UDK 34

ISSN (Štampano izd.) 0352-3713
ISSN (Online) 2683-5711

PRAVO

teorija i praksa

4 / 2025

- The evidentiary measure of temporary seizure of objects
- Criminal profiling
- The right to health and artificial intelligence
- Discrimination in employment and recruitment
- Property relations between partners
- The reign of Emperor Diocletian
- Enforcement procedure
- Sentencing juvenile imprisonment
- Copyright on the internet
- Institute of property rights
- Privatization concept in Serbia
- Cyberbullying
- An analysis of temporary and subsidiary protection
- Reciprocity in the private international law
- COP29 outcomes and perspectives
- Formation of cooperative capital

PRAVO
teorija i praksa

Godina XLII **Novi Sad, 2025.** **Br. 4**

IZDAVAČ/PUBLISHER:
PRAVNI FAKULTET ZA PRIVREDU
I PRAVOSUĐE U NOVOM SADU
UNIVERZITET PRIVREDNA AKADEMIJA
Geri Karolja 1, 21000 Novi Sad
Tel.: 021/400-484, lokal 109; 021/400-499

SUIZDAVAČ/CO-PUBLISHER:
„PRAVO“ DOO
Novi Sad, Geri Karolja 1
21000 Novi Sad

Tehnička realizacija i štampa/Technical realization and print:
Feljton, Novi Sad

LAW
Theory and Practice

Year XLII **Novi Sad, 2025** **No. 4**

CIP – Katalogizacija u publikaciji
Biblioteka Matice srpske, Novi Sad

34

PRAVO : teorija i praksa = Law: Theory and Practice / glavni urednik Jelena Matijašević; odgovorni urednik Snežana Lakićević. – God. 1, br. 1 (1984)– . – Novi Sad : Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe u Novom Sadu : „Pravo" doo, 1984–. – 24 cm

Tromesečno.

ISSN 0352-3713

COBISS.SR-ID 5442050

LAW – Theory and Practice
Year XLII Novi Sad, 2025 No. 4

C O N T E N T S

PRAVO – teorija i praksa
Godina XLII **Novi Sad, 2025.** **Br. 4**

S A D R Ž A J

Koprivica Anja*
https://orcid.org/0000-0001-6188-5605
Matijašević Jelena**
https://orcid.org/0000-0001-8068-0816

UDC: 343.272:343.13
Original scientific paper
DOI: 10.5937/ptp2504001K
Received on: October 27, 2025
Approved for publication on:
November 11, 2025
Pages: 1–17

COMPARATIVE LEGAL REVIEW OF STATUTORY PROVISIONS ON THE EVIDENTIARY MEASURE OF TEMPORARY SEIZURE OF OBJECTS

ABSTRACT: Temporary seizure of objects represents an evidentiary measure in modern criminal procedural law, aimed at securing items that may be of significance for proving facts in criminal proceedings. This evidentiary measure is prescribed by the Criminal Procedure Code of the Republic of Serbia. Its specific characteristic lies in the fact that it may be undertaken independently or within the execution of other evidentiary measures-most commonly during on-site inspections and searches-when items are also temporarily seized. This evidentiary measure holds an important place in ensuring the principles of a fair and efficient criminal procedure, as it enables the collection and preservation of material evidence essential for establishing facts in the course of criminal proceedings. The validity of this procedural action must be accompanied by a certificate of the temporarily seized items, which is issued to the person from whom the items are taken and represents its formal element. It is also of particular importance that the seized items be individually listed and described, both in the certificate and in the official record of the evidentiary action, which is prepared by the authorized officials during its execution. This paper

* LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: anja.koprivica@pravni-fakultet.info
** LLD, Full Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: jelena@pravni-fakultet.info

analyzes the evidentiary measure of temporary seizure of objects within the criminal procedural law of the Republic of Serbia, with the aim of emphasizing its significance. In addition, through a comparative review of legal solutions in Austria, the Federal Republic of Germany, and the Russian Federation, the paper examines different approaches to regulating this measure. The analysis includes the conditions and procedures for its application, the legal position of the person from whom the objects are seized, as well as the process of returning temporarily seized items.

Keywords: *temporary seizure of objects, evidentiary measures, criminal procedure, comparative law, material evidence.*

1. Introduction

The institute of evidence and the process of evidentiary assessment in criminal proceedings are of indispensable importance for achieving the purpose of the criminal procedure, which can be fulfilled only through establishing the facts of the criminal matter. Evidence plays a particularly significant role in criminal proceedings, given that the state imposes repressive measures on the perpetrators of criminal offenses. For this reason, evidentiary actions, as well as special evidentiary actions (Matijašević & Zarubica, 2020) serve as a "tool" through which the truth is uncovered in criminal proceedings, and their implementation by criminal procedure subjects must be carried out lawfully, in accordance with the committed criminal offense and with the circumstances existing at a given moment.

In the theory of criminal procedural law, numerous classifications of evidence exist, and the most important among them is the one concerning the manner in which evidence is collected-that is, the material information through which we learn about a disputed fact, or, in other words, about the subject of proof. Thus, the search of a dwelling and of a person constitutes an important evidentiary action that belongs to the category of actions aimed at collecting evidence. Within this same group falls the evidentiary measure of the temporary seizure of objects (Matijašević & Koprivica, 2024, p. 456). According to Škulić (2013), these actions "do not produce evidence, but only provide it, and only then in the criminal procedure itself, i.e. in its later stages, are they produced. For example, during the search of an apartment, items that have evidentiary value can be found, and they can be temporarily confiscated, and the production of such evidence will occur when the court in the criminal procedure gains insight into them, and based on this, obtains appropriate evidentiary conclusions" (p. 260).

The temporary seizure of objects, as a regular evidentiary measure, is regulated by the Criminal Procedure Code (hereinafter: the CPC), in Articles 147 to 151. As indicated by the very name of the measure, this is an action by which objects that must be seized from a person, or that may serve as evidence in criminal proceedings, are temporarily taken away.

In criminal law, there are various methods and grounds for the seizure of objects. An overview of the statutory provisions in our legal system shows that several different laws authorize state authorities to seize objects from individuals when the conditions prescribed by law are met. Some of these laws include the Criminal Code (2005), the Criminal Procedure Code (2011), the Police Act (2016), the Misdemeanors Act (2013), and the Weapons and Ammunition Act (2015).

In the introductory part, it should be noted that what is common to all these actions is that, in every measure of temporary seizure of objects, the human rights of the persons from whom the objects are taken are significantly affected. First and foremost, this concerns the right to property prescribed by the Constitution of the Republic of Serbia, which "guarantees the peaceful enjoyment of property and other property rights acquired in accordance with the law; however, the manner of using property may be restricted by law" (Constitution of the Republic of Serbia, 2006, Article 58, paragraphs 1 and 3). Additionally, under Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, "every natural and legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law" (Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 2003, Protocol No. 1, Article 1).

Thus, the restriction of this right is permitted only in situations prescribed by law, that is, when necessary for the protection of security and the public interest. It should be pointed out that the protection of the dignity and integrity of each individual "is achieved through the entire catalog of human rights, where one of the fundamental rights is the right to privacy" (Mladenov, 2013, p. 575), and that the right to respect the privacy of citizens "belongs to the basic human rights, the respect of which is required by the civilizational standards of the modern age" (Knežević, 2007, p. 204).

The Criminal Procedure Code, through its provisions, regulates the evidentiary measure of the temporary seizure of objects by first prescribing the basic rule that determines which objects are to be seized, and then by regulating

the duty of the holder of the objects, the exemptions from the duty to surrender objects, the procedure for temporary seizure, as well as the return of temporarily seized items. Temporary seizure of objects often appears as part of evidentiary actions such as searches and crime-scene inspections, since these measures are undertaken in the earliest stages of the proceedings, when collecting material evidence, most often in the form of seized items, is of crucial importance.

The following section of this paper will analyze the evidentiary action of temporary seizure of objects within the criminal procedure legislation of the Republic of Serbia, and will subsequently outline the regulation of this measure in the legal systems of Austria, the Federal Republic of Germany, and the Russian Federation.

2. Temporary Seizure of Objects in the Legislation of the Republic of Serbia

As already stated in the introduction, the temporary seizure of objects is an evidentiary action that belongs to the category of actions used to gather evidence. This action can be performed simultaneously with the search of a dwelling and of a person or with the investigation of things, and it can also be performed as an independent procedural action (Matijašević, 2024, p. 396).

The evidentiary measure of temporary seizure of objects is undertaken when a person is in possession of "objects which, under the Criminal Code, must be seized or which may serve as evidence in criminal proceedings; the procedural authority shall temporarily seize such objects and ensure their safekeeping" (Criminal Procedure Code, 2011, Article 147, paragraph 1). Primarily, this refers to objects that were used or intended to be used in the commission of a criminal offense (*instrumenta sceleris*), as well as objects that have resulted from the commission of the criminal offense (*producta sceleris*) (Ilić, Majić, Beljanski & Trešnjev, 2022, p. 486). In another situation, the CPC provides that all other objects that may serve as evidence in criminal proceedings shall also be temporarily seized.

Therefore, this evidentiary action is of the utmost importance in the stage of evidence collection, where the further course of the proceedings may depend on a temporarily seized object that can serve as evidence. The legislator provides a broad definition regarding the objects that may be temporarily seized and does not specify them exhaustively, unlike certain comparative legal systems. It only stipulates that such objects also include devices for automatic data processing, as well as devices and equipment on which electronic records are stored or may be stored.

The temporary seizure of objects is ordered by the procedural authority (the court, the public prosecutor, or the police), depending on the stage of the proceedings in which the need for seizure arises, except in situations involving the temporary seizure of assets that are the subject of a suspicious transaction.[1] When it comes to the undertaking of this evidentiary measure, the legislator does not specify the required degree of suspicion necessary for its application. However, the prevailing view is that the standard is probability, since this is the threshold required for conducting a search, from which the temporary seizure of objects may subsequently result (Plavšić, 2011, p. 528).

The duty of the person holding the objects is prescribed in Article 148 of the CPC and consists of enabling the procedural authorities to access the objects, providing the information necessary for their use, and surrendering the objects upon request of the authority. Before seizing the objects, the procedural authority shall examine them with the assistance of an expert if needed. A person who refuses to fulfill these duties may be fined by the public prosecutor or the court with a monetary penalty of up to 150,000 dinars, and if the person continues to refuse to comply, the same fine may be imposed once again.

Furthermore, Article 149 of the CPC specifies which persons are exempt from the duty to surrender objects. These are the following categories: 1) the defendant (which is justified, since otherwise it would constitute *self-incrimination*); 2) persons who, under the CPC, are exempt from the duty to testify, and in relation to this evidentiary measure, these include: "(1) a person who, by giving testimony, would violate the duty to protect classified information, unless the competent authority or the public official responsible for that information lifts the confidentiality or releases the person from this duty; (2) a person who, by giving testimony, would violate the duty to maintain professional secrecy (a religious confessor, attorney, physician, midwife, etc.), unless released from this duty by a special regulation or by the person for whose benefit the duty of secrecy has been established" (Criminal Procedure Code, 2011, Article 93, paragraphs 1 and 2). So, according to Bejatović et al, (2013), "there are persons who are exempt from the duty to issue cases. Due to the right to non-self-incrimination, the defendant was first released from that duty. Thus, the right to non-self-incrimination, in addition to giving a statement, has been extended to the issuance of cases that may contain information that incriminates the defendant. Persons who, through

[1] The decision on the temporary seizure of assets that are the subject of a suspicious transaction (Article 145) and their placement in a special account for safekeeping is rendered by the court.

their testimony, would reveal secret information or professional secrets are exempted from the duty to issue the case. However, when it comes to this second category of persons, the court may, at the proposal of the defendant or his defense counsel, make a decision to hand over items that can be temporarily confiscated" (p. 90).

What is particularly important, and what serves as material evidence that the measure has been carried out and that the items have been temporarily seized, is the confirmation of temporary seizure of objects that is issued to the person from whom the items were taken. The confirmation must contain a list of the seized items, the place where they were found, and, if necessary, a description of the items. It must also include information about where the item was discovered, as well as the title and signature of the person conducting the measure.

In addition, all details concerning the execution of this evidentiary measure must be entered into the record. The record of the temporary seizure of objects may be drafted as a separate document, or the relevant information may be incorporated into another official record documenting the performance of a different evidentiary action-such as the record of a search, of which the seizure of objects constitutes an integral part (Škulić & Bugarski, 2015, p. 306).

The CPC also provides that documents may be temporarily seized. When documents that may serve as evidence are taken, they shall first be described, and if this is not possible, they shall be placed in an envelope and sealed; the owner is permitted to place their own seal on the envelope as well. "The person from whom the documents were seized shall be invited to be present when the envelope is opened. If the person does not respond to the invitation or is absent, the procedural authority shall open the envelope, examine the documents, and compile an inventory of them. During the examination of the documents, care must be taken to ensure that their contents are not disclosed to unauthorized persons" (Criminal Procedure Code, 2011, Article 150, paragraph 3).

Given that this evidentiary measure concerns the *temporary* seizure of objects, which differs from the security measure of the permanent confiscation of objects, it follows that these items must be returned to their holder after a certain period of time (which the CPC does not specify). Temporarily seized objects shall be returned to their holder once the reasons for their seizure cease to exist, provided that they are not objects that must be permanently confiscated.

Situations in which permanent confiscation of objects is permitted are prescribed by the CPC. Specifically, these are objects "whose confiscation

is required under criminal law for the protection of the interests of public safety or for reasons of morality" (Criminal Procedure Code, 2011, Article 535, paragraph 1). "Objects whose confiscation is required for reasons of public safety are those that are dangerous and therefore are not ordinarily in free circulation, and whose use may endanger the life and bodily integrity of individuals or the security of their property (explosives, poisons, weapons)" (Jovašević, 2016, p. 79).

Furthermore, regarding the return of objects, if the criminal proceedings are "concluded with a conviction or with the security measure of compulsory psychiatric treatment, permanent confiscation of objects may also be imposed on the basis of the security measure of confiscation of objects. Conversely, if the criminal proceedings are concluded with an acquittal, a judgment dismissing the charges, or a decision to discontinue the criminal proceedings, the objects shall be returned to their holder, unless there are legal grounds for their permanent confiscation" (Knežević, 2023, p. 364).

Since the law does not prescribe a minimum or maximum time frame during which objects may remain temporarily seized from a person, it is entirely justified that a seized object may become necessary to its holder; in such a case, the object may be returned even before the reasons for its seizure cease to exist, with the obligation that the holder produce it upon the request of the procedural authority.

Thus, the final disposition of temporarily seized objects depends on the reasons for which they were seized, as well as on the necessity of the holder's need for the object (Bejatović, 2016, p. 348). The public prosecutor and the court are obligated, ex officio, to monitor whether the reasons for temporary seizure continue to exist.

3. Temporary Seizure of Objects in the Legislation of Selected European States

Austria

The Austrian Code of Criminal Procedure, in its main part, in Chapter Eight titled *"Investigative Measures and Taking of Evidence"* (*Hauptstück – Ermittlungsmaßnahmen und Beweisaufnahme*), provides for the measure of seizing certain objects, which is regulated within the evidentiary action of search.

This procedural action begins with a request to the person to voluntarily hand over the requested item, with a mandatory explanation of the reasons for such a

request. This requirement may be waived only in cases of imminent danger, and the use of physical force is not permitted. If, during the search, items are found that indicate the commission of another criminal offense (different from the one for which the search is being conducted), such items are separated and secured, and a separate record is made. The discovered items, along with the indication of the place where they were found and their description, are immediately reported to the public prosecutor (Strafprozessordnung, 1975, §121 para. 2).

The next investigative measure prescribed in Paragraph 135, which relates to the seizure of objects, is titled: "Seizure of letters, disclosure of basic and access data, disclosure of data on the transmission of messages, localization of a technical device, event-related data retention, and surveillance of messages" – (*Beschlagnahme von Briefen, Auskunft über Stamm- und Zugangsdaten, Auskunft über Daten einer Nachrichtenübermittlung, Lokalisierung einer technischen Einrichtung, Anlassdatenspeicherung und Überwachung von Nachrichten*).

The seizure of correspondence is permitted if it is necessary for investigating an intentionally committed criminal offense punishable by more than one year of imprisonment. Additionally, the seizure of basic identification data, access data, or data on the transmission of messages is allowed if it is assessed as strictly necessary for clarifying a specific suspicion regarding the commission of a criminal offense in the following cases[2]: 1) if and as long as there is strong suspicion that the person to whom the information relates has abducted another person, provided that the information is limited to data from such a communication that can reasonably be assumed to have been transmitted, received, or sent by the accused at the moment of the deprivation of liberty; 2) if it is expected that the investigation of an intentionally committed criminal offence punishable by imprisonment of more than six months may be facilitated, and the owner of the technical device that was or will be the origin or destination of the message transmission expressly consents to the

[2] "Information on basic identification data" – *Ziffer eins a* (Auskunft über Stammdaten) refers to the provision of information on basic identification data in accordance with the Telecommunications Act and the E-Commerce Act. "Information on access data" – *Ziffer eins b* (Auskunft über Zugangsdaten) refers to the provision of the following access data of the owner of the affected technical device: a) the name, address, and user ID of the user to whom a public IP address was assigned at a specific time, with an indication of the relevant time zone, unless the assignment covers a large number of users; b) the user ID assigned to the user when using e-mail services; c) the name and address of the user to whom an e-mail address was assigned at a specific time; and d) the e-mail address and public IP address of the sender of an e-mail."Information on data relating to message transmission" – (Auskunft über Daten einer Nachrichtenübermittlung) refers to the provision of information on traffic data, access data, and location data for a telecommunications service or an information society service.

disclosure of such information; 3) if it is expected that the investigation of an intentionally committed criminal offence punishable by imprisonment of more than one year may be facilitated, and on the basis of certain facts it may be presumed that such information will enable the identification of the accused person; and 4) if, on the basis of certain facts, it may be expected that the whereabouts can be determined of an accused person who is fleeing or absent, and against whom there is reasonable suspicion of having intentionally committed a criminal offence punishable by imprisonment exceeding one year (Martinović & Parenta, 2021, pp. 376–396).

In the aforementioned cases, the following measures are also permitted: 1) the localization of a technical device; 2) the storage of event data, if deemed necessary due to the initial suspicion in order to secure the enforcement of a court order; and 3) the monitoring of communications[3]: a) provided that the owner of the technical device which has been or will be the point of origin or destination of message transmission consents to such monitoring, b) if it appears necessary for the investigation of an intentionally committed criminal offense punishable by imprisonment of more than one year, c) if the investigation or prevention of criminal offenses that have been committed or are planned within a criminal or terrorist group or a criminal organization would otherwise be significantly hindered, or d) if, on the basis of certain facts, it may be assumed that the person for whom there is strong suspicion of having committed a criminal offense will use the technical device or establish contact with the accused.

Federal Republic of Germany

The Code of Criminal Procedure of the Federal Republic of Germany, in Book One, Chapter Eight, titled "Investigative Measures" – *Ermittlungsmaßnahmen*, regulates the application of the measure of seizure of objects – *Beschlagnahme anderer Gegenstände*.

[3] "Localization of a technical device" – *Lokalisierung einer technischen Einrichtung* – refers to the use of technical means to determine geographic locations and the number used for the international identification of a user (IMSI), without the involvement of a service provider. "Event data retention" – *Anlassdatenspeicherung* – means refraining from deleting the obtained data, that is, retaining data that would otherwise be subject to deletion. "Monitoring of messages" – *Überwachung von Nachrichten* – refers to the monitoring of messages and information that a natural person sends, transmits, or receives via a communications network or an information society service.

Namely, if certain objects are found during a search, they are temporarily seized even if they are not related to the ongoing investigation, provided that they indicate the commission of another criminal offense, of any kind, and the public prosecutor must be informed thereof. An exception exists when objects relating to the termination of a woman's pregnancy are found at a doctor's office; in such cases, they may not be used as evidence in criminal proceedings against that patient for unlawful termination of pregnancy. The use of such temporarily seized objects is permitted only for the purpose of proving a criminal offense for which a minimum sentence of five years of imprisonment is prescribed (Strafprozeßordnung in der Fassung der Bekanntmachung, 1987, §108).

Next follows the identification of seized objects – *Kenntlichmachung beschlagnahmter Gegenstände*, regulated in Section 109. Objects that have been seized or confiscated must be precisely recorded and, in order to prevent any error, marked with official seals or in another appropriate manner. A special form of seizure is the "Examination of papers and electronic storage media." Officials are authorized to examine (inspect) the documents found only if their holder consents. Otherwise, documents that are considered necessary to examine are delivered to the public prosecutor in an envelope that is sealed with an official seal in the presence of the holder. The same method or procedure applies to the examination of electronic data storage media located on the premises of the person being searched. Naturally, such data must be relevant to the ongoing investigation, and they may also be seized (in addition to being inspected or temporarily secured).

German procedural law distinguishes three special forms of seizure of another person's property. These are: 1) temporary withdrawal of a driver's license; 2) seizure for the purpose of securing confiscation or rendering an object unusable; and 3) execution of confiscation (this measure involves taking another person's movable property by placing it under safekeeping). Seizure may also be carried out simply by marking the object with an official seal or in another suitable manner. A corresponding procedure applies to the seizure of a ship, ship structure, or aircraft (of any type). The procedure for carrying out seizure and confiscation of property is precisely regulated, so the seizure or confiscation of property is executed by the public prosecutor, or by investigators or a judicial enforcement officer upon the prosecutor's request. The Code of Criminal Procedure prescribes the duty of the public prosecutor to notify the person entitled to recover the property or to receive compensation for its value about the execution of the seizure or confiscation measure. The management of seized or confiscated items is also precisely regulated. The public prosecutor is responsible for further handling of the

seized objects, although investigators or judicial enforcement officers may be engaged to assist. Only exceptionally may another person be appointed to manage such items (or property). The release of movable property represents a statutory solution under which a seized or otherwise secured movable object is returned to its owner or holder if it is no longer needed for the successful conduct of the criminal proceedings (Strafprozeßordnung in der Fassung der Bekanntmachung, 1987, §111).

A specific provision is regulated as an "emergency sale," which governs the sale of a seized or confiscated item when there is a risk of its deterioration or significant loss of value, or when its storage, maintenance, or preservation would entail substantial costs. An emergency sale is ordered by the public prosecutor, while investigators are authorized to carry out the sale only if there is an imminent danger of damage (deterioration) to the item before the prosecutor's decision is issued. Before ordering the sale, the public prosecutor must hear the persons whose property is concerned. In all cases, the time and place of the sale must be publicly announced. The public prosecutor is responsible for conducting the public emergency sale of the seized item (Hannich, 2019, p. 170).

Russian Federation

The Criminal Procedure Code of the Russian Federation, in Chapter Twenty-Five titled "Search – Обыск," provides for the measure of seizure of objects and documents (Article 183 – *Основания и порядок производства выемки*. This provision stipulates that individual items and documents may be seized if they are relevant to the criminal proceedings, provided that the location of the items and the person in whose possession they are found is known (Пикалов, 2008, pp. 117–121).

The seizure of items and documents containing state or other secrets protected by federal law, items and documents containing information on citizens' deposits and accounts in banks and other financial institutions, as well as objects that are pledged or deposited in a pawnshop, is carried out on the basis of a court decision. Before initiating their seizure, the investigator requests the voluntary surrender of the items and documents subject to seizure. If the person refuses to hand them over voluntarily, the seizure is carried out by force. However, when the seizure concerns an item that has been pledged or deposited in a pawnshop, the borrower or depositor must be notified within three days so that the item may be surrendered voluntarily (Резник, 2025, pp. 225–231).

A special form of item seizure is the measure of seizing postal and telegraph shipments — *Наложение ареста на почтово-телеграфные отправления*. If there are sufficient grounds to believe that parcels, shipments, or other postal and telegraph messages, including telegrams or radiograms, may contain items, documents, or information relevant to the criminal proceedings, they may be seized. In such cases, the seizure of postal and telegraph shipments, their inspection, and confiscation in communication facilities is carried out on the basis of a court decision issued in the course of the criminal proceedings (Уголовно-процессуальный кодекс Российской Федерации, 2001, Article 185).

If the court issues a decision on the seizure of postal and telegraph items, a copy of the court order is delivered to the competent state communications authority, instructing it to retain the postal and telegraph items and to immediately notify the investigator. After that, the investigator conducts the inspection, seizure, and copying of the retained postal and telegraph messages at the competent communications authority. If necessary, the investigator has the right to invite an expert and an interpreter to participate in the inspection and seizure of postal and telegraph items. A record is made for each inspection of postal and telegraph items, indicating which person inspected, copied, forwarded to the recipient, or retained which postal and telegraph items.

The application of this measure is terminated when the investigator receives a court decision stating that it is no longer necessary, but no later than the completion of the preliminary investigation in the specific criminal case. If there is sufficient reason to believe that data relevant to the criminal proceedings may be found in electronic messages or other communications transmitted through information and telecommunication networks, the investigator may, on the basis of a previously issued court decision, carry out their inspection and seizure.

4. Conclusion

The temporary seizure of objects as an evidentiary action holds an important place in modern criminal procedure law, as it enables the preservation of material evidence necessary for the proper and lawful establishment of facts in criminal proceedings. Its essence lies in temporarily depriving a person of possession of certain objects in order to protect the interests of criminal prosecution, while simultaneously respecting fundamental rights guaranteed by domestic and international regulations.

An analysis of the provisions of the Criminal Procedure Code of the Republic of Serbia shows that the legislature has thoroughly regulated the conditions and procedure for carrying out this evidentiary action, as well as the rights and obligations of the person from whom the object is seized. However, certain issues, such as the insufficiently precise definition of the degree of suspicion required for its application or the duration of the seizure, remain unresolved and require further normative clarification. Moreover, in contrast to the examined comparative legislation, it can be observed that the domestic legislature has broadly defined the scope of objects that may be temporarily seized, whereas comparative legal solutions provide more precise definitions.

A comparative overview of the legal provisions in Austria, the Federal Republic of Germany, and the Russian Federation shows that, although different approaches exist in regulating the temporary seizure of objects, the common goal is to ensure a balance between the efficiency of criminal proceedings and the protection of the participants' fundamental rights, with special focus on objects related to technical devices and communication. Additionally, these systems highlight the importance of judicial oversight and procedural guarantees, while Russian legislation emphasizes the formalized nature of the procedure and the necessity of a court decision in almost every case of compulsory seizure.

Considering all of the above, it may be concluded that the proper and lawful application of the evidentiary action of temporary seizure of objects is of essential importance, given that it concerns the removal of items that may serve as evidence in criminal proceedings, and on the basis of whose connection to the subject matter of the case the court may reach a decision. Further improvement and harmonization of this evidentiary action with European standards will contribute to more comprehensive protection of the rights of participants in the proceedings and to strengthening the rule of law in the Republic of Serbia.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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

Koprivica Anja
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Matijašević Jelena
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

UPOREDNOPRAVNI PREGLED ZAKONSKIH REŠENJA DOKAZNE RADNJE PRIVREMENO ODUZIMANJE PREDMETA

APSTRAKT: Privremeno oduzimanje predmeta predstavlja dokaznu radnju u savremenom krivičnom procesnom pravu, čiji je cilj obezbeđivanje predmeta koji mogu biti od značaja za dokazivanje u krivičnom postupku. Ova dokazna radnja propisna je u Zakoniku o krivičnom postupku Republike Srbije, a ono što je kod nje specifično jeste da se može preduzimati individualno, ili u okviru izvršenja nekih drugih dokaznih radnji, kao što su radnja uviđaja i radnja pretresanja, gde se i tom prilikom predmeti privremeno oduzimaju. Ova radnja zauzima značajno mesto u ostvarivanju principa pravičnog i efikasnog krivičnog postupka, jer se njome prikupljaju i obezbeđuju materijalni dokazi od važnosti za utvrđivanje činjenica u krivičnom postupku. Validaciju ove procesne radnje mora da prati potvrda o predmetima koji su privremeno oduzeti, a koja se daje licu od koga se predmet oduzima, što predstavlja njegov formalni element. Takođe, veoma je bitno oduzete predmete pojedinačno navesti i opisati ih, kako u potvrdi tako i u zapisniku o preduzimanju dokazne radnje koji se vodi prilikom njenog preduzimanja, a od strane ovlašćenih službenih lica. Ovaj rad se bavi analizom dokazne radnje privremenog oduzimanja predmeta u krivičnom procesnom pravu Republike Srbije, sa ciljem ukazivanja na njen značaj. Pored toga, cilj je da se kroz uporedni pregled rešenja u Austriji, Saveznoj Republici Nemačkoj i Ruskoj Federaciji sagledaju različiti pristupi regulisanju ove mere. Analiza obuhvata uslove i postupak njenog sprovođenja, pravni položaj lica od koga se predmet oduzima, kao i postupak povraćaja privremeno oduzetih predmeta.

Ključne reči: *privremeno oduzimanje predmeta, dokazne radnje, krivični postupak, uporedno pravo, materijalni dokazi.*

References

1. Bejatović, S., Škulić, M., Đurđić, V., Ilić, G., Čvorović, D., Milojević, D., Đorđević, D., Kiurski, J., Matić, M., Tintor, J., Subotić, D., Komlen Nikolić, L., Lazić, R., Nenadić, S., Trninić, V., & Plazinić, M. (2013). *Priručnik za javne tužioce za primenu novog Zakonika o krivičnom postupku* [*Handbook for public prosecutors for the implementation of the new Criminal Procedure Code*]. Beograd: Udruženje javnih tužilaca i zamenika javnih tužilaca Srbije
2. Bejatović, S. (2016). *Krivično procesno pravo* [*Criminal procedural law*]. Beograd: JP Službeni glasnik
3. Hannich, R. (2019). *Karlsruher Kommentar zur Strafprozessordnung* [*Karlsruhe Commentary on the Code of Criminal Procedure*]. 8. Auflage, München: C-H.Beck
4. Ilić, G., Majić, M., Beljanski, S., & Trešnjev, A. (2022). *Komentar Zakonika o krivičnom postupku* [*Commentary on the Criminal Procedure Code*]. Beograd: JP Službeni glasnik
5. Jovašević, D. (2016). Primena mere bezbednosti oduzimanja predmeta [Application of the security measure of confiscation of objects]. *Zbornik radova Pravnog fakulteta u Nišu*, *55*(72), pp. 77–91
6. Knežević, S. (2007). *Zaštita ljudskih prava okrivljenog u krivičnom postupku* [*Protection of the human rights of the defendant in criminal proceedings*]. Niš: Pravni fakultet, Centar za publikacije
7. Knežević, S. (2023). *Krivično procesno pravo – opšti deo* [*Criminal Procedural Law – General Part*]. Niš: Pravni fakultet Univerziteta u Nišu, Centar za publikacije
8. Krivični zakonik [Criminal Code]. *Službeni glasnik RS*, br. 85/05, 88/05 – ispr., 107/05 – ispr., 72/09, 111/09, 121/12, 104/13, 108/14, 94/16, 35/19 i 94/24
9. Martinović, I., & Parenta, I. (2021). Privremeno oduzimanje predmeta kao policijska ovlast i dokazna radnja – nedorečena zakonska rješenja u kontekstu ustavnih i europskih standarda [Temporary Seizure of Objects as a Police Power and an Evidentiary Measure – Incomplete Legal Provisions in the Context of Constitutional and European Standards]. *Policija i sigurnost*, *30*(3), pp. 376–396

10. Matijašević, J., & Koprivica, A. (2024). Dokazna radnja pretresanja u krivičnoprocesnom zakonodavstvu Republike Srbije [The Evidentiary Measure of Search in the Criminal Procedure Legislation of the Republic of Serbia]. In: Počuča, M. (ured.), *Odgovori pravne nauke na izazove savremenog društva* [*Answers of legal science to the challenges of modern society*] (pp. 455–470). Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu
11. Matijašević, J. (2024). *Krivično procesno pravo, opšti deo – drugo izmenjeno i dopunjeno izdanje* [*Criminal Procedure Law, General Part – Second Revised Edition*]. Novi Sad: Pravni fakultet za privredu i pravosuđe
12. Matijašević, J., & Zarubica, S. (2020). The types and conditions of the application of Special Evidentiary Procedures and preventive security measures employed by security agencies. *Pravo – teorija i praksa*, *37*(4), pp. 26–41
13. Mladenov, M. (2013). Zaštita prava na privatnost u praksi Evropskog suda za ljudska prava [Protection of the right to privacy in the practice of the European Court of Human Rights]. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *47*(3), pp. 575–593
14. Plavšić, B. (2011). *Komentar Zakona o kaznenom postupku* [*Commentary on the Criminal Procedure Act*]. Rijeka: Dušević & Kršovnik d.o.o.
15. Škulić, M. (2013). *Krivično procesno pravo* [*Criminal procedural law*]. Beograd: Pravni fakultet Univerziteta u Beogradu
16. Škulić, M., & Bugarski, T. (2015). *Krivično procesno pravo* [*Criminal procedural law*]. Novi Sad: Pravni fakultet Univerziteta u Novom Sadu, Centar za izdavačku delatnost,
17. Strafprozeßordnung [Criminal Procedure Code]. 1975 (StPO) – BGBl. Nr. 631/1975, BGBl. Nr. 403/1977, BGBl. Nr. 169/1978, BGBl. Nr. 529/1979, BGBl. Nr. 28/1980, BGBl. Nr. 201/1982, BGBl. Nr. 205/1982, BGBl. Nr. 168/1983, BGBl. Nr. 295/1985, BGBl. Nr. 556/1985, BGBl. Nr. 164/1986……., BGBl. I Nr. 14/2020, BGBl. I Nr. 16/2020, BGBl. I Nr. 20/2020, BGBl. I Nr. 24/2020, BGBl. I Nr. 148/2020, BGBl. I Nr. 159/2021, BGBl. I Nr. 190/2021, BGBl. I Nr. 243/2021, BGBl. I Nr. 152/2022, BGBl. I Nr. 223/2022, BGBl. I Nr. 1/2023, BGBl. I Nr. 135/2023, BGBl. I Nr. 165/2023, BGBl. I Nr. 182/2023, BGBl. I Nr. 34/2024, BGBl. I Nr. 96/2024 i BGBl. I Nr. 157/2024
18. Strafprozeßordnung in der Fassung der Bekanntmachung [Criminal Procedure Code with amendments and supplements] vom 7. April 1987 (BGBl. I S. 1074, 1319), die zuletzt durch Artikel 2 Absatz 1 des Gesetzes

vom 7. November 2024 (BGBl. 2024 I Nr. 351) geändert worden ist" Stand: Neugefasst durch Bek. v. 7.4.1987 I 1074, 1319; zuletzt geändert durch Art. 2 Abs. 1 G v. 7.11.2024 I Nr. 351

19. Ustav Republike Srbije [Constitution of the Republic of Serbia]. *Službeni glasnik RS*, br. 98/06 i 115/21
20. Zakon o ratifikaciji Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda [Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms]. *Službeni list SCG – Međunarodni ugovori*, br. 9/03, 5/05 i 7/05 – ispr. i *Službeni glasnik RS – Međunarodni ugovori*, br. 12/10 i 10/15
21. Zakonik o krivičnom postupku [Criminal Procedure Code]. *Službeni glasnik RS*, br. 72/11, 101/11, 121/12, 32/13, 45/13, 55/14, 35/19, 27/21 – odluka US i 62/21 – odluka US
22. Zakon o policiji [Police Act]. *Službeni glasnik RS*, br. 6/16, 24/18 i 87/18
23. Zakon o prekršajima [Misdemeanors Act]. *Službeni glasnik RS*, br. 65/13, 13/16, 98/16 – odluka US, 91/19, 91/19 – dr. zakon i 112/22 – odluka US
24. Zakon o oružju i municiji [Weapons and Ammunition Act]. *Službeni glasnik RS*, br. 20/15, 10/19, 20/20 i 14/22
25. Пикалов, И. А. (2008). *Уголовно-процессуальное право Российской Федерации* [*Criminal Procedure Law of the Russian Federation*]. Москва: Юрлитинформ
26. Резник, Г. М. (2025). *Уголовно-процессуальное право Российской Федерации – Общая часть* [*Criminal Procedure Law of the Russian Federation – General Part*]. Москва: Издательство Юрайт
27. Уголовно-процессуальный кодекс Российской Федерации от [Criminal Procedure Code of the Russian Federation]. 18.12.2001…..,N 43-ФЗ, от 23.03.2024 N 64-ФЗ, от 06.04.2024 N 73-ФЗ, от 06.04.2024 N 79-ФЗ, от 22.04.2024 N 85-ФЗ, от 29.05.2024 N 109-ФЗ, от 29.05.2024 N 110-ФЗ, от 08.08.2024, N 267-ФЗ, от 02.10.2024, N 340-ФЗ от 25.10.2024, N 350-ФЗ, от 09.11.2024, N 383-ФЗ от 23.11.2024, N 406-ФЗ от 13.12.2024, N 467-ФЗ от 28.12.2024, N 507-ФЗ от 28.12.2024, N 510-ФЗ от 28.02.2025 i N 13-ФЗ от 20.03.2025

Bjelajac Željko[*]
https://orcid.org/0000-0003-4953-8779

UDC: 343.98:343.95/.971
Original scientific paper
DOI: 10.5937/ptp2504018B
Received on: October 30, 2025
Approved for publication on:
November 10, 2025
Pages: 18–41

MODUS OPERANDI AS AN ANALYTICAL TOOL IN CRIMINAL PROFILING

ABSTRACT: In contemporary criminology, *modus operandi* represents one of the key tools for understanding, reconstructing, and predicting criminal behavior. This paper examines *modus operandi* not only as a technical pattern of crime execution but also as an analytical instrument within the framework of criminal profiling. Special emphasis is placed on the principles and elements of modus operandi, its evolutionary nature, the analysis of *modus operandi* in investigative practice, the challenges of its application, and the relationship between *modus operandi* and the offender's motives. Through qualitative content analysis, case studies, and comparative methodology, the research identifies ways in which *modus operandi* is used to recognize behavioral patterns, connect multiple criminal acts, and narrow the circle of suspects. The paper also highlights practical challenges in applying *modus operandi*, including behavioral variability, deliberate deception of investigators, and emphasizes the distinction between the functional *modus operandi* and the offender's signature—a unique element that fulfills emotional and psychological needs. The results indicate that *modus operandi*, when properly interpreted, can have significant analytical and operational value in the process of criminal profiling. It is concluded that integrating *modus operandi* into forensic and investigative analysis is essential for a deeper understanding of crime dynamics, particularly in the context of serial offenses. At the same time,

[*]LLD, Full Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: zdjbjelajac@gmail.com

excessive reliance on *modus operandi* when analyzing crimes and creating offender profiles should be approached with caution due to the deceptive nature of criminal offenders.

Keywords: *criminal profiling, modus operandi, motive, signature.*

1. Introduction

Crime and criminality are words that are overused in everyday discourse. In both print and electronic media, these terms and their synonyms intrigue, attract, and/or repel people. The idealization of mobsters and the creation of criminal myths in popular imagination have been greatly reinforced by the film industry. Individuals often identify with mafia characters from cult films and TV series who leave behind piles of corpses and rivers of blood. Generations are thus unconsciously raised to develop a form of pathological empathy toward criminals, due to the lack of emotional intelligence and the neglect of the importance of understanding security culture (Bjelajac, 2023, p. 27). In this way, society unconsciously participates in the normalization of deviant patterns, further undermining collective resilience and the capacity to recognize and respond to security threats.

The question of how to penetrate the criminal mind has always aroused curiosity and fascination. When we look into the minds of criminals, we can observe characteristic patterns of antisocial behavior, deviant thoughts and actions, impulsivity, disloyalty, selfishness, and lack of empathy; we can thus understand and detect signs of criminal intent and use them in crime prevention. We may even dare to infer the risk factors that have led certain individuals into delinquency (Bjelajac, 2023, p. 19; Bjelajac, 2024a; Bjelajac, 2022). However, such insights require careful interpretation to avoid stereotyping and to ensure that the findings are used solely for the purposes of scientific understanding and the improvement of preventive strategies.

Out of the need to better understand the hidden motives and behavioral patterns underlying criminal acts, the concept of *criminal profiling* was developed (Bjelajac, 2024b; Bjelajac, 2024c; Bjelajac & Filipović, 2023). This is an interdisciplinary method that integrates psychological expertise, investigative experience, and analytical techniques based on statistical data, with the aim of constructing a psychological profile of an unidentified offender. The essential assumption of this approach is that by analyzing the *modus operandi* – the method of committing a crime – it is possible to reconstruct the offender's mindset, thereby increasing the likelihood of anticipating his future actions.

Criminal profiling represents an important link between forensic psychology and operational police work. In addition to analyzing behavioral patterns and traces left at the crime scene, profiling also involves evaluating the verbal and nonverbal communication of suspects, with particular attention to identifying indicators of deception. Experienced profilers apply knowledge from the fields of psycholinguistics, nonverbal analysis, and emotional dissonance to detect potential lies, inconsistencies in statements, and signs of hidden motives. This ability to interpret communication signals constitutes an important aspect of the psychological assessment of a suspect and can play a key role in directing the course of an investigation (Bjelajac & Banović, 2024). Thus, profiling transcends the mere interpretation of physical evidence and becomes a tool that connects psychological mechanisms with investigative practice, contributing to a more precise understanding of criminal behavior and more effective investigative decision-making.

Profiling, therefore, not only assists in identifying and apprehending offenders but also in understanding the social and individual factors that precede crime – thereby paving the way for more effective prevention strategies. The key indicators analyzed in the process of criminal profiling are the *modus operandi*, or the method of committing the crime, and the so-called *signature* – the psychological traces left by the perpetrator as expressions of his inner motives and needs.

Many of us have probably heard the terms *criminal signature* and *modus operandi* in the news or in detective stories. However, few people know that these two concepts are not the same. Although both describe criminal actions, each has its own unique characteristics. Every crime reflects a specific method of operation and the traits of the criminal who committed it (Chase, 2011). This distinction allows police investigators to more thoroughly analyze the behavioral patterns of offenders and to better understand their motives. In this way, differentiating between *modus operandi* and *criminal signature* not only helps in identifying suspects but also in linking separate crimes that may have been committed by the same perpetrator.

Modus operandi represents the practice or routine that criminals regularly use during the commission of a crime. Every offender has an individual *modus operandi*, which is expressed through specific habits, techniques, and behavioral patterns. These patterns may remain unchanged or evolve over time, depending on the offender's growing experience and skills (Chase, 2011). In such cases, forensic analysis provides crucial support to investigators in identifying the offender's behavioral characteristics.Through the analysis of physical evidence, it is possible to determine specific aspects of an offender's

behavior in each case (LawBirdie, 2024). For example, forensic analysis helps investigators recognize with high probability recurring behavioral patterns, such as the time of day most often chosen for committing the crime. Such details may indicate the offender's habits, as well as how he adapts his actions to favorable circumstances – for instance, choosing periods when detection is less likely due to poor lighting or fewer people in the area.

Modus operandi, which in Latin means *method of operation*, refers to the specific manner in which an individual acts, particularly in the context of criminal investigations. This term, often abbreviated as *modus operandi*, describes the characteristic pattern of behavior or actions that an offender uses to successfully commit a crime. Douglas and Olshaker (1998) define *modus operandi* as what the offender *must do* in order to carry out the crime.This term is used in police practice to describe how a crime was carried out and what actions the offender took during the act. Within criminal profiling, the *modus operandi* is analyzed to gain insight into the offender's thinking and strategies. The focus is on what the individual did to commit the crime, how they attempted to avoid detection, and the method they used to escape the scene. An offender's *modus operandi* can assist in identifying, apprehending, or neutralizing the suspect, and it may also be used to determine whether multiple crimes are connected.According to Keppel and colleagues (Keppel, Weis, Brown& Welch, 2005), the term *modus operandi* first appeared in 1654 in a work titled *Zootomia: Because of Their Causes or Their Mode of Operation*. However, it did not transition from describing animal behavior to explaining human behavior until the 19th century, when it began to appear in English utilitarian literature *(e.g., Mill's Logic)*. In the United States, the same expression was for some time used in *patent law* to describe the way new machines functioned (Modus Operandi, n.d.).

In the 1890s, detectives of *Scotland Yard* began maintaining archives on *modus operandi* in order to track the known behavior of criminals moving from one district to another. Over the years, the record-keeping method adopted by *Scotland Yard* became the *standard in police science*.The *modus operandi* record system sought to document the following key elements, according to the standards established by *Scotland Yard* (Fosdick, 1916): Category- the type of property targeted; Entry- the point or place of entry; Means- the tools or instruments used; Objective- the type of property stolen; Time- the time of day or any significant feature of the date; Style- whether the offender impersonated someone else to gain entry; Story- any statements the criminal made about themselves; Accomplices- whether the crime was committed with assistance; Transportation- how the offender moved or

traveled; Trademark- any unusual or distinctive behavior associated with the crime.

Criminologists have observed that regardless of the area of criminal activity – whether it involves burglary, car theft, pickpocketing, or armed robbery – experienced criminals often remain consistent in their specific method of operation. For example, a thief who begins his career by entering houses through windows will likely continue using this method for as long as possible. Some offenders become so attached to their habitual tactics that they return to the same locations or even target the same victims.This behavior stems from a sense of security, as they believe that adhering to a proven *modus operandi* reduces the risk of arrest (Bjelajac, 2025, pp. 252–253). Such persistence in using the same method reflects a psychological need for control and predictability in committing crimes. However, this very consistency can become a crucial weakness that investigators exploit to identify and apprehend offenders.

The concept of *modus operandi* found its place in both applied and theoretical works on criminology, such as *Principles of Criminology* (Sutherland, 1947), which provides the following definition: "*Modus operandi* is the principle suggesting that a criminal is likely to use the same technique repeatedly, and any analysis or record of that technique used in a serious crime may provide a means of identification in a particular case."This definition emphasizes that *modus operandi* is not merely a method of committing a crime but a *recognizable behavioral pattern* that can be detected and tracked over time. By analyzing these patterns, investigators can link cases that may initially appear unrelated and uncover serial offenders based on the similarities in their methods.

Law enforcement officers have historically analyzed crimes by examining offender behavior (Hazelwood & Warren, 2003, p. 588). Traditionally, all behaviors observed at a crime scene were grouped under the category of *modus operandi*. However, over time, behavioral analysts began identifying the *signature* aspects of criminal acts.According to Turvey (2008, pp. 310–311), the collection, storage, and analysis of a criminal's *modus operandi* have traditionally been relevant to investigations for the following reasons:

- *Linking unsolved cases* through similarities in *modus operandi*;
- *Identifying offenders* by comparing a known *modus operandi* with that recorded in unsolved cases;
- *Routine comparison* of the *modus operandi* of apprehended individuals with that documented in unsolved cases;

- *Developing investigative leads* or identifying perpetrators in unsolved cases through the accumulation of *modus operandi* information;
- *Prioritizing or eliminating suspects* based on behavioral consistency;
- *Solving previously unsolved cases*.

