allow the use of optional leave from work for childcare (The Revised European Social Charter, 1996), while the European Union obliges its member states to provide parental orsimilarly related leave from work (Directive 2019/1158). These organizations respect differences in national situations and therefore, allow member states to regulate duration and use of parental and/or related leave from work more specifically, taking into account that international standards present arelative minimum in relation to the national ones. However, a summary of their legislation is not possible due to variations regarding available forms of this leave, as well as its duration and use. For example, in Italy, parental leave exists in the form of optional leave fromwork. In principle, it may be used by one or both foster carers simultaneously within the first 12 months of the child's placement in their family, and at most until the child reaches adulthood, not exceeding the duration of 10 months in total. In case of multiple foster care, leave must be used under the same conditions for each child. In Spain, parental leave lasts up to 16 weeks, and the right to use it is individual and non-transferable. In the first 6 weeks upon decision of establishing foster care, leave must be used in continuity, while the remaining 10 weeks may be used in continuity or with breaks – until 12 months from the date of the decision have passed. In agreement with the employer, the remaining 10 weeks can also be taken as part-time leave from work. However, if the child has developmental disabilities, parental leave can last one week longer per foster parent, and in case of multiple foster care 2 weeks longer – per child. Most countries guarantee a compensation during parental or related leave from work, either as a social insurance benefit or being partially paid by the employer (Parliament of Montenegro, 2024).

In our country, the foster parent is entitled to leave from work, in order to directly care for the child based on decision of the guardianship authority, in accordance with the Labour Law (Labour Law, 2005). The law stipulates that a foster parent has the right to be absent from work for up to 8 months to care for the child in their direct care based on decision of the guardianship authority, or until the child turns 5 years old at the longest. In case the child is younger than 3 months old, the absence can be extended until the child turns 11 months. This is a paid leave, and it must be used continually from the moment the child is placed in the foster family,[2] in order to fulfil the purpose for which

[2] Leave from work starts on the day the child is placed in the foster family because that day marks the beginning of the child's care in that family. This further means that the foster parent,

it was granted (Albaneze & Novaković, 2018, p. 152). Immediately after the expiration of this leave or at any later time the foster parent has the right to take leave from work for the care of the child they directly care for, based on the decision of the guardianship authority, but under different conditions. Namely, this leave represents a form of unpaid leave from work during which the rights and obligations of the employment relationship are suspended, unless otherwise specified by law, general acts, or the employment contract. In principle, it may be used fully or partially, continuously or intermittently – until the child turns 3 years old. After this period, the foster carer has the right , but also the obligation to return to work within the next 15 days and thus activate their suspended emplyment status. Otherwise, they risk the termination of their employment contract by the employer (Urdarević, 2020, p. 16).

Our country also respects specific position of foster parents caring for a child with health impairments. When a child requires special care due to severe disability, and this need cannot be met under health insurance regulations, the foster parent is entitled to leave from work, as approved by a relevant health authority having assessed the health impairment of the child, with salary compensation or to work part-time and earn a salary in proportion to the time spent at work, with compensation for the remainder of the working hours until full time, as long as the child should require such care, and at most until the child turns 5 years of age. The decision on which foster parent will be the beneficiary of this right, and whether it will concern leave from work or part-time work, is made by the competent authority for the application of the Family Financial Support Law (Ivošević & Ivošević, 2021). On the other hand, a foster parent, in the role of a person caring for someone with a serious illness, has the right upon request, and based on the opinion of the relevant health authority, to work part-time, but not less than half working hours. The duration of working time is determined by the employer, based on the opinion of the relevant health authority, within a range that corresponds to the need of caring for a person with such an illness (Kulić & Perić, 2016, p. 2016).

2.2. Protection from termination of employment contract

Protection from termination of the employment contract is an important segment of special protection for foster carers in employment, not only because of deeply ingrained prejudices and stereotypes about the limiting

who provides care in the child's living space, is deprived of the opportunity to have a home environment for themselves, even though for them, moving into the child's living space represents an additional burden.

impact of family obligations on fulfilling responsibilities toward the employer, but also due to intention of some employers to avoid additional costs and organizational difficulties inherent in the special protection of foster carers in employment, by misusing the right to terminate the employment contract. Accordingly, the International Labour Organization first prohibited discriminatory termination of employment (Convention 111/1960), and afterwards established that employment cannot be terminated without a valid reason. Valid reasons to terminate employment will be considered the ones related to capabilities or behaviour of the employee, or the operational needs of the employer, in particular, reasons related to family responsibilities will not be considered valid (Convention 158/1982). The European Union goes a step further, requiring member states to prohibit not only terminating employment due to reasons of requesting or using parental leave or leave from work due to urgent and unavoidable family responsibilities but also less favourable treatment of employees who have requested or used such leave. If they have taken leave, they must have the opportunity to return to the same or equivalent workplace under conditions that are not less favourable for them, along with benefiting from any improvements in working conditions they would have been entitled to had they not taken leave (Directive 2019/1158). On this basis, and in line with national conditions and practices, most countries have paved the way for the protection of foster carers from employment termination. In countries where the concept of valid reasons for terminating employment contracts has been implemented, prohibition of employment termination due to family responsibilities is meaningful in preventing termination of employment contrary to the interests of society, and therefore, such termination is null and void by law. In countries where the concept of valid reasons for terminating employment contract has not been implemented, a foster carer can retain job security by referring to prohibition of discrimination based on family responsibilities in relation to employment termination. Some countries guarantee workers with family responsibilities special protection from employment termination, thus excluding the possibility of employers initiating the termination of employment for any reason during the so-called protected period (Balnožan, 2021).