The manner in which a criminal acts, known as *modus operandi*, is not static – it evolves over time as the offender gains experience and learns to adapt to different circumstances. The concept of *modus operandi* became particularly significant toward the end of the 20th century. Researchers such as Bridges and Ressler pointed out that it is not an innate behavior, but a pattern developed through experience. Over time, the offender tests what works and what does not, continually adjusting their method of operation.The most noticeable changes usually appear in the phase of gaining entry to the crime scene. When new security measures are introduced, the offender alters their tactics to bypass them. The same occurs when investigators begin to link the offender's previous cases.Some offenders deliberately abandon their usual approach in order to mislead the police. They may change the type of victim, shift to a different ethnic group, or select a different location for the attack. By doing so, they attempt to conceal behavioral connections between crimes and extend the period during which they remain undetected.

The aim of this research is to examine the *modus operandi* from both theoretical and practical perspectives and to determine its relevance in contemporary criminal investigations. The focus is on understanding how the *modus operandi* develops through repeated behavioral patterns and on identifying the elements that make it recognizable in offender analysis. The study explores how these patterns are used in profiling and which functional characteristics enable their application in real investigative contexts. It also aims to identify and systematize the challenges and limitations encountered in its application under real investigative conditions – particularly when the *modus operandi* undergoes adaptation and evolution as a result of the offender's experience or deliberate tactics to evade detection. Furthermore, the research explores the relationship between *modus operandi* and offender motive, with the goal of better understanding the psychological and situational factors that shape criminal behavior. Finally, the study evaluates the significance of *modus operandi* in enhancing the accuracy of criminal profiling, taking into account the behavioral changes that may reduce its reliability. Based on these objectives, the research poses several key questions addressing the recognizable and fundamental characteristics of *modus operandi* in investigative practice, its principles and elements within profiling, and the challenges arising during its

application in investigations. It also examines the distinction between *modus operandi* and offender motive, as well as the difficulties in achieving precision in criminal profiling when the *modus operandi* evolves or adapts. Accordingly, the following hypotheses are formulated: MO contains consistent behavioral patterns that allow its use as a reliable tool in profiling; It possesses a clear structural framework that distinguishes it from other criminological concepts such as motive and "signature behavior"; Its application in practice often faces challenges due to offender adaptation and evolution; There is a significant distinction between MO and offender motive; and Its reliability in creating accurate criminal profiles decreases when the offender changes their method of operation to avoid identification.

2. Methodology

This research is based on a *qualitative and descriptive-analytical approach*, with the aim of thoroughly examining the analytical value of *modus operandi*within the context of criminal profiling. The study includes a theoretical analysis of relevant literature, a comparison of different approaches, and an examination of specific cases in order to describe *modus operandi* as a recognizable behavioral pattern and a set of actions used by offenders to carry out criminal acts. Special attention is devoted to defining the fundamental principles and elements of *modus operandi*, its application in criminal investigations, its connection to offender motivation, as well as the problems and challenges associated with interpreting this concept in operational practice.

The *primary research framework* encompasses the analysis of professional and academic literature in the fields of criminology, forensic psychology, and investigative methodology. In addition, elements of *case study analysis* were used to illustrate concrete behavioral patterns of offenders and how these evolve over time. The comparative analysis made it possible to identify reservations and critical perspectives of certain authors regarding the absolute applicability and validity of *modus operandi* in the process of offender profiling.

The *methodological approach* in this paper focuses on understanding *modus operandi* as an indicator of offender behavior, while also examining its practical limitations. Special attention is given to situations in which the offender alters or adapts their methods, either in response to new circumstances or in an effort to conceal evidence and hinder the investigation.

3. Principles and Elements of the Modus Operandi

An offender finds a particular technique for committing a crime that proves effective, and by using that technique he carries out his act with the intention of not being caught – therefore there is no reason to change the strategy he employs. In homicide cases where the killer used the same weapon, for example a knife, and the same method of killing, such as stabbing in the back, this indicates that a single perpetrator is likely responsible for those offenses. There is a specific way in which each criminal operates, and that manner is called the *modus operandi* (Modus Operandi, n.d.). The way an offender operates is shaped by experience, acquired skills, and the ability to adapt to specific circumstances, as well as by their personal goals and motives. *Modus operandi* encompasses practical procedures – how they gain entry to the scene, how they select victims, which tactics they use to remain undetected, and which methods they employ to remove or reduce traces that might link them to the crime.

Over time, offenders often refine or alter their *modus operandi* to become more efficient and reduce the risk of detection. For example, a burglar who previously used the same break-in technique may adopt new methods to obscure a consistent pattern and make it harder to link cases. Similarly, a serial killer may sometimes change details of the crime scene -deliberately and strategically – to mislead investigators and hinder the discovery of commonalities among victims.Such changes are not random – they indicate deliberate behavior and a clear understanding of how police investigations function, reflecting a high degree of criminal adaptation and manipulation.

Understanding *modus operandi* is crucial for criminal profiling because it enables investigators to identify behavioral patterns, link similar cases, and anticipate an offender's next moves, significantly increasing the chances of apprehension. Here are several examples of an offender's *modus operandi* (Chase, 2011): The type of bindings used on the victim, wound patterns, and the kind of fibers found on the bindings; The type of weapon used in the attack, such as a knife, blunt instrument, or firearm; Tape found on the victim used for binding hands or covering the mouth; Tools used to gain entry into the victim's home; An attack occurring when the victim exits a vehicle or passes through a dark garage; The time of day chosen by the offender to commit the crime, such as nighttime or early morning hours; Absence of fingerprints, indicating the offender wore gloves.

Figure 1. Modus Operandi: Illustration of a Rape Case

Modus Operandi: The Algoa Park Rape Case

In this example, the victim was waiting to get into a taxi when an unknown vehicle stopped beside her. The unidentified driver offered her a ride, explaining that at that late hour there were no taxis available. The victim was then taken to a nearby *mountain area*, where the perpetrator raped her. After the first assault, the offender forced the victim to go to another location, an open field, where he raped her again. After the crime, the suspect tied the victim's hands behind her back using a belt and placed her underwear in her mouth. The act of binding the victim after the assault and placing underwear in her mouth represents an example of the *modus operandi*, but it could also be considered the offender's *signature*. In this case, the repetition of specific elements of the *modus operandi* - such as a man stopping his vehicle late at night near a taxi stand and offering a ride - would constitute characteristic behavioral patterns that investigators should take into consideration.

Source: Watt,Graan & Labuschagne, 2014.

Douglas and Munn point out that an offender's *modus operandi* is reflected in the manner in which he acts during the commission of the criminal offense itself. This behavioral pattern develops and becomes reinforced over time because it has proven effective, while simultaneously changing and improving in response to new circumstances. *Modus operandi* is, therefore, a fluid and adaptable concept. As the offender gains more experience in criminal activities, he typically adjusts and upgrades his *modus operandi*. For instance, a burglar gradually improves his breaking-and-entering techniques to reduce the likelihood of arrest and increase potential gains. Experience, along with growing confidence, significantly shapes and reshapes the offender's *modus operandi*. Punitive experiences, especially among professional offenders, frequently have a strong impact on how the individual will approach future criminal behavior. After serving a sentence, the offender generally modifies his methods based precisely on the mistakes that previously led to his apprehension (Douglas & Munn, 1992). The victim's reaction can further have a decisive impact on the continued development of the offender's *modus operandi*. When a sexual offender encounters difficulties in overpowering the victim, he typically modifies his method of execution to adapt to the resistance. For this purpose, he may bring restraining tools such as adhesive tape, use a weapon, or employ a sudden, rapid attack to incapacitate the victim immediately. If these tactics are also ineffective, the offender may escalate the level of violence and may even kill the victim. In this way, his *modus operandi* gradually changes in order to align with the circumstances and the specific demands of the criminal act (Douglas & Munn, 1992). Turvey pointed out that *modus operandi* most often serves (or fails to serve) one or more of three purposes: protecting the offender's identity, ensuring the successful commission of the crime, and facilitating escape (Turvey, 1999, p. 151). This indicates that *modus operandi* is primarily a functional category

whose variability reflects the offender's adaptation to circumstances and level of experience in committing criminal acts.

The dynamism and adaptability of the *modus operandi* make it difficult to link different cases based on this factor alone. As the offender gains experience, his mode of operation is refined, becoming more sophisticated and secure. On the other hand, under certain circumstances – such as deterioration of mental health or other adverse factors – the *modus operandi* may become less effective and less precise. Regardless of these changes, *modus operandi* has a practical function and, as emphasized, generally serves the following purposes (Bjelajac, 2025, pp. 258–259):

- **Concealing the offender's identity** – The criminal takes steps to remain anonymous and avoid detection;
- **Effective commission of the crime** – The *modus operandi* helps the offender achieve his objectives as safely and quickly as possible;
- **Enabling escape** – The offender uses methods that make it easier to leave the crime scene without leaving traces or with minimal risk of capture.

These functions indicate that *modus operandi* is a dynamic and adaptable concept that criminals use as a strategic tool to achieve their aims. Their ability to modify and tailor their methods to changing circumstances and situational demands allows them to circumvent legal obstacles and position themselves tactically with respect to law-enforcement authorities. The flexibility of the *modus operandi* is a key element in maintaining the operational effectiveness of criminal activity, confirming that the term should not be regarded as a fixed set of actions but as a continuous process of adaptation and innovation in response to external challenges and environmental change. This adaptive capacity of the *modus operandi* illustrates how complex and unpredictable criminal strategies can be.

Figure 2. MO of Israel Keyes

Modus Operandi of the Serial Killer and Criminal Israel Keyes

One of the captured serial killers, Israel Keyes, committed a series of rapes and murders until his arrest in 2012. While awaiting trial for the murder of one of his victims, Keyes committed suicide in prison. He enjoyed the thrill that accompanied the act of killing. Keyes planned his murders down to the smallest detail and took extreme precautions to avoid detection. Unlike most serial killers, he did not have a specific victim profile. His murders occurred far from his home and never twice in the same place. During his travels to the crime scenes, Keyes would turn off his phone for secrecy and pay for everything in cash. On one occasion, he flew to Chicago, rented a car, and drove an additional 1,600 kilometers to Vermont, where he committed a murder.

While most serial killers strive to build a persona and achieve *pop-star* status, the most fascinating thing about Keyes is that he studied other well-known serial killers but developed his own methods so that no one could accuse him of copying others. Keyes admired Ted Bundy and exhibited certain similarities with him - both were prone to excessive drinking, methodical, intelligent, *felt a sense of possession over their victims*, and operated across multiple U.S. states.

Source: 5 Serial Killers With The Most Bizarre Killing Rituals. Downloaded 2025, May 15 from https://cvltnation.com/5-serial-killers-with-the-mostbizarre-killing-rituals/

The offender's method of operation refers to the key aspects of his approach to the crime, such as victim selection, place and time of the attack, the type of weapon used, and the manner of entry to the crime scene. This method is important for linking different cases, but it requires careful analysis to avoid misclassification. It is important to understand that the method of operation can change over time. As the offender gains experience and learns how to avoid detection, he adapts his *modus operandi*. For example, an offender who previously used bare hands for strangulation may switch to using stockings or a pillow to change his tactic. Likewise, he may change the time of attack from night to day or adjust victim choice, moving from female to male, from younger to older, or selecting victims of different races or physical characteristics, such as shifting from blondes to brunettes (Bjelajac, 2025, p. 260). These transformations highlight the variable character of offending tactics and emphasize the importance of detailed analysis of each individual case through the lens of the offender's current behavioral patterns.

Over time, particularly with more experienced offenders, certain habits and techniques become repetitive and almost routine, which increases their value as forensic evidence. In practice, crimes often reveal a personal imprint of the perpetrator – a specific set of actions that reappears across incidents. This notion is supported by the principle of transfer: any contact between the offender and a person, place, or object can leave tangible traces, enabling investigators to establish a connection between the suspect and the crime scene.

Therefore, the offender leaves evidence at the scene but also often takes something away with him. The specific way the crime was committed and the manner in which the scene was treated frequently develop and stabilize over time and with experience, since this is essentially learned behaviour. However, the offender may appear less competent because of deteriorating mental state, increased substance use, or unforeseen circumstances. In any case, *modus operandi* is functional in nature and includes, but is not limited to (Petruzzi, 2024, pp. 26–27): Number of offenders; Extent of pre-offence planning; The route the offender took to the crime location; Prior surveillance of the crime scene or the victim; Use of weapons during the crime; The nature and extent of precautionary measures; Location of the crime; Methods of committing the crime; Techniques and instruments used during the crime; Items taken from the crime scene for profit or to prevent identification; Method of escape and the route used to leave the crime scene; Offender's motive; Mode of transport to and from the crime scene.

4. Analysis of the Use of Modus Operandi in Criminal Investigations and Problems with Its Application

Investigators closely monitor how an offender carries out a crime, because these details can suggest the direction of the investigation and speed up the identification of a suspect. When multiple cases are examined, recurring elements often emerge – the same method of entry, the choice of tools, a characteristic time of day when the offender acts, or a specific means of leaving the crime scene. By recognizing these repeating patterns, investigators can rule out individuals whose methods do not match the documented behavior and concentrate on those who act in a similar manner. This process narrows the pool of suspects and enables more efficient allocation of investigative resources (Bjelajac, 2025, pp. 262–263). This method enables not only more accurate offender profiling but also a reduction in the time required to solve cases.

According to criminal investigative specialists John E. Douglas and Stephen A. Douglas, former head of the FBI Behavioural Science Unit support team, and Corinne Munn, the procedure has a number of shortcomings for investigators who place too much emphasis on it. As they note, the procedure is dynamic and changes with the offender's experience. For example, a novice burglar may use force to break glass, but, fearing that the noise could alert someone, may quickly enter the premises. The same person, however, after learning from the previous approach, may use quieter breaking-and-entering methods so that the crime appears to be the work of someone else. Imprisonment can also be a reason for a change in method, because the previous method proved unsuccessful. *Modus operandi* is often regarded as *equivalent to the success of the crime*. The better the *modus operandi*, the greater the chances of successful commission, which depends on various factors such as (Modus Operandi, n.d.):

- Victim/location selection, method of attack, use of weapons, planning, means of transport;
- Stolen valuable items;
- Evidence that was left behind.

Bartol and Bartol warn against excessive reliance on *modus operandi* when analysing crimes and creating offender profiles, because *modus operandi* need not represent stable behaviour but can be adaptable to the situation and needs. As noted, *modus operandi* represents a pattern of behaviour that the offender learns as he gains experience in committing crimes. Therefore, *modus*

operandi is subject to change, since serial offenders can alter their *modus operandi* in an attempt to develop the most effective method. For example, serial burglars find new tools or different ways to disable alarms, while serial killers often become bolder and take greater risks in victim selection or in the traces they leave to the police. As a result, although *modus operandi* cannot be ignored, investigators can make a serious mistake if they give it excessive weight when linking crimes (Bartol & Bartol, 2013, p. 35), and it is often pointed out that this indicator is by no means as consistent, essential, or psychologically significant as *the offender's signature.*

4.1. Modus Operandi and Motive

Modus operandi and motive are two separate concepts with different meanings. Motive represents the reason why an offender commits a particular crime, whether it is for money, anger, revenge, power, or lust. It is a deep internal need or desire that drives them. However, motive is not simply an explanation of why *the crime was committed*; it also involves deeper psychological or emotional factors. For example, just as a *signature* is unique to an individual, an offender also has a unique motive and characteristic behaviour that define them. For instance, a killer in Boston may commit a crime out of anger, while another killer in Chicago may have the same reason, but the way they carry it out will differ, with different *signature elements* in their actions. Their motive fulfils an internal need, but the motive or signature behaviour should not be equated with the technique they use to commit the crime (Bjelajac, 2025, p. 265). It is emphasized that the term modus operandi denotes the specific techniques and approaches the offender uses during the commission of the crime, with these methods representing operational strategies rather than directly reflecting the motivation behind the act itself.

If greed inspires an offender to commit a robbery, one of his *signature behaviours* at the scene might include cutting a particular piece of furniture in the house. Perhaps he resents a parent or spouse over that specific piece of furniture and the argument that arose from it, so he might take revenge at each crime scene by damaging that furniture. *This signature* represents an additional aspect of his original motive: the desire to obtain money through theft. Other burglars in the same city likely would not do the same, so the police, at each scene of this burglar, gain insight into his motivation. However, none of this is part of his *modus operandi*, because none of it is necessary for committing the robbery. In other words, he does not have to damage that piece of furniture in order to burglarize the house. Anything the offender does

not have to do to commit the crime will not be considered part of his *modus operandi*. *Modus operandi* refers exclusively to the method used to carry out the crime (Modus Operandi, n.d.), which is not connected to the motive that drives the offender nor to the signature he leaves during the crime, except in cases where those elements coexist with his *modus operandi*. This distinction is crucial in criminal profiling because it allows investigators to clearly separate the functional aspects of the crime, such as methods of execution, from the emotional and psychological impulses that shape the offender's behaviour, providing a comprehensive understanding of the nature of the crime and its perpetrator (Bjelajac, 2025, p. 266). This clear formulation of the relationship between *modus operandi, motive, and signature* enables more precise analysis of criminal acts. Understanding these differences helps investigators more effectively identify and profile offenders by focusing on their operational patterns.

4.2. *Modus Operandi and Signature as Two Key Indicators in Criminal Profiling*

Within forensic psychology and criminal profiling, the concepts of *modus operandi* and *signature behaviour* represent two central elements in analysing the behavioural patterns of offenders. However, no precisely determined proportional relationship between these concepts can be established, as they serve different functional purposes and are expressed through distinct forms of behaviour.

In professional literature, numerous studies focus on differentiating between *modus operandi*and *signature behaviour* in the context of criminal profiling (e.g., Douglas, Ressler,Burgess & Hartman, 1986; Keppel & Birnes, 1997; Canter & Youngs, 2009). The authors of these studies emphasize that the *signature* holds a central place in understanding the psychological motives of the offender and in identifying serial crimes, while *modus operandi* is viewed as an element subject to change according to the practical needs of committing the offense. In contrast, the *signature* remains stable and consistent, and it is precisely this consistency that allows investigators to reliably recognize behavioural patterns and link seemingly unrelated cases.

Figure 3. Comparison of Modus Operandi and Signature in Criminal Profiling

Modus Operandi	Signature	Proportional Relationship	Practical Estimates (Not a Rule, but Observations)
Definition: A set of behaviours and actions the offender uses to successfully commit the crime and avoid identification or capture. **Characteristics:** Practical and functional; can develop and change over time (offenders learn and adapt). **Example:** Use of gloves, method of entry, weapon choice.	**Definition:** The emotional or psychological component of the crime that serves no practical purpose but satisfies the offender's internal needs. **Characteristics:** More stable over time; maintains fantasies, compulsions, or internal motivations. **Example:** Positioning of the body, rituals, leaving objects at the crime scene.	In academic and practical literature, there is no clearly defined proportional relationship between MO and signature, as they represent qualitative (not quantitative) aspects of crime. However: - On average, MO is present in 100% of cases (as it is necessary for the commission of the crime). - The signature appears only in certain cases, especially in serial crimes and among offenders with strong psychological drives.	- MO is dominant in most cases (e.g., 70 - 90% of behaviours). - The signature may make up a smaller portion of behaviour (e.g., 10–30%) - but its importance for profiling is enormous, as it reveals motivation and psychological profile.

Source: Author's research, 2025.

As observed within forensic psychology and criminal profiling, no precisely defined or quantitatively expressed relationship can be established between *modus operandi* and *signature behaviour*, as they represent psychologically and functionally distinct components of the criminal act. *Modus operandi* reflects a behavioural pattern focused on the technical aspect of committing the crime and avoiding detection; due to its pragmatic function, it appears in every offence and is subject to change according to experience and circumstances. In contrast, the *signature* reflects the offender's deep psychological needs and is characterized by greater consistency across different criminal acts. Although its occurrence is rarer, the signature has significant forensic value, as it can provide insight into the motivational structures and emotional impulses underlying the offence. In the profiling process, *the signature* often possesses greater diagnostic and identificatory value than the *modus operandi*.

Figure 4. The case of serial killer Ted Bundy serves as an illustrative example that enables a deeper understanding of the distinction between *modus operandi* and *signature behaviour* through the analysis of his criminal patterns

Comparative Analysis of Modus Operandi and Signature Behaviour in the Case of Ted Bundy	
Modus Operandi (MO)	**Signature**
Bundy often used deception to approach his victims, for example: - Pretended to be injured (wore a cast, sling, or used crutches). - Asked for help carrying something to his car. - When the victim approached, he incapacitated her with a blow and pushed her into his vehicle.	Bundy had recurring rituals that were not necessary for committing the crime: - Arranged the body after death - Engaged in necrophilia - Returned to crime scenes to 'relive' the act (and sexually assaulted the corpses) - Took trophies (e.g., pieces of clothing) - In some cases, applied makeup to the victims after death
His MO included: - Approaching the victim through manipulation - Incapacitating the victim with a blow - Taking her to a secluded location - Murder (usually by strangulation or blunt force)	These elements did not contribute to the crime in a practical sense but reflected Bundy's internal need for control, domination, and sexual gratification. They were part of his signature.
This part is functional - it allows him to commit the crime and avoid capture. Over time, he refined these techniques (e.g., learning how to prevent the victim from resisting or how to disappear quickly).	

Source: Michaud & Aynesworth, 2000.

The analysis of Ted Bundy's case clearly illustrates the distinction between **modus operandi* and *signature behaviour*, as well as their significance in the process of criminal profiling. Over time, Bundy's *modus operandi* demonstrated a high degree of adaptability and functional flexibility, reflected in his changes of tactics, use of different vehicles, tools, and social deceptions to ensure the crime was carried out successfully and discreetly. On the other hand, his *signature behaviour* remained consistent and stable, allowing investigators to link seemingly unrelated cases despite geographical and tactical differences. Elements such as the way bodies were left, the presence of sexually motivated acts, and the taking of *trophies* pointed to a psychological *signature structure* that was crucial for identifying the offender's behavioural pattern. Although most of his actions were directed toward the practical execution of the crime and avoiding detection, a relatively smaller portion of behavior – which can be characterized as his *signature* – played a key role in connecting crimes committed

across different states and in understanding his deeper psychodynamic motives. Without the analysis of these stable and emotionally charged elements, many of the cases would likely have remained fragmented and attributed to different perpetrators.

This distinction shows that it is precisely the analysis of the *signature* that gives criminal profiling its deeper psychological dimension and allows investigators to identify the offender's stable internal motivation behind changing tactical patterns, with the *modus operandi* accounting for approximately 70–80% of the behaviour and the *signature behavior* comprising 20–30%, yet being crucial for linking the cases and understanding Bundy's motives.

5. Discussion

In contemporary criminal investigations, the use of *modus operandi* as an analytical instrument represents a significant methodological advancement in understanding patterns of criminal behaviour. Through the analysis of obtained results and insights from relevant literature, it is confirmed that *modus operandi*, although primarily functional and adaptive, provides more than mere technical information about the manner in which a crime is committed – it reveals the dynamic relationship between behaviour, experience, and offender adaptation.

One of the key findings of this research is the confirmation that *modus operandi* has high operational value, particularly in the context of identifying and linking serial crimes. Consistency in certain behavioural aspects (e.g., time of offence, method of entry, choice of weapon) enables investigators to establish a pattern of activity which, though not infallible, can significantly narrow the pool of suspects and contribute to the creation of an offender profile. At the same time, this pattern often evolves in accordance with the offender's experience, confirming the hypothesis that *modus operandi* should not be viewed as static, but as a dynamic behavioural system adaptable to various conditions and objectives.

However, as the analysis itself shows, excessive reliance on *modus operandi* carries certain risks, as offenders – especially experienced and intelligent ones – consciously alter or disguise their *modus operandi*. These changes may be motivated by the desire to avoid detection, but also by internal psychological factors or escalating violence, which further complicates the profiling process. In this sense, *modus operandi* loses part of its predictive power when used in isolation, without consideration of the broader context

– including motivation, signature behaviour, the offender's mental state, and other forensic evidence.

It has been observed that *modus operandi* is often mistakenly equated with motive or signature, which in operational practice can lead to confusion and incorrect conclusions. A clear distinction between these concepts – where *modus operandi* relates solely to the practical and technical aspects of the crime, while motive and signature are connected to its psychological and emotional components – is of essential importance for accurate criminal analysis. This differentiation not only enables a more precise interpretation of the offender's behaviour but also helps avoid methodological errors in analysing complex criminal patterns.

An additional challenge identified is the fact that *modus operandi* may change due to unpredictable factors such as substance use, changes in life circumstances, or the offender's mental health. In such cases, *modus operandi* becomes a less reliable indicator, which underscores the need for its interpretation to always be conducted in combination with other forms of analysis, including forensic evidence, witness statements, and digital traces.

The research conducted – based on the analysis of popular crime series with presented findings – may represent a highly valuable and creative approach (Bjelajac & Filipović, 2022a; Bjelajac & Filipović, 2022b). Given that collecting data through *modus operandi* surveys is often difficult due to the specificity of the topic and the sensitivity of information, an alternative was proposed through the analysis of popular crime shows that depict criminal profiling.[1] Such an analysis provides insight into how modus operandi is portrayed in popular culture, as well as the identification of its key elements and applications in fictional, yet often reality-based, cases. Furthermore, this type of research can contribute to a better understanding of profiling methodology and enable comparison with real investigative practices, thus opening new perspectives for further empirical research and the development of theoretical frameworks in this field.

[1] Source: CBS Studios. (2005–2020). *Criminal Minds* [TV series]. Disney+. Downloaded 2025, May 17 from https://www.disneyplus.com/en-rs/browse/entity-2fdd0e1d-786e-40b2-9aea-89e21e4a3b83; Netflix. (2017–2019). *Mindhunter* [TV series]. Netflix. Downloaded 2025, May 17 from https://www.netflix.com/rs/title/80114855; CBS Studios. (2000–2015). *CSI: Crime Scene Investigation* [TV series]. Prime Video. Downloaded 2025, May 17 from https://www.primevideo.com/detail/CSI-Crime-Scene-Investigation/0HW3JO3A1GMAR166QITS7MNKR2

Figure 5. Analysis of Modus Operandi and Criminal Profiling in Popular Crime Series

Research Sample	A total of 30 episodes were analyzed from three popular crime series: "Criminal Minds," "Mindhunter," and "CSI: Crime Scene Investigation."
Methodology	The episodes were reviewed, and content related to modus operandi and profiling was categorized and compared with theoretical concepts.
Main and Recognizable Features of Modus Operandi	In 70% of the analyzed episodes, the modus operandi was portrayed as a unique and recognizable behavioural pattern used by offenders to commit the crime. Most often, these were repetitive methods of execution (e.g., a specific way of approaching the victim, the tool used, or the crime scene location). This aligns with theoretical frameworks emphasizing the importance of these elements for offender identification.
Principles and Elements of Modus Operandi in Profiling	In 75% of cases, the series depict the modus operandi as a fundamental element for creating the offender's psychological profile. Profiling is often shown through the analysis of recurring patterns, enabling prediction of next moves or identification of motives.
Application and Problems in Using Modus Operandi	Although the modus operandi is mostly shown as an effective tool, in 40% of episodes problems such as evolution or adaptation of the modus operandi are presented, making it harder to track. Additionally, in 25% of cases, situations are depicted where the modus operandi alone was insufficient to solve the case, indicating limitations in its real-world application.
Correlation Between Modus Operandi and Offender Motives	In over 60% of episodes, a clear connection is shown between modus operandi and offender motives, where specific methods of execution reflect internal psychological drives, in accordance with theoretical expectations.
Contribution of Modus Operandi to the Accuracy of Criminal Profiling	In 65% of analyzed cases, modus operandi significantly contributed to forming an accurate profile, but in 35% of cases, changes in modus operandi (due to learned lessons or adaptation) reduced its effectiveness. These findings highlight the practical limitations of using modus operandi in investigations.
Signature Behaviour	It was characteristic in approximately 25% of the analyzed episodes, indicating that stable elements of signature behaviour played a crucial role in profiling. They enabled investigators to recognize consistent motives behind tactically changing patterns through a psychological lens. While modus operandi accounted for about 75% of behaviours, focusing on technical execution and concealment, signature behaviour—though present in a smaller proportion of about 25%—was key to linking different cases and understanding the killers' internal motivations.

Source: Author's research, 2025.

The analysis of popular crime series and films revealed that portrayals of *modus operandi* are generally consistent with theoretical concepts but are often simplified for dramatic effect. The series effectively illustrate the

importance of *modus operandi* in profiling and investigation, while also highlighting the challenges of its application – particularly in situations where the *modus operandi* evolves or adapts. This research confirms that popular culture can be useful in disseminating basic knowledge about investigative techniques, but it also emphasizes the need for a critical approach to such portrayals and caution against fully equating them with real-world practices.

6. Concluding Considerations

Within the case studies and literature reviewed, a clear distinction has been observed between traditional and contemporary approaches to *modus operandi* in profiling. In earlier investigative approaches, modus operandi was primarily treated as a technical indicator – investigators relied on crime-scene traces and repeated behavioral patterns to link an offender to a crime. Today, the analysis extends beyond physical evidence. Methods from forensic psychology, behavioral analytics, and other disciplines are incorporated, allowing for a deeper understanding of offender cognition and more precise profiling.

It is important to emphasize that combining the analysis of *modus operandi with the examination of signature behavior* has proven to be the most reliable approach within the research framework. While the *modus operandi* refers to the actions the offender must take in order to commit the crime, the *signature* reflects the offender's internal psychological impulses and emotional needs. Integrating these two dimensions provides a more comprehensive picture of the offender and their behavioral pattern. This combined model is particularly valuable in cases of serial offenses, where emotional motives and fantasy-driven elements significantly influence the offender's actions.

In practical investigative work, analyzing the modus operandi remains a valuable tool for understanding offender behavior, but it cannot serve as the sole basis for profiling. It must be evaluated alongside other available evidence and investigative information. This becomes especially important when the offender intentionally alters their usual method of operation or takes steps to conceal traces and hinder the linking of crimes.

In the final section of the paper, the research questions focused on the role of *modus operandi* in criminal investigations and offender profiling are addressed. Through the analysis of theoretical sources and practical case material, it was determined that *modus operandi* comprises a set of recognizable actions and techniques used by the offender during the commission of a crime. Special attention was given to the key principles and elements of this pattern,

demonstrating its function in understanding the offender's behavior and the relationship between the offender, the victim, and the crime scene. Furthermore, the paper presented the ways in which *modus operandi* is applied in criminal investigations, as well as the problems that arise in its use, particularly under conditions of its evolution or adaptation. Special attention has been devoted to the comparative analysis of *modus operandi* and offender motives, as well as to distinguishing between *modus operandi* and signature, which constitute two essential indicators in the process of criminal profiling and enable a deeper understanding of the offender's psychological structure. This differentiation not only contributes to a more accurate interpretation of criminal behaviour but also illuminates how the practical and tactical aspects of crime intertwine with its internal psychodynamic impulses. Finally, the study also considered the limitations of *modus operandi* in real investigative contexts and its contribution to the precision of criminal profiling, taking into account the dynamic nature and changes that may occur during the course of an investigation.

Conflict of Interest
The author declares no conflict of interest.

Bjelajac Željko
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe, Novi Sad, Srbija

MODUS OPERANDI KAO ANALITIČKI INSTRUMENT U KRIMINALISTIČKOM PROFILISANJU

APSTRAKT: U savremenoj kriminalistici, *modus operandi* predstavlja jedan od ključnih alata za razumevanje, rekonstrukciju i predikciju kriminalnog ponašanja. Ovaj rad istražuje *modus operandi* ne samo kao tehnički obrazac izvršenja krivičnog dela, već i kao analitički instrument unutar kriminalističkog profilisanja. Poseban akcenat stavljen je na principe i elemente *modus operandi*, njegovu evolutivnu prirodu, analizu *modusa operandi* u radu kriminalističkih istražitelja i izazove njegove upotrebe kao i na odnos između *modus operandi* i motiva počinioca. Kroz

kvalitativnu analizu sadržaja, studije slučaja i komparativnu metodologiju, identifikovani su načini na koje se *modus operandi* koristi za prepoznavanje obrazaca ponašanja, povezivanje više krivičnih dela, i sužavanje kruga osumnjičenih. Rad takođe osvetljava praktične izazove u primeni *modus operandi* uključujući promenljivost ponašanja, namerno zavaravanje istrage i naglašava razliku između funkcionalnog *modus operandi* i *potpisa* počinioca koji predstavlja njegov lični pečat – element koji zadovoljava emocionalne i psihološke potrebe. Rezultati ukazuju na to da *modus operandi*, kada se pravilno interpretira, može imati visoku analitičku i operativnu vrednost u procesu kriminalističkog profilisanja. Zaključuje se da je integracija *modus operandi*u forenzičku i kriminalističku analizu neophodna za dublje razumevanje dinamike krivičnih dela, posebno u kontekstu serijskih zločina. Istovremeno prekomerno oslanjanje na *modus operandi* prilikom analize zločina i kreiranja profila počinioca, treba uzimati sa rezervom zbog *varljivog karaktera* počinilaca krivičnih dela.

Ključne reči: *kriminalističko profilisanje, modus operandi, motiv, potpis.*

References

1. Bartol, C., & Bartol, A. (2013). Crime scene profiling. In:*Criminal & behavioral profiling: Theory, research and practice* (pp. 21–56). Thousand Oaks, CA: Sage Publications
2. Bjelajac, Ž. (2022). Profil nasilnika: rani znaci za detekciju [Abuser Profile: Early Signs of Detection]. *Kultura polisa, 19*(2), pp. 37–54
3. Bjelajac, Ž. (2023). *Poreklo kriminalnog ponašanja* [*The origin of criminal behavior*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu
4. Bjelajac, Ž. (2024a). The Origin of Criminal Behavior in the Context of Developmental Risk Factors. *Kultura polisa, 21*(1), pp. 18–42
5. Bjelajac, Ž. (2024b). The Concept of Criminal Profiling in Contemporary Crime Suppression Policies. *Kultura polisa 21*(2), pp. 44–75
6. Bjelajac, Ž. (2024c). Analogy of Profiling Male and Female Serial Killers. *International Journal of Cognitive Research in Science, Engineering and Education (IJCRSEE), 12*(3), pp. 681–692
7. Bjelajac, Ž. (2025*). Kriminalističko profilisanje tragovima zločina* [*Criminal Profiling Tracing the Crime*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu

8. Bjelajac, Ž., & Banović, B. (2024). Criminal Profiling as a Method of Detecting Lies inNonverbal Communication. *International Journal of Cognitive Research in Science, Engineering and Education (IJCRSEE), 12*(1), pp. 229–238
9. Bjelajac, Ž., & Filipović, A. (2023). Role of Criminal Profilers in Crisis Situations. *Kultura polisa, 20*(1), pp. 72–86
10. Bjelajac, Ž., & Filipović A. (2022a). Modus of Killer Profiling in Nordic Crime Series. *International Journal of Cognitive Research in Science, Engineering and Education (IJCRSEE),10*(1), pp. 117–125
11. Bjelajac, Ž., &Filipović A. (2022b). Profile of Contemporary Criminal Investigator in Film and Television Content. *Kultura polisa, 19*(1), pp. 1–24
12. Canter, D., & Youngs, D. (2009). *Investigative Psychology: Offender Profiling and the Analysis of Criminal Action.* Chichester, UK: John Wiley & Sons Ltd.
13. Chase, J. (2011). *Offender's signature vs. modus operandi*. Downloaded 2025, May 15 from https://authorjenniferchase.com/2011/06/22/offender%E2%80%99s-signature-vs-modusoperandi/
14. Douglas, J., & Munn, C. (1992). Violent crime scene analysis: Modus operandi, signature, and staging. *FBI Law Enforcement Bulletin, 61(2)*, pp. 1–10
15. Douglas, J., & Olshaker, M. (1998). *Obsession: the FBI's legendary profiler probes the psyches of killers, rapists, and stalkers and their victims and tells how to fight back*. New York, Scribner: A Lisa Drew Book
16. Douglas, J. E., Ressler, R. K., Burgess, E. W., & Hartman, C. R. (1986). Criminal Profiling from Crime Scene Analysis. *Behavioural Sciences and the Law, 4*(4), pp. 401–421. DOI: https://doi.org/10.1002/bsl.2370040405
17. Fosdick, R. (1916). Modus Operandi System in the Detection of Criminals. *Journal of Criminal Law and Criminology, 6*(4), pp. 560–570
18. Hazelwood, R., & Warren, J. (2003). Linkage analysis: modus operandi, ritual, and signature in serial sexual crime. *Aggression and Violent Behavior, 8*(6), pp. 587–598
19. Keppel, R., & Birnes, W. (1997). *Signature killers*. New York: Pocket Books
20. Keppel, R., Weis, J., Brown, K. & Welch, K. (2005). The Jack the Ripper murders: a modus operandi and signature analysis of the 1888–1891 Whitechapel murders. *Journal of Investigative Psychology and Offender Profiling*, *2*(1), pp. 1–21

21. LawBirdie (2024). *Criminal Signature and Modus Operandi*. Downloaded 2025, May 15 from https://lawbirdie.com/criminal-signature-and-modus-operandi/
22. Michaud, S., & Aynesworth, H. (2000). *Ted Bundy: Conversations with a killer.* Irving, TX: Authorlink Press
23. Modus Operandi – Module No.5. (n.d.). Paper No. 2: Criminology and Law. Downloaded 2025, May 17 from https://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S000016FS/P000689/M004759/ET/1453176260FSC_P2_M5_e-text.pdf
24. Petruzzi, J. (2024) .Criminal Profiling Learning resource manual – Module 2: A Short Introduction of Criminal Profiling. Downloaded 2025, May 17 from https://www.researchgate.net/publication/384145362_
25. Sutherland, E. (1947). *Principles of criminology* (4th ed.). Philadelphia: J. B. Lippincott
26. Turvey, B. (1999). *Criminal Profiling an Introduction to Behavioral Evidence Analysis*, 1st edition. San Diego, CA: Academic Press
27. Turvey, B. (2008). *Criminal profiling: an introduction to behavioral evidence analysis.* 3rd edition. London: Elsevier
28. Watt, M., Graan, J., & Labuschagne, G. (2014). Modus operandi, signature and fantasy asdistinctive behaviour : Fundamental considerations in the case linkage of child rapecases. *Child abuse research in South Africa, 15*(1), pp. 61–72

Galetin Milena*
https://orcid.org/0000-0002-1489-6050
Mladenov Marijana**
https://orcid.org/0000-0002-4574-5159

UDC: 364.69:004.8
Original scientific paper
DOI: 10.5937/ptp2504042G
Received on: September 30, 2025
Approved for publication on:
October 14, 2025
Pages: 42–55

THE RIGHT TO HEALTH IN THE CONTEMPORARY WORLD – THE APPLICATION OF ARTIFICIAL INTELLIGENCE FROM THE PERSPECTIVE OF HEALTHCARE PROFESSIONALS

ABSTRACT: The application of artificial intelligence has become inevitable in almost all areas of life and it is indisputable that it also affects different human rights. In the paper, the authors deal with the impact of artificial intelligence on the right to health, one of the basic human rights, and in this sense explore the attitudes of healthcare professionals regarding the application of artificial intelligence in this sector. In addition to empirical research and theoretical analysis, the most important legal documents related to the application of artificial intelligence in healthcare are presented. In the last part of the paper, the authors present concluding considerations and indicate further steps that should be taken in this sector regarding the application of artificial intelligence.

Keywords: *artificial intelligence and healthcare, AI strategy in healthcare, right to health and artificial intelligence.*

---

* LLD, Associate Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: milena.galetin@pravni-fakultet.info

** LLD, Associate Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: alavuk@pravni-fakultet.info

1. Introduction

There are various ways and different areas of AI application in healthcare. Its role in this sector can be found in *medical imaging and diagnostics, virtual patient care, medical research and drug delivery, rehabilitation, patient engagement and compliance, administrative application* (Al Kuwaiti et al., 2023; see Arnold, 2021).

It is undeniable that "possible applications of AI for health and medicine are expanding continuously" (Ethics and governance of artificial intelligence for health: WHO guidance, 2021, p. 5), and it could have "substantial potential for cost reduction and enhancement of service quality" (Tulli, 2023). In addition to the numerous benefits that this application brings, we also face numerous risks and challenges, especially considering that it is a constantly changing and progressing area. In the literature, challenges in the application of AI in healthcare stand out – ethical (privacy, transparency, trust, responsibility, bias, cybersecurity, and data quality) (Jeyaraman, Balaji, Jeyaraman, & Yadav, 2023), technical and governance challenges (Al Kuwaiti et al., 2023). In particular, in this context, the impact of artificial intelligence on the improvement of the doctor-patient relationship is discussed (Li, Li, Wei & Li, 2024, see also Report on the application of artificial intelligence in healthcare and its impact on the 'patient-doctor' relationship, Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO), 2024).

In order for the application of artificial intelligence in the healthcare sector to be fully implemented and in such a way to protect fundamental human rights and overcome abovementioned challenges, it is necessary to undertake and improve this process. First of all, this implies "collaboration among researchers, healthcare professionals, policymakers, and technology experts" (Jeyaraman, Balaji, Jeyaraman, & Yadav, 2023), and "to develop implementation strategies across healthcare organizations to address challenges to AI-specific capacity building" (Petersson et al., 2022), which imply their "investment in the necessary infrastructure, training, resources, and partnerships to support its successful adoption and ensure equitable access for all" (Sezgin, 2023).

Finally, it is absolutely certain that AI cannot replace healthcare workers, but can serve as a very useful, complementary tool in their work, which leads to "improved service quality, patient outcomes, and a more efficient healthcare system" (Sezgin, 2023; Al Kuwaiti, et al., 2023).

AI application in healthcare raises the question of its impact on the right to health – one of the human rights confirmed in the most important international documents (UN, General Assembly Universal Declaration of Human Rights, 1948, article 25; see also The Right to Health, World Health Organization Office of the United Nations High Commissioner for Human Rights; Charter of Fundamental Rights of the European Union). The Constitution of the Republic of Serbia also stipulates that "Everyone shall have the right to protection of his/her mental and physical health" and that the Republic of Serbia shall assist the development of health and physical culture "(Article 68 Constitution of the Republic of Serbia (2006).

In the European Declaration on Digital Rights and Principles for the Digital Decade is stated that "what is illegal offline, is illegal online" and it clearly indicates that the right to health, as well as other fundamental rights, enjoy full protection also in the digital environment. Furthermore, the aim of AI is to increase human well-being (European Declaration on Digital Rights and Principles for the Digital Decade, 2023; see also Feasibility Study, Ad hoc Committee on Artificial Intelligence (CAHAI), 2020).

In the European Union, Artificial Intelligence Act (AI Act) is the most important legal document regulating artificial intelligence and it is "particularly significant for the healthcare sector, where the use of AI products for diagnosis, treatment, and patient care is rapidly increasing" (Kolfschooten & Oirschot, 2024, p. 1), but it also implies certain "challenges, and uncertainties within the EU regulatory nexus" (see Vardas, Marketou & Vardas, 2025, p. 834). Risk-based approach in AI Act classifies AI systems into four categories—unacceptable, high, limited, and minimal risk or a general-purpose AI model and "different types of health-related AI systems fall into divergent risk categories" (Kolfschooten & Oirschot, 2024, p. 2). And different categories impose different requirements. Thus, for application health-related AI systems fall into a high-risk category, stricter requirements have to be fulfilled, such as risk management, data quality and data governance, technical documentation, record-keeping, transparency and the provision of information to deployers, human oversight, and accuracy, robustness and cybersecurity (AI Act).

The Republic of Serbia still does not have a special law on artificial intelligence, and its adoption is expected in the near future. In the Ethical guidelines for the development, application and use of trustworthy and responsible artificial intelligence, which were adopted in 2023, artificial intelligence systems in the field of healthcare are considered as high-risk systems, and it is especially emphasized for systems that analyze genetic and health data (Conclusion on the adoption of ethical guidelines for the development, application and use of

trustworthy and responsible artificial intelligence, 2023). The Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2025-2030 envisages as one of the objectives the *Increase the application of artificial intelligence in priority segments of society and economy*, and one of the measures is *Incentives for the application of artificial intelligence in healthcare and biotechnology, so health improvement by (AI) technology is at the top of the priority list.* (Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2025-2030, 2025). The indicators in this regard set out in the Strategy are the "*number of products and technologies developed and commercialized with the support of state funds and subsidies* and the *number of educational programmes, courses and certifications supported by state funds and intended for training experts in the use of AI" in those fields.* Finally, as effects of measures within this objective, the Strategy highlights: *improvement of diagnostics and treatment, resulting in a better health of the population; in administration – more efficient and faster services to citizens, reducing waiting times and improving transparency; faster and more accurate diagnostics will reduce treatment costs and enable more efficient use of healthcare resources"* (Strategy for the Development of Artificial Intelligence in the Republic of Serbia for the period 2025-2030, 2025).

2. Analysis of the application of artificial intelligence in healthcare sector – empirical research

2.1. Research sample, Research instrument, Data collection

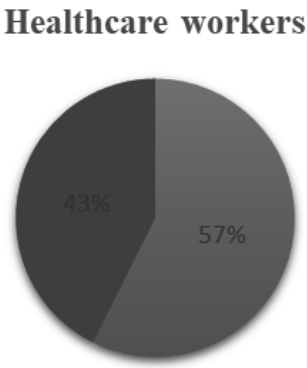
A carefully designed questionnaire for the research purpose was created to collect data. It was printed and delivered to target groups – healthcare workers – doctors and medical staff (medical associates, healthcare assistants, nurses...), with the goal to examine their views on the application of artificial intelligence in the healthcare system. The questionnaire consisted of two parts – General information about the respondents and Attitudes regarding the application of artificial intelligence systems in healthcare. The latter were multiple-choice questions that aim to examine the respondents' familiarity with AI application in healthcare; usefulness of AI application in this sector and reasons; whether they use AI tools in their work; risks or challenges in using artificial intelligence in healthcare; opinions on what would contribute to improving the application of artificial intelligence in healthcare.

Healthcare workers from both private and public sectors participated in the research. The collection of filled questionnaires was carried out in the

period from July to September 2025. The total number of respondents was 122 – 70 doctors and 52 medical staff.

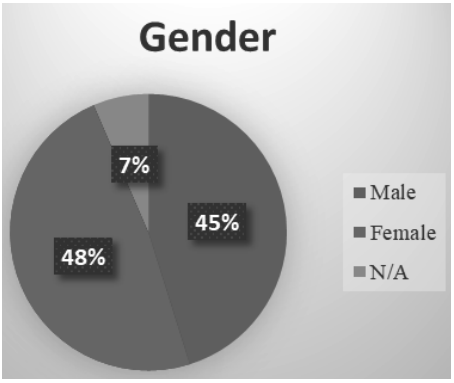
Data concerning gender, age categories and sectors surveyed work in:

Chart 1.



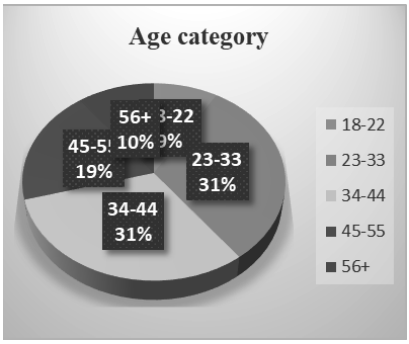
Source: Authors' research

Chart 2.



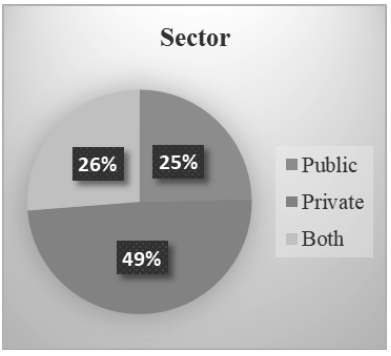
Source: Authors' research

Chart 3.



Source: Authors' research

Chart 4.



Source: Authors' research

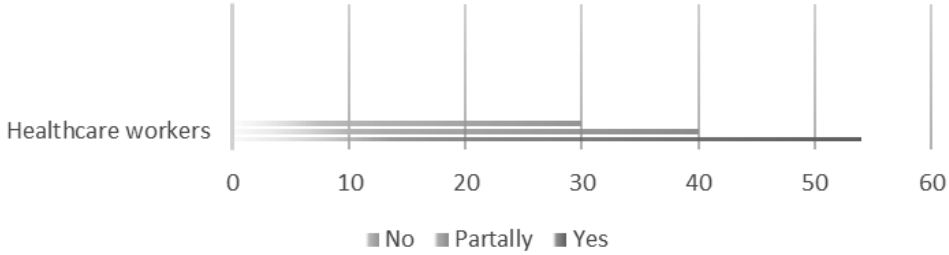
Therefore, more doctors participated in the survey (57%) compared to medical staff (43%); slightly more females (48%) than males (45%). The largest number of respondents belongs to the 23-33 and 34-44 age categories and the most work in the private sector.

Further, attitudes of healthcare workers concerning AI application in healthcare were subject of the second part of the survey.

2.2. Research results

Familiarity with the concept of applying artificial intelligence in healthcare

Chart 5. Familiarity with the concept of applying artificial intelligence in healthcare

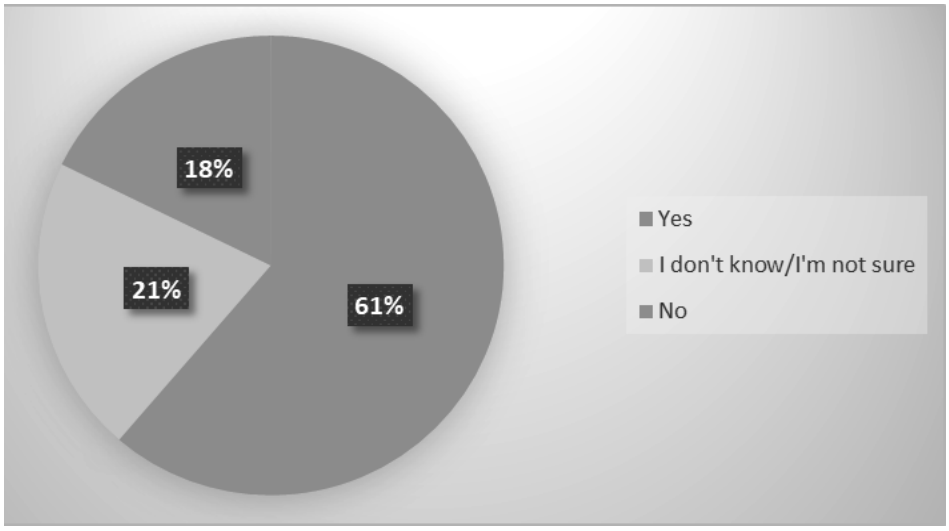


Source: Authors' research

Usefulness of AI application in healthcare sector

According to the respondents' answers, 61% is of the opinion that AI application in healthcare sector may be useful; 18% believes that this application is not useful in healthcare, while 21% is not sure/ do not know.

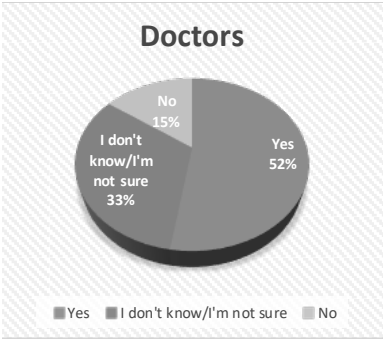
Chart 6. Usefulness of AI application in healthcare sector



Source: Authors' research

If we compare opinions of two target groups who participated in the survey (Chart 7 & Chart 8), medical staff believe, in higher percentage (62% – medical staff; 52% doctors), that AI application in healthcare sector is useful. There is greater uncertainty among doctors concerning this question.

Chart 7.
Usefulness of AI application in healthcare sector – medical staff



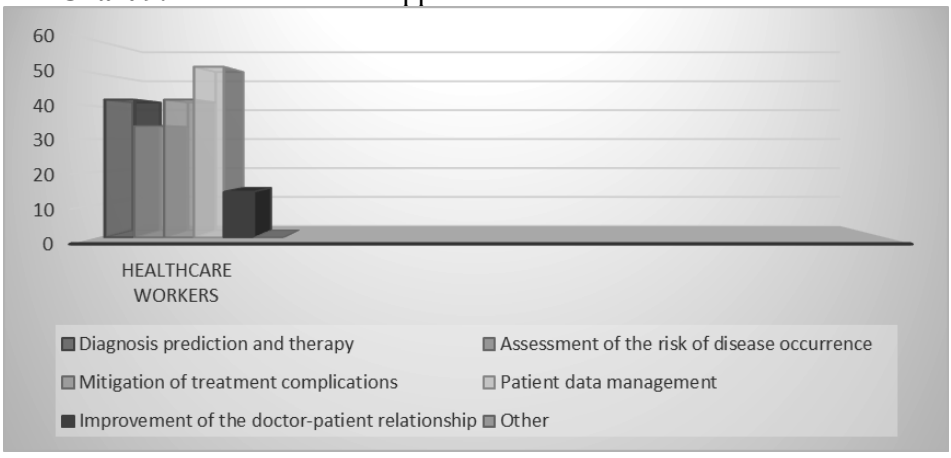
Source: Authors' research

Chart 8.
Usefulness of AI application in healthcare sector – doctors

Authors' research

Afterwards, among healthcare workers who found AI application in this sector useful, the reasons for this standpoint are following:

Chart 9. Usefulness of AI application in healthcare sector – reasons

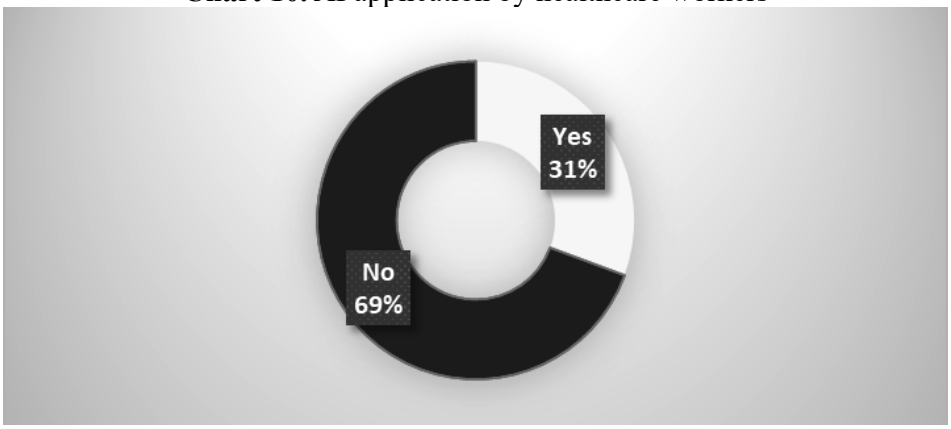


Source: Authors' research

Application of AI tools

Regarding the question whether healthcare workers use AI systems in their work, results show the following:

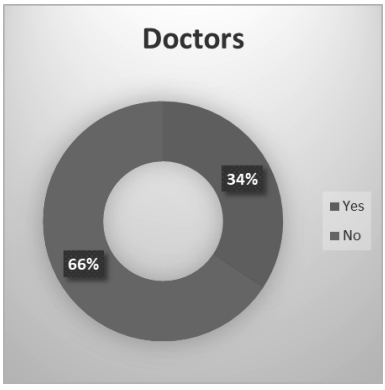
Chart 10. AI application by healthcare workers



Source: Authors' research

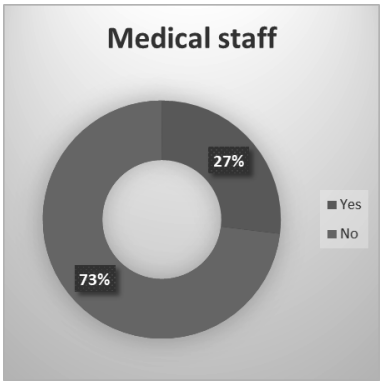
Also, results indicate that just 34% of surveyed doctors and 27% of medical staff use AI in work (Chart 11 and Chart 12).

Chart 11.
AI application by doctors



Source: Authors' research

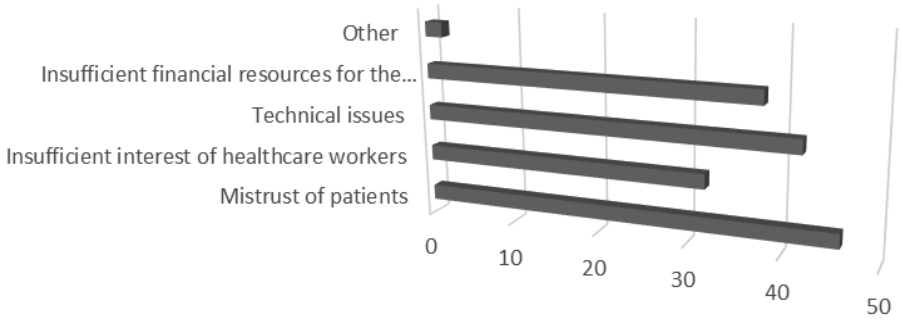
Chart 12.
AI application by medical staff



Source: Authors' research

Risks and challenges of using artificial intelligence in healthcare

Chart 13. Risks and challenges of using AI in healthcare

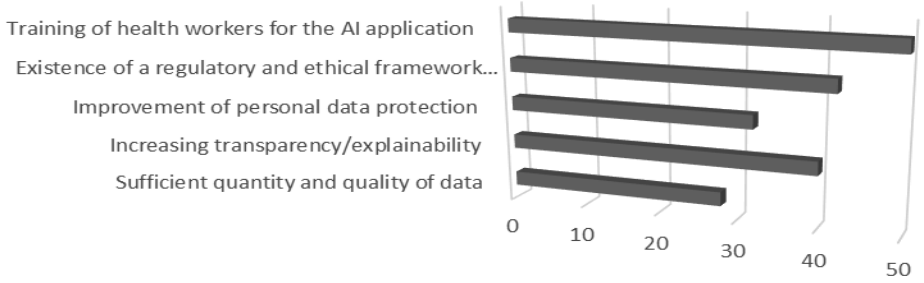


Source: Authors' research

There was a remark that misdiagnosis may occur if there is excessive reliance on artificial intelligence; it could only be a useful tool.

Finally, the last question has the aim to examine healthcare workers' attitudes regarding the improvement of AI application in healthcare (Chart 14).

Chart 14. Contribution to AI improvement in healthcare



Source: Authors' research

3. Conclusion with recommendations

Based on the analysis of the questionnaire, it could be concluded that respondents are not sufficiently familiar with the concept of AI application in healthcare (44% answered yes). 24% of the surveyed are not familiar with it at all, and 32% are partially familiar which indicates a quite high level of nescience among healthcare workers.

According to the respondents' answers, 61% is of the opinion that AI application in the healthcare sector may be useful; 18% believes that this application is not useful in this sector, while 21% is not sure/ do not know. This points out to still a small percentage of those who think this application is useful. If we compare the opinions of two target groups who participated in the survey, medical staff believe, in a higher percentage (62% – medical staff; 52% doctors), that AI application in the healthcare sector is useful. There is greater uncertainty among doctors concerning this question (33%), but also a higher percentage of respondents among medical staff who found it useless (19%).

Among healthcare workers who have found AI application in this sector useful, the reasons for this standpoint are the following: the largest number of them believes that it is patient data management, followed by Diagnosis prediction and therapy and Mitigation of treatment complications; a slightly smaller number states Assessment of the risk of disease occurrence, while much smaller is number of those who thinks that improvement of doctor-patient relationship is the reason for usefulness of AI application.

Regarding the question whether healthcare workers use AI systems in their work, results show that a worryingly large number of healthcare workers do not use AI in their work: 69% do not use, while only 31% do. Results indicate that 66% of surveyed doctors and 73% of medical staff do not use AI in their work. It is used the most in the age category 34-44 (52.63%), while in the age category 56+, none of the respondents use artificial intelligence in their work. This indicates that emphasis should be placed on the implementation, which also includes and consists of training for healthcare workers, explainability, encouragement and incitement, their involvement in the use of artificial intelligence systems.

Afterwards, when it comes to Risks and challenges of using artificial intelligence in healthcare, a surprisingly large number of answers related to mistrust of patients, and then to technical issues and insufficient financial resources for the implementation of AI in the health system. Especially important is that the results indicate that insufficient interest of healthcare workers is not considered as one of the main obstacles for the AI application into healthcare.

Finally, according to the surveyed, training for healthcare workers for the AI application would contribute the most to the improvement of the application of artificial intelligence in healthcare. In that regard, the existence of a regulatory and ethical framework for the AI application in healthcare and increasing transparency/explainability would have a medium impact. Improvement of personal data protection and existence of sufficient quantity and quality of data would have the least influence.

***

Like the AI Act, which *does not constitute distinct sectoral rules, but applies horizontally to all sectors, including healthcare* (Kolfschooten & Oirschot, 2024), it should not be expected otherwise in special law regarding AI in Serbia. The importance of a sectoral approach of AI application imposes the need to create a special strategy in the field of healthcare as well. In addition to adoption a special law in this area, this represents a significant step in the implementation of artificial intelligence. Taking all of the above into consideration, strategy for the application of artificial intelligence in healthcare should include and cover several key areas – *Introduction* – in which, in addition to the possibility of presenting the current state of application of artificial intelligence in the healthcare system, should be stated what artificial intelligence is, how it is used, what are the advantages and disadvantages, i.e. the risks of its use; *Goals and objectives* – improving data management (ensuring quantity and high quality of data; increasing transparency, explainability; reducing discrimination and prejudice; improving the protection of personal data); establishing a regulatory and ethical framework for the application of artificial intelligence; training of healthcare workers for collection/implementation of AI; patient-related improvements (early diagnosis, personalized treatment plan, disease risk assessment, treatment effectiveness/success assessment, management or mitigation of treatment complications, etc.); *Risks and strategies for their reduction*; *Assessment of the institution's readiness*; *Management*.

This approach could be very important for the trustworthy, ethical and safe application of artificial intelligence, and the next steps should be aimed at creating and improving the strategy for the application of artificial intelligence in different sectors, taking into account their specificities, which would later lead to the development of a strategy at the level of various institutions/organizations. In addition to legal regulations in the field of artificial intelligence, we believe that this, in healthcare sector, would greatly contribute to the protection of the right to health, as one of the fundamental human rights.

ACKNOWLEDGEMENT

The paper is the result of a long-term scientific research project, *Progressive Development of Law in the Modern Digital Society*, financed by the Provincial Secretariat for Higher Education and Scientific Research (Decision No. 003069523 2024 09418 003 000 000 001-01003069523 2024 09418 003 000 000 001-01, 21 November 2024).

Conflict of Interest
The authors declare no conflict of interest.

Author Contributions
Conceptualization, M.G. and M.M; formal analysis, M.G. and M.M; investigation, M.G. and M.M; methodology, M.G. and M.M; validation, M.M; visualization, M.G; writing – original draft, M.G. and M.M; writing – review & editing, M.G. and M.M. All authors have read and agreed to the published version of the manuscript.

Galetin Milena
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Mladenov Marijana
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

PRAVO NA ZDRAVLJE U SAVREMENOM SVETU – PRIMENA VEŠTAČKE INTELIGENCIJE IZ UGLA ZDRAVSTVENIH RADNIKA

APSTRAKT: Primena veštačke inteligencije je postala neminovnost u gotovo svim sferama života, a njen uticaj na različita ljudska prava je nesporan. Autori se u radu bave uticajem veštačke inteligencije na pravo na zdravlje, jedno od osnovnih ljudskih prava i u tom smislu ispituju stavove zdravstvenih radnika o primeni veštačke inteligencije u ovom sektoru. Pored empirijskog istraživanja i teorijske analize, prikazani su i najznačajniji pravni dokumenti koji se odnose na primenu veštačke inteligencije u zdravstvu. U poslednjem delu rada, autori iznose zaključna razmatranja, te ukazuju na dalje korake koje bi trebalo preduzeti u ovom sektoru kada je primena veštačke inteligencije u pitanju.

Ključne reči: *veštačka inteligencija i zdravstvena zaštita, strategija veštačke inteligencije u zdravstvu, pravo na zdravlje i veštačka inteligencija*.

References

1. Al Kuwaiti, A. Nazer, K., Al-Reedy, A., Al-Shehri, S., Al-Muhanna, A., Subbarayalu, A.V., Al Muhanna, D., & Al-Muhanna, F.A. (2023). A Review of the Role of Artificial Intelligence in Healthcare. *Journal of Personalized Medicine*, *13*(6), p. 951, DOI: https://doi.org/ 10.3390/ jpm13060951
2. Arnold, M. H. (2021). Teasing out Artificial Intelligence in Medicine: An Ethical Critique of Artificial Intelligence and Machine Learning in Medicine. *Bioethical Inquiry*, *18*(1), pp. 121–139, DOI: https://doi.org/10.1007/s11673-020-10080-1
3. Charter of Fundamental Rights of the European Union. OJ C 326, 26.10.2012
4. *Ethics and governance of artificial intelligence for health: WHO guidance* (2021). Geneva: World Health Organization
5. European Declaration on Digital Rights and Principles for the Digital Decade (2023/C 23/01)
6. Feasibility Study, Ad hoc Committee on Artificial Intelligence (CAHAI), Council of Europe, CAHAI (2020)23, Strasbourg, 17 December 2020
7. Jeyaraman M., Balaji S., Jeyaraman N., & Yadav, S. (2023). Unraveling the Ethical Enigma: Artificial Intelligence in Healthcare. *Cureus*, *15*(8), e43262, DOI: 10.7759/cureus.43262
8. Kolfschooten, van H., & Oirschot, van J. (2024). The EU Artificial Intelligence Act (2024). Implications for healthcare. *Health policy 149*, p. 105152, DOI: https://doi.org/10.1016/j.healthpol.2024.105152
9. Li, Y., H, Li, Y., L., Wei, M.,Y., & Li, G.Y. (2024). Innovation and challenges of artificial intelligence technology in personalized healthcare. *Scientific Reports*, *14*(1), p.18994, DOI: https://doi.org/10.1038/ s41598-024-70073-7
10. Petersson, L., Larsson, I., Nygren, J.M., et al. (2022). Challenges to implementing artificial intelligence in healthcare: a qualitative interview study with healthcare leaders in Sweden. *BMC Health Serv Res*, *22*(1), p. 850, DOI: https://doi.org/10.1186/s12913-022-08215-8
11. Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU)

No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act) (Text with EEA relevance)
12. Report on the application of artificial intelligence in healthcare and its impact on the 'patient-doctor' relationship, Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO), Council of Europe, September 2024
13. Sezgin, E. (2023). Artificial intelligence in healthcare: Complementing, not replacing, doctors and healthcare providers. *Digital health*, *9*, pp. 1–5, DOI:10.1177/20552076231186520
14. Strategija razvoja veštačke inteligencije u Republici Srbiji za period 2025-2030 godine [Strategy for the development of artificial intelligence in the Republic of Serbia for the period 2025-2030]. *Službeni glasnik RS*, br. 5/25
15. Tulli, S.,K.,C. (2023). Utilisation of Artificial Intelligence in Healthcare – Opportunities and Obstacles. *The metascience*, *1*(1), pp. 81–92
16. UN, General Assembly Universal Declaration of Human Rights. New York-Geneva: United Nations Publications, resolution 217 A (III), 10 December 1948
17. Ustav Republike Srbije [Constitution of the Republic of Serbia]. *Službeni glasnik RS*, br. 98/06 i 115/21
18. Vardas, E.P, Marketou, M., & Vardas, P.E (2025). Medicine, healthcare and the AI act – gaps, challenges and future implications. *European Heart Journal – Digital Health*, *6*(4), pp. 833–839, DOI: https://doi.org/10.1093/ehjdh/ztaf041
19. Zaključak o usvajanju etičkih smernica za razvoj, primenu i upotrebu pouzdane i odgovorne veštačke inteligencije [Conclusion on the adoption of ethical guidelines for the development, application and use of trustworthy and responsible artificial intelligence]. *Službeni glasnik RS*, br. 23/23

Krstinić Dalibor*
https://orcid.org/0000-0002-9731-9178
Stefanović Nenad**
https://orcid.org/0000-0002-7899-9585

UDC: 316.647.82:349.2
Original scientific paper
DOI: 10.5937/ptp2504056K
Original scientific paper
Received on: November 24, 2025
Approved for publication on:
December 11, 2025
Pages: 56–77

CIVIL LAW PROTECTION AGAINST DISCRIMINATION IN EMPLOYMENT AND RECRUITMENT

ABSTRACT: Discrimination in the field of employment and recruitment constitutes a violation of personality rights guaranteed by civil law. In the Republic of Serbia, direct and indirect discrimination in employment relationships and during the recruitment process is prohibited, and injured parties have access to judicial protection under special anti-discrimination regulations as well as under the general rules of civil law. This paper analyzes the normative framework for the prohibition of discrimination in the field of labour, as well as civil-law protection mechanisms, with particular emphasis on the right of the injured party to claim compensation for non-pecuniary damage resulting from the violation of their rights. In light of Article 21, paragraph 4 of the Constitution of the Republic of Serbia: "Special measures introduced by the Republic of Serbia for the purpose of achieving full equality shall not be considered discrimination…" – so-called affirmative measures – the paper also presents the forms of judicial protection (actions for prohibition, removal of consequences, determination of discrimination, compensation for damages, etc.) and the conditions under which the injured party may seek equitable satisfaction. The paper relies

* LLD, Associate Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: dkrstinic@pravni-fakultet.info
** LLD, Associate Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: nenad@pravni-fakultet.info

on relevant judicial practice in Serbia, including decisions of the Supreme Court of Cassation, which confirm that discriminatory conduct constitutes a violation of honour, reputation, dignity, and other personal rights that enjoy judicial protection, both through claims for cessation of the violation and claims for damages. Despite progress in normative and institutional protection, practical challenges remain – from proving discrimination under special rules on the burden of proof, to inconsistencies in judicial practice regarding the awarding of non-pecuniary damages. Therefore, it is important to continuously improve the application of the law and awareness of the right to equal treatment in employment relationships, in order to ensure that civil-law protection against discrimination is effective and comprehensive.

Keywords: *discrimination, employment relationships, civil law protection, personality rights, non-pecuniary damage, case law, Serbia.*

1. Introduction

The right to equal treatment is one of the fundamental principles of modern labour and civil law. Discrimination on any personal ground in the sphere of work and employment is prohibited by domestic legislation and international standards because it violates human dignity and infringes the basic personality rights of employees or job applicants. The Constitution of the Republic of Serbia of 2006 guarantees a general prohibition of discrimination (Constitution of the Republic of Serbia, 2006, Art. 21) and explicitly prohibits discrimination on the grounds of sex, race, nationality, religious belief and other personal characteristics (e.g., Art. 60, para. 4 of the Constitution refers to equal access to employment). However, prior to the entry into force of the general Anti-Discrimination Act in 2009, protection against discrimination was fragmented across several regulations, which did not ensure effective protection. For example Article 18 of the Labour Law prohibits any discrimination, direct or indirect, against persons seeking employment and employees, on any personal ground, in relation to conditions of employment, work, equal pay for work, promotion, professional training, termination of employment, etc. (Article 18 of the Labour Law, 2005).

The adoption of the Law on the Prohibition of Discrimination (2009; hereinafter: LPD) represented a turning point in establishing a unified legal framework for combating discrimination. This Act introduces a definition of discrimination and sets out in detail the forms of discriminatory conduct,

including specific cases of discrimination in the field of labour. In practice, the Commissioner for the Protection of Equality first acts upon a citizen's complaint and may issue an opinion with a recommendation to the employer to remedy the violation. If the employer fails to do so, the Commissioner (with the consent of the victim) may initiate misdemeanor proceedings or file a lawsuit before the court (except for claims for damages). LPD states: "If the plaintiff makes it probable that the defendant committed an act of discrimination, the burden of proof … shifts to the defendant" (Article 45, paragraph 2 of the LPD) – this rule is lex specialis in relation to the Civil Procedure Act (2011), which provides that each party must prove its own allegations.

Alongside the LPD, the Labour Law (2005) contains a special chapter on the prohibition of discrimination (Arts. 18–21 of the Labour Law, 2005), which prohibits any form of direct or indirect discrimination against persons seeking employment as well as against employees, in relation to conditions of employment, work, promotion, termination of employment, etc. In addition, there are specific regulations addressing discrimination against certain groups in the employment context, such as the Law on Professional Rehabilitation and Employment of Persons with Disabilities, which prescribes measures for the equal inclusion of persons with disabilities in the labour market. Nevertheless, regardless of the multiple legal sources of protection, the essence of legal protection against discrimination in employment relationships lies in the possibility for the injured party to initiate civil proceedings and obtain judicial protection of their violated rights. Discrimination in the workplace is, in legal theory and practice, primarily regarded as a violation of the personality rights of the injured worker or job applicant, such as the right to dignity, honour, reputation, freedom of choice, and the like. Such a violation activates the mechanisms of civil law – actions for the protection of personality rights and claims for damages – in order to restore the disturbed balance and provide appropriate satisfaction to the injured party. This paper will first present the normative framework for protection against discrimination in the field of labour, then analyze civil-law instruments of protection (types of actions and procedure), with a particular focus on the right of the injured party to compensation for non-pecuniary damage. Relevant case law in Serbia will also be presented, including examples of judgments in which courts have found discrimination and awarded damages. Finally, a conclusion will be provided regarding the scope and challenges of the existing protection, along with recommendations for improving practice.

2. Normative Framework for Protection against Discrimination in Employment

The prohibition of discrimination in the Serbian legal system is established at several levels. The Constitution of the Republic of Serbia lays the foundation by proclaiming the principle of equality and the prohibition of all forms of discrimination (Art. 21 of the Constitution). In the field of work and employment, the Constitution guarantees the right of everyone to be admitted, under equal conditions, to public functions and jobs (Art. 60(4) of the Constitution), which implies that personal characteristics must not be a basis for unequal treatment in recruitment or during employment. The Labour Law, as the fundamental regulation of labour law, explicitly prohibits discrimination in employment relationships. Article 18 prescribes that direct and indirect discrimination against employees and persons seeking employment, on any ground (in particular sex, language, national affiliation, social origin, religious belief, political opinion, disability, age, marital status, trade union membership, etc.), is not permitted in relation to all rights arising from employment. Articles 19 to 21 of the Labour Law further elaborate this prohibition, including exceptions (e.g., positive measures and cases where a certain condition represents a genuine and determining occupational requirement). The Labour Law also provides for judicial protection for victims of discrimination – an employee or candidate may initiate proceedings before the competent court and seek the protection of their employment rights. It should be noted that a victim of discrimination in employment has two avenues available: (1) to seek protection within an employment dispute, relying on the provisions of the Labour Law; or (2) to file a separate anti-discrimination lawsuit under the LPD. In practice, provisions of both laws are often used – for example, a claim for determination of discrimination and compensation for damages may be based on the LPD, while at the same time invoking the violation of employment rights under the Labour Law. The LPD is a general anti-discrimination statute that applies to all areas, including work and employment. It was adopted in 2009 in line with European standards on equality (2009, Articles 41–47). The LPD contains a general definition of discrimination: any unjustified differentiation or unequal treatment of a person or a group of persons based on a personal characteristic, which has the purpose or effect of placing that person in a less favourable position.[1] The

[1] Supreme Court of Cassation, Rev. 66/2012 of 2 February 2012 (case of discrimination against a person with disabilities by refusal of transport): The Court confirmed the establishment of discrimination and awarded non-pecuniary damages (180,000 RSD for mental anguish due to violation of honour and reputation). Published in the Bulletin of Case Law of the SCC No. 3/2012.

Act explicitly lists a wide range of protected grounds of discrimination (race, sex, national affiliation, language, religion, age, disability, sexual orientation, gender identity, property status, membership in political and trade union organizations, etc.), as well as specific forms of discrimination by fields. One of these fields is listed as "Discrimination in the field of work", where typical examples are enumerated: discrimination in recruitment, during employment, in promotion, in education and training for work purposes, etc (Krstinić, 2018a). In this way, the LPD complements the Labour Law and provides a basis for civil litigation protection regardless of the labour-law status of the victim (which means that protection may be sought not only by employees, but also by job seekers, interns, volunteers, etc., i.e., anyone discriminated against "in connection with work and employment"). In addition to these two key laws, the Law on Obligations (1978; hereinafter: LOO) is also relevant, as part of civil legislation. Although it does not explicitly deal with discrimination, the LOO lays down general rules on liability for damage and the protection of personality rights. Article 154 of the LOO establishes the principle that "whoever causes damage to another shall be obliged to compensate it", which also covers non-pecuniary damage arising from the violation of someone's rights. Furthermore, Article 157 of the LOO provides for preventive protection against violations of personality rights – the possibility for the court to prohibit an act that insults someone's honour, reputation, dignity or other personal right, if there is a risk of damage. This is significant in the context of discrimination at work: the threat of discriminatory conduct (e.g., an announced recruitment policy that would exclude a certain group) may be prevented by such a preventive action. The LOO also, in Article 199, provides for reactive protection – the removal of the consequences of an already committed violation of personality rights, in one of the ways listed in that article (cessation of the harmful act, publication of a correction or of the judgment, granting a certain form of non-pecuniary satisfaction), while leaving open the possibility of other ways of achieving compensation. In practice, this means that a victim of discrimination as a violation of personality rights may request the court to order an act that provides moral satisfaction – for example, a public apology or the publication of a judgment establishing discrimination. Finally, Article 200 of the LOO allows the court, if justified by the circumstances of the case, to award monetary compensation for suffered mental anguish, fear and other forms of non-pecuniary damage due to the violation of personality rights (Krstinić, 2018a). This provision is crucial for claims for compensation of non-pecuniary damage resulting from discrimination (Stefanović, 2018). It is important to note that Serbia, as a signatory to international human rights conventions, has an obligation to provide effective legal remedies against discrimination. In the case of racial discrimination at a swimming pool in

Šabac (2000), domestic courts already directly relied on international conventions (such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights) to fill legal gaps before the adoption of the LPD. In that case, the Supreme Court of Serbia emphasized that all public places and services must be provided to everyone under equal conditions, and that discrimination on any ground violates human dignity and constitutes a violation of personality rights that enjoys judicial protection (Humanitarian Law Center, 2024). These positions were later incorporated into legislation (LPD, 2009), also harmonized with European Union law, which through equal treatment directives requires states to ensure effective and deterrent protection for victims of discrimination, including the right to compensation without pre-determined maximum amounts (i.e., sanctions must be effective, proportionate and dissuasive). Therefore, the normative framework today provides several parallel legal bases on which a victim of discrimination in the field of work may rely: constitutional provisions, specific articles of the Labour Law, the general LPD, and general rules of civil law on the protection of personal rights and compensation for damage. The following section will examine how these regulations are implemented through judicial protection – primarily through civil litigation.

3. Civil Law Protection: Judicial Proceedings and Types of Actions

The Family Law Judicial protection against discrimination is exercised by the victim through the initiation of civil proceedings before the competent court. In disputes concerning protection against discrimination under the LPD, the Higher Court is competent as the court of first instance, which means that these cases are entrusted to higher-level courts due to their complexity and social importance. The proceedings are prescribed as urgent – the courts are required to act without delay in discrimination lawsuits[2]. In addition, the law provides that a revision (extraordinary legal remedy) is always allowed in discrimination cases, regardless of the value of the dispute, which departs from

[2] Judgment of the Municipal Court in Šabac, P. No. 174/2000 of 28 August 2001, upheld by the District Court in Šabac, Gž. No. 45/01, and the Supreme Court of Serbia, Rev. No. 102/02 of 2004 (the "Krsmanovača" swimming pool case) – publication of an apology in the newspaper "Politika" was ordered due to discrimination on the grounds of national origin (Roma). The reasoning was published in a statement of the Humanitarian Law Center.

the general rules of civil procedure.[3] This practically means that the Supreme Court of Cassation may review any final decision in an anti-discrimination dispute, thereby ensuring the harmonization of case law and the development of protection standards.

The proceedings begin by filing a claim. The LPD (Arts. 41–46) exhaustively lists what the plaintiff may request in a claim for protection against discrimination. Possible claims include:

- Prohibition of discrimination – the plaintiff may request that the court prohibit certain conduct that constitutes discrimination or prohibit the repetition of discriminatory acts in the future. For example, an employee who is subjected to harassment by a superior due to a personal characteristic may request the court to order the employer to cease such conduct and not repeat it. Similarly, a job applicant may seek the prohibition of conducting a recruitment procedure that contains discriminatory conditions (e.g., a requirement that the candidate be of a certain sex/orientation). This type of claim corresponds to preventive protection under Article 157 of the LOO and aims to prevent future or continuing violations.
- Declaration (determination) of discrimination – the plaintiff may request that the court determine that the defendant acted in a discriminatory manner towards the plaintiff (or another person) by specific conduct. This declaratory claim is meaningful when the victim seeks legal confirmation that discrimination occurred, for reasons of moral satisfaction or for the possibility of using such a judgment for other purposes. In practice, an action for determination is used when the victim does not seek any concrete measure (such as compensation or prohibition) or alongside other claims – although the LPD provides that determination is not combined with other actions (if, for example, compensation is sought, the court must in any case first determine that discrimination has occurred). Therefore, a claim exclusively for determination is usually filed when the discrimination has already ceased, no damage has occurred or is not claimed, and the plaintiff wishes to obtain judicial confirmation that their right was violated.
- Removal of the consequences of discrimination – the claimant may request, by court action, that the defendant undertake certain actions

[3] Vrhovni sud Srbije [Supreme Court of Cassation of the Republic of Serbia]. Rev 102/2002 od 2004 – the decision confirming the verdict on racial discrimination (the case of the swimming pool in Šabac); stated in the announcement of the HLC in 2005.

in order to eliminate the effects of the discriminatory conduct. This corresponds to the so-called action for removal under general civil law. For example, if an employer has adopted an internal act that is discriminatory (e.g., a rulebook containing provisions that place women in an unfavourable position regarding promotion), the plaintiff may seek the removal of the consequences of that act – for instance, that the employer repeal or amend the disputed provision, that a certain recruitment procedure be repeated under equal conditions, etc. If discrimination has left lasting consequences (e.g., damaged reputation of an employee), the court may order measures to mitigate this, such as publication of a correction or of the judgment.

- Compensation for damages – the claim may include a request for compensation of material and non-material damage caused by discrimination. This segment of protection will be discussed in more detail in the following chapter, as it represents a key form of satisfaction for the victim and is of particular interest to this paper.
- Publication of the judgment – the victim may request that the judgment upholding the discrimination claim be published in the media at the expense of the defendant. This possibility serves a dual purpose: public recognition of the violation of rights (which provides satisfaction to the victim) and general prevention (public condemnation of discriminatory conduct has a deterrent effect on others). In practice, the court will determine in which media and to what extent the judgment will be published, taking into account the circumstances of the case (e.g., publication in a daily newspaper if the incident was public, as in the case of the Šabac swimming pool, where publication of an apology in the newspaper "Politika" was ordered). The LPD further prescribes that a claim for protection against discrimination may be filed, in addition to the discriminated person, by the Commissioner for the Protection of Equality or an organization dealing with the protection of human rights of a particular group, and even by a so-called voluntary discrimination tester (a person intentionally exposed to discrimination for testing purposes). However, when discrimination is individual (against a specific person), the organization or the Commissioner must obtain the written consent of that person before filing the claim. This possibility of collective protection is particularly significant in the field of employment – trade unions and non-governmental organizations can help victims to achieve justice, which is especially useful when it comes to vulnerable persons who are reluctant to sue an employer

themselves. It should be noted that a claim for damages belongs to personal proprietary claims and can only be filed personally by the injured party (organizations and the Commissioner do not have standing to file such a claim). They may file other types of claims (determination, prohibition, removal, publication of the judgment), thereby protecting general interests and the principle of equality, but the compensation claim for specific non-material or material damage remains within the domain of the victim's personal rights (Krstinić, 2018b, p. 1–15). The burden of proof in anti-discrimination disputes is significantly modified compared to general rules. Civil evidence in principle requires that the plaintiff prove the basis of their claim. However, the LPD in Article 45(2) introduces a special rule: if the plaintiff makes it probable that the defendant committed an act of discrimination, the burden of proof shifts to the defendant to prove that there has been no violation of the principle of equality (Golubović & Šolić, 2015; special focus on labour-law discrimination cases, states that sex is the most frequent ground in practice). Thus, the victim of discrimination is not required to prove the defendant's fault or all elements as in classic civil cases, but it is sufficient to present facts and evidence that prima facie indicate discriminatory conduct (e.g., to show that they meet the conditions for a job but were not employed while others with weaker qualifications were, or to prove that they suffered unequal treatment at work by comparing their position with others, together with circumstances indicating that the cause was their personal characteristic). It is then for the defendant (employer) to prove that the difference in treatment has an objective and reasonable justification not related to a discriminatory ground. This rule reflects the standards of the EU and the European Court of Human Rights and is intended to facilitate the difficult evidentiary process for victims. In the practice of domestic courts, however, there have been certain inconsistencies in the application of these provisions. It has been observed that some courts initially ignored the special rules on the burden of proof from the LPD and adhered strictly to the general Civil Procedure Act, requiring the plaintiff to fully prove discrimination (Petrušić, 2012, p. 78). For example, the Belgrade Court of Appeal in 2013 quashed a first-instance judgment precisely because the lower court had not applied the rule of shifting the burden of proof – the lower court had dismissed the claim considering that the plaintiff had not proved discrimination, disregarding that it was sufficient to make it probable (Petrušić, 2012,

p. 78). Vodinelić discusses concepts and proposes solutions before the adoption of the LPD; points out that protection through lawsuits for violation of personality rights was the only route, and that the new law regulates this systematically (Vodinelić, 2008, pp. 39–57). Today, case law is more aware of these special norms, but this remains an aspect that lawyers and plaintiffs must point out during proceedings in order to ensure proper application of the law. When the court establishes that the conditions for protection against discrimination are met, it is obliged to provide protection to the discriminated person. This means that, if the claim is well-founded, the court renders a judgment accepting one or more of the plaintiff's claims. Multiple claims are often combined in one lawsuit – and the law permits this. For example, the plaintiff may simultaneously request that the court determine that they have suffered discrimination, prohibit the defendant from repeating such conduct, order the removal of consequences (e.g., repetition of a recruitment procedure or adoption of a new decision on employment), and award damages. All of this may be cumulated in a single procedure, which is economically and procedurally efficient. Formally speaking, the declaratory claim (determination) is not cumulated with other claims, because determination is implicitly contained in the acceptance of any other discrimination claim. In practice, attorneys often formulate the claim alternatively or subsidiarily: for example, if the court were not to award damages, to at least determine that discrimination occurred, or similar. In addition to principal protection through a lawsuit, provisional measures may also be sought in order to urgently prevent further harm. At the request of the plaintiff, the court may, already during the proceedings, issue a provisional measure by which it would, for example, temporarily prohibit the defendant from continuing the disputed conduct until the completion of the dispute. This is useful in employment situations where delaying the process may mean that the victim continues to suffer harassment or has meanwhile lost their job. Provisional measures are regulated by the LPD and the Civil Procedure Act, and are especially justified if there is a risk of irreparable harm or violence, or a risk that the defendant will impede the enforcement of the future judgment (e.g., by hiding assets to avoid paying compensation). It is thus possible to prevent the defendant from disposing of their property in order to secure a claim for damages during the course of the proceedings. All of the described procedural possibilities constitute the framework within which the injured party can exercise civil-law

protection. In the next part of the paper, the focus will be placed in more detail on compensation for non-pecuniary damage due to discrimination – a claim that is often of the greatest importance to the victim, as it represents recognition of their suffered mental anguish and satisfaction for the violation of dignity.

4. Compensation for Non-Pecuniary Damage Caused by Discrimination

Non-pecuniary damage includes mental pain, emotional suffering, impairment of dignity, fear, or other forms of discomfort suffered by the injured party that are not materially measurable (Stefanović & Milojević, 2024, pp. 90–108). Discriminatory conduct, especially in the employment context, as a rule causes some form of non-pecuniary damage: violation of dignity, a feeling of humiliation in front of colleagues, stress, impairment of psychological integrity, and even fear of further consequences or loss of livelihood. Under the LPD, discrimination itself does not automatically presuppose the existence of damage – it is possible for someone to be discriminated against without objectively suffering material loss or provable mental pain. Likewise, for the determination of discrimination it is not necessary that the perpetrator acted with intent or fault (liability under the LPD is objective in the sense that the unlawfulness of the conduct is assessed irrespective of intent). However, in order for the victim to exercise the right to compensation for damage, the conditions of civil liability must be met: the existence of damage and, as a rule, the fault of the perpetrator. Thus, the injured party must prove (or make it probable) that, due to discriminatory conduct, they have suffered a certain type of damage – whether material or non-pecuniary – and that it occurred through the fault of the defendant (intent or negligence of the discriminator). In practice of discrimination in employment relationships, material damage may consist, for example, of lost earnings (if a person was not employed or was dismissed due to discrimination), costs of medical treatment or relocation (if discrimination led to deterioration of health or the need to change the working environment), and legal and court costs incurred in order to protect their rights, etc. On the other hand, non-pecuniary damage is manifested through mental suffering (Matijašević, Krstinić, Galić, Logarušić & Bingulac, 2024, p. 587), impairment of feelings of honour, psychological stress, or fear suffered by the discriminated person as a result of unlawful conduct. Examples include: a female employee who has suffered sexual harassment by a superior and experiences mental anguish due to the violation of her dignity; an older worker who has been

mocked by colleagues because of age and suffers an impairment of honour and a feeling of shame; a person with a disability who is constantly belittled by an employer and may develop fear and stress in the workplace, etc. With regard to non-pecuniary damage, the forms of compensation are specific. Unlike material damage (where compensation is reduced to the payment of an appropriate monetary amount covering, for example, lost salary or additional costs), satisfaction for non-pecuniary damage may also be of a non-material nature. Pursuant to Article 199 of the LOO, the court may order actions to remove the consequences of violations of personality rights – which includes, for example, requiring the perpetrator to issue an apology to the injured party, to withdraw the disputed statement or act, or to publish the judgment or a correction in the media. Such measures are often of great importance to victims of discrimination, as they confirm their justice and restore impaired reputation. In the already mentioned case of discrimination against Roma at a swimming pool, the plaintiffs primarily sought the publication of a public apology in a newspaper as a form of non-pecuniary satisfaction, instead of monetary compensation. The court upheld that request and ordered the perpetrator to publish a public apology to the injured parties at their own expense for the discrimination committed. This indicates that money is not the only or always the most important form of compensation for suffered injustice – often public acknowledgment of wrongdoing and condemnation of the discriminator is of greater value to the victim. Nevertheless, monetary compensation for non-pecuniary damage (so-called compensation for mental anguish, fear, etc.) represents a key instrument to provide the victim with equitable satisfaction, and at the same time to punish and deter the perpetrator (specific prevention) and other potential discriminators (general prevention). Based on Article 200 of the LOO (1978), the court may award monetary compensation for mental anguish suffered due to the violation of personality rights, as well as for suffered fear, taking into account the intensity and duration of such pain and fear, and their impact on the life of the injured party. In the context of employment relationships, discrimination may leave serious psychological consequences on the employee – for example, long-term workplace harassment may lead to clinical depression or other disorders – and the court should assess all circumstances. Although non-pecuniary damage cannot be precisely "measured" in money, the court, based on its equitable assessment, determines an amount that corresponds to the severity of the violation and the economic strength of the environment. Serbian case law records a number of cases in which non-pecuniary damage was awarded for discrimination, including those related to employment. For example, in one case a person with a disability was discriminated against by a transport company

whose staff refused to allow her to board a bus because of her disability. She sought a determination of discrimination and compensation for damage. The court found that discrimination had occurred (violation of the right of a person with a disability to transport services), prohibited the defendant from repeating such conduct, and awarded the injured party monetary compensation for non-pecuniary damage due to mental anguish (violation of honour and dignity) in the amount of 180,000 Serbian dinars, while the amount initially awarded for fear (150,000 RSD) was later finally rejected, as it was assessed that the fear was not of such intensity as to justify monetary compensation. In 2012, the Supreme Court of Cassation confirmed the part of the judgment awarding compensation for violation of honour and dignity, thereby practically establishing a standard that discrimination against a person with a disability is considered a violation of personality rights that deserves equitable monetary satisfaction (Petrović & Mrvić-Petrović, 2014, pp. 422–423) (in that particular situation, around 180,000 RSD, which at the time corresponded to approximately EUR 1,800). These and similar amounts demonstrate judicial policy in Serbia – compensation is neither symbolic nor exorbitantly high; courts strive to award fair compensation that will alleviate the suffering of the injured party while remaining reasonable and proportionate to the severity of the violation. In cases of employment discrimination, the amount of awarded non-pecuniary damage depends on the specific case. For mobbing (workplace harassment, which may include discriminatory motives), amounts such as 300,000 RSD have previously been awarded for mental anguish, depending on the length and intensity of the harassment. For refusal to employ due to discrimination, in addition to compensation for material damage (lost earnings), a certain amount is usually awarded for the violation of the candidate's dignity. For example, the Novi Sad Court of Appeal in 2018 upheld a judgment awarding a candidate who was not employed due to national origin 200,000 RSD in non-pecuniary damages (together with a determination of discrimination and an order to the employer to repeat the recruitment procedure under equal conditions) – this hypothetical example illustrates the tendency to compensate individual injustices with moderate amounts, together with measures that correct the situation. An integral part of such judgments are often public apologies or publication of the judgment, which, as noted, carry special weight for the victim and society. It is important to note that compensation for non-pecuniary damage is not awarded automatically – the plaintiff must prove or at least make it probable that they have suffered mental anguish or another form of non-pecuniary damage due to discrimination. Courts, in their reasoning, state the basis for concluding that damage exists: they often take into account the plaintiff's own statement on how the

discriminatory act affected them, possible testimony of witnesses (colleagues, family members) regarding changes in behavior, and sometimes expert opinions of psychologists or psychiatrists if the difficulties are more serious. In the case of minor violations of dignity that did not leave more lasting consequences, the court may assess that there is no basis for compensation or that the declaratory part of the judgment (establishing discrimination) already represents sufficient satisfaction. Thus, in the example from Niš from 2007, the Supreme Court ultimately rejected compensation for fear, probably reasoning that the injured party's fear was not of such intensity or duration as to justify monetary compensation, while mental anguish due to violation of dignity was recognized as relevant and awarded. When compensation is awarded, its amount depends on criteria developed in practice: the degree of violation (whether discrimination was of a gross nature, e.g. public humiliation, or more subtle), the duration and frequency of discriminatory conduct (a single incident vs. continuous harassment), the consequences for the injured party's psychological condition (whether the suffering is temporary or leaves lasting trauma), and general social circumstances. Courts are also aware of the general standard that compensation should be sufficiently deterrent for the perpetrator. In that sense, domestic law does not prescribe upper limits for compensation (which would also be contrary to EU standards), but in practice, amounts are rarely awarded that would seriously financially endanger the employer, except in the most serious cases. In the future, an increase in awarded amounts may be expected as awareness of the harmfulness of discrimination grows, while maintaining the principle of individualization of each claim.