The Labour Law of the Republic of Serbia stipulates that taking leave from work for childcare or special childcare leave cannot be a justified reason for termination of employment contract on the part of employer, therefore the employer cannot condition the establishment of an employment relationship by requiring a statement of termination of the employment contract from the candidate employee, especially since such a statement can be activated

at any time to avoid the application of legal provisions on the protection of maternity and parenthood (Kovačević, 2016). In the case of introducing economic, technological or organizational changes in the work process, the criteria for determining employee redundancy cannot be based on leave from work for childcare or special childcare. However, a foster carer may be one of the employees whose work is no longer needed due to introduction of these changes in the work process, and, ultimately, may be one of the employees whose employment contract can be terminated in case they refuse to conclude an Annex to the employment contract in order to secure another job as part of new employment measures. If there arises a need to perform tasks that the employee executed prior to expiration of 30 days from the day of the employment contract termination, they will have priority over other candidates when concluding an employment contract (Brković & Urdarević, 2020).

During leave from work for childcare or special childcare, a foster carer is additionally protected from termination of the employment contract. Namely, if the employer initiates termination of the employment contract during leave for childcare or special childcare, an additional protective mechanism will be activated, resulting in the nullity of the termination decision, on condition that the employee has notified the employer of the circumstances related to taking this leave by providing a certificate from the competent authority before the termination of the employment contract or within 30 days of the employment termination.“ Therefore, after the right to leave from work for childcare and special childcare has expired, there are no obstacles for the employer to terminate the employment contract if the conditions prescribed by law have been met” (Ministry of Labour, Employment, Veterans and Social Affairs, 2025); if the employee has established a fixed-term employment relationship, the term of the contract is extended until the expiration of leave for childcare or special childcare. This way, employers cannot take advantage of objectively justified reasons for establishing a fixed-term employment contract to avoid the application of legal norms on the protection of maternity and parenthood (Kovačević, 2016).

2.3. Protection within the Framework of Working Hours

Special protection for foster carers in employment also implies prevention of night work, overtime work, and flextime, particularly because such work can, by its nature, intensify the conflict between family responsiblities and responibilities to the employer. The International Labour Organization points

this fact out, suggesting that special attention should be paid to general measures for improving working conditions and quality of work life, especially those aimed at: progressive shortening of day working hours and reducing overtime work; introducing more flexible arrangements concerning work schedules, rest times and holidays, while at the same time considering the level of development and social needs of countries and different activity sectors. When feasible and appropriate, while organizing shift work and assigning night work, attention should be paid to the needs of employees with family responsibilities (Recommendation No. 165/1981). On the other hand, the European Union obliges member states to take necessary measures so that employees with children under the age of 8 are entitled to flexible working conditions, as well as the right to return to their original work schedule upon expiration date of the agreed period, or if justified by objective circumstances, berfore the expiration date of the agreed period. Member states are also required to take necessary measures so as to enable the employer to address any request of the employee in a reasonable timeframe and provide an explanation why the request has been rejected or use of flexible working conditions postponed. However, member states are allowed to set reasonable limits on the duration of flexible working conditions, and condition the right to flexible working hours on the duration of the employment contract or duration of the employment contract with the same employer, which cannot exceed 6 months. If the worker has concluded consecutive fixed-term employment contracts with the same employer, the total duration of these contracts must be taken into account when calculating the reference period (Directive 2019/1158).

In our country, foster carers have the right to protection within the framework of working hours, in accordance with the Labour Law. This law stipulates that a foster carer is entitled to protection until the child, as based on a decision by the guardianship authority, has reached a certain age, specifically—until the child turns 3 years old or, in case of caring for a child with severe disabilities, until the child becomes an adult. A foster carer may work at night, overtime, and in the system of flexible working hours with their written consent. This consent may be revoked in writing when the carer deems it to be in the best interest of the child they are directly caring for, based on a decision by the guardianship authority.[3] The reason for this law lies in the fact that a younger child needs adult care more in comparison to an

[3] The written form of consent for night work, overtime work, and work under the flexible working hours system not only forces the foster carer to think carefully before starting such work but also makes it easier to prove that they have agreed to it. For these reasons, they should also revoke the given consent in writing.

older child, whereas a healthy child will need less adult care than a severely disabled child. Another reason is that the foster carer cannot be deprived of the opportunity to earn additional income from night and overtime work at the rate set by the employer's general act and the employment contract, which amounts to at least 26% of the base rate, provided that the carer can ensure alternative care for the child during the time they would otherwise spend working. Protection from overtime work also implies preventing on-call duty for employees in healthcare institutions, since on-call duty in such institutions is considered a special form of overtime work. It would be desirable to prevent both on-call duty and on-demand work, considering that these forms of overtime work in healthcare institutions have been introduced into the general system of employment under the guise of flexible working arrangements (Albaneze & Novaković, 2018), without assessing the impact they may have on fulfilling family responsibilities. It would also be desirable to prevent performing any kind of work after the contractual working hours, especially since employers tend to ask part-time employees to work beyond the agreed working hours in the amount not exceeding full-time work, thereby avoiding the payment of increased earnings for overtime work (thus achieving greater profit) (Kovačević, 2008, p. 244).

Comparative law recognizes minor differences regarding quality and scope of protection for foster carers within the framework of working hours. Some countries limit the actual scope of this protection to prevent overtime and night work, while other countries provide it to foster carers of healthy older children and/or children with developmental disabilities. These differences also exist in neighboring countries— in the Federation of Bosnia and Herzegovina, a person who, based on the decision of the competent authority, cares for and raises a child up to the age of 6 is allowed to work overtime and under the system of flexible working hours with their written consent, and to work at night with their written consent—until the child reaches 2 years of age (Labour Law of the FBIH, 2016), while in Montenegro, a foster carer of a child with developmental disabilities can work overtime and at night based on their written consent (Labour Law, 2019).

3. Conclusion

In recent decades, there has been an increasing number of children placed in foster families, under the influence of the social protection system reform. With this in mind, it is essential to reaffirm the importance of special

protection for foster carers in employment, and make the issues related to its implementation visible so that they can be addressed in an adequate manner. In most countries, there is no legal guarantee for this protection, and in countries where it has been normatively confirmed, it has been marginalized due to a low level of awareness of its importance, the intention of employers to avoid additional costs and difficulties in organizing work inherent to its application, etc. Therefore, in the upcoming period, more proactive measures should be taken to ensure that this protection gets normatively confirmed in the countries where it has not yet been implemented, and in those where it exists, it should be consistently applied—through organizing forums and campaigns to raise awareness of its significance, publicizing good and bad practices, providing financial incentives to employers, etc. Additionally, the scope of its application should be expanded to include all individuals who need it. This is especially important since it is guaranteed for individuals working in the form of an employment relationship, while those performing work outside the employment relationship are denied this protection solely because they are not working under an employment contract.

Conflict of Interest

The author declares no conflict of interest.

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POSEBNA ZAŠTITA NA RADU HRANITELJA I DETETA O KOJEM SE STARA

APSTRAKT: Radnopravne refleksije zasnivanja hraniteljstva nalaze svoj pravni izraz u posebnoj zaštiti hranitelja u radnom odnosu. Ta zaštita je osmišljena sa ciljem da se, uz dodatnu i intenzivnu podršku i pomoć društva, detetu bez roditeljskog staranja, odnosno detetu pod roditeljskim staranjem koje ima smetnje u psihofizičkom razvoju ili poremećaj u

ponašanju, a privremeno ne može da živi sa roditeljima, obezbedi optimalan razvoj u porodičnom okruženju. Krajnji cilj pomenutog je povratak deteta u biološku porodicu, osposobljavanje za samostalan život i rad ili promena mere zaštite. Sa druge strane, hranitelju koji o detetu neposredno brine, na osnovu odluke organa starateljstva, potrebno je omogućiti lakše usklađivanje porodičnih obaveza i obaveza prema poslodavcu. To implicira i povremeno odsustvovanje sa rada radi nege deteta, kao i odsustvo sa rada radi posebne nege deteta, zaštitu zaposlenja i zaštitu u okviru instituta radnog vremena. Ovaj rad temelji se na primeni pravno-dogmatskog i uporedno-pravnog metoda, a ima za cilj reafirmaciju posebne zaštite hranitelja u radnom odnosu, uz prikaz najznačajnijih aspekta njenog regulisanja na međunarodnom i nacionalnom nivou.

Ključne reči: *hraniteljstvo, porodične obaveze, odsustvo sa rada radi nege i posebne nege deteta, zaštita zaposlenja, zaštita u okviru instituta radnog vremena.*

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PROCEDURAL SPECIFICS IN SMALL-VALUE CLAIMS LITIGATION

ABSTRACT: This paper analyzes specific provisions of the Civil Procedure Law concerning procedural rules in small-value claims litigation. Due to the normative redefinition and expansion of the concept of *small-value claims litigation*, courts of general jurisdiction most often follow the rules applicable to this special procedure. In small-value claims proceedings, the right to legal protection is not exercised through the standard (full) cognitive procedure, but through special rules designed to ensure that these cases are concluded efficiently and economically. Given the limitations in the scope of this paper, the analysis focuses on the specific features that characterize this procedure, which also determined the content of the paper.

Keywords: *civil procedure, small-value claims litigation, specific features of the special procedure.*

1. Introduction

The rules of general civil procedure are regulated in accordance with the standard model for resolving disputes in property-related legal matters, meaning that this model corresponds to the average structure of civil litigations. However, given that this method of dispute resolution cannot adequately encompass all procedural situations and the specific nature of disputes

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arising from certain legal relationships, the legislator prescribed specific civil procedures, which are regulated not only in the Civil Procedure Law,[1] but also in the provisions of certain substantive laws applicable to the case, for example in family, anti-discrimination, media-related, or whistleblower protection litigations.