5. Judicial Practice in Serbia – Examples and Trends

Since the adoption of the LPD in 2009, a significant number of discrimination proceedings have been conducted before courts in Serbia, the majority of which have concerned the field of work and employment. Research shows that cases of discrimination related to employment are among the most frequent anti-discrimination disputes. This is understandable, as the world of work directly affects people's livelihoods and daily lives, and unequal treatment most often manifests itself precisely there – whether during recruitment procedures or within the work environment (promotion, allocation of tasks, mobbing, dismissal). We have already mentioned some judicial decisions that illustrate the application of the law. It is useful to systematize several significant cases from practice in order to gain insight into the standards that have developed:

- "The Šabac swimming pool case" (2000–2005) – The first significant judicial outcome related to discrimination in Serbia occurred before the adoption of the LPD. After a testing experiment established that Roma were denied access to the municipal swimming pool in Šabac solely because of their ethnic origin, the Humanitarian Law Center initiated civil proceedings against the pool management. The court found that discrimination had occurred and ordered the cessation of such conduct, as well as the publication of a public apology to the injured persons. In 2004, the Supreme Court of Serbia (rejecting the defendant's revision) upheld that judgment and, in its reasoning, set out principles that would become the foundation of further case law: it clearly defined the concept of personality rights and emphasized that "discrimination violates human dignity, the components of which are honour, reputation and personal integrity, and as such constitutes a violation of personality rights that enjoys judicial protection both through a claim for cessation of the violation and through a claim for compensation for damage." This judgment opened the door to the application of civil-law institutes to cases of discrimination. It is also significant because the court for the first time accepted the evidentiary method of "discrimination testing" as valid (engaging persons to check whether they would be discriminated against), which was later recognized in law through the institution of voluntary discrimination testers.
- Discrimination against a person with a disability in transport (Niš, 2007–2012) – The already mentioned case, which concluded the dispute of a claimant with a disability against a carrier due to refusal to allow her to board a bus. Judicial practice in this case consolidated several important positions: (1) that refusal of service on the grounds of disability constitutes direct discrimination and a violation of that person's dignity; (2) that even before the adoption of the general LPD, there was a basis in the special Law on the Prevention of Discrimination of Persons with Disabilities (adopted in 2006) and in the general rules of the LOO to sanction such conduct; (3) that claims for determination of discrimination, prohibition of further conduct and compensation for non-pecuniary damage may be cumulated; (4) that compensation for violation of honour and reputation may be awarded (here, 180,000 RSD), while compensation for fear depends on specific evidence (in this case rejected in revision). This judgment is also significant because it confirms the primacy of special anti-discrimination legislation over general regulations (the Court of Cassation explicitly referred to the

Law on the Prevention of Discrimination of Persons with Disabilities and to provisions of the Civil Procedure Act that give precedence to such laws). Cases of discrimination against persons with disabilities in access to services have parallels in labour law (e.g., failure to provide reasonable accommodation at the workplace may be considered a form of discrimination against persons with disabilities at work).[4]

- Discrimination on the grounds of sex and marital status in recruitment – In practice, problems have arisen regarding questions asked by employers to female candidates about family planning. This is considered direct discrimination against women (grounds of sex and family status). For example, the Higher Court in Belgrade in early 2012 ruled in favour of a claimant who was not hired by a state institution because the employer assumed that she would soon become pregnant. The court found that asking such questions in a job interview and making a negative decision on that basis is contrary to the law, ordered the employer to repeat the recruitment procedure under equal conditions, and awarded the claimant compensation for non-pecuniary damage due to the violation of the right to equal treatment (this outcome is presented here illustratively, as concrete details are partly hypothetical due to the unavailability of the full judgment) (Šolić, Vasić & Todorović, 2019, p. 23). The important point is that courts have recognised these subtle forms of discrimination.
- Indirect discrimination in wages – A more recent example before the Supreme Court of Cassation[5] concerned allegations by a group of employees that they were discriminated against because the employer's bonus allocation criteria were seemingly neutral, but in fact disproportionately excluded older workers. The Court of Cassation confirmed the definition of indirect discrimination: it exists even when a seemingly neutral practice places persons with a certain characteristic in a less favourable position compared to others. In that case, it was found that the criterion (e.g., knowledge of modern digital tools) was not justified by a legitimate aim to a sufficient degree and therefore constituted indirect discrimination against older workers. The

[4] Vrhovni kasacioni sud [Supreme Court of Cassation]. Rev 66/2012 od 02.02.2012, Downloaded 2025, November 12 from https://www.vrh.sud.rs/sr-lat/rev-6612-naknada-%C5%A1tete-akt-diskriminacije

[5] Vrhovni sud [Supreme Court]. Rev2 3762/2023 28.02.2024. Downloaded 2025, November 12 from https://www.vrh.sud.rs/sr-lat/rev2-37622023-114-zabrana-diskriminacije

employer was ordered to change the criteria and to pay the employees the difference in bonuses, along with compensation for non-pecuniary damage to each of them due to the violation of the right to equal dignity at work (around 50,000 RSD per person, according to media reports – again showing a trend of moderate but meaningful amounts).

In general, judicial practice has evolved from initial restraint towards a more active role of the courts in protecting equality. At first, discrimination lawsuits were rare and often unsuccessful due to strict formalism (e.g., strict proof of discriminatory intent). However, over time, and with the education of judges (the Judicial Academy, in cooperation with the OSCE, conducted training for judges on anti-discrimination laws) (Šolić, Vasić & Todorović, 2019, p. 22), more and more judgments have confirmed a genuine readiness of courts to sanction discriminatory behaviour. The Supreme Court of Cassation, in several revision decisions, has elaborated key concepts of the LPD, such as the very concept of discrimination (a 2022 decision cited the definition from Art. 2 of the LPD and confirmed that the law was correctly applied when lower courts rejected the claim, which means that sometimes plaintiffs do fail to establish even a prima facie case).[6] Thus, there are also confirmed dismissing judgments, which is also significant for jurisprudence (it shows that not every claim of unequal treatment constitutes legally relevant discrimination; it must be examined whether a comparator exists, whether there is a protected characteristic and unequal treatment without an objective reason). From a statistical point of view, exact numbers are difficult to obtain because discrimination cases are not always registered under a single designation. According to one analysis, in the period 2010–2015 there were over one hundred court proceedings under the LPD, a significant part of which ended in settlements or dismissal of the claim, but also a considerable number with success of the plaintiffs (Šolić, Vasić & Todorović, 2019). The Commissioner for the Protection of Equality, in its annual reports, regularly states that the field of work and employment is among the leading areas by the number of citizens' complaints of discrimination – for example, in 2022, most complaints concerned discrimination on the grounds of sex and disability precisely in the domain of employment (Regular annual report of the Commissioner, 2025). This implies that an increasing number of cases find their way before the courts, either directly by citizens or indirectly through initiatives of the Commissioner

[6] Vrhovni sud [Supreme Court]. Rev 9359/2022 od 23.11.2023. Downloaded 2025, November 2 from https://www.vrh.sud.rs/sr-lat/rev-93592022-361-pojam-diskriminacije

when recommendations are not respected. Finally, it is worth noting that domestic judicial practice and available professional literature in this field are already quite extensive. Special overviews of the case law of appellate courts on protection against discrimination have been published (Golubović & Šolić, 2015), as well as manuals for judges (see: Petrušić, 2012). These conclude that courts have generally correctly understood the purpose of anti-discrimination norms, but point to the need for greater uniformity of decisions, especially in determining the level of non-pecuniary damage and the application of the rules on the burden of proof. Continued education and the exchange of experiences (including the use of comparative law and the practice of the European Court of Human Rights) will contribute to making civil-law protection against discrimination in employment even more effective.

8. Conclusion

Civil law protection against discrimination in connection with work and employment in Serbia today is founded on a detailed legal framework and confirmed through a significant number of judicial decisions. Discrimination against an employee or a job candidate constitutes a violation of their fundamental personality rights – honour, reputation, dignity, and freedom of choice – and as such activates the mechanisms of civil law at their request. Through civil litigation, the injured party may pursue a full range of claims: from the prohibition of further discriminatory conduct, through the removal of harmful consequences (e.g. repeating an action under equal conditions), to the declaration of the discriminatory act itself as unlawful, and finally to compensation for both material and non-pecuniary damage. The importance of compensation for non-pecuniary damage is particularly emphasized, since discrimination in the workplace often leaves deep psychological consequences for the victim. Awarding equitable monetary satisfaction for suffered mental anguish and humiliation not only individually rehabilitates the victim, but also sends a clear message that society and the judiciary do not tolerate violations of equality. The analysis has shown that Serbian courts, after some initial hesitation, have accepted a proactive role in protection against discrimination. Through the judgments of the Supreme Court of Cassation, it has been confirmed that discrimination represents an unlawful act that violates human dignity, and that any such violation enjoys judicial protection, including compensation for damage. Special rules of civil procedure (such as the shifting of the burden of proof to the defendant) have also been incorporated, which facilitate the position of plaintiffs in these disputes. However, challenges

remain. Inconsistencies in practice have been observed – some judges initially neglected the special rules of the LPD or assessed the amount of non-pecuniary damage differently for similar violations. The maximum legal possibilities are still relatively rarely used, such as the imposition of judicial penalties (monetary fines for non-compliance with court decisions) on discriminators, which would further ensure the enforcement of judgments. Moreover, many victims do not decide to file lawsuits due to fear of retaliation or loss of employment, so the number of court cases is smaller than the actual number of discrimination incidents (as also indicated by the data of the Commissioner). In this sense, it is necessary to encourage the use of alternative mechanisms – for example, mediation, which the LPD envisages prior to court proceedings, as well as support for victims through trade unions and organizations. For employers, the existence of such a legal framework means an obligation to actively take measures to prevent discrimination within their organizations, since otherwise they risk not only reputational damage but also serious legal consequences (court orders, compensation, and even criminal liability in extreme cases). It is particularly important for employers to understand the obligation of reasonable accommodation (applicable to persons with disabilities), the prohibition of harassment and sexual harassment, and other more subtle forms of discrimination, because they are punishable just like open discrimination. In conclusion, it can be said that civil-law protection against discrimination in employment in Serbia has been built on solid foundations and aligned with European standards. Further strengthening of this protection will be seen through continued education of stakeholders (judges, lawyers, employers, employees), consistent application of the law, and richer case law that will clarify remaining dilemmas. The ultimate goal remains the creation of a working environment in which equality will be a reality, not merely a principle, and, in the rare cases of its violation, that injured parties will have at their disposal fast, effective and fair legal protection.

ACKNOWLEDGMENTS

The work was developed as part of the scientific research project "*Discrimination in relation to work and employment*" („*Diskriminacija u vezi sa radom i zapošljavanjem*"), funded by the Provincial Secretariat for Higher Education and Scientific Research of the Autonomous Province of Vojvodina (Project No. 003788094 2025 09418 003 000 000 001 04 002).

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

Conceptualization, K.D.; methodology, K.D.; formal analysis, K.D. and S.N.; writing – original draft preparation, K.D. and S.N.; writing – review and editing, K.D. and S.N.; All authors have read and agreed to the published version of the manuscript.

Krstinić Dalibor

Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Stefanović Nenad

Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

GRAĐANSKOPRAVNA ZAŠTITA OD DISKRIMINACIJE U VEZI SA RADOM I ZAPOŠLJAVANJEM

APSTRAKT: Diskriminacija u oblasti rada i zapošljavanja predstavlja povredu prava ličnosti zajemčenih građanskim pravom. U Republici Srbiji zabranjena je neposredna i posredna diskriminacija u radnim odnosima i pri zapošljavanju, a oštećeni imaju na raspolaganju sudsku zaštitu po posebnim antidiskriminacionim propisima i opštim pravilima građanskog prava. Ovaj rad analizira normativni okvir zabrane diskriminacije u oblasti rada, kao i građanskopravne mehanizme zaštite, sa posebnim naglaskom na pravo oštećenog da ostvari naknadu nematerijalne štete zbog povrede njegovih prava. Prikazani su oblici sudske zaštite (tužbe za zabranu, otklanjanje posledica, utvrđenje diskriminacije, naknadu štete i dr.) i uslovi pod kojima oštećeni može zahtevati pravičnu satisfakciju. Rad se oslanja na relevantnu sudsku praksu u Srbiji, uključujući odluke Vrhovnog kasacionog suda, koje potvrđuju da diskriminatorno postupanje predstavlja povredu časti, ugleda, dostojanstva i drugih ličnih dobara koja uživaju sudsku zaštitu, kako kroz zahtev za prestanak povrede tako i zahtev za naknadu štete. I pored napretka u normativnoj i institucionalnoj zaštiti, u praksi postoje izazovi – od dokazivanja diskriminacije uz posebna pravila o teretu dokazivanja,

do neujednačenosti sudske prakse u pogledu dosuđivanja nematerijalne štete. Stoga je važno kontinuirano unapređivati primenu zakona i svest o pravu na jednako postupanje u radnim odnosima, kako bi građanskopravna zaštita od diskriminacije bila efikasna i sveobuhvatna.

Ključne reči: *diskriminacija, radni odnosi, građanskopravna zaštita, prava ličnosti, nematerijalna šteta, sudska praksa, Srbija.*

References

1. Fond za humanitarno pravo [Humanitarian Law Center] (2024). *Vrhovni sud Srbije potvrdio presudu protiv rasne diskriminacije* [*The Supreme Court of Serbia confirmed the verdict against racial discrimination*]. Downloaded 2025, November 12 https://www.hlc-rdc.org/informisanje/saopstenja/vrhovni-sud-srbije-potvrdio-presudu-protiv-rasne-diskriminacije/
2. Golubović, K., & Šolić, N. (2015). *Analiza sudske prakse apelacionih sudova – Pravna zaštita od diskriminacije u Republici Srbiji* [*Analysis of Appellate Courts' Case Law – Legal Protection against Discrimination in the Republic of Serbia*]. Beograd: Pravosudna akademija
3. Krstinić, D. (2018a). *Naknada štete nastale izvršenjem krivičnih dela protiv imovine – doktorska disertacija* [*Compensation for damages caused by the commission of criminal offenses against property – doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu
4. Krstinić, D. (2018b). Compensation of damages in the criminal law of the Republic of Serbia. *Pravo – teorija i praksa*, *35*(10-12), pp. 1–15. DOI: 10.5937/ptp1812001K
5. Matijašević, J. D., Krstinić, D. M., Galić, B. M., Logarušić, D. S., & Bingulac, N. Ž. (2024). Modalities and legal treatment of obstetrical violence in the Republic of Serbia. *Srpski arhiv za celokupno lekarstvo*, *152*(11-12), pp. 587–591. DOI: 10.2298/SARH240629082M
6. Petrović, Z., & Mrvić-Petrović, N. (2014). *Zaštita od diskriminacije u sudskoj praksi u Republici Srbiji* [Protection against Discrimination in Judicial Practice in the Republic of Serbia]. In: Petrović, Z., & Mrvić-Petrović, N. (eds.), *Osiguranje, naknada štete i parnični postupak – XVII Međunarodni naučni skup* [*Insurance, Damage Compensation and Civil Procedure – XVII International Scientific Conference*] (pp. 413–421), Beograd: Intermex
7. Petrušić N. (ed.), (2012). *Sudska građanskopravna zaštita od diskriminacije* [*Judicial Civil Law Protection against Discrimination*]. Beograd: Poverenik za zaštitu ravnopravnosti; Pravosudna akademija

8. Poverenik za zaštitu ravnopravnosti [Commissioner for the Protection of Equality] (2019). *Poseban izveštaj poverenika za zaštitu ravnopravnosti o diskriminaciji u oblasti rada i zapošljavanja* [*Special report of the Commissioner for the Protection of Equality on discrimination in the field of labor and employment*]. Downloaded 2025, November 12 from https://ravnopravnost.gov.rs/rs/posebni-izvestaji/
9. Redovan godišnji izveštaj Poverenika predat Narodnoj skupštini [Regular annual report of the Commissioner submitted to the National Assembly]. Downloaded 2025, November 22 from https://ravnopravnost.gov.rs/rs/redovan-godisnji-izvestaj-poverenika-predat-narodnoj-skupstini-2/
10. Šolić, N., Vasić, M., & Todorović, K. (2019). *Diskriminacija u Srbiji – praksa i izazovi* [*Discrimination in Serbia – practice and challenges*]. Beograd: Komitet pravnika za ljudska prava; YUCOM. Downloaded 2025, November 12 from https://www.yucom.org.rs/wp-content/uploads/2019/02/Diskriminacija-u-Srbiji-praksa-i-izazovi.pdf
11. Stefanović, N. (2018). *Imovinskopravni zahtev oštećenog u krivičnom postupku – doktorska disertacija* [*Property Claim of the Injured Party in Criminal Proceedings – doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu
12. Stefanović, N., & Milojević, G. (2024). General damages awarded for emotional distress resulting from miscarriage of justice and false imprisonment. *Pravo – teorija i praksa*, *41*(3), pp. 90–108. DOI: 10.5937/ptp2403090S
13. Ustav Republike Srbije [Constitution of the Republic of Serbia]. *Službeni glasnik RS*, br. 98/06, 115/21
14. Vodinelić V., V. (2008). Građanskopravna zaštita od diskriminacije [Civil Law Protection against Discrimination]. *Hereticus*, *6*(3-4), pp. 22–45
15. Zakon o obligacionim odnosima [Law on Obligations]. *Službeni list SFRJ*, br. 29/78... *Službeni glasnik RS* br. 18/2020
16. Zakon o parničnom postupku [Civil Procedure Act]. *Službeni glasnik RS*, br. 72/11, 49/13 – odluka US, 74/13 – odluka US, 55/14, 87/18, 18/20 i 10/23 – dr. zakon
17. Zakon o radu [Labour Law]. *Službeni glasnik RS,* br. 24/05, 61/05, 54/09, 32/13, 75/14, 13/17, 113/17, 95/18, 271/18
18. Zakon o sprečavanju diskriminacije osoba sa invaliditetom [Law on the Prevention of Discrimination against Persons with Disabilities]. *Službeni glasnik RS*, br. 33/06, 13/16
19. Zakon o zabrani diskriminacije [Law on the Prohibition of Discrimination]. *Službeni glasnik RS*, br. 22/09, 52/21

Novaković Uroš[*]
https://orcid.org/0009-0002-9749-7369
Milojević Goran[**]
https://orcid.org/0000-0003-3752-9883

UDC: 347.232(347.68:347.6-055.3)
Original scientific paper
DOI: 10.5937/ptp2504078N
Received on: September 26, 2025
Approved for publication on:
November 4, 2025
Pages: 78–98

PROPERTY RELATIONS BETWEEN PARTNERS IN NON-MARITAL AND SAME-SEX UNIONS

ABSTRACT: By defining the concept of a non-marital union in the Family Law of the Republic of Serbia, the legislator highlights the key similarities and differences between non-marital and marital unions, particularly in terms of their formation and the evidentiary standards required to establish their existence—factors that directly impact the exercise of property rights. The authors' intention is to present, through an analysis of broader scholarly literature and relevant judgments of the European Court of Human Rights, the nature and various approaches concerning property relations in non-martial and same-sex unions. The study employs a comparative legal method, analysis of statutory provisions, legal doctrine, and case law. By examining relevant legislative provisions and judicial decisions, the aim is to assess the legal framework, identify challenges in its application, and explore potential avenues for extending the protection of these relations within the existing legal system, taking into account the practice of the European Court of Human Rights and the principles of non-discrimination.

Keywords: *non-marital union, same-sex union, registered partnership, joint property, tenancy rights.*

[*] LLD, Associate Professor, University of Belgrade, Faculty of Law, Belgrade, Serbia, e-mail: uros.novakovic@ius.bg.ac.rs

[**] LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: milojevic@pfbeograd.edu.rs

1. Introduction

When observed in relation to the type of relationship between family members or individuals in intimate and personal partnerships, we can distinguish the following categories of property relations: those arising in marriage, in non-marital unions, and, finally, in same-sex unions. A key question is whether individuals in same-sex unions fall within the scope of family law or should be regulated by other branches of law. Same-sex unions share certain characteristics with relationships between individuals living in non-marital partnerships. Although marriage and non-marital unions are treated as legally equivalent under the Family Law, notable differences exist in the regulation of property relations. Our intention is to present and analyze the legal status of individuals in non-marital and same-sex unions, as well as the similarities and differences that arise between them.

2. Non-Marital Union

In accordance with the provisions of the Family Law, a non-marital union is defined as a stable and enduring relationship between two individuals between whom there are no legal impediments to marriage. The literature identifies three essential elements that constitute a non-marital union: cohabitation of the partners, the duration of such cohabitation, and the absence of legal impediments to marriage between the partners (Draškić, 2021, p. 51). In this respect, the non-marital union is equated with marriage in terms of the conditions that must not exist between the individuals entering into such a union, that is, between non-marital partners at the time the union is formed. Unlike marriage, where spouses are expected to enter into matrimony with the intention of forming a shared life (based on emotional, economic, sexual, or procreative reasons) and are not required to live together, cohabitation is a necessary condition, *a conditio sine qua non* for the existence of a non-marital union. Without shared life in the same household, there can be no non-marital union. While one issue concerns the formation of the union, a separate and equally important issue is its proof. A non-marital union is formed through joint life over a prolonged period, the length of which is subject to judicial assessment in each specific case. On the other hand, the question of proving the existence of a non-marital union often proves to be just as important, if not more so. This issue typically arises in proceedings concerning the division of jointly acquired property. The question of whether a non-marital union existed does not emerge automatically, not even upon its termination. If the

partners did not acquire any property during the course of their union (which is unlikely in relationships lasting three years or more) there will be no need for court involvement once cohabitation ends. No state authority will issue a decision, judgment, or declaration establishing or confirming the termination of the non-marital union. However, where joint property exists, the preliminary question in property division proceedings will be to prove the existence of the non-marital union. If non-marital partners reach an agreement on the division of property, the agreement is submitted to a notary, who merely certifies it after verifying that the movable and immovable assets listed in the agreement have indeed been transferred to one of the partners. Subsequently, the other non-marital partner is registered in the Land Registry as a contractual party to the agreement. The other partner, as a contracting party, is then registered in the land registry. In the absence of an agreement, the partner initiating legal proceedings bears the burden of proving the existence of the non-marital union and that the assets in question were acquired during that union.

This is where the issue of evidentiary proof arises. A non-marital union is typically proven through evidence such as shared residence, witness testimony, common (non-marital) children, payment of household bills, lease agreements, and subscriptions to telecommunication or cable services. In contrast, proving the existence of a marriage is not a contentious issue, as an extract from the marriage registry serves as a simple and straightforward means of proof. The process of establishing the existence of a non-marital union is significantly different, and it is at this point that a clear distinction between marriage and non-marital union must be acknowledged.

The difficulty of proving the existence of a non-marital union is reflected in growing efforts to allow such unions to be registered before a competent state authority. In recent years, practice in the Republic of Serbia has shown that non-marital unions are sometimes registered before a notary public for the purpose of exercising certain health or social rights. Registration of a non-marital union emerges as an option available to partners who wish to establish its existence. However, such practice stands in direct contradiction to the provisions of the Family Law, which requires the element of duration as a constitutive condition of a non-marital union. This precludes the possibility of creating a non-marital union merely by a declaration of intent, thereby constituting it contrary to the statutory requirements of the Family Law. Such registration may be acceptable when it serves to exercise certain health-related rights or rights related to parenthood, but not for the purpose of acquiring joint property. The reasoning behind this position is the following: if a non-marital union could be registered before a notary public in matters relating to joint

property, then two individuals who, for example, have been in an emotional relationship for only a month or even without such a relationship, could, by a simple declaration before a notary, place themselves in a position whereby, within the following year, any assets acquired through joint effort (including real estate, movable property, shares, bonds, copyrights) would be subject to division under the legal regime of joint property of non-marital partners. At first glance, this argument may seem justified, after all, if two individuals genuinely wish to affirm that they are in a non-marital union, they should be allowed to do so, in accordance with the principle of freedom of contract. According to the Law on Public Notaries, agreements on the division of joint property between spouses or common-law partners must be executed in the form of a notarial deed (Stanić, 2012, p. 92). On the other hand, individuals who do not register a non-marital union, bearing in mind that the Family Act does not provide registration procedure for such unions, but only for the procedure of establishing their existence, particularly in the context of dividing joint property would be placed in a less favorable position. In such cases, the court decides, within the proceedings, whether a non-marital union existed, and consequently, whether jointly acquired property exists. Therefore, the court cannot treat a mutual declaration of intent by two persons stating that they are in a non-marital union as proof that such a union began from that moment, as long as the provisions of the Family Act require that the existence of a non-marital union be established in each individual case. Only after the existence of a non-marital union is established does the procedure for determining the shares in the jointly acquired property commence. At this stage, there is a presumption of equal shares between the non-marital partners, just as with spouses. The partner who has proven the existence of the union is thereby entitled to one-half of the jointly acquired property, and it is up to the other party to prove that their share in the acquisition was greater. In marriage, during property division proceedings initiated by a lawsuit, the court immediately proceeds to determine unequal shares (greater or lesser than the statutory 50/50), since the existence of marriage is proven by an extract from the marriage register. Unlike a marital union, for which a formal termination procedure is prescribed, a non-marital union does not require any formal act for its formation, and thus none for its dissolution. The competent authorities do not maintain any official records on the formation or existence of such unions, and therefore no deregistration is required (Ranđenović, 2017, p. 138).

However, the question arises as to the purpose for which such registration is performed, that is, which rights arising from the non-marital union it is

intended to serve. To that end, it would be necessary to provide that only after a certain period, e.g., two years, which is one year less than the period generally required by judicial practice (three years) to consider a non-marital union as lasting, and the parties may submit a joint declaration, and only with respect to joint property. Such a mechanism would avoid the lengthy and complex process of proving the existence of a non-marital union, which is a prerequisite for any property acquired during the course of shared life to be treated as joint property. The act of registration would serve as evidence for the court that, after the expiration of the two-year period, both parties declared that they were in a non-marital union, and that neither party could subsequently contest the existence of that union once it has ended. The evidentiary procedure for establishing the existence of a non-marital union, in addition to proving cohabitation, typically involves witness statements, the existence of children born from the union, and similar elements, and it often requires a significant amount of time to resolve.

The issue of shared life is one of the essential elements for the existence of a non-marital union. However, cohabitation at the same address, when considered as an isolated condition, does not automatically imply the existence of such a union. For instance, the relationship may be purely friendly or resemble a roommate arrangement, which does not satisfy the criteria for a non-marital union, and consequently, does not give rise to joint property.

A practical issue arises from the fact that the concept of a non-marital union has, in practice, been interpreted differently from the definition provided in the Family Law. This divergence is a result of legal practice allowing individuals to declare the existence of a non-marital union before a notary public, primarily for the purpose of exercising the right to in vitro fertilization, which carries broader legal implications. In the context of assisted reproduction, the term “non-marital union” is used to refer to persons who are not married. If the individuals are in a non-marital union, they are required to make a formal declaration stating that they are in such a relationship and that there are no legal impediments to marriage. This declaration is valid for a period of 12 months. The notarized statement includes a clause in which the partners confirm that they have been in a non-marital union for at least two years, which contradicts the provisions of the Family Law. In the context of exercising certain other rights derived from a non-marital union, such as the right to in vitro fertilization-this two-year requirement should not be mandatory, and the non-marital union may be registered, though not legally constituted, at any time. Notaries do not examine whether the individuals are actually in a non-marital union or whether they have cohabited during

the relevant period. They merely certify the parties' signatures, and the only verification the notary can conduct is to confirm that both individuals are registered at the same address, based on the information in their personal identification documents. There is a possibility of establishing the factual credibility of cohabitation over the previous two years if the notary were to request data from the Ministry of Internal Affairs regarding the date from which both individuals have been registered at that address. In such a case, the factual existence of a non-marital union lasting two years could be verified. This method of verification could also be applied in the context of registering a non-marital union for the purposes of determining joint property ownership.

However, the necessity of requiring a declaration that individuals are in a non-marital union for the purpose of in vitro fertilization raises a certain legal dilemma. This is because people who are neither married nor in a non-marital union may still be eligible to exercise this right, provided they cohabit. From the state's perspective, the question arises whether a minimum period of cohabitation should be required before individuals can be recognized as entitled to free or subsidized in vitro fertilization. If such a period is required to demonstrate the stability of the relationship, which may be a reasonable condition, it would be necessary for the notary public to verify that the parties have shared the same residence for the two years preceding the date on which the declaration of the existence of the non-marital union is made.

If the legislator decides to introduce the registration of non-marital unions, permitting such registration before a designated state authority (such as a municipality or a notary public), the question arises as to which procedure would apply for the division of the so-called "joint" property acquired during the union. Property division may be carried out in two ways: by agreement or by litigation. Disputes arising from these non-marital unions, particularly those concerning property relations, are resolved in accordance with the rules of civil law (Draškić, 2005, p. 416). Unlike parental rights, where non-marital partners cannot regulate parental authority by agreement and proceedings are initiated exclusively by lawsuit even in the absence of any dispute between the partners regarding the children in the case of consensual division of joint property between non-marital partners, this may be performed before a notary public who, based on the agreement, submits the data regarding the (new) owners to the Land Registry for registration. Where there is no agreement between the non-marital partners, the division is carried out by the court under the same rules applicable to spouses, determining each partner's share in the joint property, with the preliminary condition that the existence of the non-marital union is established. Since this is a legal act, non-marital partners

can regulate their property relations only by mutual agreement through the contract, which means that unilateral changes to the contract are not permitted (Novaković, 2019, p. 231).

At this point, at the very end of the section on the division of property between non-marital partners, we emphasize the distinction between the factual and legal concepts of a non-marital union in the context of joint property. This distinction is important because, if legal practice seeks to eliminate the requirement set out in the Family Law – that a non-marital union must be of a lasting nature – this can only be done through amendments to the Family Law, which we do not support, for the following reasons. The legislator's intention in formally recognizing non-marital unions was to acknowledge relationships similar to marriage, which for various reasons do not take the legal form of marriage or do not wish to do so, but nonetheless reflect a serious and long-term commitment. In our view, the requirement of permanence is particularly significant in the area of property rights, precisely to prevent the indiscriminate initiation of legal proceedings for the division of "joint property" by individuals engaged in any form of relationship with emotional and/or sexual elements that does not meet the legal threshold of a non-marital union. One of the constitutive elements of a non-marital union is shared life, which implies cohabitation at the same address. If such cohabitation lasted for five years and subsequently ended, then upon termination of the union, all property acquired from the first day of shared life until its end such as earnings, real estate, movable property, and intellectual property would be subject to division. Conversely, if the same form of cohabitation lasted only eight months, its termination would not give rise to joint property rights, which we consider entirely justified. The duration of an emotional relationship that lacks the necessary legal form entails a more burdensome process of proof compared to a legally formalized relationship, namely, marriage. In order for a non-marital union to give rise to rights in relation to joint property, it must meet the condition of being a lasting union. All shorter-term personal, emotional, or sexual relationships should remain outside the scope of Family Law and be addressed within other branches of law.

3. Comparative Legal Overview

Non-marital unions in the examined legal systems are recognized as stable partnerships between two persons who are not married but are, in many respects, equated with marital unions regarding property and personal rights. In Serbia, a non-marital union is defined as a lasting cohabitation between

two partners without marital impediments, and the law does not prescribe a minimum duration for its recognition. However, judicial practice often considers a period of three years as a relevant timeframe for establishing the existence of a lasting cohabitation.

Unlike this approach, in Croatia and North Macedonia, the laws governing this area stipulate a required duration of cohabitation for it to be legally recognized as a non-marital union. Croatian legislation explicitly provides that such a union must last at least three years to be legally relevant, except when the partners have a child or when the union precedes marriage. It may be observed that this legislative solution ensures greater legal certainty by clearly defining the minimum duration required for recognition.

The Italian legal system introduces the possibility of regulating the relationship between non-marital partners through a cohabitation agreement which allows the partners to define their property relations in advance. The agreement may include provisions on the regime of joint property, each partner's contribution to their shared life, assistance in cases of illness or incapacity, and other elements of cohabitation. Unlike Serbia, Croatia, and North Macedonia, where rights arise from the factual existence of a partnership, the Italian model provides greater legal certainty and flexibility, as partners may contractually regulate property matters and mutual contributions, with the agreement being valid only if cohabitation actually exists.

Similarly, the French legal system allows partners to formalize their non-marital relationship through the *Pacte Civil de Solidarité* (PACS), introduced by Law No. 99-944 of 15 November 1999. The PACS is a formal agreement between two persons enabling them to choose a joint or separate property regime, define mutual obligations, and acquire rights concerning maintenance and social security. Unlike Serbia, where such unions cannot be formally registered, the French PACS provides legal certainty through formal registration, reducing the need to prove the existence of the partnership and clearly defining the partners' property and personal rights.

A comparative analysis of these solutions indicates that legal systems prescribing a minimum duration of cohabitation, such as those in Croatia and North Macedonia, offer greater legal certainty and facilitate the recognition of partnerships and the exercise of rights. Systems that do not require a minimum duration, such as those in Serbia and Italy, although more flexible, introduce uncertainty and increase the burden on courts in property division and proof of partnership existence. At the same time, the formalization of property relations through agreements or registration, as seen in Italy and France, further enhances the security of partners and allows precise regulation of

property and obligations, while Serbia continues to rely primarily on judicial assessment in each individual case. The aim of this comparative legal analysis is to highlight the different approaches to the regulation of non-marital unions and to identify the practical advantages of solutions that combine the element of partnership duration with the possibility of formal regulation of property relations.

4. Registered same-sex partnership

Same-sex unions, as a phenomenon present since ancient times, only began to gain legal recognition and regulation at the end of the 20th century. A significant shift in the legal approach to this issue occurred with the advent of the new millennium, primarily in European and North American countries. According to some authors, around 90% of countries worldwide do not recognize any form of same-sex partnerships (Wardle, 2015, p. 248). Despite the lack of legal recognition, the cohabitation of same-sex partners involves acquisition and management of property, which in practice raises questions regarding the legal regulation and potential protection of these relationships. First, it is important to distinguish several concepts in the property context that are not and should not be subject to legal regulation, such as permanent or casual same-sex relationships. More permanent same-sex relationships, or same-sex unions, could be subject to legal consideration. Only when two persons of the same sex live together for an extended period, sharing the same address and acquiring property jointly, can they acquire the right to divide such property upon dissolution of the union. The draft Law on Same-Sex Partnerships, which has been anticipated in Serbia for many years, provides for the possibility of registering same-sex partnerships and defines their personal and property rights, as well as rights in the areas of healthcare and social protection and through this Act seeks to regulate the status of rights of same-sex partners. The draft defines a registered same-sex union as a family life community of two persons of the same sex concluded before a competent public authority in accordance with the provisions of this law (Article 2, Draft Proposal of the Law on Same-Sex Unions). If homosexual partners are in a non-marital union, after a prescribed period they may register their same-sex union and acquire the right to divide property under the same rules that apply to non-marital partners. Since partners in a non-marital union may regulate their property relations in advance by agreement based on the principle of autonomy of will, in accordance with the provisions of the Law of Obligations, the content of such agreement may include the

distribution of initial property, methods of acquiring joint property, property management, and rules for division upon termination of the union. In the absence of such agreement or in case of dispute, civil litigation may be initiated before a competent court for the division of joint property, where the contribution of each partner, whether material or immaterial is assessed. On the other hand, although same-sex unions exist de facto, they are not yet recognized by positive law, and their members cannot base their rights on family law norms but must rely on real and obligation law instruments. Subject to mandatory provisions, public order, and good customs, parties in an obligation relationship may regulate their relations according to their own will (Milojević, 2020, p. 479). Therefore, members of same-sex unions may use legal means such as contracts on joint investments, co-investments, registration of co-ownership shares in the cadastre, and seek protection through claims for reimbursement of investments, unjust enrichment, or management without mandate. The draft Law on Same-Sex Partnerships, envisaging the registration of same-sex partnerships and the regulation of their personal and property rights, would require consideration of the relationship between existing principles of family law and new forms of family unions, taking into account that marriage in Serbia is currently defined as a union between a man and a woman.

5. Property Rights of Same-Sex Partners

Domestic judicial practice has not yet taken a stance regarding the property relations of individuals in same-sex partnerships. Potential disputes may arise across a wide spectrum of social, health, tax, and property-related rights, including tenancy rights, the right to a survivor's pension, social insurance entitlements, and tax reliefs. "With regard to the rights enjoyed by family members, under the regulations governing pension insurance, a family member is also considered to be a partner in a same-sex union and any child supported by that partner-Article 51 of the Draft Law (Vuković, 2021, p. 87). In the absence of domestic case law, reference will be made to European standards in this area and the case law of the European Court of Human Rights.

The refusal to apply tax exemption provisions to sisters living in a shared household, the provisions which do apply to persons in homosexual partnerships does not constitute a violation of the right to respect for family life or the right to equality.

The risk of unduly expanding the scope of family law to encompass not only same-sex relationships but also other forms of same-sex cohabitation is illustrated in the case of Burden v. the United Kingdom,[1] case about two sisters who sought to invoke inheritance tax exemptions applicable to same-sex partners living in the same household. Joyce and Sybil Burden, born in 1918 and 1925, had lived together in their family home for their entire lives, including the thirty years following the death of their parents. The sisters claimed that they were being discriminated against in comparison to same-sex couples, arguing that the tax exemption violated their human rights, as same-sex partners were eligible for it while siblings living in identical circumstances were not (Rosenn, 2014, p. 321).[2] If one accepts the functional approach, under which certain rights (such as tenancy rights (Collier, 1995, p. 53), maintenance, and inheritance) are granted to same-sex partners in registered partnerships based solely on the fulfillment of functions similar to those performed by married couples, then it is difficult to justify why all individuals of the same sex who fulfill identical functions, such as siblings or close friends should not also enjoy such rights. Nevertheless, the ECHR, by a narrow majority (four votes to three), held that the Burden sisters had not been subjected to discrimination (Welstead, 2010, p. 120). According to the ECHR, the relationship between siblings is fundamentally distinct from that between spouses, non-marital partners, or same-sex partners (Probert, 2009, p. 21). Blood relation forms the basis of the relationship between siblings, unlike the emotional and often sexual bond characteristic of spousal or same-sex relationships. However, it remains unclear why individuals of the same sex living in long-term family-like cohabitation without a sexual component should be denied tax benefits reserved for both heterosexual and homosexual couples.

The denial of tenancy rights to individuals in non-familial, friendship-based cohabitations does not amount to a violation of the right to respect for family life.

[1] Burden and Burden v. United Kingdom, Application no. 13378/05, judgment of 12 December 2006. In addition to the already noted comparison between non-marital partnerships and cohabitations based on friendship or shared housing, we refer to this case as a notable example. Some authors have advocated for expanding legal recognition of rights granted to individuals in same-sex partnerships to also include relationships between siblings or close friends. See, for example, McClain, 2013, p. 54; Cooper, 2011, p. 1758; Omejec, 2013, p. 509.

[2] A similar legislative approach was adopted in Brazil, where 1996 amendments granted individuals in civil partnerships inheritance rights, access to health and social benefits, survivor's pensions, and the right to adopt children.

A particularly interesting case is Korelc v. Slovenia[3], involves the potential recognition of tenancy rights for a man who lived in a long-term cohabiting relationship of a non-romantic nature with another man (Federal Constitutional Court of Germany, 2013, p. 319). The European Court of Human Rights held that the applicant was not denied tenancy rights based on the fact that the cohabitation involved two men, but because the relationship lacked emotional and personal elements characteristic of familial life. The Court drew a clear distinction between marital, extramarital, and same-sex unions on the one hand, and other forms of cohabitation such as the applicant's on the other. The applicant could not be considered a "person who was in a long-term stable relationship with the tenant," a category that includes heterosexual and same-sex partners. Although the relationship between the applicant and the deceased might have included emotional aspects in addition to the economic, the Court found it significantly different from relationships between blood relatives (e.g., parent and child) and from those between marital, non-marital, and same-sex partners. The applicant's relationship lacked the essential elements of "family life," being limited instead to the sharing of economic benefits. In line with its reasoning in *Burden*, the ECHR rejected the applicant's claims under Articles 8 and 14 of the Convention, holding that personal or friendly relations, as well as relationships between more distant blood relatives, could not be equated with the notion of "family life" for the purposes of acquiring tenancy rights (Boele-Woelki & Fuchs 2012, p. 62). We argue that recognising the existence of family life in relationships based purely on friendship or shared housing would lead to an undue expansion of the scope of family law.

The inability of a homosexual person to acquire the right to a family pension from their deceased partner does not constitute a violation of the Convention.

[3] Korelc v. Slovenia, Application No. 28456/03, Judgment of 12 May 2009, the applicant, a Slovenian, born in 1946, moved in with his father's friend following his divorce in 1990. From May 1992, the applicant had permanent residence at his father's friend's address and was listed in the tenancy agreement as a person entitled to use the apartment. In April 1993, the father's friend passed away. Domestic authorities informed the applicant that, as he was not a family member, he had no tenancy rights and was therefore required to vacate the apartment.The applicant argued that, given the possibility for persons living in cohabitation or same-sex relationships to inherit tenancy rights, there was no justification for denying him such rights in relation to the deceased. He claimed that a "long-standing stable relationship" had existed between them. The authorities, however, found that the relationship was merely an "economic partnership." The applicant submitted that the differential treatment compared to same-sex partners amounted to a violation of his right to equality in conjunction with the right to respect for private and family life.

The economic effects of same-sex relationships were again the subject of a decision before the European Court of Human Rights in the case of Mata-Estevez v Spain[4] At the outset, the Court noted, referring to its previous case law, that a long-term homosexual relationship between two men does not fall within the notion of family life.[5] Despite an increasing trend towards judicial and legislative recognition of stable homosexual relationships, there is no common ground among member states on this issue, and therefore states enjoy a broad margin of appreciation. Consequently, the relationship between the applicant and his partner could not be regarded as family life but as private life. The Court observed under Article 14 of the Convention that the applicant would have been treated differently regarding the inheritance of the family pension had he been of the opposite sex (Bamforth, 2011, p. 132). Furthermore, marriage was considered a precondition for acquiring the right to a family pension. The Court found that the differential treatment aimed to protect family relationships based on marital ties. No violation of Articles 8 or 14 of the Convention was established. We consider that the family pension should be subject to inheritance by a homosexual partner, given that it represents an economic benefit reflecting the mutual commitment of spouses (including de facto partners) during the course of their shared life, which has effects after the death of one partner.

The refusal to recognize tenancy rights for a surviving homosexual partner constitutes a violation of the Convention. In the case of Karner v

[4] Mata-Estevez v Spain, no. 56501/00, judgment of 10 May 2001. he applicant, a Spanish national born in 1953, had lived for ten years in a same-sex relationship with a man. They were unable to enter into marriage because it was not permitted under domestic law. After the applicant's partner died in 1997, the request for the applicant to inherit the family pension, reserved only for spouses of the deceased beneficiary, was rejected. The domestic court held that Articles 8, 12, and 14 of the Convention do not guarantee equal treatment between de facto homosexual relationships and heterosexual marriages. The Supreme Court dismissed the applicant's appeal and stated that it was the legislature's, not the court's, role to decide on the extension of family pension rights to stable *de facto* relationships, whether heterosexual or homosexual in nature. The applicant complained that the differential treatment of homosexual relationships compared to marital relationships violated his right to equality and the right to respect for private and family life.

[5] X. and Y. v. the United Kingdom, no. 9369/81, judgment of 3 May 1983; S. v. the United Kingdom, no. 11716/85, judgment of 14 May 1986.

Austria[6] The European Court of Human Rights emphasized that particularly compelling reasons must exist to justify differential treatment based on sex and sexual orientation.

Domestic courts found that the purpose of the Tenancy Act provision was to protect both heterosexual and homosexual persons who were not married but had lived together for a long period, so that they would not suddenly be left homeless after the death of their partner. The court could accept the Supreme Court's view that there was an intention to protect the traditional family, which justified the differential treatment of the applicant (McGlynn, 2006, p. 15). However, the goal of protecting the traditional family is abstract, and in all situations where the margin of appreciation of the domestic state is limited, as in this case, the principle of proportionality between the measure taken and the aim pursued must be observed (Herring, 2007, p. 70).[7] In this case, the issue concerned the protection of the applicant's specific right, namely his tenancy right. The European Court of Human Rights was not convinced that the differential treatment was justified and found a violation of Article 14 in conjunction with Article 8 of the Convention (Harper, Downs & Landells & Wilson, 2005, p. 16; Murphy, 2004, p. 257; Probert, 2009, p. 21).

The inability to acquire tenancy rights following the death of a partner in a same-sex relationship constitutes a violation of the Convention.

[6] Karner v. Austria [application no. 40016/98, judgment of 24 July 2003], the applicant was an Austrian citizen born in 1955 who had lived with a man in a same-sex partnership since 1989. The applicant's partner was the tenant of the apartment, and they shared the housing costs. The partner passed away in 1994. Austrian law did not provide for the transfer of tenancy rights to a same-sex partner. In 1995, the apartment owner initiated eviction proceedings against the applicant, but both the first-instance and appellate courts rejected the request, reasoning that a same-sex partner, like a spouse or common-law partner, was considered a family member entitled to inherit tenancy rights. The owner's appeal was dismissed.
However, in 1996, the Supreme Court accepted the owner's appeal and held that under the term "life partnership," at the time the 1974 Tenancy Act was enacted, the legislature did not intend to include a same-sex partner as a family member. The applicant died in September 2000, but his lawyer continued the proceedings with the aim that the applicant's heirs acquire the tenancy rights. The applicant complained that the inability to acquire tenancy rights violated his right to equality in connection with the right to respect for family life

[7] According to the dissenting opinion of one judge in this case: "...it is unclear how the refusal to recognize same-sex unions could endanger the right of heterosexual individuals to marry if they so wish..."

In the case of Kozak v. Poland[8] ECHR stated that in cases involving discrimination based on sex or sexual orientation, the margin of appreciation afforded to states is narrow. The Court acknowledged the domestic authorities' observation that there were conflicting claims regarding the existence of a shared household between the applicant and his partner at the time of the partner's death. Under domestic law, tenancy rights could be acquired by a person who had lived with the tenant in a de facto marital relationship. Based on such a provision, same-sex partners were excluded from acquiring tenancy rights, even if they were in a stable emotional and economic relationship. De facto cohabitation was applied exclusively to relationships between a man and a woman. While recognizing the aim of the Polish authorities to protect the family as a union between a man and a woman, the Court held that the Convention must be interpreted as a living instrument, in light of evolving social realities, and that there is no single way in which private and family life may manifest. The Court emphasized that the concept of family life must take into account social developments and changes in the understanding of civil status and personal relationships, recognizing that family life is not limited to one specific form or structure (Boele-Woelki & Fuchs, 2012, p. 66). The subsequent removal of the provision in Polish law that distinguished between marital and other types of unions in relation to the acquisition of tenancy rights indicates unjustified differential treatment of same-sex unions compared to other forms of partnerships. A violation of Articles 8 and 14 of the Convention was established.

In contrast, in the case of Simpson v. the United Kingdom, which concerned the recognition of tenancy rights for a homosexual individual who had outlived her partner, it was found that the distinction between same-sex partners and spouses was justified by the traditional preference for marriage over other forms of unions (Murphy, 2004, p. 257). The starting point in recognizing a violation, primarily of the right to equality for individuals in same-sex unions, was the finding that economic discrimination was not

[8] Kozak v. Poland, application no. 13102/02, judgment of 2 March 2010. The applicant, a Polish national born in 1951, had resided since 1989 in an apartment rented by his homosexual partner. In April 1998, the applicant's partner passed away. The applicant's request to conclude a tenancy agreement based on the existence of a stable same-sex relationship with his partner was rejected. According to the domestic authorities, the relationship between the applicant and his partner had ended before the partner's death. In April 1999, the domestic authorities initiated eviction proceedings against the applicant. His appeal against the eviction order was dismissed in September 2001. The applicant complained that the inability to acquire tenancy rights due to his homosexual orientation violated his right to equality in connection with the right to respect for family life.

justified in relation to the material rights acquired by such individuals, as it is in the case of opposite-sex unions (Boyd, 2013, p. 278). The criterion of economic vulnerability was decisive in recognizing certain rights for individuals of homosexual orientation such as the right to the division of joint property, tenancy rights,[9] maintenance rights (Glennon, 2005, p. 163), right to inheritance, right to a survivor's pension (Eekelaar 2006, p. 43).[10]

Our position, based on the examined case law of the European Court of Human Rights, is that individuals of homosexual orientation may be granted rights such as a survivor's pension and tenancy rights, but not through the right to respect for family life, since the fundamental condition for the existence of this right is not met. Rather, these are property rights of certain individuals, including the right to a survivor's pension, tenancy rights, and the right to marry. Additionally, there is no requirement that the relationship be inter vivos. The right to respect for family life does not encompass property rights such as maintenance or the division of joint property, and even less so tenancy rights or the right to a survivor's pension. This conclusion is supported by an analysis of the European Court of Human Rights' practice, especially in cases like Karner v. Austria and Taddeucci and McCall v. Italy,[11] which show that access to certain property rights may be granted to persons in same-sex unions, but through the protection of the right to private life and the prohibition of discrimination under Article 14 in conjunction with property interests, rather than necessarily through the concept of family life under Article 8 of the Convention. Although the Court in Schalk and Kopf v. Austria

[9] Observing the case law of domestic courts, in the United Kingdom, individuals of homosexual orientation invoked violations of tenancy rights following the death of their partners in the cases of Ghaidan v. Godin-Mendoza (2004) 2 FLR 600 and Fitzpatrick v. Sterling (2000) 1 FLR 271. (Harper & Downs & Landells & Wilson, 2005, p. 17; Boele-Woelki & Sverdrup, 2008, p. 120; Eekelaar, 2006, p. 150).

[10] The economic aspect is a central element of same-sex couples' demands to acquire the right to marry.

[11] Taddeucci and McCall v. Italy, application no. 51362/09, judgment of 30 June 2016. The applicants, Mr. Daniele Taddeucci (an Italian national) and Mr. Andrew McCall (a New Zealand national), filed the application after Italian authorities refused to recognize the right of residence for the foreign applicant who was in a same-sex relationship with an Italian citizen, on the grounds that they were not married.The European Court of Human Rights found a violation of Article 14 in conjunction with Article 8 of the European Convention on Human Rights. The Court concluded that the distinction in treatment between same-sex and opposite-sex couples regarding family reunification was unjustified and discriminatory, as same-sex couples were denied a right automatically granted to opposite-sex unmarried partners.The Court emphasized that while states are not required to legalize same-sex marriage, they are obliged to respect the principle of non-discrimination in the enjoyment of rights already recognized for other forms of unions, such as the right to family reunification.

acknowledged that same-sex unions may enjoy some degree of protection under the right to family life, it did not establish an obligation for states to equate such unions with marriage, nor to grant them all the rights arising from marriage. In other aspects of the relationships of persons in same-sex unions, the European Court of Human Rights has established different standards, namely, the recognition of the right to respect for family life.[12] In this regard, rights such as maintenance, joint property, or inheritance do not automatically fall under the protection of family life and do not arise from relationships that the domestic legal system recognizes as marriage or its equivalent.

6. Conclusion

Property relations within non-marital and same-sex partnerships represent a distinct category of property and family rights, subject to specific regulation. In both categories of partnerships, there are points of convergence regarding property arrangements, as no formal regulation automatically defines their status; property relations are only governed through a partner agreement or legal action. However, a claim brought by partners in a same-sex partnership seeking the division of joint property would be dismissed due to the lack of legal standing. Under current positive law, partners in same-sex unions cannot be classified as subjects entitled to joint property rights under the provisions of the Family Law.

Legal recognition of property relations in same-sex partnerships directly touches upon public order, as statutory regulation reflects the value system of society. Unlike the regulation of non-marital unions, where establishing the existence of a partnership simultaneously confirms rights to joint property, the absence of normative regulation of same-sex partnerships in the area of property rights reflects the retention of the traditional understanding of family and marriage as exclusively heterosexual categories. Recognition of

[12] For more recent case law of the European Court of Human Rights, see: Oliari and Others v. Italy, applications nos. 18766/11 and 36030/11, judgment of 21 July 2015; Orlandi and Others v. Italy, application no. 26431/12, judgment of 14 December 2017; Chapin and Charpentier v. France, application no. 40183/07, judgment of 9 June 2016; Herman and Mozer v. Austria, application no. 31176/13 and Dic and Sutasom v. Austria, application no. 31185/13, judgment of 30 March 2017; Ratzenböck and Seydl v. Austria, application no. 28475/12, judgment of 26 October 2017; Przybyszewska and Others v. Poland, application no. 11454/17, judgment of 12 December 2023; Maymulakhin and Markiv v. Ukraine, application no. 75135/14, judgment of 1 June 2023; Buhuceanu and Others v. Romania, application no. 20081/19, judgment of 23 May 2023; Fedotova and Others v. Russia, applications nos. 40792/10, 30538/14, and 43439/10, judgment of 17 January 2023.

same-sex partnerships in terms of regulating property relations would involve not only adjustments to legislation but also reconsideration of fundamental constitutional principles and societal perceptions regarding the concepts of family, marriage, and family rights.

Conflict of Interest

The authors declare no conflict of interest.

Author Contribution

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

Novaković Uroš
Univerzitet u Beogradu, Pravni fakultet, Beograd, Srbija

Milojević Goran
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

IMOVINSKI ODNOSI LICA U VANBRAČNIM ZAJEDNICAMA I ISTOPOLNIM ZAJEDNICAMA

APSTRAKT: Zakonodavac samim definisanjem pojma vanbračne zajednice u Porodičnom zakonu Republike Srbije, ukazuje na ključne sličnosti i razlike sa bračnom zajednicom, što se naročito ogleda u pogledu načina nastanka i dokazivanja postojanja istih, a koje imaju direktnu posledicu po ostvarivanje imovinskih prava. Intencija autora je da analizom šire naučne građe i relevantnih presuda Evropskog suda za ljudska prava predoče pravnu prirodu i različita rešenja po pitanju imovinskih odnosa u vanbračnim i istopolnim zajednicama. U radu je primenjen uporednopravni metod, analiza zakonskih odredbi, pravne doktrine i sudske prakse. Cilj rada je da se analizom relevantnih zakonskih propisa i sudskih odluka

sagleda pravna regulativa, identifikuju izazovi u njenoj primeni i istraže mogućnosti za širu zaštitu navedenih odnosa u okviru postojećeg pravnog sistema, uzimajući u obzir praksu Evropskog suda za ljudska prava i načela zabrane diskriminacije.

Ključne reči: *vanbračna zajednica, istopolna zajednica, registrovana zajednica, zajednička imovina, stanarsko pravo.*

References

1. Bamforth, N. (2011). Families but not (yet) marriages? Same-sex partners and the developing European Convention "margin of appreciation". *Child and Family Law Quarterly, 23*(1), pp. 128–143
2. Boele-Woelki, K., & Fuchs, A. (2012). *Legal Recognition of Same-Sex Relationships in Europe: National, Cross-Border and European Perspectives*. Cambridge: Intersentia Publishing Ltd.
3. Boele-Woelki, K., & Sverdrup, T. (2008). *European Challenges in Contemporary Family Law*. Antwerpen: Intersentia
4. Boyd, S. B. (2013). 'Marriage Is More than Just a Piece of Paper': Feminist Critiques of Same Sex Marriage. *National Taiwan University Law Review*, *8*(2), pp. 263–298
5. Collier, R. (1995). *Masculinity, Law and the Family*. London: Routledge
6. Cooper, S. L. (2011). Marriage, Family, Discrimination & Contradiction: An Evaluation of the Legacy and Future of the European Court of Human Rights' Jurisprudence on LGBT Rights. *German Law Journal*, *12*(10), pp. 1746–1763
7. Kovaček Stanić, G. (2014). *Porodično pravo, partnersko, dečje i starateljsko* [*Family law, partnership law, child law, and guardianship law*]. Novi Sad: Pravni fakultet
8. Draškić M. (2005). *Porodično pravo i prava deteta* [*Family law and children's rights*]. Beograd: Čigoja štampa
9. Draškić, M. (2021). Vanbračna zajednica vs istopolna zajednica: različito, ali ravnopravno? [Common-law union vs same-sex union: different, but equal?] In: Lilić, S. (ed.), *Perspektive implementacije evropskih standarda u pravni sistem Srbije – zbornik radova, knj. 11* [*Perspectives of implementation of European standards in the Serbian legal system – proceedings, vol. 11*] (pp. 51–63). Beograd: Pravni fakultet, Centar za izdavaštvo i informisanje

10. Eekelaar, J. (2006). *Family Law and Personal Life*. Oxford: Oxford University Press
11. Federal Constitutional Court of Germany (2013). *Decisions of the Bundesverfassungsgericht, vol. 5: Family Related Decisions 1957–2010*. Karlsruhe: Nomos Verlagsgesellschaft
12. Kovaček Stanić, G. (2012). Ovlašćenja javnog beležnika u bračnim/partnerskim odnosima [Notary public authority in marital/partnership relations]. *Zbornik radova Pravnog fakulteta, Novi Sad*, *46*(2), pp. 87–101. DOI: https://doi.org/10.5937/zrpfns46-2600
13. Glennon, L. (2005). Targeting the Exclusionary Impact of Family Law. In: M. Maclean (ed.), *Family Law and Family Values* (pp. 157–180). Oxford: Hart Publishing
14. Harper, M., Downs, M., Landells, K., & Wilson, G. (2005). *Civil Partnership: The New Law*. Bristol: Jordan Publishing
15. Herring, J. (2007). *Family Law*. Harlow: Pearson Education.
16. Wardle. D., L. (2015). The Future of the Family: The Social and Legal Impacts of Legalizing Same-Sex Marriage. *Ave Maria Law Review*, *13*(2), pp. 237–267
17. McClain, L. C. (2013). A Diversity Approach to Parenthood in Family Life and Family Law. In: McClain, L. C. & Cere, D. (eds.), *What is Parenthood?* (pp. 41–62). New York
18. McGlynn, C. (2006). *Families and European Union Law: Politics and Pluralism*. Cambridge: Cambridge University Press
19. Milojević G. (2020). Odnos stvarnog i obligacionog prava u svetlu kodifikacije građanskog prava u Republici Srbiji [The relationship between property law and law on obligations in light of the codification of civil law in the Republic of Serbia]. *Kultura polisa*, *17*(43), pp. 475–485
20. Murphy, J. (2004). Same-sex Marriage in England: a Role for Human Rights. *Child and Family Law Quarterly*, *16*(1), pp. 245–259
21. Novaković D, (2019). Ugovorni imovinski režim vanbračnih partnera [The contractual property arrangement of unmarried partners]. *Megatrend revija*, *16*(1). pp. 225–236
22. Omejec, J. (2013). *Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Evropskog suda za ljudska prava* [*The Convention for the Protection of Human Rights and Fundamental Freedoms in the Practice of the European Court of Human Rights*]. Zagreb: Novi informator
23. *Predlog nacrta zakona o istopolnim zajednicama* [*Draft Proposal of the Law on Same-Sex Unions*]. 2021. Downloaded 2025, May 15 from https://www.paragraf.rs/dnevne-vesti/080321/080321-vest18.html

24. Probert, R. (2009). *Cretney and Probert's Family Law*. London: Sweet & Maxwell
25. Ranđelović, D. (2017*).* Vanbračna zajednica u Republici Srbiji [Common-law union in the Republic of Serbia]. *Megatrend revija*, *14*(2), pp. 127–144
26. Rosenn, K. S. (2014). Recent Important Decisions by the Brazilian Supreme Court. *University of Miami Inter-American Law Review*, *45*(2), pp. 297–334
27. Vuković, I. (2021). *Istopolne zajednice u Srbiji? Pravne nedoumice i moguće uređenje* [*Same-Sex Unions in Serbia: Legal Uncertainties and Possible Regulatory Approaches*]. Beograd: Dosije studio
28. Welstead, M. (2010). The Family the Law Forgot In: Atkin, B. (ed,), *The International Survey of Family Law* (pp. 113–131). Bristol: Jordan Publishing

Špoljarić Danko[*]
https://orcid.org/0000-0003-3300-2654

UDC: 347.73:94(37)
Original scientific paper
DOI: 10.5937/ptp2504099S
Received on: August 15, 2025
Approved for publication on:
September 15, 2025
Pages: 99–111

CONTRIBUTIONS TO THE STUDY OF THE HISTORY OF FINANCIAL LAW IN ANCIENT ROME – THE REIGN OF EMPEROR DIOCLETIAN

ABSTRACT: Roman law, as the legal system that was in force for nearly thirteen centuries in Ancient Rome, did not disappear with the fall of the Roman state. Rather, in a more or less modified form, it became positive law in contemporary European states. The reception of Roman law, especially the fundamental institutions of private law (private ownership, freedom of contract, and freedom of testamentary disposition), forms the legal foundation of modern private law. A part of the Roman legal system is also public law (ius publicum) which deals with general state interests (*Ulpian, Digest 1,1,1, 2*).

The purpose and aim of this research is Roman financial law, and the subject of the paper is the fiscal system during the reign of Emperor Diocletian. Through a comparative method of available sources and texts from relevant authors of Diocletian's time and the period immediately after him (a smaller number), as well as scientific studies from the modern era (referring to the past hundred or more years), it is concluded that the public-law acts of financial law from that period were, in some of their solutions, far ahead of their time and are partially applicable even today.

Keywords: *Diocletian, tax reform, Edict on prices.*

[*]LLD, University College Professor, Effectus University of Applied Sciences, Zagreb, Croatia, e-mail: dspoljaric@effectus.com.hr

1. Introduction – Historical Context

Financial law is a branch of law that encompasses the legally regulated financial activity of the public sector, the legal framework governing public revenues and expenditures and the regulated collection, management, and spending of financial resources necessary for the functioning of the public sector. The development of financial law can be traced back to the emergence of the state and social classes, when the need arose to finance public (state) expenditures.

Financial and tax reforms of Roman emperor Diocletian represent a significant contribution to the history of financial law. Historical records show that Diocletian as a soldier and later as a ruler, took part in Roman wars across the Empire: in Gaul, along the Danube, in Asia Minor, Syria, Mesopotamia, Egypt, and Italy and that he became Roman emperor in 284 (Bulić, Cambi & Babić, 2005, p. 152; Bošković, 2008, p. 402).

A year after he became emperor (285), he appointed Maximian (*Marcus Aurelius Valerius Maximianus Augustus*), a military commander, friend, and comrade-in-arms from many battles (and, as it would turn out, who proved to be a loyal supporter), as co-ruler in the western part of the Empire (Waldron, 2022, p. 38). After ten years of *dyarchy*, in 293 he appointed Constantius Chlorus (*Marcus Flavius Valerius Constantinus, surnamed Chlorus*) and Galerius (*Gaius Galerius Valerius Maximianus*) as subordinate co-rulers and successors, caesares (Kalas, 2016, p. 66; Leadbetter, 2009, pp. 5, 63, 139; Waldron, 2018, p. 2). Diocletian divided the governance of the Empire: from his residence in Nicomedia in Asia Minor he himself administered the Asian portion of the state and Egypt; he entrusted the Balkan Peninsula and the Danubian frontier to Galerius; Maximian governed Italy, Raetia, Hispania, and Africa; and Constantius Chlorus administered Gaul and Britain (Romac, 2018, p. 98; Williams, 2000, p. 63).

Historians remember Diocletian as a ruler whose reign was marked, among other things, by the persecution of Christians (Corcoran, 2000, p. 6), but also by reforms with which he attempted to stabilize the Empire. The brief reigns of several of Diocletian's predecessors had led to political, military, and financial crisis that threatened the collapse of the Empire. The state could survive only through major structural reforms that would establish a stable public administration, a robust military organization, and financial recovery (Aličić, 2006, p. 553).

Assessments of Diocletian as a ruler range from that of a spendthrift who oppressed his own people and ruthlessly persecuted Christians (Laktancije, 2005, pp. 39, 41) through those depicting a pragmatic and capable soldier and

reformer, to portrayals of a savior of the Empire and founder of a new order – a ruler who was more statesman than warrior.

2. Diocletian's Edict on Prices

"When Diocletian became Emperor in 284 the Empire had already suffer anarchy and chaos for half a century. The economic situation was very poor. The people were impoverished and partly bound in hereditary castes" (Wassink, 1991, p. 486). After several unsuccessful attempts to reform the monetary system, in 301 Diocletian issued the well-known Edict on the Prices of Goods for Sale (*Edictum de pretiis rerum venalium*) (Romac, 2007, p. 37). It is more commonly referred to as the Edict on Prices (*Edictum de pretiis*) or Diocletian's Edict on Prices (*Edictum Diocletiani de pretiis*). Jovanović (2009, p. 553) emphasizes that the Edict, which was carved on stone slabs and set up throughout the Empire, is "one of the best-known textual testimonies to the *tetrarchy*."

The preamble of the Edict calls it a "divine edict" by which greed would be eradicated forever (Crawford & Reynolds, 1975, pp. 160–163), and states that the reason for its adoption is the struggle against immoral and shameless human greed, which must be curbed by fear. Whoever violates the provisions of the Edict will be subject to the death penalty, and the death penalty will also befall anyone who buys at prices contrary to the regulation (Jovanović, 2009, p. 553; Kent, 1920, p. 37). Fragments of the stone slabs on which the Edict on Prices was inscribed have been found at forty sites across the Empire (Barbieri, 2008, p. 435).

The Edict on Prices set maximum prices for more than 1200 ancient goods and services, freight rates, animals, wages, and even slaves (Salway, 2010, pp. 1–20). The ceilings ranged from one denarius (silver coin) for animal fodder to 150,000 denarii for a live lion. In addition to protecting citizens, Diocletian also issued the Edict for pragmatic reasons: it was necessary to cap prices to protect the state's largest consumer – the army ("protect the soldiers from profiteers") The prescribed maximum prices for a large number of products and services placed some producers and service providers in a position where they had to produce and trade at a loss. The Edict prescribed the death penalty not only for those who sold goods and services at prices above the ceilings, but also for those who bought them, and for those who withheld goods from sale (Petrak, 2016, p. 104). Forced price regulation contrary to market forces ultimately resulted in the economic collapse of some producers, who, under threat of death, could not withdraw from the market until they had gone bankrupt. This resulted in a market collapse, and the remaining producers and

merchants in the end turned to the illegal market, where goods were sold at market prices (Cambi, 2016, p. 130). The Roman writer Lactantius (Lucius Caecilius Lactantius Firmianus), a contemporary of Diocletian, writes that Diocletian himself, through his 'insatiable greed', caused an economic crisis and high prices, and therefore took it upon himself to set maximum prices for goods and services by law. In the process, he shed much blood over trivial and insignificant matters before he repealed the bad law (Meißner, 2000, p. 79).

Beyond administratively capping the prices of goods and services, the Edict on Prices went a step further in state intervention in the economy: it also prescribed maximum wages for different categories of craftsmen and workers. The prices for the maritime transport of goods, and especially the rates for transport on behalf of the state, were set by the Edict at significantly lower levels than commercial rates. For example, the state freight rate for transporting grain from Alexandria to Rome was limited to fifty percent of the rates charged to other users (Michel, 1947, pp. 1–12).

Ultimately, the Edict on Prices did not lead to economic stabilization and order in the market. Shortages of goods further deepened the crisis, and the ineffective regulation was eventually repealed. While it did not materially change the dire economic situation of the period, the Edict is an important historical source on economic conditions in Diocletian's time. Some historians of Roman law even consider it the most important text of late antiquity (Petrak, 2016, p. 104; Brandt, 2004, p. 47). Analyzing the available historical sources, it can be concluded that the Edict on Prices, although unsuccessful for the state economy, is a significant source for understanding the financial relations Diocletian's time. Some authors find similarities between the Price Edict and modern regulatory attempts to fight against inflation. They conclude that the experiences of Ancient Rome should be instructive for today's governments – state intervention in the market failed in Diocletian's time as well as it fails today (Matić Matešković & Dujmešić, 2024, p. 109). Sukačić (2017, p. 113) highlights Diocletian's willingness to put public interest ahead free trade and connects this with today's regulations: "A similar situation is present today where competition law creates barriers for fully free trade in order to give protection to consumers, which is again viewed as public interest."

3. The Roman Fiscal System and Diocletian's Reforms

While the history of the Roman state and law is not fully the history of all peoples who lived within that state, the relationship between the center and the provinces changed over time, as did the size of the state with the outcomes

of wars for territory (Kurtović, 2005, p. 12). The fiscal system in all phases of ancient Rome was organized for the entire territory under state control, and changed over the centuries in line with historical circumstances.

In the early phase of the Roman Republic, the earliest property tax was the *tributum*. The Senate decided on its introduction; it was paid by Roman citizens. A peculiarity of this tax was the possibility of refunds – particularly in the event of unexpected war spoils that replenished the state treasury. Over time, state expenses were mostly covered from external sources (war indemnities, levies imposed on conquered provinces such as Africa, Macedonia, Hispania), so there was no need for citizens to pay the *tributum*, although it was never entirely abolished. The Republic transformed from a tax state into a state that relied for public revenue on the spoils of war and on tax revenues in subjugated provinces (Špoljarić, 2024, pp. 162–167).

The tax system of the Principate (beginning with Octavian and ending with Diocletian), although continuing the practice of funding the treasury with war booty and levies on subjugated populations, was characterized by a multitude of tax rules, tax forms, and privileges for favored strata and social elites. Tax policy constituted a powerful weapon of rule used to purchase loyalty where necessary and to keep the non-privileged in subordination. A tax system tailored to the army and to social elites (tax privileges and exemptions) further impoverished the poorest populations.

Tributum soli and *tributum capitis*, the official direct state taxes during the Principate, burdened the populations of the provinces, while citizens of Rome living in Italy were exempt from the tax obligation. *Tributum soli* – the tax on agricultural land and the means of cultivating it – also covered labor, primarily slave labor. The taxable base was determined by censuses of the population, land cadastres, and land registers, while the amount of the tax burden depended on the size and quality of agricultural land and the number and quality of the labor force. Agricultural land in Italy was exempt, and Roman citizens did not pay *tributum soli* even on agricultural land they owned outside Italy.[1]

Tributum capitis (poll tax, tax on the person), one of the most significant direct taxes, arose and persisted in various forms and with various exemptions

[1] The tax form known as tributum soli was a direct tax on agricultural land and means for cultivating the land. The object of taxation was determined through population censuses. Arable land, vineyards, olive goves, meadows, forests and houses were recorded. In some provinces taxes were collected in fixed amounts of money, while elsewhere they were collected in kind. In some provinces taxes were collected as a percentage of the estimated value of the land, while in others they were paid in quotas (Špoljarić, 2024, pp. 163–167).

for almost the entire period of ancient Rome. During the Principate it struck primarily Roman subjects in the provinces, while citizens of Rome were exempt. In the earlier Republic this tax was collected by state officials; during the Principate it was left to magistrates and city senates in the provinces. *Portoria*, the oldest known Roman tax, originally a customs duty on the traffic of goods entering or leaving a port, later were collected in the form of tolls or bridge tolls in land transport. For most goods the *ad valorem* method applied (the tax base is the value of the goods). This tax was paid by all Roman citizens, and collection was carried out by provincial procurators or specially appointed procurators charged precisely with tax collection in the provinces. A significant portion of state expenditures was earmarked for financing veterans pensions (*aerarium militare*). For this purpose Emperor Augustus introduced a 5% tax on testamentary inheritances, the *vicesima hereditarum* (*vicesima* – i.e., a twentieth). Another revenue source for the military pension fund was the *centesima rerum venalium*, a tax on goods sold at auctions, at a 1% rate. The *collatio lustralis*, a tax on production or services, was paid by craftsmen, merchants, and moneylenders, but not by physicians, teachers, or farmers. Physicians and teachers were particularly valued in society because they were few, whereas farmers paid the *tributum soli.* As it was a slave-owning society, the trade in slaves and liberation on slaves were also taxed. The *vicesima libertatis*, a tax at 5% of a slave's value, was paid by the owner who liberated the slave or by the slave himself; the *quinta et vicesima venalium mancipiorum (manumissio*), a tax on the trade and transfer of slaves, was levied at 4% (Günther, 2019).

A significant portion of tax revenues also came from local taxes not regulated by the state, which the central authority left to local bodies in the provinces. The tax sovereignty of local bodies was nevertheless limited: a portion of the revenues collected through taxes not regulated by the state could be retained locally, while another portion was paid into the state treasury. Despite the lack of uniformity in types of taxes and the differing tax burdens on citizens across provinces, the Roman state largely relied on local authorities for tax collection. The costs of assessment, collection, and enforcement through local administration were incomparably lower than if they had been carried out by a centralized tax administration.

Aside from attempting to reform the financial system by issuing the Edict on Prices, Diocletian's reign was marked by tax reform. An assessment of Diocletian's tax reform must begin from his fundamental conception of the relationship between emperor and subjects. The tax reform was a logical extension of his basic idea about that relationship: unconditional loyalty to the emperor was expected of the subjects, and the emperor's obligation was to do

everything in the interest of the citizens. Security of Rome was paramount for both, and it rested on a strong military force. Therefore loyalty to the emperor was to be demonstrated through responsibility, respect for imperial regulations and timely payment of taxes, so that military expenditures could be financed and the Empire defended against external threats.

At the very beginning of his reign Diocletian introduced the *capitatio–iugatio*,[2] a unified form of taxation of agricultural land and persons capable of work, while urban populations continued to pay the *tributum capitis*. The intention was to standardize taxation across the entire empire, with the tax base determined by the extent of arable land, the number of livestock, and the labor force. This tax form encompassed both persons and property, and simplified taxation. From a tax-technical perspective the *capitatio–iugatio* represented a significant advance over the previous period and, with minor modifications, this mode of taxation survived for the next three centuries (Romac, 1966, p. 52). While for its time it was a positive innovation, objective circumstances rendered the overall tax system unsuccessful. In order to make tax collection in the field efficient, Diocletian gave provincial administrators a smaller area to oversee (Wassink, 1991, p. 488). The vastness of the Empire, difficulties in communication with distant areas, and the excessive costs of an administration that would assess and collect taxes made it impossible to ascertain and tax actual agricultural income; instead, presumptive quota taxes (based on cadastral data collected) were applied. Tax liability was determined on the assumption that the taxpayer realized a certain level of income, and an actual absence of income (poor harvest, drought, flood) did not extinguish the tax obligation. Inability to pay taxes led to confiscation of land and further impoverishment of the population (Nelson, 2018, p. 2).

The tax system during the imperial period largely influenced the emergence and development of the colonate. The peasant, the colonus – "a semi-free cultivator of another's land" (Clark, 2017, p. 51) – who, owing to inability to pay taxes, had lost his own land, was not a slave but a tenant. He cultivated another's land but was existentially tied to the land and its owner. Tenancy and the cultivation of others' land over time took on ever greater dimensions and economic significance, so that the colonate gradually evolved from a leasehold relationship into an alienable and hereditary real right known as *emphyteusis*.[3] The holder of the right of *emphyteusis* was obliged to pay

[2] In system *capitatio-iugatio* the assesment was based on the categories of people and animals and land combined with each other, calculated by the tax estimates.

[3] Alienable and inheritable real right over someone else's land, which gives the holder of that right the possibility of full use of that land.

an annual rent to the owner in money or in kind, to keep the land in good condition, and to pay the tax. "*Emphyteusis* was not, from the very beginning, an inheritable lease, but a lease for a fixed term, originally five years" (Horvat & Petrak, 2022, p. 204). The impact of Diocletian's tax reforms was also felt in the colonate.

Under the *capitatio–iugatio* system, instead of a free choice grounded in the voluntary cultivation of another's land, the colonate was transformed into an obligation, and peasant coloni were forcibly tied to the land they had cultivated as tenants. The movement of coloni was restricted – they became "slaves of the soil" (*servi terrae*) – and if the ownership of the land changed, the colonus was obliged to continue cultivating the land for the new owner. The reason for introducing compulsory colonate is to be sought in the importance of the farmers as the most generous source of state revenue. Every migration of a colonus created disorder in an already imprecise registry of taxpayers and thus jeopardized orderly tax payment and the tax system as a whole.

The census, the survey of agricultural land and the abolition of privilege regimes are considered positive legacies of Diocletian's tax reform. While taxation in the field did not function as envisaged, particularly in distant provinces, the idea of universality in taxation as a form of just taxation deserves attention as a significant step forward compared with the preceding period of the Roman state.

4. Conclusion

The Roman Emperor Diocletian left a significant mark on the history of ancient Rome. His twenty-year reign, from 284 to 305, was marked by constant incursions by barbarian peoples and wars on the borders of the Empire, merciless persecution of Christians, but also reforms of state administration and reforms of the military, tax and financial systems.

History remembers Diocletian for his reform of state administration and the introduction of the tetrarchy. The Roman Empire at the end of the 3rd century, when Diocletian came to power, was burdened with numerous problems. The empire stretched from the Iberian Peninsula in the west to Mesopotamia in the east, and included Britain in the north and North Africa in the south. Due to the constant incursions of barbarian peoples, the state was constantly at war, wars and the army had to be financed, and the state finances were unsettled and burdened by a large and corrupt administration. Since he had fought in all parts of the Empire as a soldier and thus got to know it, he assessed that one man could not successfully govern the state alone. After

appointed his friend and comrade Maximian as co-emperor, faced with wars in various parts of the Empire, in 293 he appointed two more co-emperors, the generals Constantius Chlorus and Galerius. Diocletian ruled in the east of the Empire, Maximian in the Iberian Peninsula, Italy and North Africa, Constantius Chlorus in Britain and Gaul, and Galerius in the Danube region and the Balkans all the way to the Black Sea.

Although they were not entirely successful in their implementation, Diocletian's reforms of state finances and the tax system were, even by today's standards, in some parts well conceived. The Edict on Prices of 301 was passed as an attempt to suppress the enormous inflation that had completely paralyzed the Roman economy. Diocletian tried to counteract inflation in the simplest way possible – he prescribed by law maximum prices for goods and services throughout the Empire. The Edict could not be successful for a long period of time: some manufacturers were forced to sell goods below the cost of production, which ultimately led to their ruin. Others, despite the strict sanctions, turned to the black market, which flourished and everything continued as before. When he saw that the Edict had not achieved its intended goal, Diocletian repealed it. Tax reforms, partly based on the idea of universal taxation of all citizens of the Empire, were initiated with great expectations for the recovery of public finances. A population census was prepared and carried out and the existing agricultural land register (land cadastre) was revised. Diocletian's *capitatio – iugatio* taxation system, although burdened with the problems, nevertheless represented a great improvement over the anarchy in the tax system that preceded it.

As a warrior and military leader, Diocletian distinguished himself in wars throughout the empire and eventually attained the imperial throne. For a man of common descent, he displayed unusual clarity and skill as a ruler. He reformed the way the vast Roman Empire was governed by the tetrarchy, reorganized public finances and the army, and, by all accounts, saved the Empire from collapse in his time.

Conflict of Interest

The authors declare no conflict of interest.

Špoljarić Danko
Effectus veleučilište, Zagreb, Hrvatska

PRILOZI ZA PROUČAVANJE ISTORIJE FINANSIJSKOG PRAVA U STAROM RIMU – VREME VLADAVINE CARA DIOKLECIJANA

APSTRAKT: Rimsko pravo, kao pravni poredak koji je važio gotovo trinaest vekova u Starom Rimu, nije nestalo sa padom rimske države, već je, u manje ili više izmenjenom obliku, postalo pozitivno pravo današnjih evropskih država. Recepirano rimsko pravo, naročito osnovni instituti privatnog prava (privatna svojina, sloboda ugovaranja i sloboda raspolaganja zaostavštinom), čine pravnu osnovu savremenog privatnog prava. Deo rimskog pravnog sistema je i javno pravo (ius publicum) koje se bavi opštim državnim interesima (*Ulpijan, Digesta 1,1,1,2*).
Svrha i cilj ovog istraživanja je rimsko finansijsko pravo, a predmet rada fiskalni sistem u vreme vladavine rimskog cara Dioklecijana. Komparativnom metodom dostupnih izvora i tekstova relevantnih autora iz Dioklecijanovog vremena i perioda neposredno nakon njega (u manjem broju), kao i naučnih studija iz savremenog doba (misli se na poslednjih sto i više godina), dolazi se do zaključka da su javnopravni akti finansijskog prava iz tog perioda po nekim svojim rešenjima bili daleko ispred svog vremena, a delimično su primenljivi i danas.

Ključne reči: *Dioklecijan, poreska reforma, Edikt o cenama.*

References

1. Aličić, S. (2006). Iuris sollemnitas u Dioklecijanovim konstitucijama [Iuris Sollemnitas in Diocletian's Constitutions]. *Zbornik radova Pravnog fakulteta u Splitu, 43*(3-4), pp. 553–576. DOI: https://doi.org/10.31141/zrpfs
2. Barbieri, V., (2008). *Ja Dioklo Jupitrov sin* [*I am Diocles, Son of Jupiter*]. Zagreb: AGM
3. Bošković, I., (2008). Svi hrvatski Dioklecijani [All Croatian Diocletians]. *Croatica et Slavica Iadertina*, *4*(1), pp. 401–435. DOI: https://doi.org/10.15291/CSI.618

4. Brandt, H., (2004). Erneute Überlegungen zum Preisedikt Diokletians [Reconsiderations of the Price Edict of Diocletian]. In: Demandt, A., Goltz, A., & Schlange-Schöningen, H. (eds.), *Diokletian und die Tetrarchie* [*Diocletian and the Tetrarchy*] (pp. 47–55). Berlin: Walter de Gruyter,
5. Bulić, F., Cambi, N., & Babić, I. (2005). *Dioklecijan i Split* [*Diocletian and Split*]. Split: Slobodna Dalmacija
6. Cambi, N. (2016). *Dioklecijan, Vir prudens moratus callide et subtilis ili inventor scelerum et machinator omnium malorum, Povijesne kontroverze i današnje dileme* [*Diocletian, Vir prudens moratus callide et subtilis ili inventor scelerum et machinator omnium malorum, Historical Controversies and Today's Dilemmas*]. Split: Filozofski fakultet Sveučilišta u Splitu
7. Clark, P. E. (2017). *Taxation and the Formation of the Late Roman S5ocial Contract – doctoral thesis.* University of California. Downloaded 2025, March 15 from https://escholarship.org/uc/item/41p8q5p7
8. Corcoran, S. (2000). *The Empire of the Tetrarchs*, *Imperial Pronouncements and Government AD 284–324.* Oxford: Oxford University Press
9. Crawford, M. H., & Reynolds, J. (1975). The Publication of the Prices Edict: a New insription of Aezani. *The Journal of Roman Studies*, *65*, pp. 160–163. DOI: https://doi.org/10.2307/370069
10. Gibbon, E. (2009). *Slabljenje i propast Rimskog* carstva – *vol. I* [*The Decline and Fall of the Roman Empire – vol. I*]. Zagreb: Naklada Stih
11. Günther, S. (2019). *The Politics of Taxation in the Roman Empire*. Downloaded 2025, May 15 from https://www.austaxpolicy.com/politics-taxation-roman-empire/
12. Horvat, M., & Petrak, M. (2022). *Rimsko pravo* [*Roman Law*]. Zagreb: Pravni fakultet Sveučilišta u Zagrebu
13. Jovanović, N. (2009). Avaritia i inflacija: percepcije ekonomskih pojava u preambuli Dioklecijanova edikta [Avaritia and Inflation: Perception of Economic Phenomena in the Preamble of Diocletian's Edict]. In: Cambj, N. (ed.), *Dioklecijan, tetrarhija i Dioklecijanova palača o 1700. obljetnici postojanja : zbornik radova s međunarodnog simpozija* [*Diocletian, tetrarchy and Diocletian's palace on the 1700th anniversary of existence : proceedings of the International conference*] (pp. 553–580). Split: Književni krug
14. Kalas, G. (2016). Memorials of the Ability of Them All: Tetrarchic Displays in the Roman's Forum Central Area. In: Christie, J., J., Bogdanović, J., & Guzman, E. (eds.) *Political Landscapes of Capital Cities* (pp. 65–96), Denver: University Press Colorado

15. Kent, R. G. (1920). The Edict of Diocletian fixing maximum prices. *University of Pennsylvania Law Review and American Law Register*, *69*(1), pp. 35–47
16. Kurtović, Š. (2005). *Opća povijest prava i države* [*General History of Law and State*]. Zagreb: Sveučilište u Zagrebu
17. Laktancije, Lucije Cecilije Firmije (Lactantius, Lucius Caecilius Firmianus) (2005). *O smrtima progonitelja* [*About the deaths of Persecutors*]. Split: Književni krug
18. Leadbetter, B. (2009). *Galerius and the Will of Diocletian*. New York: Routledge
19. Matić Matešković, I., & Dujmešić, K. (2024). Edictum Diocletiani de Pretiis: Price Control as (in) Effective Measure to Combat Inflation. In: do Rosario Anjos, M., Duarte Manuel, C., & Anđelinović, M. (eds.), (pp. 103–110). *114th Economic and Social Development Conference Proceedings,* Varaždin: Varazdin Development and Entrepreneurship Agency
20. Meißner, B. (2000). Über Zweck und anlaß von Diokletians Preisedikt. *Historia: Zeitschrift Für Alte Geschichte*, *49*(1), pp. 79–100. Downloaded 2025, April 15 from http://www.jstor.org/stable/4436567
21. Michel, H. (1947). The Edict of Diocletian: A Study of Price Fixing in the Roman Empire. *The Canadian Journal of Economics and Political Science*, *13*(1), pp. 1–12. DOI: https://doi.org/10.2307/137598
22. Nelson, L. H., (2018). *The Reforms of Diocletian and Constantine in the Later Roman Empire.* Lawrence: University of Kansas. Downloaded 2025, May 29 https://brewminate.com/the-reforms-of-diocletian-and-constantine-in-the-later-roman-empire/
23. Petrak, M. (2016). *Traditio Iuridica, Vol. II, Verba Iuris.* Zagreb: Novi informator
24. Romac, A. (1966). Dioklecijanove vojne i poreske reforme i njihove posljedice [Diocletian's Military and Tax Reforms and their Consequences]. *Zbornik Pravnog fakulteta u Zagrebu, 16*(1-4), pp. 44–51
25. Romac, A. (2007). *Rimsko pravo* [*Roman Law*]. Zagreb: Sveučilište u Zagrebu, Pravni fakultet
26. Romac, A. (2018). *Rječnik rimskog prava (četvrto izdanje)* [*Dictionary of Roman Law, fourth edition*]. Zagreb: Dominović
27. Salway, B. (2010). Municipium Rusticum Sive Urbanum: The Slave Chapter of Diocletian's Edict on Maximum Prices. In: Roth, U. (ed.), *By the Sweat of your Brow: Roman Slavery in its Socio-Economic Setting.* (pp. 1–20), London: Oxford University Press

28. Špoljarić, D. (2024). Dioklecijanove reforme [Diocletian's Reforms]. In: Karlović, T., & Ivičević Karas, E., (eds.), *Legatum pro anima : zbornik radova u čast Marku Petraku* [*Legatum pro anima: proceedings in honor of Marko Petrak*] (pp. 155–173). Zagreb: Sveučilište u Zagrebu, Pravni fakultet
29. Waldron, B. (2018). *Diocletian*, *Hereditary Succession and the Tetrarchic Dynasty – doctoral thesis.* University of Sydney: Faculty of Arts and Social Sciences. Downloaded 2025, April 30 from https://ses.library.usyd.edu.au/bitstream/handle/2123/18749/waldron_bl_thesis.pdf
30. Waldron, B. (2022). *Dynastic Politics in the Age of Diocletian, AD 284–311.* Edinburgh: Edinburgh University Press
31. Wassink, A. (1991). Inflation and Financial Policy under the Roman Empire to the Price Edict of 301 A.D. *Historia: Zeitschrift Für Alte Geschichte*, *40*(4), pp. 465–493 Downloaded 2025, May 30 from http://www.jstor.org/stable/4436215
32. Williams, S. (2000). *Diocletian and the Roman Recovery*. London: Routledge

Gajinov Tamara*
https://orcid.org/0000-0003-4265-9244
Vavan Zoran**
https://orcid.org/0000-0003-2965-6532
Mijatović Marija****
https://orcid.org/0000-0001-8160-7397

UDC: 347.952
Original scientific paper
DOI: 10.5937/ptp2504112G
Received on: July 30, 2025
Approved for publication on:
November 3, 2025
Pages: 112–125

ITEMS OF AFFECTIVE VALUE IN ENFORCEMENT PROCEDURE

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

* LLD, Associate Professor, Union University, Belgrade, Faculty of Law and Business Studies "Dr Lazar Vrkatić", Novi Sad, Serbia, e-mail: tamara.gajinov@gmail.com
** LLD, Assistant Professor, Union University, Belgrade, Faculty of Law and Business Studies "Dr Lazar Vrkatić", Novi Sad, Serbia, e-mail: zoran.vavan@yahoo.com
*** LLD, Associate Professor, Union University, Belgrade, Faculty of Law and Business Studies "Dr Lazar Vrkatić", Novi Sad, Serbia, e-mail: mrksicmarija@gmail.com

Keywords: *items of affective value, exemptions from enforcement, enforcement procedure, debtor protection, Serbia.*

1. Introductory Notes

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

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

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

[1] This claim cannot be asserted after one year has elapsed since the acquisition of ownership rights over the item.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[3] All animals are appropriately marked, and the holdings where they are kept are registered in the Central Database for Animal Identification.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Conclusion

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

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

ACKNOWLEDGMENTS

The authors wish to express their gratitude to Goran Veselinović, a bailiff from Belgrade, for his constructive insights and shared practical experiences, which proved invaluable during the writing of this paper. These contributions were also presented during the defense of his master's thesis titled "Enforcement Action—Inventory of Movable Property: Doctrinal and Historical-Legal Analysis of Enforcement Legislation in the Republic of Serbia from 1978 to 2020." at the Faculty of Law and Business Studies Dr Lazar Vrkatić, Novi Sad, 2024.

Conflict of Interest
The authors declare no conflict of interest.