The rules of specific civil procedures are applied to resolve civil disputes in which the general civil procedure rules are not applicable, due to the nature of the legal relationship, the nature of the right being protected, or certain legal-political or procedural-technical reasons (Stanković, 2024, p. 1393). Specific civil procedures hold the status of *lex specialis* in relation to the general civil procedure (*lex generalis*), and in that sense, they represent the primary procedural framework for certain types of disputes. As these are not fully regulated procedures but are instead defined through specific deviations from the general civil procedure, the rules of general procedure are applied subsidiarily in all other matters. However, the legal provision in Article 467 of the CPL (2011) departs from the usual model of subsidiary application of the general procedure, which characterizes the relationship between general and specific procedures, and prescribes instead the analogous application of general civil procedure rules in cases of legal gaps, a solution that has been criticized in procedural literature (see Stanković, 2024, p. 1454).

One of the specific procedures regulated by the Civil Procedure Law is the procedure in small-value claims litigations.[2] In both theory and practice, various terms are used for this procedure – summary, small-value claims, petty claims (Palačković, 2004, p. 318), or reduced cognition procedure (Triva, Belajec & Dika, 1986, p. 670). This procedure is classified as a specific civil proceeding intended for the efficient and economical resolution

[1] In the Civil Procedure Law – CPL (2011), the following are regulated as specific civil procedures: proceedings in labour disputes (Articles 436–441), proceedings in disputes concerning collective agreements (Articles 442–447), proceedings in possession disturbance disputes (Articles 448–454), issuance of a payment order (Articles 455–466), proceedings in small-value claims litigations (Articles 467–479), commercial dispute proceedings (Articles 480–487), consumer dispute proceedings (Articles 488–493).

[2] The provisions of the chapter of the CPL (2011), which regulate the procedure in small-value claims litigations, were not carefully drafted, as they contain certain legal-technical errors. This primarily refers to the incorrect and legally imprecise title of the small-value claims procedure itself, which stems from the fact that the editors didn't distinguish between the dispute as the cause for litigation and the litigation itself, which is conducted according to the rules of civil procedure. The legal terminology used in this legal text is inconsistent and varied, which clearly represents an example of poor legislative technique and unprofessional editorial. Thus, for example, the title of the chapter is "Procedure in small-value claims litigations", while Article 467 refers to the "Procedure on small-value claims litigations". The editors overlooked the fact that civil procedure takes place within a litigation in which a dispute is resolved (Stanković, 2024, pp. 1453–1454).

of simple disputes involving lower monetary values and which are of lesser social importance. The procedure is simplified and aims to avoid delays in its development (Poznić, 2009, p. 1069). However, as pointed out in procedural literature, the manner in which the specific procedure in small-value claims litigations is regulated in the Civil Procedure Law (2011), unlike the solutions from the Civil Procedure Law (2004), has failed to deliver the expected results in practice due to a legislative misstep, especially in terms of efficiency, cost-effectiveness, and the realization of the principle of trial within a reasonable time (Stanković, 2022, p. 1). It is also noted that this outcome was influenced by the especially high threshold for the value of the dispute, as well as by the incorrect and inconsistent application of the procedural rules for this specific litigation procedure in court practice – and, to some extent, by the parties themselves, whose procedural conduct influenced the inefficiency and cost-effectiveness of these proceedings (Stanković, 2022, p. 1).

Small-value claims litigations are those concerning monetary claims that do not exceed the dinar equivalent of 3,000 euros, calculated at the middle exchange rate of the National Bank of Serbia on the day the lawsuit is filed (or 30,000 euros for commercial disputes), while noting that changes in the euro exchange rate after the filing of the lawsuit do not affect the value of the subject matter of the litigation ("value of the subject matter of the dispute"). The relevant criterion for determining the value of the subject matter of the litigation for monetary claims is the specific amount stated in the claim.

The legislator has expanded the meaning of a small-value claims litigation by stipulating that they may concern not only monetary but also non-monetary claims, in cases of subsidiary cumulation, when the claimant includes a subsidiary claim in the lawsuit indicating a monetary amount they are willing to accept in lieu of the owed non-monetary action, provided that the monetary value does not exceed the statutory limit, and that payment of this amount would release the defendant from the obligation to fulfil the non-monetary obligation (Stanković, 2024, p. 1456). Small-value claims litigations are also those where the subject of the claim is not a monetary amount, which implies that protection which isn't condemnatory in nature may also be sought (proceedings initiated by declarative or constitutive lawsuits), so long as the value of the subject matter of the litigation indicated in the lawsuit does not exceed the statutory limit. A small-value claims litigation may also refer to a bill of exchange or cheque dispute, as such cases involve monetary claims, as well as disputes over monetary claims in which an objection was raised against a payment order in the procedure for the issuance of a payment

order, provided the value of the contested part of the payment order does not exceed the statutory limit (Stanković & Boranijašević, 2023, p. 568). The provisions applied to small-value claims litigations also apply in situations where, following an objection by the defendant to an enforcement order in enforcement proceedings, the legal matter is transferred to a civil procedure, and the proceedings continue under the rules of civil procedure. A case is also considered a small-value claims litigation if the claimant reduces the value of the claim by the end of the main hearing in a case that was originally conducted under the general civil procedure, which is then converted into a small-value claims litigation. This category of specific procedures also includes proceedings conducted under the Law on the Protection of the Right to a Trial Within a Reasonable Time (2015), which in Article 27, paragraph 1 provides that in proceedings concerning claims for monetary compensation, regardless of the type or amount of the claim, the provisions on small-value claims litigations from the law which regulates the civil procedure are applied accordingly.