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

Gajinov Tamara
Univerzitet Union, Beograd, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Novi Sad, Srbija

Vavan Zoran
Univerzitet Union, Beograd, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Novi Sad, Srbija

Mijatović Marija
Univerzitet Union, Beograd, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Novi Sad, Srbija

STVARI OD AFEKCIONE VREDNOSTI U IZVRŠNOM POSTUPKU

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

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

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

References

1. Antić, O. (2011). *Obligaciono pravo* [*Obligatory Law*]. Beograd: Pravni Fakultet Univerziteta u Beogradu
2. Folić, S. (2017). Popis domaćih životinja [Invetory of Domestic Animals]. *Bilten Komore javnih izvršitelja Srbije*, *4* pp. 41–51
3. Gajinov, T. (2023). Osiguranje kućnih ljubimaca [Pets insurance]. *Evropska revija za pravo osiguranja*, *23*(1), pp. 13–21. DOI: 10.46793/ERPO2201.13G
4. Gajinov, T. (2024). Afekciona vrednost stvari i osiguranje [Affective value of things and insurance]. *Evropska revija za pravo osiguranja*, *24*(1), pp. 42–59. DOI: 10.46793/ERPO2301.42G
5. Grubač, D. (1979). Stvari i vrednosti izuzete iz izvršenja [Objects and Values Exempted from Enforcement]. In: Stojković, S., & Stajić, J. (eds.), *Izvršenje sudskih odluka – zbornik radova* [*Execution of court decisions – collection of papers*] (pp. 275–289). Beograd. Republički sekretarijat za pravosuđe i opštu upravu; Republički zavod za javnu upravu SR Srbije
6. Milenković, R. (2015). Naknada štete u slučaju smrti i povrede kućnog ljubimca Compensation of Damages for Killing or Injury of a Pet]. *Glasnik Advokatske komore Vojvodine*, *87*(10), pp. 525–542. DOI: 10.5937/gakv1510525M
7. Ovršni zakon Hrvatske [Law on Enforcement. *Narodne novine*, br. 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22, 06/24
8. Radišić, J. (2014). *Obligaciono pravo* [*Obligatory Law*]. Niš: Pravni fakultet Univerziteta u Nišu
9. Radulović, S. (2020). (Pravni) status kućnih ljubimaca i posebna afekcija prema njima [Legal status of Pets and Pretium Affectionis]. *Zbornik radova Pravnog fakulteta u Nišu*, *59*(89), pp. 335–351. DOI: 10.5937/zrpfn0-28570

10. Šarkić, N. (2016). *Komentar Zakona o izvršenju i obezbeđenju* [*Commentary on the Law on Enforcement and Support*]. Novi Sad: Paragraf Lex
11. Šarkić, N. (2018). Prikaz razvitka izvršnog zakonodavstva u poslednjih 40 godina kroz analizu osnovnih načela [Presentation of the development of Executive Legislation in the last 40 years through the Analysis of Basic Principles]. In: Šarkić, N., et al. (eds.) *Četrdeset godina izvršnog zakonodavstva u građanskim postupcima* [*Forty Years of Executive Legislation in Civil Proceedings*] (pp. 31–41). Beograd: Službeni glasnik; Pravni fakultet Univerziteta Union
12. Stanković, O., & Orlić, M. (1999). *Stvarno pravo* [*Property Law*]. Beograd: Nomos
13. Ujdehag J., et al. (2014). *Sveobuhvatna analiza sistema izvršenja u Srbiji* [Comprehensive Analysis of the Enforcement System in Serbia]. Beograd: GIZ
14. Vavan Z. (2025). *Postupci izvršenja sudskih odluka iz odnosa roditelja i dece* [*Procedures for the execution of court decisions related to the relationship between parents and children*]. Novi Sad: Fakultet za pravne i poslovne studije dr Lazar Vrkatić
15. Zakon o dobrobiti životinja [Law on Animal Welfare]. *Službeni glasnik RS*, br. 41/09
16. Zakon o izvršenju i obezbeđenju [Law on Enforcement and Support]. *Službeni glasnik RS*, br. 31/11, 99/11 – dr. zakon, 109/13 – odluka US 55/20
17. Zakon o izvršenju i obezbeđenju [Law on Enforcement and Support]. *Službeni glasnik glasnik RS*, br. 106/15, 106/16 – autentično tumačenje, 113/17 – autentično tumačenje, 54/19, 9/20 – autentično tumačenje i 10/23 – dr. zakon
18. Zakon o izvršenju i obezbeđenju Grne Gore [Law on Enforcement and Support]. *Službeni list CG*, 36/11, 28/14, 20/15 22/17, 76/17
19. Zakon o izvršnom postupku [Law on Enforcement Procedure]. *Službeni list SFRJ*, br. 20/1978, 6/1982, 74/1987, 57/1989, 27/1990, 35/1991, 27/1992
20. Zakon o izvršnom postupku [Law on Enforcement Procedure]. *Službeni glasnik RS*, br. 125/04
21. Zakon o izvršnom postupku [Law on Enforcement Procedure]. *Službeni list SFRJ*, br. 28/00, 73/00, 71/01
22. Zakon o izvršnom postupku Federacije BIH [Law on Enforcement Procedure]. *Službene novine Federacije BiH*, br. 32/03, 52/03 – ispr.,

33/06, 39/06 – ispravka, 39/09, 35/12 i 46/16 i *Službeni glasnik BiH*, br. 42/18 – odluka Ustavnog Suda i 19/25
23. Zakon o izvršnom postupku Republike Srpske [Law on Enforcement Procedure]. *Službeni glasnik Republike Srpske*, br. 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13, 98/14, 5/17 – odluka US, 58/18 – rješenje US BiH i 66/18
24. Zakon o obligacionim odnosima [Law on Obligations]. *Službeni list SFRJ*, br. 29/78, 39/85, 45/89 – odluka USJ i 57/89, *Službeni list SRJ*, br. 31/93, *Službeni list SCG*, br. 1/03 – Ustavna povelja i *Službeni glasnik RS*, br. 18/20
25. Zakon o osnovama svojinskopravnih odnosa [Law on the Fundamentals of Property and Legal Relations]. *Službeni list SFRJ*, br. 6/80 i 36/90, *Službeni list SRJ*, br. 29/96 i *Službeni glasnik RS*, br. 115/2005 – dr. zakon
26. Zakon za izvršuvanje [Law on Enforcement Procedure]. *Službeni vesnik Republike Severne Makedonije*, br. 72, 142/16, 233/18, 14/20, 154/23

Joksić Ivan[*]
https://orcid.org/0000-0003-2920-9943
Dunđerski Borivoje[**]
https://orcid.org/0009-0000-8918-0834
Dimitrijević Nemanja[***]
https://orcid.org/0009-0007-9748-2649

UDC: 343.261-053.6
Review article
DOI: 10.5937/ptp2504126J
Received on: October 21, 2025
Approved for publication on:
November 4, 2025
Pages: 126–138

SENTENCING JUVENILE IMPRISONMENT

ABSTRACT: Juveniles represent a sensitive category of delinquents, due to which they enjoy a special criminal-legal status. Their age necessitates different models of criminal-legal reaction in which educational measures dominate as the primary criminal sanctions. In exceptional cases, the legislator has prescribed possibilities for pronouncing a juvenile imprisonment sentence. This compassionate attitude towards juveniles stems from the fact that they are, as yet, psychologically and physically immature individuals. Hence, in literature, they are referred to as "delinquents in miniature" and "great criminals in waiting". However, regardless of this "privileged" status, juveniles may be sentenced to juvenile imprisonment. Its specificity is reflected in the application of the principle of exceptionality in sentencing, a shorter duration, special general and specific rules for determining the sentence, as well as a special method of execution. The specificity of juvenile imprisonment particularly comes to the fore during sentencing. Special rules are applied here, with a simultaneous reference to the application of norms that relate to adults. Consequently, we consider it necessary to present the area of juvenile sentencing from the perspective of our legislator.

Keywords: *juveniles, juvenile prison, sentencing, legal cases, court.*

[*] LLD, Full Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: ijoksic@pravni-fakultet.info
[**] LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: borivoje.dundjerski@pravni-fakultet.info
[***] PhD Student, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: nemanjadimitrijevic141099@gmail.com

1. Introduction

The historical development of juvenile delinquency dates back to the earliest times of human civilization. In older legal monuments, there was no distinction between the criminal behavior of younger and older people. Hence, we can raise the question of how to punish children and minors for offenses that violate customary, moral, and legal norms of good behavior. It should be borne in mind that the age period of childhood and adolescence was not distinguished but instead divided into younger (immature) and older (more mature) offenders. In this way, society referred to the phenomena of early delinquency that had not yet taken on the dimensions of delinquent behavior.

Juvenile delinquency (*delinquere* – to err, transgress, fail) is a form of negative social behavior. It is known that ancient Greek philosophers and Roman lawyers pointed out the importance of a different attitude towards minors as actors of delinquent behavior. However, legal monuments lacked a special treatment of minors in criminal law, which leads to the conclusion that courts in practice punished younger persons more leniently.

The Middle Ages did not bring anything new in the field of special punishment of minors. The preoccupation of the Inquisition courts with punishing heretics and freethinkers is obvious, which left no room for regulating the special penal treatment of minors. Moreover, there was no clear distinction between minor children and adult delinquents. Parents were obviously responsible for re-educating their children so that the parents themselves would not be held responsible for their actions. This is confirmed by the fact that death sentences were pronounced on serious minor offenders, which were carried out in the same way as on adult offenders. In England, children over 12 years of age were punished by hanging for serious offenses (e.g., for stealing something worth more than 12 pence).

The beginning of the 20th century brought changes in the area of juvenile punishment in the leading European countries of the time. In Germany, special judicial chambers for juveniles were formed, which represented a radical departure from the earlier period. The Juvenile Justice Act of 1923 introduced complete criminal non-responsibility for offenders under the age of 14. Educational measures, which represented the basic criminal sanctions against juveniles, gained primacy. This meant that a juvenile could be punished only if the educational measure could not sufficiently achieve the purpose of the criminal law response. Somewhat earlier, in England, in 1908, the Children Act was passed, which abandoned the idea of mandatory severe punishment

of juveniles. Therefore, imprisonment of persons under the age of 14 was not permitted.

The evolution of the criminal law status of minors in Serbia has come a long way. Therefore, a turning point can be considered the Criminal Code of 1869, which established the duty of parents to educate and punish their children up to the age of 12. Although beatings were the main form of punishment, minors could be punished with fines and imprisonment. There were no special rules regarding the sentencing of juveniles, which indicates the application of general rules prescribed for adults. After more than half a century, the Yugoslav Criminal Code of 1929 was adopted, which provided for special rules for sentencing older minors.

2. Models of the criminal legal status of minors

The criminal legal status of minors has undergone fundamental changes. Therefore, we can discuss the specifics of their status, taking into account the temporal and spatial dimensions. In some countries, minors are punished more leniently, in others there are special criminal sanctions intended for their age, while in some countries even the death penalty can be imposed on minors, etc. However, although there are no two countries in which the criminal legal status of minors is regulated in a completely identical way, it is possible to distinguish two basic models of their status, which are: the protective model and the judicial model (Joksić & Radovanov, 2018, p. 158).

The welfare model appeared and became publicly recognizable in the world at the beginning of the 20th century. In it, the judge has broad powers in conducting the court proceedings, which deprives him of strictly formal conduct in carrying out actions. There is no proportional system of imposing criminal sanctions and an arbitrary approach to sanctioning minors. We can find the representation of this model in criminal legislation in the period after World War II.

The justice model was first applied in the second half of the 20th century. It was preceded by deeper political and economic factors in European countries that led to a loss of confidence in the traditional system of punishing juveniles. Instead of the juvenile perpetrator, the focus of the criminal legal response is the victim as the object of the committed criminal act.

The mixed (welfare-justice) model emerged as a result of the shortcomings of the previous two models. The criminal legal essence of the mixed model is the application of the so-called traditional criminal sanctions, accompanied

by a reduction in the maximum sentence of juvenile imprisonment and the abolition of existing indeterminate sentences (Banović & Joksić, 2012, p. 16).

3. Determining the juvenile detention sentence

Juvenile detention is a special type of criminal sanction intended for older juveniles, the imposition of which is preceded by criminal proceedings against juveniles, legally prescribed conditions for imposing and imposing sentences, as well as special correctional institutions for juveniles (Joksić, 2019, p. 440). This definition of juvenile detention stems from the current Act on Juvenile Perpetrators of Criminal Offenses and Criminal Protection of Juveniles from 2005 (hereinafter: ZOM). This Act entered into force on 1 January 2006, when the Criminal Code also came into force. It is noticeable that our legislator, in this legal act, gives priority to extrajudicial forms of criminal-legal response. Therefore, the inclusion of minors in the criminal justice system, through the imposition of institutional sanctions, should have been the last resort of the state in responding to juvenile crime (Stevanović, 2024, p. 68).

According to the provisions of Article 9, paragraph 3 of the Law on Youth, it is stipulated that a juvenile may, only exceptionally, be sentenced to juvenile imprisonment. This is a legal provision that clearly seeks to make a difference in relation to adult perpetrators of criminal acts. From this, it can be concluded that the punishment of minors is of a secondary nature and only when educational measures cannot achieve the purpose. In the above context, the legal nature of juvenile detention in our criminal law should be understood. In criminal doctrine, there are opinions according to which juvenile detention is a hybrid criminal sanction, which in its form is a punitive measure with pronounced elements of repression, but in terms of its content, essence and the goal it is intended to achieve, it is an educational measure (Jovašević, 2010, p. 152).

Our legislator prescribes that an older juvenile who has committed a criminal offense for which the law prescribes a prison sentence of more than five years may be sentenced to juvenile imprisonment if, due to the high degree of guilt, the nature and gravity of the criminal offense, it would not be justified to impose an educational measure (Article 28 of the LOY). In this way, the conditions that must be met in order for an older juvenile perpetrator of a criminal offense to be punished with imprisonment have been specified. This has led to the application of general and special rules when determining the sentence, taking primarily into account the interest of the juvenile and the

possibilities of their successful resocialization. Since it is an institutionalized criminal sanction, juvenile imprisonment greatly changes the role of the family in the resocialization of juveniles (Joksić & Rajaković, 2020, p. 50).

3.1. General circumstances during sentencing

Sentencing is a legally regulated method of determining the right measure of imprisonment in a particular criminal case. Regardless of the differences that accompany each individual case, it is necessary to prescribe the rules within which the court must operate. Accordingly, the provision of Article 30 of the LOY stipulates that the court shall impose a sentence of juvenile imprisonment on an older minor within the limits prescribed by this law, bearing in mind the purpose of juvenile imprisonment and taking into account all circumstances that affect the amount of the sentence (Article 54 of the CC), and in particular the degree of maturity of the minor and the time required for his education and professional training. From the verbiage of the aforementioned provision, we can see the determination of the legislator to ensure the application of two groups of circumstances when imposing a sentence of juvenile imprisonment. Hence, such a complex system of sentencing allows the judge to adapt the most adequate measure of punishment to the minor in a specific criminal case.

All circumstances provided for by law when determining the sentence of juvenile imprisonment can be divided into two groups: general circumstances that also apply to adults and special circumstances that apply only to minors.

The general circumstances in the determination of a juvenile prison sentence include several legal aspects. First, the judge is required to take into account (have in mind) the purpose of juvenile prison when determining the sentence (see Article 10 of the Criminal Procedure Code). The judge is then required to take into account all the circumstances that affect the amount of the sentence prescribed in Article 54 of the Criminal Code (hereinafter: the Criminal Code). This is the guiding norm that ensures the application of the general rules for determining a prison sentence for adults. Given that the punishment is essentially the same, the legislator's position on this issue is understandable. There are opinions in the doctrine that, although the provision of Article 30 of the Criminal Procedure Act does not contain a reference norm for the appropriate application of Article 55 of the Criminal Procedure Code, the court should take into account the recidivism of juveniles when determining the juvenile prison sentence (Knežević, 2010, p. 88).

According to the provision of Article 54 of the Criminal Code, the court shall impose a sentence on the perpetrator of a criminal offense within the

limits prescribed by law for that offense, taking into account the purpose of the punishment and taking into account all circumstances that influence the sentence to be lower or higher (mitigating and aggravating circumstances), and in particular:

- degree of guilt,
- motives from which the offense was committed,
- severity of the threat or damage to the protected property,
- circumstances under which the offense was committed,
- the perpetrator's previous life,
- his personal circumstances,
- his behavior after the criminal offense was committed, and in particular his attitude towards the victim of the criminal offense,
- as well as other circumstances relating to the personality of the perpetrator.

Although the (mitigating and aggravating) circumstances are listed in detail, the court is left with the option to take other circumstances into account by applying the principle of free judicial discretion. This legal solution can be considered a compromise because it follows the line of a mixed model. In practice, this means that the court is allowed freedom in determining the sentence, but within clearly established legal frameworks. In this way, the possibility of arbitrary action by the court is prevented, which would call into question the objectivity of its decision-making.[1]

3.2. Special circumstances during sentencing

The special rules for sentencing minors contain the mandatory application of two (additional) circumstances, which are: the degree of maturity of the minor and the time required for his or her upbringing and professional training. From the verbiage of the provision of Article 30 of the Criminal Procedure Act, one can clearly see the imperative character with the targeted intention

[1] The importance that the American judicial system attached to the proper and objective sentencing was evident in the 1980s. In the USA, the Sentencing Reform Act was passed in 1984, which provided for the formation of a special Sentencing Commission, as an independent body within the judiciary, to review existing case law. The Commission's task was to formulate exact numerical rules that would be applied when imposing prison sentences. Based on the given powers, the Commission created the Sentencing Guidelines Manual, which came into force in 1987. Although it had only consultative force and significance, the Guidelines are applied by many judges to this day (Miladinović Stefanović, 2019, pp. 207–208).

that the court, in addition to the circumstances relating to the sentencing of adults, use two additional circumstances determined only for minors.

The degree of maturity of a minor involves determining the level of his maturity at the time of committing the criminal offense. Maturity in the conceptual sense can be defined as the totality of his psycho-physical, emotional, social, and intellectual capacities (Radulović, 2010, p. 155). Given the individuality of each person, it is not possible to build a universal model in assessing their maturity. The same happens with the degree of maturity of a minor, which shows different varieties in each specific case. Therefore, special caution should be exercised when determining this circumstance in order to justify the application of a prison sentence.[2]

The time required for his education and vocational training is a circumstance that is determined *in futuro*. Here, the court is required to foresee the future course of the resocialization process, in which, it should be noted, the penitentiary institution itself plays an important role. Therefore, determining the time required for the education and vocational training of a minor must be assessed, both in terms of the personality of the minor and in relation to the possibility of organizing treatment in a juvenile correctional institution.

4. Sentencing for concurrent criminal offenses

Juvenile delinquency often involves the participation of multiple persons who commit criminal offenses in conjunction. As a result, it is necessary to provide methods for determining a single juvenile prison sentence for all criminal offenses included in the concurrent offense. Our criminal legislation uses a mixed approach that includes the application of several different legal rules, depending on the prescribed legal possibilities, as provided for in the provision of Article 31 of the Criminal Procedure Act.

The first legal possibility exists if an older juvenile commits multiple criminal offenses in conjunction, and the court finds that a juvenile prison sentence should be imposed for each criminal offense, it will freely assess a single sentence for all offenses within the limits set forth in Article 29 of this law (paragraph 1 of the Criminal Procedure Act). Here, the legislator was

[2] Here, the help of a psychological expert is necessary, who, acting according to the rules of his profession (lege artis), provides assistance to the court in assessing the personality of the perpetrator of the criminal act. Although his engagement includes a wide range of "services", his opinion is undeniably important in determining the sentence (See more: Drakić, 2014, pp. 253–254).

guided by simple legal logic according to which a single sentence is assessed without prior determination of individual sentences for criminal offenses included in the conjunction. Therefore, there is a departure from the rule of assessing a prison sentence for the conjunction of criminal offenses in adults. However, this does not exclude the court's obligation to take into account and evaluate all mitigating and aggravating circumstances provided for by law.

The second legal possibility exists *if the court finds that, in case of a concurrent criminal offense, a juvenile should be sentenced for one offence while for others an educational measure should be imposed, it will impose only a sentence of juvenile detention for all the offenses committed in conjunction* (paragraph 2 of the LOY). The meaning of this legal provision is that juvenile detention, as the only punishment and at the same time the most severe criminal sanction against minors, also includes educational measures that should be imposed for one or more criminal offenses included in the conjunction. In this case, the court resorts only to imposing a sentence of juvenile detention, considering it a type of umbrella criminal sanction in a given criminal case.[3]

The third legal possibility exists *if the court has determined prison sentences and juvenile detention for concurrent criminal offenses and will impose prison as a single sentence by applying the rules set forth in Article 60, paragraph 4 of the Criminal Code* (paragraph 3 of the Criminal Code). In this legal situation, the same perpetrator committed one or more criminal offenses during his or her childhood and adulthood when he or she should be tried for them. The legal logic of our legislator is that a single prison sentence should be imposed for all criminal offenses included in the concurrent offense. In doing so, the general rules for determining prison sentences for concurrent criminal offenses from Article 60, paragraph 4 of the Criminal Code apply. This includes the application of the principle of asperation, which applies to prison, although the principle of absorption may also be applied (Stojanović, 2006, p. 294).

The fourth legal possibility exists *if the court finds that for some criminal offenses in concurrence a correctional measure should be imposed, and for others a prison sentence, it will impose only a prison sentence* (paragraph 4 of the Criminal Procedure Act). The legislator behaves the same way as in another legal situation (Article 31, paragraph 2 of the Criminal Procedure Act)

[3] In this case too, the sentence of juvenile detention is subject to the rules of Article 29 of the Criminal Code, regardless of the number of criminal offenses for which it is being considered (Perić, 2007, p. 81).

because these two criminal sanctions cannot be cumulative. This practically means that the court will impose a single prison sentence for all criminal offenses included in the concurrence.

The fifth legal possibility exists if the court, after the sentence has been pronounced, determines that the convicted person committed another criminal offense before or after its pronouncement (paragraph 5 of the Criminal Procedure Code). Due to the lack of special rules for sentencing a convicted person serving a sentence in juvenile detention, it is necessary to apply the general rules for sentencing a convicted person from Article 62 of the Criminal Procedure Code, which foresees three possible situations (Joksić, 2019, p. 447):

The first situation exists if a convicted person is tried for a criminal offense committed prior to the start of the sentence under a previous conviction or for a criminal offense committed while serving a prison sentence or juvenile detention, the court shall impose a single sentence for all criminal offenses by applying the provisions of Article 60 of this Code, taking the previously imposed sentence as already determined. The sentence or part of the sentence that the convicted person has served shall be included in the imposed prison sentence (paragraph 1).

The second situation relates to a criminal offense committed while serving a prison sentence or juvenile detention. In this case, the court shall impose a sentence on the perpetrator, regardless of the previously imposed sentence, if the application of the provisions of Article 60 of this Code, taking into account the gravity of the criminal offense and the unserved part of the previously imposed sentence, would not achieve the purpose of punishment (paragraph 2).

The third situation provides for special responsibility for minors, whereby a convicted person who, while serving a prison sentence or juvenile detention, commits a criminal offense for which the law prescribes a fine or a prison sentence of up to one year, is subject to disciplinary punishment (paragraph 3).

The above legal rules cover a wide range of legal situations in which a person who committed criminal acts as a minor and/or as an adult may find himself. Therefore, it is necessary to apply general and special rules for determining the sentence of juvenile imprisonment, which create conditions for its more efficient application. The intention of our legislator is to fully preserve the special criminal legal status of minors in this way, although some authors consider such solutions to be painful. The doctrine contains opinions that the graduality in sanctioning minors must take into account the provision

of conditions for their growth. After that, it is possible to talk about their adequate punishment (Kovačević & Vasiljević Prodanović, 2020, p. 112).

5. Conclusion

Juveniles represent a special age category of perpetrators of criminal acts. The age of a minor obliges our legislator to prescribe special rules regarding the regulation of their criminal legal status. This refers to the general position of minors in criminal legislation, which is reflected in the application of a special system of criminal sanctions. An equally important point is the possibility of their punishment, in which the principle of exceptionality in punishment applies. Therefore, the court must show special caution in considering the possibility of punishing a minor instead of imposing an educational measure on him.

The imposition of a juvenile prison sentence involves the application of general and special legal rules. By prescribing a complex system of punishment for juveniles, our legislator has sought to ensure that the process of imposing a juvenile prison sentence in all respects follows the expectation that the legal purpose of the sentence will be achieved by punishing them. The wide catalog of possibilities when imposing a sentence covers various situations in which an older juvenile or younger adult may find themselves when being tried for a criminal offense. The specificity of punishing juveniles is also present when imposing a single sentence for a series of criminal offenses. Here, a different approach is applied when imposing a single sentence in relation to adults.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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

Joksić Ivan
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Dunđerski Borivoje
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Dimitrijević Nemanja
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

ODMERAVANJE KAZNE MALOLETNIČKOG ZATVORA

APSTRAKT: Maloletnici predstavljaju osetljivu kategoriju delinkvenata usled čega uživaju poseban krivičnopravni status. Njihov uzrast iziskuje drugačije modele krivičnopravne reakcije u kojima dominiraju vaspitne mere kao osnovne krivične sankcije. U izuzetnim slučajevima, zakonodavac je propisao mogućnosti za izricanje kazne maloletničkog zatvora. Ovako bolećiv odnos prema maloletnicima proizilazi iz činjenice da su u pitanju, još uvek, psihofizički nedozrela lica. Otuda se u literaturi nazivaju delinkventima u minijaturi i „velikim kriminalcima" u najavi. No, bez obzira na „povlašćeni" status, maloletnicima se može izreći kazna maloletničkog zatvora. Njena posebnost se ogleda u primeni načela izuzetnosti u kažnjavanju, kraćem vremenskom trajanju, posebnim opštim i posebnim pravilima kod odmeravanja kazne kao i posebnom načinu izvršenja. Posebnost maloletničkog zatvora posebno dolazi do izražaja prilikom odmeravanja kazne. Ovde se primenjuju posebna pravila uz istovremeno upućivanje na primenu normi koje se odnose na punoletna lica. Usled toga, smatramo neophodnim da područje odmeravanja kazne maloletnicima prikažemo iz ugla našeg zakonodavca.

Ključne reči: *maloletnici, maloletnički zatvor, odmeravanje kazne, pravni slučajevi, sud.*

References

1. Banović, B., & Joksić, I. (2012). *Maloletnički zatvor u zakonodavstvu i praksi* [*Juvenile prison in legislation and practice*]. Beograd: Fakultet bezbednosti
2. Drakić, D. (2014). Krivično pravo i psihologija – tačke spajanja [Criminal law and psychology – points of convergence]. *Zbornik radova Pravnog fakulteta u Novom Sadu, 48*(2), pp. 243–256. DOI: 10.5937/zrpfns48-6736
3. Jovašević, D. (2010). *Položaj maloletnika u krivičnom pravu* [*The position of minors in criminal law*]. Niš: Pravni fakultet
4. Joksić, I., & Radovanov, A. (2018). Položaj maloletnika u porodičnom i krivičnom pravu Republike Srbije. [The position of minors in family and criminal law of the Republic of Serbia]. *Vojno delo, 70*(6), pp. 154–165. DOI: 10.5937/vojdelo1806154R
5. Joksić, I. (2019). *Krivično pravo – opšti deo* [*Criminal law – general part*]. Novi Sad: Pravni fakultet za privredu i pravosuđe
6. Joksić, I., & Rajaković, V. (2020). Porodica kao faktor socijalizacije i resocijalizacije [The family as a factor of socialization and resocialization]. *Pravo – teorija i praksa, 37*(45), pp. 42–54. DOI: 10.5937/ptp2004042J.
7. Kovačević, M., & Vasiljević Prodanović, D. (2020). Diverzioni mehanizmi postupanja prema maloletnicima u Škotskoj – mogućnosti za primenu određenih iskustava u Srbiji [Diversionary mechanisms of dealing with minors in Scotland – possibilities for the application of certain experiences in Serbia]. *Strani pravni život, 64*(2), pp. 111–124. DOI: 10.5937/spz64-25413
8. Knežević, S. (2010). *Maloletničko krivično pravo-materijalno, procesno i izvršno* [*Juvenile criminal law – material, procedural and executive*]. Niš: Centar za publikacije Pravnog fakulteta u Nišu
9. Miladinović Stefanović, D. (2019). „Matematizovanje" odmeravanja kazne – efikasan metod za ujednačavanje sudske kaznene politike ili neuspeli eksperiment? ["Mathematization" of sentencing – a reliable method for unifying judicial penal policy or a failed experiment?]. *Zbornik radova Pravnog fakulteta u Nišu, 58*(85), pp. 205–224. DOI: 10.5937/zrpfn0-23419
10. Perić, O. (2007). *Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica* [*Commentary on the Law on Juvenile Offenders and Criminal Protection of Juveniles*]. Beograd: Službeni glasnik

11. Radulović, Lj. (2010). *Maloletničko krivično pravo* [*Juvenile criminal law*]. Beograd: Pravni fakultet u Beogradu
12. Stojanović, Z. (2006). *Krivično pravo – opšti deo* [*Criminal law – general part*]. Beograd: Pravna knjiga
13. Stevanović, I. (2024). Normativni okvir i adekvatnost reakcije na kriminalitet maloletnika [Normative framework and adequacy of reaction to juvenile delinquency]. In: Turanjanin, V. & Čvorović D. (eds.), *Kaznena politika i adekvatnost reakcije na kriminalitet* [*Penal policy and the adequacy of the response to crime]* (pp. 58–73). Zlatibor: Srpsko udruženje za krivičnopravnu teoriju i praksu; Intermex
14. Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica [Law on Juvenile Offenders and Criminal Protection of Juveniles]. *Službeni glasnik RS*, br. 85/05
15. Krivični zakonik [Criminal Code]. *Službeni glasnik RS*, br. 85/05-94/24

Radulović Stanislav[*]
https://orcid.org/0009-0000-6486-7672

UDC: 347.78:004.738.5
Review article
DOI: 10.5937/ptp2504139R
Received on: May 8, 2025
Approved for publication on:
October 21, 2025
Pages: 139–152

CHALLENGES TO COPYRIGHT ON THE INTERNET – COLLECTIVE MANAGEMENT OF COPYRIGHT AND BITTORRENT PLATFORMS

ABSTRACT: The development of information and communication technologies and the Internet has fundamentally changed the traditional concept of copyright and related rights, causing a crisis in its functioning. Forms of copyright inefficiency on the Internet are reflected in the fact that there is a factual impossibility for the author to effectively exercise and protect their copyright or related rights. The search for potential solutions is demanding and complex, ranging from the following efforts: to maintain the traditional concept of copyright and related rights, to implement a reform of the traditional system, to change it from the ground up, to the approach that copyright has no practical reach in the digital environment. BitTorrent platforms have recently become one of the most recognizable forms of copyright infringement in the Internet environment. Although we have witnessed many court proceedings aimed at preventing the activities of BitTorrent platforms on which unauthorized direct sharing of copyrighted content takes place, the expected results have not yet been achieved. In search of a potential solution, the research directed us towards collective management organizations, specialized entities that have the capacity

[*]PhD, Public Media Institution "Radio Television of Vojvodina", Novi Sad; University of Novi Sad, Faculty of Law, Novi Sad, Serbia, e-mail: stanislavradulovic84@gmail.com

to overcome certain challenges in the context of copyright inefficiency, particularly in relation to the unauthorized distribution of copyrighted content via BitTorrent platforms. The basic aim of this scientific research is to offer concrete proposals which, in the future, if implemented, could potentially represent a solution to part of the problem of the most common and widespread form of copyright inefficiency on the Internet.

Keywords: *collective management, copyright, BitTorrent platforms, Internet, judicial practice.*

1. Introduction

Collective management of copyright is a key legal mechanism for the functioning of the copyright system, especially in the creative industries. In the context of the information age and the development of data exchange technologies, the widespread use of BitTorrent platforms has raised complex issues related to copyright protection. Although the protocol of these technologies is not illegal, their use for direct sharing of copyrighted content without proper permission poses a significant problem for authors/copyright holders. One of the fundamental questions that requires research is whether collective management organizations (hereinafter referred to as CMOs) have the appropriate capacity to overcome the challenges posed by the widespread occurrence of unauthorized direct sharing of copyrighted works via the Internet.

BitTorrent platforms use a direct data exchange architecture, the so-called peer to peer file sharing (abbreviated: P2P), which allows users to directly exchange a wide variety of content located in the memories of their computers, with or without the limited service of a dedicated server. What sets them apart from other platforms is their superiority because they are based on a specific BitTorrent communication protocol. Content is exchanged at high speed, between multiple users, and the exchange is carried out in a way that could be compared to putting together a puzzle, because files are exchanged in parts, for easier transfer. The goal of content exchange is for each user to download all parts of the file to the memory of their computer. This concept of sharing allows hundreds, even thousands of users to participate simultaneously in the exchange of just one piece of content, and the speed of sharing increases with the number of users on the network. Also, one of the characteristics of these platforms is their ease of use (Vujičić, 2016).

The problems of individual management of copyright and related rights are overcome through CMOs. The point of the functioning of CMOs is as follows: Authors or copyright holders of certain types of copyrighted works, who in fact cannot or cannot, under economically viable principles, individually manage their rights, join together in organizations. They assign their rights to the organization for certain forms of use of their works, with the order that the organization assigns these rights to interested users, collects the agreed remuneration and distributes it to the authors, i.e. copyright holders (Marković, 2000). With the advent of modern technologies, mass media, and the Internet, a multitude of different forms of exploitation of copyrighted works have emerged. Over time, the role of the organization evolved to become a carrier of activities in controlling the lawful enforcement of copyright and related rights, taking action against unauthorized exploitation of copyrighted works, and performing various socio-cultural functions (Gervais, 2010).

The exchange of copyrighted content online, obtained without authorization, via BitTorrent platforms is one of the most common forms of threatening the property rights of authors or holders of related rights in the online environment. Although this type of technology is not illegal in itself, it is mostly used for illegal activities and is a kind of synonym for internet piracy. The complexity of finding effective copyright protection mechanisms is caused by the characteristics of the aforementioned technology (Vujičić, 2016). Attempts to stop the unauthorized use of copyrighted content via the Internet have focused on legal mechanisms, technological protection measures, and even proposals to remove individual participants in the global computer network who use this type of exchange from it. It should not be forgotten that overly radical requirements can have negative consequences, primarily in the form of a reduction in Internet traffic, online commerce, but also a violation of the right to privacy of online participants. We take the position that the primary focus should not be directed at the uncompromising suppression of unauthorized use of works, but rather it is necessary to strive towards achieving the goal that would lead to the maximum increase in the legal use of works. In the implementation of the complex undertaking of the use of multi-territorial licenses or extended licenses for the use of musical works and other types of content on the Internet, CMOs could be positioned as leading entities. In essence, it is almost unthinkable that such a system could function without their participation (Gervais, 2010).

Considering the above, the paper is dedicated to the analysis of the characteristics of unauthorized, direct exchange of copyrighted material via the Internet, research about individual models of functioning of platforms based

on BitTorrent technology which operate in accordance with legal regulations, and finally to solutions for overcoming perhaps the greatest form of non-functionality of copyright and related rights in the Internet environment. In the relevant sections, through scientific research, we place emphasis on potential possibilities of collective management of copyright in the activities of exploiting copyrighted material within BitTorrent platforms.

2. Bit torrent platforms as a paradigm for the unauthorized exchange of author's work

When considering the legal aspects, it is important to note that the largest number of copyright infringements is related to BitTorrent platforms. One of the most important reasons lies in the fact that copyright and related rights are violated by the Internet intermediary, i.e. the owner of the BitTorrent file exchange site, but also by the huge number of users who participate in the exchange. The actions of users of BitTorrent platforms during the unauthorized exchange of copyright works are carried out both in the preparation phase for online file exchange and during the direct exchange of copyrighted work. In this regard, the ruling of the Higher Court in Grankenthal in Germany is illustrative, which concluded that downloading a part of a file that cannot be uploaded does not constitute a violation of the exclusive right to make a author's work available (Vujičić, 2016).

The Court of Justice of the European Union made a major contribution to the interpretation of the concept of making a work available to the public in its judgment in the case of Stichting Brein v. Ziggo BV, which concerns a legal dispute between Stichting Brein, a Dutch CMO, and Ziggo BV, one of the largest internet service providers in the Netherlands. Thus, in response to a previous question from the Supreme Court of the Netherlands, the Court of Justice of the EU found that the actions of the operator of The Pirate Bay platform constituted an unauthorised communication to the public of the subject matter of copyright protection within the meaning of Article 3(1) of Directive 2001/29. The Court of Justice of the EU assessed, referring to previous practice, that the act of communication to the public of a copyright work exists when a person, fully aware of the fact, enables his clients to access the protected works. Another important fact related to the aforementioned dispute is the court's position on the operator's actions in connection with the administration of the platform. Namely, the platform operator indexed the dot torrent files, so that the copyrighted works could be more easily located and downloaded. In addition, the works were also categorized according to

type of work, genre and other criteria. Taking everything into account, the Court of Justice of the EU pointed out that the operators of these files could not be unaware of the fact that the platform was being used to access works communicated without the consent of the copyright holder or related right holder. Finally, the Court of Justice found that the fact that the administration of the platform brought income to the operators was not legally irrelevant (Popović & Jovanović, 2017).

Also, the use of BitTorrent platforms causes another effect that is observed in the context of the principle of territoriality of copyright and related rights. Therefore, activities aimed at suppression this type of copyright infringement complicate issues of national legislation, because BitTorrent files can be accessed from different geographical locations, from several different countries that have different ways of regulating copyright matters. In other words, users who participate in the direct exchange of unauthorized content that is the subject of copyright or related rights protection are located in different countries, often on different continents. An Internet intermediary, i.e. the owner of a BitTorrent platform, can also place its servers in different countries, which complicates the choice of applicable law and the jurisdiction of the courts, taking into account the territorial validity of copyright and related rights (Damjanović 2020). Therefore, the conflict between the principle of territoriality, which is based on territorial, i.e. national states, and the virtual (unlimited) cyberspace that does not know state borders, further complicates legal actions in the event of unauthorized exploitation of protected content carried out through these platforms.

One of the first music sharing services was Napster, which enabled millions of users to share music. On February 12, 2001, the U.S. Court of Appeals for the Second Circuit issued a landmark decision in the case of A&M Records Inc., et al. vs Napster, Inc. The court ruled that Napster's defenses, which were based on the fair use doctrine and permissible distribution, were inadmissible. Napster received legal notice of the illegal nature of its activities, but subsequently failed to take any action to prevent further infringement (Idris, 2003). It also failed to regulate its system, which the court found feasible because it had the ability to track files on the platform. Finally, Napster was also found liable for the infringement of its users' rights.[1] A interesting

[1] Judgment in the case A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004 (9th Cir. 2001), Apelacioni sud SAD od 5 februara 2023. godine Downloaded 2025, May 15 from https://law.justia.com/cases/federal/appellate-courts/F3/239/1004/636120/

fact was that the Napster service went bankrupt, but the number of such and similar services in cyberspace increased to unimaginable proportions.

The case law in cases against BitTorrent platforms has reached its peak in the last fifteen years. Disputes against their owners receive great media attention and the public has every right to expect an epilogue that would somehow lead to a reduction in tensions in the future. In this regard, we look back at the court case related to one of the more influential BitTorrent platforms – IsoHunt which enabled the unauthorized direct exchange of copyrighted content. In October 2013, the owner of the platform, Gary Fung, concluded a court settlement in the amount of $ 110 million with the Motion Picture Artists Association of America. The platform was shut down, and the defendant was ordered to pay damages and cease unauthorized sharing of copyrighted content (Mullin, 2023). The second case involved the TorrentSpy platform, a popular BitTorrent indexing site that allowed users to search for and download content. In 2008, the platform was also sued by the Motion Picture Association of America. The court ruled in favor of the MPAA and ordered the closure of the TorrentSpy platform due to massive copyright infringement (Statz, 2023).

There are several common features that we can identify when looking at the case law in cases against BitTorrent platforms. As we have already mentioned, most of the aforementioned disputes are accompanied by great publicity and media attention. Much is expected of the outcome of the proceedings, but there are no major breakthroughs in the area of solving the key problems. In the practice of the US courts, there is significant activity by author associations, which often appear in the role of prosecutors to represent members who have been harmed by acts of unauthorized sharing of content via BitTorrent platforms. This is a positive trend because it is noticeable that the level of vitality of guild artistic associations that recognize their role in newly emerging social relations is increasing. In a large number of cases, the proceedings end with a settlement, with the platform owner paying multi-million dollar amounts to the plaintiff, so the question of how much is the real income from illegal actions is quite justified.

Finally, the phenomenon is the fact that most BitTorrent platforms, after a formal shutdown lasting a certain period, continue their work with a changed graphic design, but with the same operating system. We should not lose sight of the fact that the subject matter is relatively new and that it takes time to harmonize certain positions of legal theory and practice and to see the entire context of the problem. We can also state that the greatest inefficiency

of copyright and related rights protection on the Internet is reflected in the functioning of certain BitTorrent platforms.

3. Bit torrents platforms for authorized content exchange

Although over time, the image of BitTorrent platforms as a paradigm for copyright infringement has emerged, it is important to note that there are many Internet platforms based on this technology that operate within legal frameworks. This essentially means that the content that is exchanged is copyrighted works or objects of related rights protection that are suitable for this type of interaction. Namely, as we have already stated, BitTorrent or P2P technology has shown superiority in terms of speed and availability of a large number of contents in one place. In other words, this type of technology is not illegal or unethical in itself, and if it is used as a means of distributing content that meets legal requirements, it can be of exceptional benefit to all participants on the network. Therefore, the main difference is reflected in the legality of the content that is the subject of exchange via the same technology.

A large number of BitTorrent platforms direct users to content that is under the Creative Commons license regime, to which the author/rights holder grants general permission to use his work. Files marked with these licenses are safe for copying and distribution, and these actions do not constitute an infringement of copyright. On the other hand, there are also a number of copyrighted works that have become part of the public domain over time, which as such can be freely exchanged.

In the above context, it is illustrative to mention several such platforms that operate on the Internet in order to gain a broader picture of the functioning of BitTorrent platforms. We will refer to the Internet Archive, which constitutes a digital library of Internet sites and other cultural content in digital form. This platform provides free access to researchers, historians, scientists, people with disabilities and the general public to content from a wide range of creative fields with the mission of enabling universal access to knowledge (Internet Archive, 2025). The Vuze platform contains a legal selection of P2P sources that are used to download media using a free BitTorrent client. This platform requires all its users to have permission from the copyright holder to upload or post content to the platform. It also contains a special music section that includes a large selection of musical genres (Vuze Copyright Policies, 2025). The Legit torrents platform has more than five thousand legal links that cover a wide variety of content: music, film, literary works, computer programs and other content. This file sharing platform also has a selection of legal software

that covers not only Microsoft Windows, but also Mac and Linux operating systems (Legit torrents, 2025). Finally, Public Domain Torrents is a platform whose content is in the public domain (in the public domain). The site is primarily dedicated to filmmaking and offers a significant selection of film industry classics and films of lower production categories (Public domain torrents, 2025).

4. Some proposals for solving the problem of unauthorized P2P exchange of copyright works

In previous sections, we have seen that direct data exchange, so-called peer to peer file sharing, offers significant technological capabilities, and that over time it has become recognizable by platforms that abuse the potential of this computer architecture. Copyright infringement are of a significant scale, regardless of the fact that the technology itself is not illegal and can undoubtedly be effectively used in many areas. Rejecting or even ignoring the possibility of using this type of technology because it is subject to potential copyright infringement would be wrong and would produce far-reaching negative consequences. The fight against a kind of symbol of unauthorized use of protected content on the Internet, so-called pirated BitTorrent platforms, using conventional legal means, does not give the expected results. Based on the above theses, the research is aimed at finding a solution that would find an appropriate model by which the aforementioned technology could be applied to the legal exchange of copyrighted works, with the consent of the author and adequate material compensation. It is not impossible to imagine a situation in the near future in which some of the proposals would be implemented, which would partially put an end to the most pronounced form of copyright dysfunction on the Internet.

Proposals in which P2P file sharing would be established on a different basis – by providing compensation to authors for the legal use of their copyrighted works, are advocated by representatives of the academic community and experts in the field around the world. In the US, one proposal that has gained widespread support is the concept of Harvard professor William Fisher outlined in his 2004 publication Promises We Must Keep: Technology, Law, and the Future of Entertainment. Fisher essentially proposes a separate administrative royalty collection system in which the author/copyright holder of a musical or film work can register the subject matter of protection with a government agency – the Copyright Office (Copyright Office, 2025) in order to obtain a unique registration number that would be used to track the

distribution and use of the digital file. This approach involves governments levying a fee in the form of a tax on electronic devices and services used to access digital content. Once the tax is collected, they would direct it to the authors/copyright holders in proportion to the extent of use of their works, which would be assessed using the digital identification of the file. With this model, non-commercial file sharing would be systematically covered and incorporated into the US tax system. In the above proposal, the author would be able to claim compensation for the use (exchange) of the subject matter of protection only for works registered with the competent authority (Dusollier & Colin, 2011).

Another proposal that attracted attention during the research is the model of the law professor at the University of California, Los Angeles, Neil Netanel who similarly proposed to approve the non-commercial sharing of copyrighted works by providing compensation for authors that would be collected in the form of a mandatory contribution. The use of works in P2P networks would be allowed within the framework of mandatory (compulsory) licensing. Authors and copyright holders would then manage the right to compensation through a tax, the burden of which would be borne by suppliers of products or providers of services whose value is increased by file sharing. For example, entities that provide Internet access services, P2P software sales services, and electronic devices used to store, copy, and reproduce files downloaded from a P2P network would be additionally taxed. Determining the amount of the tax would be the subject of negotiations with representative associations of authors, and in the event that negotiations fail, the final say would be given to a state body – the Copyright Office, which would determine the amount of the fee. The third proposal comes from French scientist, humanist, and researcher Egren, in his work Internet and Creation proposes a different system (Aigran, 2008). In Egren's proposal, users would be required to pay a monthly fee for licensing the exchange of copyrighted works via a P2P platform. The collected material fees would subsequently be directed to the authors/rights holders whose works were the subject of the exchange, while a portion would be allocated to a special fund for financing creativity. Finally, the Union of Artists in France and the Songwriters Association of Canada are promoting the establishment of a new property right – the right to remuneration for P2P sharing of musical work (Dusollier & Colin, 2011).

5. Conclusion

The dysfunctionality of copyright on the Internet is perhaps most evident in the ineffective system of copyright and related rights protection online. BitTorrent platforms, which are characterized by high speed in content exchange and specific computer architecture, are most often mentioned as a paradigm for copyright infringement. Although we have witnessed many court proceedings at the global level as part of the society's efforts to to prevent such actions, there have been no significant breakthroughs so far. The reason should definitely be sought in the fact that it takes time to understand such systems and establish case law that would have a positive effect on suppressing this type of unauthorized use of content.

We should not lose sight of the fact that there are platforms based on BitTorrent technology that operate legally and enable users to exchange copyrighted works. Therefore, this type of technology is more than desirable, if its activities do not violate copyright and related rights, or if its activity is directed towards free access to licensed content. On the other hand, if we assume that it is in the individual's interest to use legal content and to avoid any action that uses copyrighted work without authorization, we should pay attention to large companies that are engaged in streaming licensed content. It is to be expected that over time, when the services of legal entities that perform the activity of "streaming", that is, provide access to licensed content in the field of film and series production, are lower, more economically acceptable to the majority, it will lead to the fact that the use of BitTorrent platform services that are used for unauthorized content exchange will not be as widespread as it is now. In the current situation we can conclude that online piracy remains a major issue in copyright enforcement. Anyway, CMOs play a crucial role in protecting creative works. The digital age requires innovative solutions, such as improved licensing models to ensure fair compensation for creators while making content accessible to consumers legally.

One of the potential solutions to overcome the problem of unauthorized direct exchange of copyright works via the Internet is the use of collective management of copyright and related rights. Considering that collective management of copyright is acceptable in situations where individual management is difficult or even impossible, this type of management could be appropriate for a new type of property law authorization, if it is provided for by a legal act in the future. Also, CMOs represent specialized entities that possess the technical and professional capacity for the efficient management

of rights, which would significantly reduce the transaction costs for the author/rights holder.

In some future situation, if the law provides for a new property right, as proposed by a French and Canadian association – the right to non-commercial P2P sharing of musical works, the organization could, based on the obtained authorization of the right holder and the adopted tariff, collect a fee from users on the above basis. It seems reasonable to suggest that the greatest burden should be borne by economic entities that would potentially generate the most income from the aforementioned activity – internet providers, legal or natural persons engaged in the sale of P2P software and electronic devices used for storing, copying and reproducing files downloaded via a P2P network, etc. A platform whose activity is P2P content exchange could be conditioned by fulfilling the legally prescribed conditions for obtaining a work permit from the competent state authority. The above conditions would be designed in such a way as to ensure appropriate capacities that would be a kind of guarantee that the above service would be provided at the required level that meets technical and other necessary standards. Platforms, following the example of CMOs, could be specialized (and conditioned by a legal act) for sharing certain types of authors work. Platforms engaged in non-commercial P2P sharing of music content would periodically report to the organization with accurate and verifiable data on the scope of exploitation of the work, as proposed by Professor Fischer, and on this basis the CMOs would make payments to authors/rights holders. The described solution could have a positive effect on, at least partially, suppressing mass piracy of music content on the Internet via bit torrent platforms. On the other hand, authors/rights holders would be provided with a certain form of remuneration for works that are exploited in cyberspace, to which they have not been entitled until now.