Article 469 of the CPL (2011) states which litigations cannot be conducted under the rules of the procedure in small-value claims litigations. These include lawsuits concerning immovable property, labour disputes, and possession disturbance litigations.

Although the concept of a small-value claims litigation merits a more comprehensive analysis, due to limitations regarding the length of this paper, such an analysis is not possible. Therefore, the focus is placed solely on the deviations from general civil procedure and on the specific features that characterize the procedure in small-value claims litigations.

2. Specific rules of the procedure in small-value claims litigations

The procedure in small-value claims litigations (both in the first and second instance) is characterized by a number of specific rules which represent a deviation from the general civil procedure.

Firstly, this procedure is marked by its summary nature, as a consequence of the predominance of the principles of cost-efficiency and effectiveness upon which it is based (Stanković & Boranijašević, 2023, p. 569). This key feature is achieved through the establishment of a number of special procedural rules (Petrušić, 2024, p. 427). The deviations from the general civil procedure are based on the position that in disputes of low value, there is no need to apply

those provisions that make litigation more complex and prolong its duration (Poznić & Rakić Vodinelić, 2015, p. 539).

In the procedure in small-value claims litigations, pursuant to the Law on the Organization of Courts (2023), subject-matter jurisdiction lies with the basic court, or the commercial court if it is a small-value claims commercial dispute, while in the second instance, appeals are decided by the higher court or the Commercial Appellate Court. More on the analysis of legal provisions regarding the application of rules in procedures in small-value claims litigations – including the conflict between Article 468 of the CPL 2011 (threshold of €3,000 as the criterion) and Article 471 of the CPL 2011 (subject-matter jurisdiction of the court as the criterion) – can be found in Bodiroga, 2015. This author also advocates that the legislator should treat a court's error in applying one procedural regime (rules for small-value claims litigations) instead of another (rules of general civil procedure) as an absolutely relevant violation of civil procedure provisions.In these proceedings, in accordance with the dominant monocratic principle in trial, it is prescribed that at the first instance the case is always handled by a single judge, while the second-instance court always adjudicates in a panel of three judges.

In these proceedings, the lawsuit is not delivered to the defendant for a response but is served together with the summons for the main hearing. Accordingly, a written response to the lawsuit is not a mandatory but an optional procedural act, from the content of which it can be inferred whether the defendant admits or disputes the claim (although the defendant will state their position on the lawsuit at the first trial hearing for the main discussion). Besides the fact that the lawsuit is not delivered to the defendant for a response, these proceedings do not schedule or hold a preliminary hearing but instead immediately schedule the first hearing for the main discussion. Unlike the provisions of the CPL (2004), the new CPL (2011) no longer prescribes a mandatory response to the lawsuit or a mandatory preliminary hearing, which is why the essential triage of procedural materials before scheduling the main hearing, adherence to the rules for setting the timeframe for dispute resolution, application of rules on holding a single main hearing and concentration of evidence were omitted, as well as the possibility to render a judgment without discussion or a judgment by omission, thereby efficiently resolving the dispute (Stanković, 2021, p. 65).

Article 473 of the CPL (2011) prescribes the mandatory content of the summons for the main hearing. Namely, it is stipulated that the court shall include in the summons to the parties a special instruction regarding the essential characteristics of the procedure in small-value claims litigations and shall state, among other things, that the plaintiff is considered to have

withdrawn the claim if they fail to appear at the main discussion hearing, that the court will issue a judgment by omission if the defendant is absent from the main discussion hearing (Article 351), and shall also provide a warning about limitations on introducing new facts and new evidence, meaning that the party in this procedure should present all facts and evidence by the conclusion of the first main discussion hearing, that in an appeal against the judgment, new facts cannot be introduced, nor can new evidence be proposed, that the decision can only be challenged due to relevant violations of civil procedure provisions from Article 374, paragraph 2 of the CPL (2011) and due to misuse of substantive law. If an ordinary summons, rather than a summons containing this prescribed content, is sent to the parties, it shall be considered that the parties were not properly summoned.

According to Article 308 of the CPL (2011), which, pursuant to Article 467 of the same law, also applies in small-value claims litigations, at the preliminary hearing, i.e., the first hearing for the main discussion (if the preliminary hearing is not mandatory, as is the case here), the party is obligated to present all facts necessary to substantiate their proposals, to propose evidence supporting the stated facts, to respond to the allegations and evidence offered by the opposing party, and to propose a timeframe for conducting the proceedings. At this hearing, the court is obligated to establish which facts are undisputed or generally known, and which facts are disputed, and to decide which means of evidence will be presented at the main discussion, while it will reject proposals for presenting evidence it considers irrelevant to reaching a decision by a decision against which no special appeal is permitted. Thus, in small-value claims litigations, the court is obligated to decide on the parties' evidentiary proposals submitted by the conclusion of the first hearing for the main discussion.