Conflicts of interest

The author declares no conflicts of interest.

Radulović Stanislav
Javna medijska ustanova „Radio-televizija Vojvodine“, Novi Sad; Univerzitet u Novom Sadu, Pravni fakultet, Novi Sad, Srbija

IZAZOVI AUTORSKOG PRAVA NA INTERNETU – KOLEKTIVNO OSTVARIVANJE AUTORSKOG PRAVA I BITTORRENT PLATFORME

APSTRAKT: Razvoj informaciono-komunikacionih tehnologija i pojava interneta suštinski su poremetili tradicionalni koncept autorskog i srodnih prava, uzrokujući krizu u njegovom funkcionisanju. Oblici neefikasnosti autorskog prava na internetu se ogledaju u činjenici da postoji faktička nemogućnost da autor efikasno ostvari i zaštiti svoje subjektivno autorsko ili srodno pravo. Potraga za potencijalnim rešenjima je zahtevna i kompleksna, a kreće se oko sledećih nastojanja: da se održi tradicionalni koncept autorskog i srodnih prava, da se sprovede reforma tradicionalnog sistema, da se isti promeni iz temelja, do pristupa da autorsko pravo nema praktičan domet u digitalnom okruženju. BitTorrent platforme su nedavno postale sinonim za masovne povrede autorskog prava u internet okruženju. Iako smo bili svedoci mnogih sudskih postupaka sa ciljem sprečavanja delovanja BitTorrent platformi na kojima se vrši neovlašćeno direktno deljenje predmeta autorskopravne zaštite, očekivani rezultati još nisu postignuti. U potrazi za potencijalnim rešenjem, istraživanje nas je usmerilo na organizacije za kolektivno ostvarivanje autorskog prava, specijalizovane pravne subjekte koji imaju kapacitet da prevaziđu određene izazove u kontekstu nefunkcionalnosti autorskog prava na internetu u smislu neovlašćene razmene sadržaja putem BitTorrent platformi. Osnovno nastojanje u naučnom istraživanju jeste da se ponude konkretni predlozi, koji bi u budućem periodu, ukoliko budu implementirani, mogli da budu potencijalno rešenje jednog dela problema najčešćeg i u velikoj meri prisutnog, oblika neefikasnosti autorskog prava na internetu.

Ključne reči: *kolektivno ostvarivanje, autorsko pravo, BitTorrent platforme, internet, sudska praksa.*

References

1. Aigran, P. (2008). Internet & Creation. Cergy-Pontoise: In Libro Veritas
2. Damjanović, G. (2020). Pravo intelektualne svojine i internet [Intellectual property law and the Internet]. In: Belović, J. (ed.), *Naučno istraživački projekat Pravni aspekti savremenih društvenih kretanja u Republici Srbiji: tematski zbornik – projekat. Sv. 2* [*Scientific research project Legal aspects of contemporary social movements in the Republic of Serbia thematic collection – project. Vol. 2*] (pp 135–147). Kosovska Mitrovica: Pravni fakultet Univerziteta u Prištini sa privremenim sedištem u Kosovskoj Mitrovici
3. Dusollier, S., & Colin, C. (2011). Peer-to-Peer File Sharing and Copyright: What Could Be the Role of Collective Management. *Columbia Journal of Law & the Arts*, *34*(4), pp. 813–814. DOI: 10.7916/jla.v34i4.2194
4. Gervais, D. (2010). Collective Management of Copyright and Related Rights. In: Gervais, D. (ed.), Collective Management of Copyright and Related Rights (pp. 1–28). Alphen aan den Rijn: Kluwer Law International
5. Idris, K. (2003). *Intelektualna svojina moćno sredstvo ekonomskog rasta* [*Intellectual property is a powerful tool for economic growth*]. Beograd: Zavod za intelektualnu svojinu; Balkan kult
6. Marković, S. (2000). *Pravo intelektualne svojine* [*Intellectual property law*]. Beograd: Službeni list
7. Mullin, J. (2023). BitTorrent search site IsoHunt will shut down, pay MPAA $110 million. Downloaded 2025, June 6 from https://arstechnica.com/tech-policy/2013/10/bittorrent-site-isohunt-will-shut-down-pay-mpaa-110-million/
8. Popović, D., & Jovanović, M. (2017). *Pravo interneta, odabrane teme* [*Internet law, selected topics*]. Beograd: Pravni fakultet u Beogradu
9. Vujičić, N. (2016). Povreda autorskog prava korišćenjem bit torent platformi za razmenu sadržaja putem interneta [Copyright infringement using bit torrent platforms for sharing content over the Internet]. In: Popović, V., D. (ed.), *Intelektualna svojina i internet* [*Intellectual property and the Internet*] (pp. 187–215). Beograd : Pravni fakultet
10. Copyright Office. Downloaded 2025, April 29 from https://www.copyright.gov/
11. Internet Archive. Downloaded 2025, April 29 from https://archive.org/about/
12. Legit torrents. Downloaded 2025, April 29 from https://www.legittorrents.info/

13. Public domain torrents. Downloaded 2025, April 29 from https://www.publicdomaintorrents.info/index.html
14. Vuze Copyright Policies. Downloaded 2025, April 29 from https://www.vuze.com/corp/copyright
15. Statz, P. (2006). MPAA versus Torrentspy. Downloaded 2025, June 6 from https://www.wired.com/2006/03/mpaa-versus-torrentspy/

Rajaković Jovčić Vesna*
https://orcid.org/0000-0002-9900-6853
Kovačević Danijela**
https://orcid.org/0009-0001-4008-5497
Rajaković Mijailović Jasmina****
https://orcid.org/0000-0001-6995-0416

UDC: 347.23(091)
Review article
DOI: 10.5937/ptp2504153R
Received on: May 9, 2025
Approved for publication on: May 28, 2025
Pages: 153–169

INSTITUTE OF PROPERTY RIGHTS THROUGH A HISTORICAL PRISM

ABSTRACT: The institute of property rights is one of the oldest legal institutes. It appears as a historically determined form of social relations that arises in connection with the appropriation and possession of material goods. Since its inception, it has been the subject of fierce battles, but also the subject of a person's greatest factual and legal protection. However, property is not only a legal concept, but also an economic, social, ethical, and even a religious concept. The development of the institute of property is interwoven with turbulent changes, which reflect the direction of societal development and evolve in accordance with its needs. For this reason, the institute of property rights is the most suitable legal institute, through which social relations in different periods of society's development are viewed. Therefore, in this paper we will analyze the institution of the right of ownership across several historical periods: Roman law, the era of feudalism, the bourgeois revolutions, as well as the modern age.

Keywords: *institute of property rights, property, Roman law, feudalism, Middle Ages, capitalism.*

---

* LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Serbia, e-mail: vesnarajakovic@yahoo.com
** LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: kovacevicdanijela74@gmail.com
*** PhD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: jasminarajakovic@yahoo.com

1. Introduction

When it comes to the institute of property rights, it is necessary to answer the question of what forms of property exist in general and what criteria determine the existence of a property relationship. In its basic elementary form, regardless of how it is actualized, the final realization of property is always individual. From the aspect of appropriation, as its economic content, property was originally created as private property, regardless of all the changes that occurred during history in relation to the forms of its manifestation, it always remained private. The second approach starts from the fact that appropriation is the basic content of property, but the criteria for distinguishing various forms of property are found in the way and forms of realization of its property functions, and the holder of property rights, that is, the owner, is determined according to who is the person that decides upon the way of realization of property functions (Lakićević , 1992, p. 169). Although it is true that the terms property and ownership of assets both mean appropriation in the economic sense, it is important to highlight the difference between these two terms. In this sense, Gams (1953) points out that property is the appropriation of use value, while ownership is the appropriation of marketable value.

Property law is seen as a set of different legal relationships between legal subjects regarding a certain matter. It is "a real right to a certain thing that authorizes the holder of this right to use the thing and benefits from it at his own discretion, as well as to exclude everyone else from it if it does not conflict with the rights of others or legal restrictions" (Popov, 2005, p. 129). Gams and Petrović (1980) state that property is a double concept: economic and legal. Property, as an economic term, means the most complete appropriation of economic goods, while as a legal term, it has an objective and subjective meaning. In an objective sense, property is a legal institution that regulates the direct appropriation of economic goods, that is, things in their most complete and basic form, while in a subjective sense, it represents subjective rights and legal powers related to that appropriation. According to Malahinova (1989), when means of production appear as objects of property, the right of ownership acquires, in addition to legal, an economic form of realization, that is, appropriation of a part of the product in the form of income of its subject. However, that right can only be used when there is something to be appropriated. Otherwise, nothing can be done with that right. A classic example is e.g. a piece of land that, due to changed land conditions, no longer provides for the rent, and its owner continued to claim it as part of his income. "Therefore, it is necessary to distinguish formal appropriation, on which the

legal understanding of property is based, from real appropriation that occurs in the real relationship of people and the conditions of production where their actual exploitation is accounted for as a condition of production" (Malahinova, 1989, p. 39). On the other hand, Lakićević (2007) points out that property is primarily an economic category and that its basic economic content is the appropriation of objects of nature, which means that the right of property arose as an expression of the economic relationship between people in the process of appropriation. According to the same author, the right to property has retained its basic characteristic in all stages of the development of social relations, and legal norms, both in political and legal systems, had a special significance. According to Marx, property is a historically determined relationship between people interconnected by means of production and products. The totality of these relations in a society divided into classes is denoted by property in the broadest sense of the word. Also, Marx understands property in a more narrow sense, as appropriation. At the same time, appropriation signifies the relationship of people to nature in the process of work (Marks, 1859).

From property as a social relationship, it follows that the right to property does not seem as a relationship between a person and a thing, but as a relationship between people regarding things. A change in production relations entails a change in the property category. These changes in certain historical types of production relations were accompanied by corresponding forms of property. In the primordial community, the basic production relationship was social ownership of the means of production, while in the slave system it was replaced by private ownership. The basic production relationship in the slave society was the slave owner's ownership of the means of production and the commodity itself. In the conditions of slave labor, there was a natural way of production, and private property appeared as the clearest form of individual appropriation (Ristić, 1978, p. 1130). According to the general understanding, "property is a right, on the basis of which a thing is constantly subjected to the exclusive will of one person. The owner, because he is the owner, is authorized to use the thing, to enjoy it and to dispose of it. He may not use the thing, or even destroy it" (Konstantinović, 1982, p. 282). So, property is an absolute right and has a similar character in all the codes valid today. It is an individual right, which exists only in order to satisfy the individual goals of the owner. However, property did not always have the nature of an individual right. Over the centuries, the institution of property rights has changed, that is, was modified with the improvement of humankind and with the education and development of society.

2. Roman law

The Romans did not originally have a term for property, but used the possessive pronouns *meum esse* and *suum esse*, which did not denote only property, but were used for both persons and things. At the end of the Republic, the Romans used the term *dominium* for property (from *dominus* – master, owner and corresponds to our term property), and in the classical period *proprietas* (from the possessive pronoun *proprius* – own). (Stanojević, 1972, p. 845). The usual interpretation of the meaning of these expressions is that the first implies authority over the thing, and the second indicates the owner's right of disposal and the owner's exclusion of other people's influence on the thing. Milošević (1989) analyzes this point of view in more detail, stating that "in the original and broadest meaning, *dominus* is the same, or almost the same, as *pater familias*, in classical law a similar use was transferred to the later and more abstract noun *dominium*. "From this initial position, the terms *dominus* and *dominium* gradually received various concretizations, whereby none of them could be denied a legal technical character: thus each or both of them can denote the relationship to one's own property or the property itself, the position of the represented person, the holder of a real right or the right itself" (p. 110).

In the pre-classical period of the development of Roman law, there were different forms of property that intertwined with each other, namely: private and individual, private collective and public or state property. Private individual property was the property of the family community represented by the *pater familias*. "The powerful *pater familias*, to whom the right was given *ius vitae ac necis*, recognized him as business and legally capable, declared him the absolute master of everything living and dead in the family,[1] he was in fact a slave of traditional understandings, religious dogmas, moral and even legal norms that have all reduced the use of his powers to very narrow limits, leaving him to bear the full burden of caring for family property, for deceased ancestors, for living members and future descendants, and always in fear of the wrath of offending ancestral gods, of the moral condemnation of society, of the *nota consoria*, from being declared a *prodigus* and from whether he will deserve that his descendants offer enough sacrifices to him after his death.[2]

[1] This authority corresponded to the closed household economy, which was mainly reduced to extensive agriculture and animal husbandry, the family in that time period was a productive and consuming community.

[2] Romac (1981, p. 155) states that in such occasions, there was no name for the concept of ownership, and that ownership at that time actually consisted of a possession named according to Law XII *plate usus*. Ownership was not understood as a right, but was equated with things.

This is how property relations were in the first phase, which includes the first centuries of Roman history until the liquidation of the closed household economy and the construction of developed slave-owning, commodity-money relations" (Stojčević, 1970, p. 351).

Private collective property was land that belonged to a *gens* and was available for cultivation by family members from that *gens*. Public or state property was land that was acquired through conquests and was called *agner publicus*, which was granted selectively, initially only to members of aristocratic families who had enough money and slaves to occupy and use it (Stanojević, 2010, p. 191).

In the classical period of Roman legal history, there was a stabilization of relations regarding land (*ager publicus*), and conditions were created that influenced the formation of the classical concept or understanding of property rights. Namely, Roman law was the only legal system that made an essential difference between property and ownership of assets, building an understanding of property as complete unlimited power over things (*plena in re poteas*), while ownership of assets was defined as a set of things that are the subject of ownership. Thus, the Roman understanding of property as complete authority over things became the foundation of modern private property, which is of immeasurable importance from the point of view of modern law (Stefanović, 2018, p. 18). However, even in Roman law, this power was not without any limitations. Restrictions existed in the interest of the neighbor, i.e. to leave certain land along the boundary uncultivated, to allow the neighbor to pick the fruits that fell on his land, as well as in the public interest, in the sense of allowing the "public use of rivers", to allow the extraction of ores, while still retaining a certain percentage, and others. In order to facilitate circulation, the praetor sanctioned the informal delivery of the basic means of production and thus created bonitary or praetorian property, and thus another remnant of collective property disappeared (Stanojević, 1972, p. 845). In addition to the above, Roman law also distinguished the following forms of property: quiritary, provincial and peregrine (more in: Šarkić, 2017, pp. 60–62; Stanojević, 2003, pp. 194–197). Quiritary property is a form of property that is acquired and protected according to the rules of *ius civile*. It belonged to the Romans and referred to things found in Italy. This form of property was individual or family property, unequal in the sense that no limits were set as to the amount of goods belonging to individuals. The absolute right of ownership was eternal and the owner could transfer it to another person if that person was a Roman citizen by birth (Vuković, 1998, pp. 76–77). Provincial property is a form of property belonging to the Romans and the inhabitants of Italy in

the provinces. In fact, it is a matter of different relationships to property that have changed over time. So, for example, a number of 'provincial' owners appropriated their land from the state by purchase, others settled on plots of land that they received through the assingation after the agrarian reforms, some were tenants, and there were also those who occupied parts of the conquered land over time through constitutional protection, and with the permission of the state became its owners. Free inhabitants of the provinces of Peregrine have peregrine ownership over land and other property. For them, property is not regulated by *ius civilie* but instead by their local law and *ius gentium*, regulated by tradition, local customs and orders of the governor of the province and the peregrine praetor (more in: Šarkić, 2017, pp. 60–62; Stanojević, 2003, pp. 194–197). Over time, the differences between these forms of ownership have diminished or disappeared.

With the collapse of the Roman Empire and the emergence of a new social order – feudalism in the whole of Europe, which was characterized by a closed autochthonous natural economy and collective feudal property, in which the lords developed a centralized state power with the predominance of customary, private law, there could be no question of the application of Roman law. Namely, Roman law was developed for a society whose characteristic was the existence of a slave-money economy (Stojanović, 1976, p. 83).

3. Feudalism and medieval law

The period of the Middle Ages is identified with feudalism, which is considered the dominant form of property in that period (Avramović & Stanimirović, 2007, p. 138). So, at its core, the medieval social order has a feudal system as a special type of political organization based on property and personal ties of its members. Personal character is relevant because it represents the basis of feudal social order (Nikolić, 1997, p. 167). The essence of feudalism in the narrower sense is the relationship between seniors and vassals, that is, the existence of a special personal relationship between privileged feudal lords, seniors, that is, suzerain and their inferior but free subjects (vassals). This relationship arises when the feudal lord entrusts the vassal with the performance of some public service, or even more often, land ownership, that is, a fief. The vassal managed it, used it and collected revenues from it, but could not alienate it. In return, he acquired the obligation of personal loyalty to the suzerain, primarily in the military sense, which meant that the vassal's obligation was to accompany his suzerain to war. This obligation of personal loyalty, in addition to military service, entailed certain

other duties towards the master in natural sense, money or labor. On the other hand, the vassal gained the security and protection provided by the lord. This relationship was established in the form of a specific ceremonial contract, during the conclusion of which the vassal expressed his respect to the suzerain through various rituals (Avramović & Stanimirović, 2007, pp. 139–140). This contract had a personal character, and had to be renewed in the event of the death of one of the parties. For the same reasons, non-compliance by a vassal or a suzerain exempted the opposite party from fulfilling its obligations. Non-fulfillment of obligations by the vassal meant the loss of the feudal possession, and in a situation where the suzerain could not provide protection to the vassal and for this reason the vassal lost his possession, he had the right to cancel the vassal oath and enter into a vassal relationship with another suzerain, even a foreign ruler (Šarkić, 2011, p. 58).

In feudal social system, the feudal lord had ownership of the means of production, primarily ownership of land and partial ownership of serfs. Feudal property included not only the economic appropriation of an object, such as country, but it also contains, in case of such appropriation, some other powers of a personal or political nature. Thus, the feudal owner of a piece of land was also the political head and judge for the settlements on that piece of land. Exploitation was carried out by non-economic means, and feudal property was divided, that is, it was not jointly owned because several persons appropriated it through the same property (Gams & Petrović, 1980, p. 48). Each vassal leased his land to free farmers, villagers (*des vilains*), or had dependent farmers tied to the land (*des serfs*) on his property. We can say that these population groups formed the base of the medieval social pyramid, which kept the entire system alive through their work. It is relevant to emphasize that the property is appropriated differently by the supreme feudal lord, differently by his vassal who uses the land for life, but has certain obligations, and differently by the serf who appropriates the land to a certain extent, which is why he differs from a slave who is not a subject of law. So in feudalism, there were various forms of tied and encumbered property, which authorized their holders to a limited use of the same thing, i.e. land. Regarding one and the same thing, there were several limited property rights (higher and lower property). Along with the feudal divided property (*dominum dividium*), the unique work property of peasants and artisans on the means of production also developed in feudalism. As we can see, the same land was partially appropriated by the serfs, however, the land, and to some extent the serfs, were further appropriated, according to a certain hierarchy, by various higher feudal lords, who had varying powers in this matter, which was a typical form of collective property. The specificity of

feudalism is precisely the division of ownership of the land. Namely, on the same piece of land, the ruler has the supreme right of ownership (*dominium eminens*), his vassal directly controls it and derives income from it (*dominum directum*), and then on the same land, in the system of hierarchical ladders, there is also the right of a vassal (*dominium utile)*, while the serf cultivates that land and directly uses it and harvests fruits from it (*usus fructus*). In this way, the division of property rights between several holders was defined by glossators and post-glossators, because they noticed that the whole is divided among several holders, which in the case of private property are the *usus, fructus* and *abusus*.[3] Also, some of these powers are intertwined and shared among them, without their relationship being based on co-ownership. In many countries, over time, these powers were increasingly concentrated in the hands of feudal lords, and according to the content of the powers, this specific medieval type of property came closer to individual private property (Avramović & Stanimirović, 2007, p. 142).

4. Property 'through the revolution'

The French Revolution destroyed all medieval obligations, abolished the old feudal burdens and paved the way for the establishment of property rights as unlimited and absolute. Namely, the French bourgeois revolution was one of the examples of the large-scale transformation of property relations that marked the beginning of the end of the feudal social and economic system, opening a completely new era in the development of social relations. The decree of March 15-28, 1790 abolished the feudal property system. All immovable properties that were owned on the basis of *dominum utile* became the private property of the former immediate holders, with the obligation to pay a certain amount of money to the former suzerain. Also, all hierarchical relationships that resulted from the mixture of personal and property elements of feudal divided property were abolished. The Declaration on the Rights of Man and Citizen from 1789 states: "Men are born and remain free and equal in rights. Social distinctions may be based only on considerations of the common good." (Art. 1). "The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression." (Article 2) (Čepulo, 1989). However, the text of the Declaration indicates that the idea

[3] In French law, these land rights were not called property, but holdings (*las tenures*). The two basic types of tenure were fiefdom and censiva. (more in: Nikolić, 2023, pp. 266–268).

of unlimited and inviolable property rights is not absolute, i.e. it is allowed to limit property rights under certain conditions. In doing so, it is required that those conditions be provided by law and that the reason for the restriction be "obvious public necessity", that is, public interest, as well as that the owner be fairly compensated (Dolović Bojić, 2022, p. 305).

In this period, codes were created in Europe in which property received its full affirmation, namely: the French Civil Code (1804), the Austrian Civil Code (1811), the Serbian Civil Code (1844), the German Civil Code (1896) and the Swiss Civil Code code (1907). In these civil codes, the individualistic and absolutist concept of property rights was consistently expressed and implemented (Stanković & Orlić, 1982, p. 88). Thus, the French Civil Code, by the provision of Article 544, regulates the right with certain limitations, by proclaiming that property is the right to enjoy and dispose of things in the most absolute way, on the condition that it does not do something that is prohibited by laws and other regulations. Also, Article 537 of the same Code stipulates that individuals have the freedom to dispose of things that belong to them with the limitations set by the law. This means that ownership is exclusive in its relation to third parties, and unlimited in terms of the use and disposal of things. It is the absolute right of individuals to one specific thing. Violation of this right represents its limitation, i.e. deprivation of the authority already contained in it. According to the spirit of the French Civil Code, property is limited by servitude that represents an "unnatural humiliation of the owner." These restrictions should be removed as quickly as possible, and with their removal, property is once again complete and free. Namely, everything is allowed to the owner, which is not expressly prohibited. Other codes were inspired by the same spirit (Nikolić, 2014). It is believed that after the French Revolution and the adoption of the French Civil Code in 1804, property was confirmed as a human right, i.e. the right to property, and that with the adoption of the Civil Code, it was also confirmed as a civil subjective right for the first time in legal history.

In the Austrian Civil Code from 1811, although it was adopted for a society in which the remnants of feudal property were still present, it was prescribed that "Considered as a right, property is an authorization: to dispose of the substance and benefits of something at will, and each exclude others from it" (§ 354). According to this Code, the limits of the exercise of property rights are the rights of third parties and the law, as can be seen from the content of paragraph 364, paragraph 1, which reads: "Property rights exist only until they do not infringe upon the rights of third persons, transgress legal restrictions, prescribed for the purpose of maintaining and supporting the general well-being." The Serbian Civil Code from 1844 accepts the

individualistic concept of property and guarantees the owner that he is "a complete master of his possessions, that he is free to enjoy them at his will, to dispose of them at his will, to transfer them to another or not to enjoy them" (§ 22, 211, 2016) (Lazić, 2007, p. 182). The German Civil Code stipulates that the owner of an item may, if the law or the rights of a third party do not oppose it, dispose of the item at his discretion (paragraph 903). The absolute character of property is also expressed in the provision of Article 641 of the Swiss Civil Code, according to which the owner of a thing can, within the limits of the legal order, dispose of it at his discretion. He also has the right to demand it from anyone who illegally holds it and to remove any illegal influence on the matter (Popov, 2005, pp. 134–135). It is evident that property is defined in all codes as the most absolute legal authority over things within the limits of the law. Although the aforementioned codes included in their wording the restriction that the exercise of ownership must not contradict the rights of third parties and laws, for the creators of the codes, this did not mean that the state wanted to reserve the right to ownership for itself. The state could impose certain burdens on the owners in the public interest in order to prohibit a certain way of using things, and that was where its powers ended.

The political principles that the bourgeoisie proclaimed upon coming to power, and reinforced with its civil laws, are a reflection of its class position, and therefore of its class interests. The capitalist system is characterized by capitalist private ownership of the means of production, as well as the absence of ownership of the worker, who participates in the production process. Formally, the worker is free, but he is forced to sell his labor power to the capitalist as a commodity (Gams, 1980, p. 49). "In such a mechanism of labor exploitation by the capital, the capitalist needs a worker who is formally and legally free and who, as a formally equal partner, can conclude a labor contract with him; freedom, equality and equity, as a political principle, expresses, in fact, the needs of the existing mechanism of labor exploitation, while the 'lightness and inviolability' of property rights, in fact, is the lightness and inviolability of bourgeois private property, since the historical process of separating direct producers from the means of production has already been completed" (Stanković & Orlić, 1982, p. 89). The basic transparency of capitalist society is the social character of production and the private capitalist form of appropriation. This contradiction is abolished in the socialist revolution, which replaces capitalist ownership of the means of production with social socialist ownership. Social socialist ownership of the means of production appears as the basic production relationship in the socialist social order (more in: Lakićević, 1985).

5. Looking back at modern times

In the modern legal order, the institute of property is undergoing a transformation under the influence of digitalization, globalization and increasingly pronounced environmental and social challenges. Although property traditionally represents an absolute subjective right – the right to use the thing, dispose of it and exclude others – modern legal systems increasingly integrate the social, ecological and technological dimensions of this institution. Comparative legal analysis between continental and Anglo-Saxon legal systems sheds light on different approaches to property law and points to wider social processes that shape its contemporary role.

Within continental law, property is codified as a whole right. For example, the German Civil Code (Bürgerliches Gesetzbuch, 2024) in Article 903 stipulates that the owner of the thing can do whatever he wants with it, unless the law restricts it. The French Code civil and the Serbian Law on the Basics of Property Relations (1980) take a similar approach, emphasizing that the right to property can be limited in the public interest, especially in the case of expropriation. In contrast, Anglo-Saxon law, especially in the United States of America, divides property into so-called "bundle of rights", i.e. a set of rights that includes the right to use, the right to dispose of, and the right to exclude others. In such a framework, ownership is not absolute, but is flexible and adaptable to specific circumstances, and court practice plays a key role in shaping it. This approach is particularly suitable in the context of digital assets and intellectual property, where traditional notions of physical ownership are difficult to apply (Merrill & Smith, 2001).

The modern age is characterized by a special form of property – digital property, which includes software, data, cryptocurrencies and NFTs (Jia & Yao, 2024), which opens up new questions. Who owns the digital content? Does a user of social networks have ownership rights over their own data? In the European Union, the General Data Protection Regulation (GDPR, 2016) introduces the concept of "control" over personal data, while in the US they rely on the Digital Millennium Copyright Act (1998) and the "fair use" doctrine. Serbia, as a country in the process of European integration, harmonizes its legislation with EU directives, but still does not have clear regulations on digital property and digital assets. In addition to the above, in the modern age there is an increasingly strong connection between property rights and environmental rights. Constitutional models like the Ecuadorian one recognize nature as the subject of law (Assamblea Nacional del Ecuador, 2008), while in European countries, such as in Norway (Norway, 2005), develop concepts

of collective property over natural resources. In continental systems, such as the German one, Article 14 of the Grundgesetz für die Bundesrepublik Deutschland (2024) stipulates that "property binds", which emphasizes its social function, and in the Constitution of the Republic of Serbia (2006), the provision of Article 58 recognizes the possibility of limiting property rights in order to protect the general interest.

6. Conclusion

The institution of property, as a legal term, in the broadest sense means a socially regulated and protected legal relationship that is intended for the appropriation and the use of goods. As far as the content of property is concerned, it appears as the broadest legal authority of keeping, using and disposing of the subject of property. As the relations of appropriation changed in various historical epochs, the legal concept of property, from the original forms of collective to the modern concept of individualistic property, went through numerous changes expressing social order, authority, power.

Roman law was further characterized by various forms of closed household economy with the head of the household having unlimited authority. Over time, a commodity-money economy was developed that broke apart the closed household economy, thus affecting the development of commodity production, which in the 19th century served as a model for bourgeois codifications. In this period, a new category appeared in Roman law, property of goods. With the appearance of this type of property, the category of ownership of assets also appears. In feudal property relations, the most important property was land. In doing so, it is clearly seen that the economic appropriation of the land by the feudal lord, which gives the feudal lord certain other powers. The property element is important, for the reason that it is the land that forms the core of the fief, as an expression of the personal bond between the suzerain and the vassal. The dominant model of ownership and use of immovable property in medieval society is the fief model, which was reflected in the fact that the suzerain assigned land to a vassal for lifetime use in exchange for certain acts of a completely personal nature, as well as acts related to property. The French bourgeois revolution 'marked' the end of feudal divided property and feudal social relations and 'introduced' classical individualistic property. Then, for the first time in legal history, the right to property was confirmed by a regulation as a civil subjective right. This right was a key element of the legal basis of industrial capitalism.

Forms of property and property rights are conditioned by the character of production of a certain social formation. The laws that regulate property express the will of the ruling class conditioned by the nature of production, which determines the content of the institution of property rights, and thus the subjective right of property in specific property relations. For this reason, property rights have different content in different social formations, depending on the manner of production. Starting from the fact that property rights should be determined historically, it is still possible to determine some general characteristics of the institution of property rights that would be valid for all social formations in which they exist. In this sense, it can be concluded that in all forms of society, the general characteristic of property rights is that they provide the owner with the opportunity to own the thing, to use it and to dispose of it. Also, a general characteristic is the independence of the powers that belong to the owner of a thing, and the content of property rights is determined directly by the law itself.

The Institute of Property in the modern era is no longer a static legal concept but a dynamic instrument that reflects changes in society, technology and economy. Property is no longer just a private right, but increasingly takes on a public, digital and collective dimension. Comparative legal analysis shows that legal systems approach property differently, and continental systems strive for a clear normative framework, while the Anglo-Saxon system relies on the flexibility of judicial practice. The traditional concept of property as an absolute right of the owner is increasingly giving way to modern, more flexible models that take social function, collective rights and digital property into account. The advantages of this development are reflected in the ability of legal systems to respond to new challenges – from regulating the ownership of digital content to protecting natural resources and citizens' data. Also, the convergence of legal standards through international mechanisms, such as European Union directives, facilitates legal certainty and cooperation between states. However, such changes also bring a number of challenges. Legal uncertainty, non-uniformity of regulations, as well as collisions between different rights, especially in the digital space, can threaten the clarity and effectiveness of property rights protection. In order to overcome these difficulties, it is necessary to adapt the legislation to modern forms of property, to develop hybrid models of property relations, such as digital property) to promote responsible ownership through education, and to improve international cooperation in order to harmonize standards. We believe that in this way the property institute will maintain its legal relevance and social function in the 21st century.

Conflict of Interest
The authors declare no conflict of interest.

Author Contributions:
Conceptualization, V.R. J. and D.K.; methodology, J.R.M. and V.R.J.; validation D.K.; formal analysis, V.R.J. and D.K.; writing – original draft preparation, V.R.J. and J.R.M; writing – review and editing, D.K. and J.R.M. All authors have read and agreed to the published version of the manuscript.

Rajaković Jovčić Vesna
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Kovačević Danijela
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Rajaković Mijailović Jasmina
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

INSTITUT PRAVA SVOJINE KROZ ISTORIJSKU PRIZMU

APSTRAKT: Institut prava svojine predstavlja jedan od najstarijih pravnih instituta. Pojavljuje kao istorijski određena forma društvenih odnosa koja nastaje u vezi sa prisvajanjem i posedovanjem materijalnih dobara. Od svog nastanka predstavljala je predmet žestokih borbi, ali i objekat najveće čovekove faktičke i pravne zaštite. Ipak svojina ne predstavlja samo pravni, nego i ekonomski, socijalni, etički, pa i religiozni pojam. Razvoj instituta svojine je protkan burnim promenama, koji možemo reći, odslikava i pravac razvoja društva i koji evoluira u skladu sa potrebama društva. Iz tog razloga institut prava svojine predstavlja najpogodniji pravni institut, kroz koji se sagledavaju društveni odnosi u različitim periodima razvoja društva. Stoga ćemo u okviru ovog rada analizirati institut prava svojine

kroz određene istorijske epohe, odnosno rimsko pravo, doba feudalizma, buržoaskih revolucija, kao i osvrt na moderno doba.

Ključne reči: *institut prava svojine, imovina, rimsko pravo, feudalizam, srednji vek, kapitalizam.*

References

1. Asamblea Nacional del Ecuador (2008). *Constitución de la República del Ecuador* [*Constitution of the Republic of Ecuador*] arts. 71–74. Downloaded 2025, April 03 from https://www.asambleanacional.gob.ec/
2. Bundesministerium der Justiz und für Verbraucherschutz. (2024). Bürgerliches Gesetzbuch (BGB). [Civil Code]. Downloaded 2025, April 04 from https://www.gesetze-im-internet.de/bgb/
3. Bundesrepublik Deutschland. (2024). Grundgesetz für die Bundesrepublik Deutschland [Constitution of the Federal Republic of Germany]. Downloaded 2025, April 05 from https://www.gesetze-im-internet.de/gg/
4. Code civil – Livre II: Des biens et des différentes modifications de la propriété. Downloaded 2025, April 03 from https://www.legifrance.gouv.fr/
5. Čepulo, D. (1989). Francuska revolucija i Deklaracija o pravima čovjeka i građanina 1789. godine: problemi političke demokracije [The French Revolution and the Declaration on the Rights of Man and Citizen in 1789: problems of political democracy]. *Časopis za suvremenu povijest*, *21*(1-3), pp. 161–178
6. Dolović Bojić, K. (2022). Pravne garancije prava svojine [Legal guarantees of property rights]. *Anali Pravnog fakulteta u Beogradu*, *70(*poseban), pp. 303–321
7. European Parliament and Council of the European Union. (2016). General Data Protection Regulation (EU) 2016/679. *Official Journal of the European Union*, L119. Downloaded 2025, April 03 from https://eur-lex.europa.eu/eli/reg/2016/679/oj
8. Gams, A. (1953). Svojina i imovina [Property and ownership of assets]. *Anali Pravnog fakulteta u Beogradu*, *1*(1) pp. 17–29
9. Gams, A., & Petrović, M. (1980). *Osnovi stvarnog prava* [*Fundamentals of Property Law*]. Beograd: Naučna knjiga
10. Jia, W., & Yao, B. (2024). NFTs applied to the art sector – Legal issues and recent jurisprudence. *Convergence*, 30(2), pp. 807–822

11. Konstantinović, M. (1982). Pitanje svojine – od svojine individualnog prava ka svojini socijalnoj funkciji [The question of property – from ownership as an individual right to ownership as a social function]. *Anali Pravnog fakulteta u Beogradu*, *30*(3-4), pp. 282–293
12. Lakićević, V. (1985). *Društvena svojina u teoriji i praksi* [*Social property in theory and practice*]. Novi Sad: Dnevnik
13. Lakićević, V. (1992). Pristup pitanjima pravnog uređivanja svojinskih odnosa [Approach to issues of legal regulation of property relations]. *Pravo – teorija i praksa*, *9*(5-7), pp. 169–172
14. Lakićević, V. (2007). Svojinski odnosi prema Ustavu iz 2006. godine [Property relations according to the 2006 Constitution]. *Pravo – teorija i praksa*, *24*(5-6), pp. 3–12
15. Lazić, M. (2007). Razvoj instituta svojine u pravu Srbije [Development of the institute of property in Serbian law]. In: Mićović, M. (prir.). *Srpsko pravo – nekad i sad* [*Serbian law – then and now*] (pp. 181–191). Kragujevac: Pravni fakultet Univerziteta u Kragujevcu; Institut za pravne i društvene nauke
16. Malahinova, R. (1989). Svojina – ekonomska i pravna forma [Property – economic and legal form]. *Ekonomika : stručni časopis za organizaciju rada i ekonomiku poslovanja tercijarne privrede*, *25*(9), pp. 38–40
17. Marks, K. (1859). *Predgovor za prilog kritici političke ekonomije* [*Preface to the Contribution to the Critique of Political Economy*]. Beograd: Institut za proučavanje međunarodnog radničkog pokreta
18. Merrill, T. W., & Smith, H. E. (2001). What Happened to Property in Law and Economics? *Yale Law Journal*, *111*(2), pp. 357–398. DOI: https://doi.org/10.2307/797529
19. Milošević, M. (1989). Neka zapažanja o rimskom shvatanju svojine [Some observations on the Roman understanding of property]. *Arhiv za pravne i društvene nauke*. *45*(1-2), pp. 105–114
20. Nikolić, D. (2014). Apsolutnost svojine u francuskom pravu [Absoluteness of ownership in French law]. *Zbornik radova Pravnog fakulteta, Novi Sad, 48*(4), pp. 85–101
21. Nikolić, D. (2023). *Istorija prava – stari i srednji vek* [*History of Law – Antiquity and Middle Ages*]. Niš: Pravni fakultet
22. Nikolić, N. (1997). *Fragmenti pravne istorije* [*Fragments of legal history*]. Niš: Institut za pravna i društvena istraživanja Pravnog fakulteta
23. Norway. (2005). *Act relating to legal relations and management of land and natural resources in Finnmark* (17. juni 2005). Downloaded 2025, April 06 from https://lovdata.no/dokument/NL/lov/2005-06-17-85

24. Popov, D. (2005). Pojam prava svojine [The concept of property rights]. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *39*(3), pp. 134–135
25. Ristić, S. (ed.) (1978). *Enciklopedija imovinskog prava i prava udruženog rada – tom II* [*Encyclopedia of property law and collective labor law – volume II*]. Beograd: Novinsko-izdavačka ustanova Službeni list SFRJ
26. Romac, A. (1981). *Rimsko pravo* [*Roman Law*]. Zagreb: Narodne novine
27. Stanković, O., & Orlić, M. (1982). *Stvarno pravo* [*Real Law*]. Beograd: Naučna knjiga
28. Stanojević, O. (1972). Rimsko i anglosaksonsko shvatanje svojine [Roman and Anglo-Saxon understanding of property]. *Anali Pravnog fakulteta u Beogradu*, *20*(5-6). pp. 843–857
29. Stanojević, O. (2003). *Rimsko pravo* [*Roman Law*]. Srpsko Sarajevo: Pravni fakultet Univerziteta u Srpskom Sarajevu
30. Stanojević, O. (2010). *Rimsko pravo* [*Roman Law*]. Beograd: Dosije studio
31. Stefanović, N. (2018). Koncept svojine u rimskom pravu [The concept of property in Roman law] *Pravo – teorija i praksa*, *35*(4-6), pp. 17–29
32. Stojanović, D. (1976). Istorijski razvoj građanskog prava i građanskopravne nauke [Historical development of civil law and civil law science]. *Zbornik radova Pravnog fakulteta u Nišu*, (16), pp. 83–91
33. Stojčević, D. (1970). Oblici svojine u starom Rimu [Forms of property in ancient Rome]. *Zbornik radova Pravnog fakulteta u Novom Sadu 4*, pp. 345–355
34. Šarkić, S. (2011). *Osnovi države i prava I – osnovi svetske pravne istorije* [*Fundamentals of the State and Law I – Fundamentals of World Legal History*]. Novi Sad: Pravni fakultet
35. Šarkić, S. (2017). *Osnovi rimskog prava* [*Fundamentals of Roman law*]. Beograd: Pravni fakultet Univerziteta Union u Beogradu; Službeni glasnik.
36. United States Congress. (1998). Digital Millennium Copyright Act, 17 U.S. Code § 512. Downloaded 2025, April 05 from https://www.law.cornell.edu/uscode/text/17/512
37. Ustav Republike Srbije [Constitution of the Republic of Serbia]. *Službeni glasnik RS*, br. 98/06 i 115/21
38. Vuković, G. (1998). *Istorijski razvitak prava svojine od rimskog doba do danas, reprint* [*Historical development of property rights from Roman times to the present day, reprint*]. Nikšić: Centar za kulturu; Kolo
39. Zakon o osnovama svojinskopravnih odnosa [Law on the Basics of Property Relations]. *Službeni glasnik RS*, br. 6/80

Filić Miloš[*]
https://orcid.org/0009-0009-7526-9323

UDC: 338.246.025.88(497.11)
Review article
DOI: 10.5937/ptp2504170F
Received on: October 22, 2025
Approved for publication on:
November 24, 2025
Pages: 170–186

HISTORICAL DEVELOPMENT OF THE PRIVATIZATION CONCEPT IN SERBIA – EXPERIENCE AND CONCLUSIONS

ABSTRACT: Privatization is a process of crucial importance for the transformation of a planned economy into a market economy. Requirements and procedures for the change of ownership over social and public capital and assets in the Republic of Serbia were regulated by the Law on Privatization (2014). In conceptual terms, privatization is not a novelty, even though rules and legal regulations have changed, evolved and adapted to the needs of the economy and society. The paper analyzed the historical development of the privatization concept in Serbia, considering that it would be interesting to make an overview of the evolution of privatization from 1989 to 2001 and from 2001 to 2014, as well as the contemporary concept of privatization that was introduced in 2014. In terms of methodology, the paper was based on a theoretical analysis of relevant contemporary views, normative analysis of legislative sources and quantitative analysis of statistical indicators of various parameters of privatization effects from 1989 to the present day. The research was founded on numerical indicators and available data on contemporary theoretical–practical analyses of privatization development in Serbia. This comprehensive research encompassed the entire privatization process, from its initiation in 1989 to the modern concept introduced in 2014.

[*]LLD, Municipality of Kosovska Kamenica, Kosovska Kamenica, Serbia, e-mail: coozy84@gmail.com

Keywords: *privatization, economic activities, Law on Privatization, Republic of Serbia.*

1. Introduction

In the broad sense, procedure of privatization implied establishing private property in business– economic field of a state operation. Privatization was a process which was essential during the procedure of transformation of planned economy into market economy.

Discussions and issues regarding privatization, transition and reforms implemented in Serbia were in the limelight for many years. Therefore "there were still many new aspects to be learnt, explored and researched in field of property ownership" (Madžar, 1995, p. 5). In terms of theory, insufficient efficiency of planned economy, which was primarily based on social property and, as such, was completely incompatible with market economy model, indicated the necessity of transforming social to private property.

Private property model was completely opposite to the concept of collective property. The property owner's right to use private property precluded the right of any other entity to property income.

Namely, after a long period of social property domination, "privatization process in Serbia, introduced after the adoption of federal Law on Social Capital of Socialist Federal Republic of Yugoslavia (1989), was initiated in 1989. This law offered the possibility of transforming social companies into private companies through issuing and selling internal shares and making partial or complete sale of companies. Liberal and stimulative concept of the law initiated massive avalanche in the field of privatization" (Ristić, Rajković, Mančić & Rajić, 2011, p. 11).

In terms of Law on Privatization (2014), privatization was a "change of ownership over capital and assets of legal entities that operated with socially– owned and public capital. Additionally, privatization implied sale of shares and stakes that were transferred to Privatization Agency after the termination of the contract on the sale of capital signed between the Agency and buyer; sale of assets in companies where the contract on sale of capital was terminated; sale of shares i.e., stakes of the Shareholder Fund, as well as the Development Fund of the Republic of Serbia and the Fund for Pension and Disability Insurance".

The changes in "the structure of ownership relations have always been and are still of importance" (Lakićević & Popović, 2022, p. 25; Filić, 2023, p. 139). According to Šoškić (1995), the first and basic "objective of social

property transformation was improving the efficiency of generating revenue" (p. 93). Generally speaking, "privatization implied the transfer of property i.e., capital from public (social) property to private property that was expected to use the property in more efficient way" (Zdravković, Nikolić, & Bradić-Martinović, 2010, p. 279; Radišić et al., 2010, p. 690). Making a general overview of the conceptual determination of privatization, Radosavljević and Mihailović (2024) indicated that privatization was primarily "a process of transforming social and public property into private property and, aside from defining new ownership structure, included the changes in capital structure, as well as crucial ownership and organizational restructuring" (p. 5).

Theoretical analysis of the effects and importance of privatization indicated numerous pros and cons in terms of privatization, and therefore "some of advantages of privatization included its effect on private sector progress and growth rate, as well as the fact that it boosted technological development and entrepreneurship. Additionally, private companies were more efficient than public companies, which was proved in practice, and thus privatization process was useful for state budget as well. The downsides of privatization included cost increase, employment decrease and the loss of quality" (Boorsma, 1994, p. 25).

Undoubtedly, privatization process "offered economy organizational forms in accordance with market business operations, which resulted in creating favorable environment for efficient business and top– quality management" (Milosavljević & Milošević, 2019, p. 102). Privatization "was not the goal, but means for developing institutions and mechanisms of market economy, in order to make transfer to trade system as efficient as possible. Therefore, privatization was one of the most important processes for transforming planned economy into trade economy. Additionally, it was a crucial form of labor reallocation within society" (Stantić, 2016, p. 94).

The primary and most important objective of privatization was "creation of efficient economy, dominated by private property, instead of irrational economy which relied on inefficient social and public property" (Kecman Šušnjar, 2012, p. 18).

International researchers indicated that "during the procedure of determining a model of privatization, a government was to consider the following three aspects: competitive structure of economic branch, political environment and institutional framework" (Kontić, 2007, p. 149; see: Sheshinski & López-Calva, 2003).

Hence, political and institutional framework of a country, competitive focus of business operations and potential benefits of privatization process

had strong impact on the selection of privatization model within a national economy. Consequently, the selection of the model had effect on efficiency and effectiveness of the company and its management.

Even though privatization process had been implemented in Serbia since 1989, when different models of free distribution of capital to employees, pensioners and citizens were implemented, the new concept of privatization came into practice in 2001, all in compliance with the provisions of the 2001 Law on Privatization (2001). Methodological concept of labor shall be analyzed in the next chapter, after which the paper shall focus on historical development of privatization concept, from its beginning to the adoption of the 2014 Law on Privatization (2014).

2. Methodology and data sources

As emphasized on numerous occasions, "advocacy for strengthening private property aimed at making qualitative change of the base for regulating comprehensive social relations" (Mitrović, 1998, p. 121), the crucial reason for implementing privatization "was poor performance of state companies. Furthermore, some of the drawbacks of state companies included: focus on political and social goals instead of economic, reduced efficiency and profitability of business operations, orientation to state aid and subsidies, careless acceptance of loss in order to keep social peace, insufficient use and maintenance of work equipment, excess of personnel, poor management of business expenses, lack of knowledge transfer, no marketing concept, inadequate control of business operations" (Lakićević, 2011, p. 62).

Business operations of social companies "deteriorated due to the lack of market and competition, loose budget limitations and constricted company autonomy, which was usually the case with socialist economies" (Lipton, Sachs, Fischer & Kornai, 1990, p. 81). On the other hand, "numerous researches showed that private companies were more efficient than social companies under intensive competition, as well as that privatization and restructuring of state companies increased their efficiency to a significant point" (Boycko, Shleifer & Vishny, 1996, p. 309).