2.1. Absence of the parties from the hearings – consequences in small-value claims litigations

Article 475, paragraph 1 of the CPL (2011) stipulates that if the plaintiff does not appear at the main discussion hearing, having been duly summoned, it shall be considered that the plaintiff has withdrawn the lawsuit. In small-value claims litigations, the plaintiff's absence from the hearing by operation of law leads to the conclusion that the lawsuit is deemed withdrawn (this requires the cumulative fulfilment of two conditions: that the plaintiff was duly summoned to the hearing and that they were absent from it), regardless of whether the reasons for absence are justified or not. The justification of the

reasons for absence may only be examined upon a motion for restoration to the previous state. The plaintiff has the right to prove the justification of the reasons for missing the hearing and the necessity to revoke the decision made due to justified absence by filing a motion for restoration to the previous state (this procedure is regulated by the CPL (2011), Articles 109–114).

Therefore, Article 475, paragraph 1 of the CPL (2011) does not distinguish between justified or unjustified reasons for such absence, and it is irrelevant whether the plaintiff justifies their absence or not, unlike Article 311, paragraph 2 of the CPL (2011), which refers to "unjustified absence". The legal fiction of withdrawal of the lawsuit, which occurs by operation of law, represents a consequence affecting the plaintiff if, after filing the lawsuit, they fail to show the necessary activity during the proceedings.

In procedural literature, such regulation is criticized primarily because the withdrawal of a lawsuit does not resolve the dispute. Furthermore, it is considered unusual that the plaintiff in litigations on disputes of potentially very low value is required to demonstrate a higher degree of procedural diligence than in million-dollar litigations. Finally, the mentioned sanction unjustifiably increases the plaintiff's procedural risk by imposing litigation costs in cases where the plaintiff does not reside or have a registered office in the court's jurisdiction: in small-value claims litigations, the plaintiff is required either to travel to the first trial hearing or to ensure representation at that hearing. As a result, litigation costs may become strikingly disproportionate to the value of the subject of the dispute (Poznić, 2009, p. 1078).

The plaintiff's absence from a scheduled hearing, for which they were duly summoned, reflects their freedom to control the proceedings (disposition) and indicates a lack of interest in pursuing the case and obtaining a decision on the dispute that was the subject of the litigation and which they initiated themselves (Stanković & Boranijašević, 2023, p. 571).

Article 475, paragraph 2 of the CPL (2011) prescribes that if the defendant does not appear at the main discussion hearing, having been duly summoned, the court shall issue a judgment by omission. In small-value claims litigations, for the issuance of a judgment by omission, which accepts the claim, it is necessary that all conditions prescribed in Article 351, paragraph 1 of the CPL (2011) be met, and these conditions are the same regardless of whether the case is a small-value claims litigation or not (that the defendant was duly summoned to the hearing, that the defendant did not appear at the hearing, meanwhile there are no generally known circumstances that prevented the defendant from attending the hearing, that the defendant has not contested the claim in a submission, that the grounds

for the claim arise from the facts stated in the lawsuit, and that these facts are not contradicted by evidence submitted by the plaintiff or by generally known facts). The provisions of all other paragraphs contained in Article 351 of the CPL (2011) also apply to the judgment by omission rendered in small-value claims litigations, including the circumstances under which the court will not render a judgment by omission, as well as when the court may render a judgment by omission rejecting the claim.

If the court concludes that the facts stated in the lawsuit do not give rise to a well-founded claim, or that there is a contradiction between the stated facts and the submitted evidence, or with facts of common knowledge, it shall not render a judgment by omission but shall dismiss the claim. It will act the same in the situation when the lawsuit is contrary to the provision of Article 3, paragraph 3 of the CPL (2011). The court shall continue the examination if all conditions for rendering a judgment by omission are not met.

To prevent the rendering of a judgment by omission, the defendant must appear at the first main discussion hearing and engage in the proceedings. The defendant's absence from later hearings will not result in the rendering of a judgment by omission because, by being present at the first hearing, the defendant participated in the proceedings by contesting the claim. Therefore, absence from any subsequent main discussion hearings cannot lead to the conclusion that the defendant admitted the facts on which the claim is based (Bodiroga, 2022, p. 515).

The rules of the specific procedure in small-value claims litigations do not regulate the situation of mutual absence of parties from the first main discussion hearing. In theory, it is argued that the fiction of withdrawal of the lawsuit should be accepted (Palačković, 2004, p. 319), since the legal condition required by law is fulfilled – the plaintiff was absent.

2.2. Minutes in small-value claims litigations

Unlike the minutes kept in general civil procedure, the minutes from the main discussion hearing in small-value claims litigations have a specific content. According to views expressed in procedural literature, these minutes should be prepared more rationally than usual, more sparingly, concisely, and briefly (Triva & Dika, 2004, p. 820).

Besides all the elements required in the minutes of the general civil procedure (the name and composition of the court, the place where the action is performed, the date and time of the action, the indication of the subject matter of the dispute, and the names of the parties or third persons present, or their legal

representatives or attorneys), the minutes in this specific procedure contain a brief and summary overview of the course of the proceedings. The legislator's intention is that the acceleration of the procedure should also be achieved by limiting the content of the minutes to what is strictly necessary, and therefore, besides the information from Article 116, paragraph 1 of the CPL (2011), which defines the mentioned parts required for the hearing minutes, they should also include: 1) statements of the parties that are of essential importance, especially those by which the claim is fully or partially admitted, the claim is waived, the lawsuit is amended or withdrawn, or the appeal is waived (as examples of other statements of significant importance, the following can be mentioned: granting power of attorney for representation, request for recusal, motion for security for costs in litigation, countersuit, and a statement on the defendant's alternative authority (Poznić, 2009, p. 1075); 2) the essential content of the evidence presented; 3) decisions against which an appeal is permitted and which are pronounced at the main discussion; 4) whether the parties were present at the pronouncement of the judgment and, if so, that they were instructed under what conditions they may file an appeal (CPL (2011), Article 474).

2.3. Judgment in small-value claims proceedings

According to Article 477, paragraph 1 of the CPL (2011), the judgment in small-value claims litigations is pronounced immediately after the conclusion of the main discussion. From this norm stems the duty of the court to pronounce its decisions, specifically by pronouncing the judgement reached in small-value claims litigations immediately after concluding the main discussion, making it impossible to postpone the rendering of the judgment. The court pronounces the judgment at a separate hearing dedicated to its pronouncement, which is done by informing the parties when the decision will be pronounced at the conclusion of the main discussion. During the pronouncement of the judgment, the court is obligated to read the original judgment and briefly state the reasons, as well as instruct the parties present about the conditions under which an appeal may be filed. The instruction regarding the conditions for filing an appeal is recorded in the minutes.

A copy of the judgment is delivered to the party who was not present at the pronouncement, while it is delivered to the party who was present only upon their request, which may be made no later than at the hearing at which the judgment is pronounced (Keča & Knežević, 2024, p. 407).

The content of the written judgment depends on whether it is a judgment by omission, or a judgment rendered based on the contradictory claims of

the parties. A written judgment rendered based on contradictory claims of the parties contains in its rationale the established factual situation, a citing of the evidence on which the facts were established, and the legal provisions on which the court based its decision (CPL (2011), Article 477, paragraph 3).[3] If the court rendered a judgment by omission, its rationale includes only procedural grounds justifying the issuance of the judgment and the reasons why the court considers the claim to be well-founded. Decisions that the court issues during the main discussion and against which an appeal is allowed are not delivered to the parties but are pronounced at the hearing and included in the written decision (Stanković & Boranijašević, 2023, p. 571).

2.4. Legal remedies in small-value claims litigations

In procedures in small-value claims litigations, the shortening of the duration of the procedure is particularly achieved with regard to legal remedies, resulting in certain deviations from the rules of general civil procedure. A decision (judgment or ruling) that concludes this type of procedure can be challenged within eight days, in accordance with the provision of Article 479, paragraph 3 of the CPL (2011). In procedures in small-value claims litigations, an eight-day deadline is prescribed for the period for the deadline for voluntary fulfilment of the obligation imposed on the defendant by the judgment, the deadline for submitting a proposal to supplement the judgment, as well as the deadline for filing a response to the appeal.

The deadline for filing an appeal is counted from the day the judgment or decision is pronounced, and if the judgment or decision is delivered to the party, the deadline is counted from the day of delivery. The defendant may respond to the appeal within the same deadline.

In these proceedings, a party has the right to a special appeal only against a ruling which concludes the procedure (for example, decisions declaring the court incompetent, decisions dismissing the lawsuit, or decisions rejecting the appeal). Other rulings, against which a special appeal is allowed under the CPL (2011), can only be challenged by an appeal against the decision that concludes the procedure. These decisions are not delivered to the parties but are announced at the hearing and entered into the written record of the decision. Procedural literature notes that this legislative stance is not fully justified, and that a special appeal should have been allowed that determines the suspension of the procedure when the court decides not to resolve

[3] See, e.g. Presudu Trgovinskog apelacionog suda [The judgment of the Commercial Appellate Court]. Pž. 1828/2013 od 13 marta, 2014. godine.

a preliminary matter itself (Poznić & Rakić Vodinelić, 2015, p. 541). It is also pointed out that the occurrence of procedure suspensions in these cases has become frequent precisely after the limitation of appeal rights only to decisions which conclude the procedure, which compromises the need for these proceedings to be resolved quickly, especially because some procedural stages and guarantees of factual accuracy that apply in general proceedings are missing (Poznić & Rakić Vodinelić, 2015, p. 541).

A party in small-value claims litigations may refute a judgment due to absolutely relevant violations of civil procedure rules and due to misuse of substantive law (CPL, Article 479, paragraph 1). It follows that judgments and rulings in this procedure cannot be refuted on appeal for relatively significant violations of civil procedure rules, nor for incorrectly or incompletely established factual situation. The exclusion of incorrectly or incompletely established factual situation as grounds for appeal means that a party cannot even dispute the accuracy of the evaluation of evidence (Poznić, 2009, p. 1085). Furthermore, new facts or new evidence cannot be introduced in the appeal, which represents a difference compared to the general civil procedure rules, where parties may present new facts and propose new evidence on appeal if they make it probable that, without their fault, they could not have presented them before the conclusion of the main discussion in the first-instance procedure. If reasons are presented in the appeal for which an appeal cannot be filed, the court will dismiss the appeal as inadmissible.

The reduction of procedural guarantees in favour of swiftness of the procedure in small-value claims litigations eliminates the possibility of factual review of the first-instance judgment by the appellate court, meaning this court is not authorized to examine the accuracy of the established factual situation, nor can it annul the first-instance judgment and return the case for retrial due to incorrectly or incompletely established factual situation. This legislative solution has been criticized as unconstitutional (Article 32, paragraph 1 in connection with Article 36, paragraph 2 of the Constitution of the Republic of Serbia (2006)) because it limits the control of the correctness and legality of the first-instance decision and limits the right to a legal remedy (Knežević, 2012, pp. 393–397).

Moreover, in this type of proceeding, no hearing is held before the court of second instance, as that court is obliged to base its decision on the factual situation established in the first-instance proceedings, even if it identifies certain deficiencies.

The decision of the appellate court in small-value claims litigations is not subject to refuting by revision. Article 479, paragraph 6 of the CPL (2011) stipulates that revision is not permitted against the decision of the court of

second instance deciding in small-value claims litigations, neither ordinarily nor exceptionally.[4]

Other extraordinary legal remedies against a final judgment of the court of second instance in small-value claims litigations have not been explicitly regulated by the legislator. Since no special limitation is prescribed, a request for review of a final judgment can be submitted by the Supreme Public Prosecutor if they consider that the law has been violated by that judgment to the detriment of the public interest. A repeated trial may be requested against the second-instance judgment in small-value claims litigations, and this extraordinary legal remedy may be invoked for any reasons provided for in the general civil procedure and according to the general rules of civil procedure which are applied subsidiarily.

3. Conclusion

Small-value claims are resolved in litigation according to specific procedural rules prescribed by the CPL (2011). In this procedure, which has the character of an abbreviated, summary procedure, deviations from the general civil procedure are prescribed. Namely, with the aim of speedy and efficient dispute resolution, this special procedure is simplified, and the simplification is reflected in the reduction of certain procedural actions or the execution of others in a shortened form. Although this procedure contains some procedural specificities, which appear significant and are further explained in this paper, it shares with other specific civil procedures the common characteristic of incompleteness, which makes the application of the general civil procedure rules still a necessary aspect for its functioning. The provisions regulating it take precedence over the rules of the general civil procedure, thereby confirming its nature as *lex specialis*.

The specificity of the procedure in small-value claims litigations reflects in the fact that the lawsuit is not served to the defendant for an answer, no preliminary hearing is held, and all facts and evidence must be presented by the parties before the conclusion of the first main discussion hearing. In case of the plaintiff's absence from the hearing, a fiction of withdrawal of the lawsuit occurs, while in the case of the defendant's absence, the court, if all conditions are met, may issue a judgment by omission accepting the plaintiff's claim. The

[4] See, for example, Odluku Vrhovnog kasacionog suda [The decision of the Supreme Court of Cassation], Rev 2311/2022 od 24 marta 2022 i Odluku Vrhovnog suda [The decision of the Supreme Court], Rev. 10206/2024 od 28 maja, 2024. godine.

procedure's specificity is also reflected in the special instruction, or warning, contained in the summons for the first hearing of the main trial, as well as in the concise trial minutes, which are drawn up only to the strictly necessary extent. Another particularity is reflected in the judgment rendered in these proceedings, as it is pronounced immediately upon the conclusion of the main discussion. Besides a judgment by omission, the court may also render a judgment based on the contradictory claims of the parties, and such a written judgment contains in its rationale the established factual situation, the citing of the evidence on which it was based, and the legal provisions on which the court based its judgement. The specificity of the procedure in small-value claims litigations regarding legal remedies is reflected in the fact that a special appeal is allowed only against rulings that conclude the procedure; the deadline for an appeal is eight days; the grounds for appeal are reduced – the decision in small-value claims litigations (judgment or ruling) may be challenged only due to absolutely relevant violations of civil procedure and misuse of substantive law; parties cannot present novelties in the second-instance procedure; the court of second-instance cannot annul the decision and return the case to the first-instance court for retrial if it doubts the accuracy of the factual situation; revision against the decision of the court of second-instance is not permitted.

Conflict of Interest

The author declares no conflict of interest.

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SPECIFIČNOSTI POSTUPKA U PARNICAMA O SPOROVIMA MALE VREDNOSTI

APSTRAKT: U radu su analizirana specifična rešenja Zakona o parničnom postupku koja se odnose na procesna pravila u postupcima koji se vode u parnicama o sporovima male vrednosti. Usled normativnog redefinisanja

i proširenja pojma "parnice o sporovima male vrednosti", sudovi opšte nadležnosti u praksi najčešće postupaju prema pravilima koja se primenjuju upravo u ovom posebnom postupku. U parnicama o sporovima male vrednosti pravo na pravnu zaštitu se ne ostvaruje kroz standardni (potpuni) kognicioni postupak, već kroz posebna pravila čiji je cilj da ovi postupci budu efikasno i ekonomično okončani. Imajući u vidu ograničenja u obimu rada, predmet analize je usmeren upravo na specifičnosti koje karakterišu ovaj postupak, što je ujedno determinisalo i sadržinu rada.

Ključne reči: *parnični postupak, postupak u parnicama o sporovima male vrednosti, specifičnost posebnog postupka.*

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Conceptualization, G.E.D., S.E.G., and T.E.C.; methodology, G.E.D.; software, S.E.G.; formal analysis, G.E.D. and S.E.G.; writing - original draft preparation, G.E.D. and S.E.G.; writing -review and editing, T.E.C. and S.E.G. All authors have read and agreed to the published version of the manuscript.

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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).

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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.
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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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