The paper analyzed historical development of the concept of privatization in Serbia, having in mind the complexity of the evolution of privatization from 1989 to 2001, and from 2001 to 2014, as well as contemporary concept of privatization which was introduced in 2014. As for methodology, the paper was based on theoretical analysis of relevant contemporary views in theory, normative analysis of legislation sources and quantitative analysis of

statistical indicators of various parameters of privatization effects from 1989 to the present day.

Research was based on numerical indicators and available data on contemporary theoretical– practical analysis of privatization development in Serbia.

Comprehensive research encompasses the entire privatization process– from its initiation in 1989 to the modern concept which was introduced in 2014.

3. Privatization process in Serbia from 1989 to 2001

Adoption of Law on Enterprises (1988) whereby "an enterprise may carry out business operations using assets in social, cooperative, mixed and private property, ended an era in which an enterprise was treated as self–governing labor organization, as defined in 1976 Law on Associated Labor" (Nikolić, 2013, p. 17).

Ownership transformation was initiated simultaneously on the entire territory of SFRY in 1989, when Law on Turnover and Disposal of Social Capital (1989) was adopted. This law enabled the transformation of socially–owned companies into private companies through the issue and sale of internal shares and through the sale of entire or part of the company. According to available data, "during the 1990s, approximately 1200 companies changed their status and became mixed companies. Privatization was extensive in the field of trade and industry, and hence, economically developed regions, primarily Vojvodina, showed special interest in privatization" (Todosijević, Šušnjar, Ahmetagić & Perošević, 1995, p. 25).

According to Kecman Šušnjar (2012), "1990 privatization program could be regarded as positive, since all employees found it easy to understand, it corresponded to self-government stage of development, employees' feeling that the companies belonged to them and that companies' success depended on their results. Therefore, it was no surprise that this privatization program became very popular. More than 1.200 companies (prominent ones) were included in privatization process, which was another indicator of the popularity of the program" (p. 30).

In 1991, Serbia adopted Law on Conditions and Procedure for Converting Social Property into Other Forms of Property (1991). Ristić et al. (2011) stated that this republic law "was, in conceptual context, very similar to federal law, with the exception of specific postulates which had more restrictive character. The basic models– recapitalization and sale remained the same, while the sale

of the entire company and company lease were introduced as new concepts. The Law was not so favorable for employees, as it reduced discounts, shortened repayment period to five years, introduced the concept of assessed company value, which was much higher than accounting value, which no longer made privatization attractive. Therefore, privatization rate was drastically low from 1991 to 1993 (only 134 companies were transformed). At the same time, large infrastructure companies, such as EPS, NIS, JAT, PTT, ŽTP, etc. were converted from social to state property" (p. 11). Nikolić (2013) observed that "during galloping inflation and depreciation of assessed value of social capital, privatization process was accelerated, so that 465 companies were privatized by the end of 1993. Of approximately 700 companies which were privatized in compliance with the republic law, more than 200 companies decided to initiate privatization process in line with federal law, but continued the process in line with republic law. Majority of transformations carried out in compliance with republic law (more than 60%) from August 1991 to August 1994 were implemented using the model of capital sale, at a discount or at a regular price. At the beginning of 1994, more than 40 percent of total social capital was privatized in approximately 2000 companies" (p. 19).

However, in 1994 the Assembly adopted Law on Changes and Amendments to Law on Conditions and Procedure for Converting Social Property into Other Forms of Property, which initiated "the procedure of revaluation and audit, which resulted in compromising privatization process. The total of 2035 companies faced inspections. After annulling privatization procedures, 436 companies decided to return the status of social company. Shareholders' capital share was 43,14% of total capital of companies that implemented ownership transformation. After the audit, shareholders' capital share was reduced to 2,91%, while social capital was increased to 97,09%" (Zec & Živković, 1997, p. 83).

In 1997, Serbia adopted Law on Property Transformation (1997), which initiated a new wave of privatization. The law defined several possible models of privatization. The essence of the concept "was still focused on insider privatization (employee shareholding), while the primary model implied selling shares/stocks to employees, at a discount or at a regular price, based on preemption right. All foreign investors had the right to purchase shares/stocks. Other models included recapitalization and debt for equity swap (up to 20% of debt amount). The law offered 6–year repayment period with permanent revalorization, while the initial base was company value assessment" (Ristić et al., 2011, pp. 12–13).

With reference to total results for the period 1997–2001, provisions of Law on Property Transformation "were implemented in 786 companies (34,5% of the total number of transformed companies) with total capital of approximately RSD 170 billion. In just three years, nearly 21% of Serbian economy initiated the process of transformation in compliance with the stated Law. Privatization process was completed in 350 companies, while the remaining 430 companies which initiated privatization, completed the entire process in the near future" (Jovović, Maksimović & Matčetić, 2015, p. 35).

To conclude, based on the available data "after all attempts of privatization, annual calculation of Institute for Calculation and Payment for 2001 indicated as follows: common stock – 13,32%, preferred stock – 0,53%, share – 7,36%, investment – 1,08%, state capital – 42,67%, social capital – 33,80%, withheld capital – 0,14%, other capital – 1,00%" (Ristić et al., 2011, p. 13).

4. Law on Privatization adopted in 2001 and privatization concept

Based on experience of countries that decided to implement one of privatization models, "Serbia chose to implement the method of sale during privatization process in 2001. In terms of the provisions of Law on Privatization adopted in 2001, privatization implied the change of ownership over social and state capital in privatization subjects by implementing one of privatization models" (Radosavljević & Mihailović, 2024, p. 10). It should be noted that liberalization of trade relations and capital balance enabled the integration of Serban economic system into international financial and commodity flows (Mihailović, Šaraušić & Simonović, 2007). Furthermore, the leading theoreticians of contemporary legal affairs indicated that "development of market economy primarily depended on free, competitive behavior of market entities" (Matijašević Obradović & Mirković, 2018, p. 16).

Models defined in the Law included "sale of capital and transfer of capital without consideration. Namely, 70% of company capital was sold by public submission of bids offered by potential buyers (public tender) or by public competition of potential buyers (public auction) in compliance with the predefined sale requirements, while the remaining percentage of capital under privatization was transferred to employees and citizens, free of charge. The basic idea of the process was to provide new majority owners and, if there were no buyers who were interested in buying a company (due to poor financial state or insolvency of the company, large number of subsidiaries and employees, etc.), the company was in obligation to initiate restructuring

procedure (make statutory/organizational changes, negotiate debt settlement, etc.)" (Ristić et al., 2011, p. 13). Additionally, adoption of Law on Privatization Agency (2001) resulted in establishing Privatization Agency which became the crucial republic institution for preparation, implementation and control of privatization procedure.

Therefore, 2001 Law on Privatization defined "two competitive methods of sale: auctions for smaller and financially weaker companies, and tenders for larger and financially stable companies, primarily intended for foreign investors. As a rule, 70% of non-privatized capital was sold (as stated, the remaining 30% was given to employees and/or citizens, free of charge). Large companies were to initiate restructuring– dividing a company into smaller units, reducing workforce, etc." (Kecman Šušnjar, 2012, p. 36).

From the initiation of privatization process on January 30th 2002 (during 2001, there were no privatizations in compliance with the new Law) to July 28th 2009, the total of 2505 companies (71% of offered companies) were sold. As for the methods of sale, 70% of all offered companies were sold at auctions, which was predominant method of sale. On the other hand, tender method was not implemented to a great extent (only about 6%), with privatization success rate of about 50%" (Zdravković, Nikolić & Bradić-Martinović, 2010, p. 281).

Table below indicated the structure of privatized companies from 2002 to 2009 by methods of sale.

Table 1. Structure of privatized companies from 2002 to 2009 by methods of sale

	Total offered	**Total sold (terminated)**	**Success rate**
Auctions	2415	1717	0,71
Auctions–contract termination		403	
Tenders	218	108	0,50
Tenders–contract termination		21	
Tenders and auctions total	2633	1825	0,69
Capital market	651	546	0,84
Capital market–previously terminated contract	187	134	0,72
Capital market–previously privatized	1038	817	0,79
TOTAL	3471	2505	0,72

Source: Zdravković, Nikolić & Bradić-Martinović, 2010, p. 282.

Even though tender sale "was not implemented to a great extent, revenue that the state acquired via tenders exceeded revenue made via auction sale and capital market. The total of 42% revenue from privatization was acquired through tender sale, as a result of state organs' decision to privatize largest companies using this method of sale" (Zdravković, Nikolić & Bradić-Martinović, 2010, p. 282). The following table presents the results of privatization implemented in compliance with 2001 Law.

Table 2. Results of privatization in Serbia from 2002 to September 2011

Cumulative report						
SUM. 2002-2011.	**Public bid no.**	**Total offered**	**Total sold/ terminated**	**Success rate**	**No. of employees**	**Accounting value (K)**
Tenders (T)	301	218	90	41%	67.627	921.038
Tenders–contract termination			37		27.014	423.036
Auctions (A)	4.061	2.461	1.555	63%	129.813	976.075
Auctions–contract termination			599		55.484	357.184
Tenders + Auctions (T + A)	4.362	2.679	1.645	61%	197.440	1.897.113
Capital market (Tk)		663	564	85%	115.653	520.003
Capital market–previously terminated contract (Tkr)		264	172	65%	21.046	95.016
Capital market–previously privatized (Tkp)		1.067	902	85%	85.994	75.963
T O T A L (T+A+Tk+Tkr+Tkp)		3.606	2.381	66%	334.139	2.588.095

Source: Ristić, et. al., 2011, p. 14.

According to the information of Ministry of Economy of the Republic of Serbia, "Privatization Agency conducted 210 privatizations in 2002, 639 privatizations in 2003, 232 privatizations in 2004, 312 privatization procedures in 2005, 269 privatizations in 2006, 289 privatizations in 2007, 246 privatization procedures in 2008, 87 privatizations in 2009, 31 privatizations in 2010, 14 privatizations in 2011 and 13 privatizations in 2012. As for 2013, there were 7 privatizations, 6 privatizations were completed in 2014, 53

privatizations were carried out in 2015 and 7 privatizations in 2016" (Stantić, 2016, pp. 96–98).

5. Law on Privatization adopted in 2014 and privatization concept

Having in mind that procedure of privatization of business subjects pursuant to 2001 Law on Privatization lasted for a long period of time, legislation, models and privatization requirements became outdated. Therefore, new law that defined privatization procedure came into force on August 13th 2014. Law on Privatization was adopted in 2014 and was revised on four occasions– twice during 2015, once in 2016 and once in 2025.

At the moment of adopting the new Law „privatization procedure was in progress in 556 companies, 161 of which were in restructuring phase. Models, methods and measures regulated in this Law were proposed only for companies with sustainable business operations, while companies that could not meet their financial obligations were advised to submit a receivership proposal. Additionally, the Law defined measures for preparing and unburdening businesses, including debt acquittance after a successful sale or recapitalization (original abbreviation: MPRS). The Law defined that a timeframe for completing public capital privatization would be until the end of 2015, which was not carried out" (Milosavljević & Milošević, 2019, p. 107).

The 2014 Law defined „sale instead of division of social capital. Based on the provisions of the Law, sale was carried out via auctions or tenders, which represented transparent selling methods that reduced the possibility of abuse, corruption and other illegal activities to a minimum. Auction was the method of sale which was intended for smaller companies facing financial challenges, that first had to undergo restructuring, while tenders were planned for large, prominent companies which could be attractive for foreign investors" (Milosavljević & Milošević, 2019, pp. 107–108).

The law defined the sale to foreign investors, as well as transfer of up to 30% shares to employees for companies sold at auctions. As for privatization via tenders, employees and citizens were transferred 15% of shares.

According to the information of the Ministry of Economy of the Republic of Serbia, since the adoption of the new Law on Privatization, 6 companies were privatized during 2014, 53 business entities were privatized during 2015, while 7 companies were privatized during 2016.

Pursuant to the Article 6 of the Law „privatization was mandatory for privatization subjects with social capital. Social capital of an entity which was subject to privatization procedure had to be privatized until December 31st 2015, the latest. This provision did not refer to privatization subjects that Government acts classified as privatization subjects of strategic importance, as well as to privatization subjects with headquarters and locations for carrying out prevailing activities on the territory of Autonomous Province of Kosovo and Metohija or companies with property located on the territory of Autonomous Province of Kosovo and Metohija. Government defined conditions, ways and procedures for selling the assets of large privatization subjects via public bid collection method. Privatization of social capital and assets of the subjects that carried out business operation using social capital was carried out based on the Government decision i.e., decision of authorized institution within autonomous province or local self-government unit. Procedure of privatization was considered completed if Capital Sale Contract was signed and if all requirements for transfer of capital ownership, as defined in the contract (payment of purchase price, submission of bank guarantee, registration of the change of ownership into a relevant registry) were met i.e., if Property Sale Program was accomplished".

Article 15 defined means of payment in privatization procedure. Namely „means of payment were RSD and foreign currency means of payment (foreign currency and foreign currency notes)". Article 17 of the Law regulated the procedure of handling the assets acquired by the sale during privatization procedure.

The Law provided a detailed explanation of the procedure for privatization preparation. Initiation of privatization procedure was defined in Article 19. Article 21 of the Law stated that „Ministry responsible for economy affairs adopted a decision that defined the model and method of privatization, initial price and proposed measures for preparing and unburdening of privatization subject within 30 days from the date of expiry of timeframe for delivering Expression of Interest, taking into consideration the following criteria: capital and asset value, strategic importance of privatization subject, number of employees, expressed level of interest".

Special chapters of the Law defined privatization methods, as well as the sale of capital. According to Article 23 „method of public collection of bids at open competitions was the method of privatization for the sale of capital and assets of privatization subject". Pursuant to Article 36 „the subject of sale was 70% of social capital which was privatized, unless this Law or legislation which regulated legal position of business subjects i.e., conditions and ways of carrying

out specific economic and other activities defined otherwise. Percentage of public capital which was under privatization was determined by Government, relevant institutions of autonomous province or local self-government units. The capital and assets which remained unsold after the sale of public capital and transfer of capital to employees were transferred to Shareholder Fund."

A separate chapter of the Law regulated the sale of assets. Namely, Article 48 defined that „assets or parts of assets belonging to privatization subject may be sold during privatization procedure. The sale of assets was organized and carried out by the ministry responsible for economic affairs". The stated chapter also outlined asset sale program. Special chapters of the Law regulated procedures and ways of controlling the implementation of contract obligations regarding the sale of capital or property, sale of shares and stakes, transfer of capital free of charge, strategic partnership, measures for preparing and unburdening privatization subject, privatization of public capital from succession, initiation of receivership procedure for the purpose of ending privatization, and privatization of a subject with minority capital. Article 84 indicated that „Government made sure that the relevant ministry complied with all provisions of this Law." nTable below summarized the results of privatization procedure in Serbia 2002-2012.

Table 3. Summarized results of privatization in Serbia in the period 2002-2012.

	Number of companies	**Number of employees**	**Accounting value***	**Purchase price***	**Investment program***	**Social program***
Tenders	84	68.484	882.316	1.002.779	877.234	276.689
Auctions	1.531	127.999	973.392	866.979	193.486	-
TOTAL	1.615	196.483	1.855.708	1.869.758	1.070.720	276.689
Terminated privatizations						
Tenders	46	30.666	445.825	618.701	304.173	2.042
Auctions	625	57.258	368.743	525.576	88.885	-
TOTAL	671	87.924	814.568	1.144.277	393.058	2.042

Note: *expressed in thousands of EUR

Source: Nikolić, 2013, p. 44.

6. Conclusion

As a process, privatization was of crucial importance during transformation of planned organized economy into market economy. As theoreticians often emphasized, insufficient efficiency of planned economy, which was based on predominately social property and completely incompatible with market economy model, indicated the necessity of transforming social into private property. Private property model was completely opposite to the concept of collective property The property owner's right to use private property precluded the right of any other entity to property income.

Conditions and procedures for the change of ownership over social and public capital and assets in the Republic of Serbia were regulated by Law on Privatization (2014).

Theoretical sources reflected different viewpoints in terms of determining the concept of privatization, its importance, features and possibilities which were offered to economic environment of a country. Research in this field was well known to the public, as well as the effects that privatization had on business operations of economic entities and economy as a whole. Moreover, the expectations from transition reforms, the risks that business subjects faced during transition and economic crisis, when possibilities for receivership, tender and privatization manipulation were increased, were more than obvious. Therefore, privatization was not novelty, even though rules and legislation changed, evolved and adapted to the current needs of economy and society. Consequently, after the introductory notes, the paper focused on methodological concept of labor, and presented historical development of privatization concept from its beginnings to the adoption of currently effective Law on Privatization.

The paper analyzed historical development of privatization concept in Serbia, having in mind that it would be interesting to make an overview of privatization evolution from 1989 to 2001, and from 2001 to 2014, as well as the modern concept of privatization which was introduced in 2014. In methodological context, the paper was based on the analysis of relevant contemporary viewpoints in theory, normative analysis of legislation sources and quantitative analysis of statistical indicators of various parameters of privatization effects from 1989 to the present day.

Conflict of Interest

The author declare no conflict of interest.

Filić Miloš
Opština Kosovska Kamenica, Kosovska Kamenica, Srbija

ISTORIJSKI RAZVOJ KONCEPTA PRIVATIZACIJE U SRBIJI – ISKUSTVA I ZAKLJUČCI

APSTRAKT: Privatizacija je proces koji se smatra veoma značajnim prilikom transformacije planski organizovane privrede u tržišnu. Uslovi i postupak promene vlasništva društvenog i javnog kapitala i imovine u Republici Srbiji uređeni su Zakonom o privatizaciji (2014). Privatizacija kao koncept nije novina, iako su se pravila i zakonska regulativa uopšte menjala, evoluirala i prilagođavala aktuelnim potrebama privrede i društva. Predmet analize u radu bio je istorijski razvoj koncepta privatizacije u Srbiji, imajući u vidu da je interesantno sagledati evolutivni aspekt privatizacije od 1989. do 2001. godine, zatim od 2001. do 2014. godine, kao i savremeni koncept privatizacije koji je uveden 2014. godine. Rad je metodološki zasnovan na teorijskoj analizi relevantnih savremenih stavova u teoriji, normativnoj analizi legislativnih izvora, te kvantitativnoj analizi statističkih pokazatelja različitih parametara efekata privatizacije od 1989. godine do danas. Istraživanje je zasnovano na numeričkim pokazateljima i podacima dostupnim u dosadašnjoj teorijsko-praktičnoj analizi evolutivnog koncepta privatizacije u Srbiji. Istraživanje obuhvata period od samih početaka privatizacije, dakle od 1989 godine do savremenog koncepta koji je uveden 2014 godine.

Ključne reči: *privatizacija, privredno poslovanje, Zakon o privatizaciji, Republika Srbija.*

References

1. Boorsma, P. (1994). *Privatisation – Political and Economical Considerations*. Amsterdam: SISWO
2. Boycko, M, Shleifer, A., & Vishny, R. W. (1996). A Theory of Privatisation. *The Economic Journal*, *106*(435), pp. 309–39

3. Filić, M. (2023). Krivičnopravna analiza dela – zloupotreba u postupku privatizacije [Criminal analysis of the offense – Abuse in the privatization process]. *Pravo – teorija i praksa*, *40*(2), pp. 138–148, DOI: 10.5937/ptp2302138F
4. Jovović, M., Maksimović, D., & Marčetić, M. (2015). Efekti privatizacije u Srbiji [Effects of privatization in Serbia]. *BizInfo*, *6*(2), pp. 31–49
5. Kecman Šušnjar, A. (2012). *Efekti privatizacije preduzeća od strateškog interesa u privredi Srbije – doktorska disertacija* [*Effects of privatization of companies of strategic interest in the economy of Serbia – doctoral dissertation*]. Beograd: Ekonomski fakultet Univerziteta u Beogradu
6. Kontić, Lj. (2007). Privatizacija [Privatization]. In: Đurković, M. (ed.), *Srbija 2000-2006: Država, društvo, privreda* [*Serbia 2000-2006: State, society, economy*] (pp. 149–170). Beograd: Institut za evropske studije
7. Lakićević, S., & Popović, M. (2022). Democratization of property relations. *Pravo – teorija i praksa, 39*(3), pp. 23–37
8. Lakićević, M. (2011). Lice i naličje privatizacije [The face and back of privatization]. *Acta economica*, *9*(15), pp. 51–77
9. Lipton, D., Sachs, J., Fischer, S., & Kornai, J. (1990). Creating a Market Economy in Eastern Europe: The Case of Poland. *Brookings Papers on Economic Activity*, *1990*(1), pp. 75–147
10. Madžar, Lj. (1995). *Svojina i reforme* [*Property and reforms*]. Beograd: Ekonomski institut; Institut ekonomskih nauka
11. Matijašević Obradović, J., & Mirković, P. (2018). Zloupotreba dominantnog položaja uz osvrt na osnovne principe politike konkurencije u EU i Srbiji [Abuse of a dominant position with reference to the basic principles of competition policy in the EU and Serbia]. *Pravo – teorija i praksa*, *35*(10-12), pp. 16–31
12. Milosavljević, J., & Milošević, I. (2019). Privatizacija u Republici Srbiji [Privatization in the Republic of Serbia]. *Civitas, 9*(2), pp. 101–113
13. Mihailović, B., Paraušić, V., & Simonović, Z. (2007). *Analiza faktora poslovnog ambijenta Srbije u završnoj fazi ekonomske tranzicije* [*Analysis of the factors of the business environment of Serbia in the final phase of the economic transition*]. Beograd: Institut za ekonomiku poljoprivrede
14. Mitrović, B. (1998). *Slom socijalističkih privreda i perspektive njihove tranzicije – primer Jugoslavije – doktorska disertacija* [*The collapse of socialist economies and perspectives of their transition – the example of Yugoslavia – doctoral dissertation*]. Niš: Ekonomski fakultet
15. Nikolić, I. (2013). *Efekti privatizacije na performanse industrijskih preduzeća u Srbiji – doktorska disertacija* [*The effects of privatization*

on the performance of industrial enterprises in Serbia – doctoral dissertation]. Beograd: Ekonomski fakultet Univerziteta u Beogradu
16. Radosavljević, K., & Mihailović, B. (2024). *Analiza uticaja privatizacije na poslovanje i performanse preduzeća u Srbiji* [*Analysis of the impact of privatization on the business and performance of companies in Serbia*]. Beograd: Institut za ekonomiku poljoprivrede
17. Radišić, S., Ćosić, I., Tkac, M., Anđelić, G., Carić, M., & Djaković, V. (2010). The Scopes and Challenges of the Privatization Process: the Case of the Republic of Serbia with a Focus on the Region of Vojvodina (2002-2007). *Ekonomicky Casopis, 58*(7), pp. 690–706
18. Ristić, Z., Rajković, D., Mančić, S., & Rajić, D. (2011). *Efekti privatizacije u Srbiji* [*Effects of privatization in Serbia*]. Beograd: Socijalno-ekonomski savet Republike Srbije i Solidar Suisse/Swiss Labour Assistance SLA – Kancelarija u Srbiji
19. Stantić, S. (2016). Uporedna analiza privatizacije u Republici Srbiji i u Mađarskoj [Comparative analysis of privatization in the Republic of Serbia and in Hungary]. *Administracija i javne politike*, *4*(1-2), pp. 93–109
20. Sheshinski, E., & López-Calva, L. F. (2003). Privatization and Its Benefits: Theory and Evidence. *CESifo Economic Studies*, *49*(3), pp. 429–459
21. Šoškić, B. (1995). Društvena svojina i modeli njene transformacije [Social property and models of its transformation]. *Luča, 12*(1-2), pp. 92–101
22. Todosijević, R.,V., Šušnjar, G., Ahmetagić, E., & Perošević, B. (1995). *Promenama do uspešnog preduzeća – ciljevi, strategija, organizovanje, motivacija* [*Through changes to a successful company – goals, strategy, organization, motivation*]. Novi Sad: Prometej
23. Zakon o društvenom kapitalu SFRJ [Law on Social Capital of the SFRY]. *Službeni list SFRJ*, br. 84/89 i 46/90
24. Zakon o privatizaciji [Privatization Law]. *Službeni glasnik RS*, br. 83/14, 46/15, 112/15, 20/16 – autentično tumačenje i 19/25
25. Zakon o privatizaciji [Privatization Law]. *Službeni glasnik RS*, br. 38/01, 18/03, 45/05, 123/07, 123/07 – dr. zakon i 30/10 – dr. zakon
26. Zakon o prometu i raspolaganju društvenim kapitalom [Law on turnover and disposal of social capital]. *Službeni list SFRJ*, br. 84/89 i 46/90
27. Zakon o udruženom radu [Law on Associated Labor]. *Službeni list SFRJ*, br. 53/76
28. Zakon o preduzećima [Law on Enterprises]. *Službeni list SFRJ*, br. 77/88

29. Zakon o uslovima i postupku pretvaranja društvene svojine u druge oblike svojine [Law on conditions and procedure for converting social property into other forms of property]. *Službeni glasnik RS*, br. 48/91, 75/91, 48/94 i 51/94
30. Zakon o svojinskoj transformaciji [Law on Property Transformation]. *Službeni glasnik RS*, br. 32/97 i 10/01
31. Zakon o agenciji za privatizaciju [Law on the Privatization Agency]. *Službeni glasnik RS*, br. 38/01
32. Zdravković, A., Nikolić, D., & Bradić-Martinović, A. (2010). Analiza modela privatizacije u Srbiji [Analysis of the privatization model in Serbia]. In: Drašković, B. (ed.), *Kraj privatizacije, posledice po ekonomski razvoj i nezaposlenost u Srbiji* [*End of privatization, consequences for economic development and unemployment in Serbia*] (pp. 278–287). Beograd: Institut ekonomskih nauka
33. Zec, M., & Živković, B. (1997). *Tranzicija realnog i finansijskog sektora* [*Transition of the real and financial sectors*]. Beograd: Institut ekonomskih nauka

Gligorić Slađana[*]
https://orcid.org/0000-0003-4535-8041
Zlatanović Sanja[**]
https://orcid.org/0000-0001-7753-0876

UDC: 364.63-057.16:004.738.5
Review article
DOI: 10.5937/ptp2504187G
Received on: September 23, 2025
Approved for publication on:
November 25, 2025
Pages: 187–201

ADDRESSING WORKPLACE CYBERBULLYING – KEY CHALLENGES AND THE EVOLVING ROLE OF LABOUR LAW

ABSTRACT: The Fourth Industrial Revolution has made the use of internet technologies and digital tools standard components of modern workplaces, particularly among white-collar employees. Alongside these advancements, new forms of workplace misconduct have emerged, including cyberbullying. This phenomenon may be understood as inappropriate behavior – whether repeated or as a single act with enduring consequences – conducted through emails, messaging applications, social media, or other digital platforms, with the intent to harass, intimidate, or demean colleagues, subordinates, or workers in general. Unlike traditional „*face-to-face*" bullying, which requires direct interaction, cyberbullying transcends physical boundaries, taking place in digital environments both during and outside working hours. Its persistence makes it difficult to escape, often following victims through their devices and networks, thereby posing serious risks to health and overall well-being. The paper employs normative and comparative legal methods to examine existing legal provisions on workplace cyberbullying within selected jurisdictions, with the aim of identifying models of good legislative practice for improving Serbian

[*] LLD, Assistant Professor, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad, Novi Sad, Serbia, e-mail: sladjana.gligoric@pravni-fakultet.info
[**] Senior Research Fellow, Institute of Social Sciences, Belgrade, Serbia, e-mail: sanjazlatanovic1@gmail.com

labour law. Current Serbian legislation on the prevention of workplace harassment does not explicitly define or address cyberbullying, creating regulatory gaps that leave workers insufficiently protected. As the world of work increasingly shifts toward virtual and digital spaces, a holistic legal approach to the prevention of cyberbullying and the protection of affected workers becomes essential. Strengthening the normative framework is critical not only for safeguarding workers' rights, but also for fostering a healthy and more sustainable working environment.

Keywords: *digital workplaces, cyberbullying, bullying, labour law aspects.*

1. Introduction

Work, labourrelations, and work environment arerapidly changing nowadays.Changes are becoming faster due to the development of artificial intelligence and the use of various digital tools. Following the COVID-19 pandemic, work has become increasingly organized in a hybrid manner, combining office and remote work. However, many employeesare workingonly from home, using information and communication technologies to carry out work outside the employer'spremises.In home-based working environments, employees often experience a sense of constant surveillance, particularly due to the use of digitally enabled performance monitoring tools such as keystroke logging and screen-monitoring software (Tomczak, Lanzo & Auginis, 2018, p. 252). This raises a significant concern regarding the protection of employees' right to privacy, particularly in situations where employer control may become excessive or disproportionate.Employees working from home could feel disintegrated from the work collective (Kociatkiewicz, Kostera & Parker, 2021, p. 936) and in a position where the employer withholds important business-related information from them. Communications in workplace is performed via emails and phones or on a social media, like LinkedIn, or by using social platforms.[1]Recent studies shown that employees working from home are at higher risk to be a victim of bullying or cyber bullying, that remote work may open up new avenues for abusive behaviors and can be a risk factor

[1] According to 2022 European Union Labour Force Survey data, almost 30% of employed people (aged 15–74) in the EU use digital devices for all or most of their working time.Also, data from Eurostat's ICT usage in enterprises survey point to a significant increase in the share of enterprises in the EU using social media (59% in 2021 compared with 37% in 2015) (Eurofound, 2024, p. 1).

for cyber bullying at work (European Foundation for the Improvement of Living and Working Conditions (Eurofound), 2024, p. 35).

Cyberbullying, as arelatively new phenomenon, has not been explored enough yet. In the rapidly changing world of work, where working performance includes digitalization and automation, cyberbullying is becoming very widespread, and it can be seen as a phenomenon that represents the continuation of traditional direct, face-to-face bullying.In 2018, a foresight study conducted by the European Agency for Safety and Health at Work (EU-OSHA) recognized cyberbullying as an emerging psychosocial risk in the workplace (Eurofound, 2024, p. 1).

2. Labour law challenges in protecting against cyberbullying

There is no unique definition of cyberbullying, both in theory, among scholars, andin practice. According to the International Labour Organization, the term 'cyberbullying' has been used to describe aggressive conduct carried out through information and communication technologies (ICT), and can involve picture/video clips, emails, or social network sites, among others (De Stefano, Durri, Stylogiannis & Wouters, 2020, p. 1). It is aggressive, unacceptable conduct happening at work and in the work environment to aperson or a group. The perpetrator could be an individual or a group, operating at any level of supervision, whether higher or lower.

Nowadays, in labour relations, the usual way to communicate with colleagues, partners, and customers is by using digital devices, such as emails, telephone, and digital platforms. Such business communication blurred boundaries between employees' private and professional lives, as often employees use their private social platforms to finish work tasks or to communicate with the public, potential clients, or partners (Schongen, 2023, p. 226). Through such communication tools, individuals can often become victims of insults, psychosocial harassment, or violence (Pothuganti, 2025, p. 81). When defining what constitutes cyberbullying at work, we first need to consider where and when the behavior occurs. It is important to determine whether the harassment is related to the victim's work tasks or not. In this context, the boundaries are defined as 'occurring at work, in connection with work, or arising out of work'. Therefore, regular working hours are less relevant, as employees frequently work overtime or participate in work-related seminars and events outside of standard working hours. The concept „of being at work" includes performance at work (at any time and anywhere) even if employees are engaged in other activities allowed by the

employer or during a daily break or accessing social media while performing the work (De Stefano et al., 2020). It is worth mentioning that the spread of ICT arguably warrants an understanding of violence and harassment in the world of work that is not bound by specific physical or temporal limits and extends to conduct that originates – anytime and anywhere – in relation to work (De Stefano et al., 2020). This certainly complicates the situation of defining whether inappropriate behaviour is electronic/cyber harassment, whether it results from employment and labour relationship, and whether it requires labour-lawprotection.[2]

Legal protection against bullying and cyberbullying varies across different national legalsystems.In some countries, large groups of workers – such as temporary, casual, platform, or self-employed workers – fall outside the scope of labour law protections and are therefore at a higher risk of becoming victims of bullying and cyberbullying.In this regard, it is essential that measures against violence and harassment in the world of work -including cyberbullying – provide universal coverage and apply to all workers, regardless of their contractual status, to ensure that the most vulnerable are not excluded from protection, as stipulated by the ILO Violence and Harassment Convention, 2019 (No. 190) (De Stefano et al., 2020, p. 20).

On theotherside, cyberbullying can be understood as merely an extension of face-to-face bullying (Forssell, 2016), but it can happen separately. However, when it happens after work time and outside the workplace, it could be seenasa "safe zone" for the perpetrator in terms of labour law liability and initiating disciplinary proceedings by the employer. Since work-related cyberbullyingcan take place outside traditional work-related environments, the negative acts can become visible to a large audience,which further aggravates the victim's position. Thus, cyberbullying becomes a public form of bullying (Forssell, 2016, p. 456). In such a digital environment, perpetrators could make fake profiles, made-up names, which creates anonymity of the perpetrator and worsens the position of the victim. Also, a lack of supervision makes the situation for the victim even more difficult.

[2] In Australia*Bowker case* represents an example of how existing anti-bullying instruments can be interpreted to include instances of cyberbullying. The Australian Fair Work Act prohibits bullying „at work". In this judicial case, the aggressive behaviour was carried out through a series of Facebook posts. The Fair Work Commission adopted a notion of being bullied „at work" that was not confined to the „physical workplace", and held that there was no requirement for the worker to be at the workplace at the time when the contents were posted online. It sufficed for her to access those comments while „at work"(De Stefano et al., 2020, p. 31). In this case, legal protection of cyberbullying comes above the physical place of work, and it is in line with "in relation to work", therefore; legal protection is needed.

3. The concept of bullying and cyberbullying – key legal elements

As emphasized earlier, there is no single, internationally accepted labour-law definition of bullying or cyberbullying. "Cyberbullying", instead, continues to be used as an umbrella term for a range of aggressive behaviors that are perpetrated through Information Technology usage (De Stefano et al., 2020). A group of authors definescyberbullying as "an aggressive, intentional act carried out by a group or individual using electronic forms of contact, repeatedly, and over time against a victim who cannot easily defend himself or herself" (Smith et al., 2008, p. 376). On the other side, others place cyberbullying within the broader framework of digital violence, emphasizing its connection to digital exclusion (Špadina & Ljubić, 2024, p. 241). In this context, digital exclusion has been defined as "an act of aggression that undermines equal opportunities, discriminates against employees subjected to unfair treatment, and threatens the right to work" (Špadina & Ljubić, 2024, p. 244). Nevertheless, cyberbullying in the workplace cannot be confined solely to the dimension of digital exclusion. It encompasses a wider range of behaviors and manifestations shaped by the dynamics of the digitalized work environment, including algorithmic management, remote supervision, and the blurring of professional and private communication channels. Therefore, understanding workplace cyberbullying requires a multidimensional approach that integrates labour law, occupational safety, and digital governance perspectives.Overall,in theory, some scholars view cyberbullying as a distinct phenomenon, while others argue that it is merely an extension of traditional face-to-face bullying (Eurofound, 2024, p. 2). Recently adopted ILO Violence and Harassment Conventionoutlines in Article 3 cyberbullying in the world of work as a situation of violence and harassment occurring "in the course of, linked with or arising out of workthrough work-related communications, including those enabled by information and communication technologies" (Violence and Harassment Convention, 190/2019). Therefore, this provision applies regardless of physical or temporal boundaries and covers all forms of communication that are work-related or arise from work.

According to the prevailing view, the defining characteristics of bullying relate to the hostility or underlying negativity of the behavior, the repetition of the negative acts over time, and the imbalance of power, which makes it difficult for the victims to defend themselves (Eurofound, 2024, p. 2). This definition highlights three core points: (1) inappropriatebehaviorthatis aggressive and negative, (2) behavior that is intentional, and (3) behavior

that persistsover time. Hence, we need repetition of inappropriate behavior to define it.[3] Thus,in academic literature, workplace bullying is typically defined by three elements: (1) the frequency of the behavior, (2) its impact on the worker's health and well-being – which is rightly highlighted as a key component, and (3) treating others in ways that fall below accepted standards of respectful workplace conduct (Martin & LaVan, 2010, p. 177).

On the other side, what happens if someone intentionally behavesaggressively toward someone, and such behavior happens once? While the definition excludes this behavior from the scope of cyberbullying, we maintain that such a conclusion is debatable.Some authors, thus, suggest that a singular event can in some cases be deemed bullying, having regard to its impact, where the consequences of the one-off event would have to be repeated regularly for a prolonged period (Einarsen, Hoel, Zaph & Cooper, 2011). That said, while traditional definitions of bullying emphasize the subjective nature of bullying experience (Healy-Cullen, 2017, p. 564) as repeated behavior, a single, severe incident can have a lasting impact and may be argued to constitute bullying, particularly if it involves significant harm or a power imbalance (Pothuganti, 2024). Therefore, it is essential to consider the context and consequences of an incident when determining whether it qualifies as bullying or cyberbullying.

Repetition, as a critical element in the legal definitions of bullying and cyberbullying, raises an important question: what constitutes repetition of acts? For instance, if someone shares a video or clip that is viewed by a large audience online, is this considered a single act, or does one email sent to multiple recipients qualify as repeated behavior? Here, the impact and consequences of a single act can be extensive and amplified. One act may repeatedly affect the victim, even if the perpetrator did not necessarily intend such an outcome. The internet and platforms are available for millions of users, where one click and sharing could cause huge damage to the victim. This may render 'repetition' a less reliable criterion for defining cyberbullying (De Stefano et al., 2020). One post, or picture shared on the internet, is more

[3] Some jurisdictions have used a different concept to define bullying. Harassment is the broadest term that includes bullying, sexual harassment, and discrimination harassment. Harassment is also synonymous with bullying, mobbing, moral harassment, victimization at work, and violation at work. The New Zealand Harassment Act (2017) defines bullying as any specified act done to the other person on at least 2 separate occasions within a period of 12 months, so the repetition is needed to define harassment. Similar in Bosnia and Herzegovina, Slovenia, and Serbia, repetitive action, behaviour, or act, active or passive, is needed to define harassment or bullying (De Stefano et al., 2020). Different terms are used as similar.

difficult to cancel and to prevent damages to victims, if we do not include the owners of digital platforms in deleting offensive content.It is also worth mentioning that, sometimes, victims of bullying can retaliate by using cyber-means (De Stefano et.al., 2020) to hurt the perpetrator, in despair and a feeling of revenge. Therefore, at the level of an employer, it is very important to work on the management and development of prevention measures of bullying and cyberbullying at work to maintain a healthy and safe work environment.[4]

In theory, the intention to harm is generally not regarded as a central element of bullying, and, by extension, of cyberbullying (De Stefano et al., 2020, p. 8). Consequently, the legislation follows this view: under Serbian law, when bullying is proven in court as a violation of professional integrity, reputation, or health, the perpetrator's intention is not relevant. On the other hand, when the case is aimed at establishing that bullying is specifically intended to harm professional integrity, reputation, or health, the perpetrator's intention becomes important. Also, in Serbian law, there is no definition of cyberbullying in the Law on the prevention of harassment at work (The Law on prevention of harassment at work, 2010). On the other side, the Law on the Basics of the Education and Training System stipulates that physical, psychological, social, sexual, and digital, and any other violence, abuse and neglect of an employee, child, student, adult, parent, or other legal representative or third person in the institution is prohibited. Violence and abuse are considered any form of verbal or non-verbal behavior committed once or repeated that has the effect of actually or potentially endangering the health, development, and dignity of the personality of a child, student, or adult (The Law on the Basics of the Education and Training System, 2017). Hence, a single act could be regarded as cyberbullying under Serbian education legislation.

One of the first pieces of legislation to provide a clear and precise definition of 'cyberbullying' is found in the legal framework of Nova Scotia, Canada. The "cyberbullying" has been defined as an electronic communication, direct or indirect, that causes or is likely to cause harm to another individual's health or well-being where the person responsible for the communication maliciously intended to cause harm to another individual's health or well-being or was reckless with regard to the risk of harm to another individual's health or well-being. It may include 1. creating a web page, blog, or profile

[4] In only seven EU Member States – Belgium, Greece, Lithuania, the Netherlands, Portugal, Romania, and Spain – employers are mandated by statutory law to adopt an anti-harassment and bullying policy (Eurofound, 2024).

in which the creator assumes the identity of another person, 2. impersonating another person as the author of content or a message, 3. disclosure of sensitive personal facts or breach of confidence, 4. threats, intimidation, or menacing conduct, 5. communications that are grossly offensive, indecent, or obscene, 6. communications that are harassment, 7. making a false allegation, 8. communications that incite or encourage another person to commit suicide, 9. communications that denigrate another person because of any prohibited ground of discrimination listed in Section 5 of the Human Rights Act, or 10. communications that incite or encourage another person to do any of the foregoing (Intimate Images and Cyber-protection Act (Intimate Images and Cyber-protection Act, 2017). The purpose of this Act was (a) to create civil remedies to deter, prevent and respond to the harms of non-consensual sharing of intimate images and cyber-bullying; (b) uphold and protect the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication; and (c) provide assistance to Nova Scotians in responding to nonconsensual sharing of intimate images and cyber-bullying (Intimate Images and Cyber-protection Act, 2017).

In general, legal provisions worldwide that prohibit cyberbullying primarily protect relationships established in educational settings, such as schools and universities, but may also extend to professional relationships in the workplace. Legal provisions on cyberbullying in workplaces in generalare rare. New Zealand represents the country where the Harmful Digital Communications Act was adopted in 2015. New Zealand law outlines the proper conduct for digital communication, establishes its main principles, defines what constitutes digital communication, and specifies its scope.[5] Digital communication has been defined as any form of electronic communication and includes any text message, writing, photograph, picture, recording, or other matter that is communicated electronically (Harmful Digital Communications

[5] The communication principles are: 1) A digital communication should not disclose sensitive personal facts about an individual; 2) A digital communication should not be threatening, intimidating, or menacing; 3)A digital communication should not be grossly offensive to a reasonable person in the position of the affected individual; 4) A digital communication should not be indecent or obscene; 5) A digital communication should not be used to harass an individual; 6) A digital communication should not make a false allegation; 7) A digital communication should not contain a matter that is published in breach of confidence; 8) A digital communication should not incite or encourage anyone to send a message to an individual for the purpose of causing harm to the individual; 9) A digital communication should not incite or encourage an individual to commit suicide; 10) A digital communication should not denigrate an individual by reason of his or her colour, race, ethnic or national origins, religion, gender, sexual orientation, or disability (Harmful Digital Communications Act, 2015, Art. 6, Par 1).

Act, 2015). In Europe,Denmark is the only country to explicitly mention 'digital harassment' in relevant regulatory frameworks (Eurofound, 2024). In Denmark, digital harassment is explicitly recognized in the legal framework, encompassing both traditional bullying and cyberbullying. The Danish Working Environment Act prohibits workplace bullying when it is perceived as degrading and harmful to the victim's health, including through digital means, while the Danish Act on Occupational Accident Insurance recognizes the consequences of online harassment as a workplace accident (Németh, 2025, p. 350). Additionally, Denmark is pioneering legislation that grants individuals copyright over their own image and voice, enabling them to demand the removal of non-consensual deepfake content and seek compensation, with exceptions for parody and satire (Németh, 2025, p. 349).

Considering the foregoing, bullying and cyberbullying constitute distinct phenomena, albeit with significant similarities, with cyberbullying frequently conceptualized as a specific subtype of bullying. Cyberbullying occurs in digital environments, in contrast to traditional bullying, and can have broader consequences even when it involves a single act of inappropriate behavior, due to the capacity of information and communication technologies (ICT) to amplify and widely disseminate its effects. For it to be of relevance under labour law, the behavior must be work-related, specifically occurring at the workplace, in connection with work, or arising from work activities. Thus, cyberbullying refers to inappropriate behaviors that occur within digital environments, whereas traditional bullying typically involves direct, face-to-face interactions, occasionally encompassing physical contact. Both constructs are encompassed within the broader framework of workplace harassment, reflecting the spectrum of behaviors that may adversely affect employees' health and well-being as well as theworkplace environment.

4. Workplace cyberbullyng, imbalance of power and legal subordination

In the context of workplace cyberbullying, a central consideration is the asymmetry of power, particularly legal subordination, whereby employers or executive managers exercise economic, disciplinary, and normative authority. As a result, they occupy a position of power that is inherently unequal relative to other employees. This framework primarily pertains to vertical cyberbullying, whereas horizontal cyberbullying, which occurs among peers, is not characterized by such an imbalance of power. These powers, in cases of

vertical cyberbullying, position employers or managers closer to the role of perpetrators, should they choose to abuse their authority.[6]

The study performed in Sweden used a sample of 3371 correspondents, trying to explorethe prevalence of cyberbullying in working environments. According to the results, email was among the most commonly employed tools for cyberbullying. An interesting finding of this study is that the vulnerability of men and supervisors was evident only in instances of online bullying. This heightened vulnerability was not observed among those subjected to face-to-face bullying. This discrepancy between organizational position among victims of face-to-face bullying and cyberbullying suggests that electronic devices in cyberbullying challenge traditional power relations. In this context, earlier studies highlight the significance of power distribution and subordination in the workplace regarding cyberbullying, revealing notable findings and suggesting that online anonymity may allow formally weaker individuals to retaliate against more powerful aggressors (Forssell, 2016). Cyberbullying in the workplace is a multifaceted phenomenon that extends beyond traditional employee-targeted harassment. It can also be directed at employers, managers, and even top-level executives, reflecting a broader scope of interpersonal conflicts facilitated by digital platforms. Unlike conventional bullying, which often involves a clear power imbalance with the 'weaker' party being the primary victim, cyberbullying can occur across various hierarchical levels, with power dynamics being more fluid and context-dependent. This shift is particularly evident in environments characterized by *laissez-faire* leadership styles, where passive management approaches may inadvertently foster conditions conducive to cyberbullying. In such settings, the lack of clear boundaries and oversight can lead to increased interpersonal conflicts, which may escalate into cyberbullying behaviors. Therefore, understanding the dynamics of cyberbullying requires a comprehensive examination of organizational structures, leadership styles, and the pervasive influence of digital connectivity, all of which contribute to the complex landscape of workplace harassment. Furthermore,cyberbullyingoccurs outside of physical contact, where nonverbal communication can not be seen,

[6] Hence, bullying is most often a process that happens at the vertical level. Those in low-power positions, such as subordinates, entry-level employees, and women, are more likely to become victims of bullying. Scandinavian countries and Finland are exceptions to this rule. Studies from these countries show that colleagues are reported as often as supervisors being perpetrators (Forssell, 2016, p. 456). It is worth mentioning that bullying also occurs in the horizontal level, between colleagues with the same power relations, or can be seen as reverse mobbing, where employees harass their supervisors, for different reasons.

leading to perpetrators' lack of awareness of the victim's emotional reaction. That makescyberbullying more difficult for the victim. On the other hand, the absence of physical contactcaninfluencethe victim to be braverand confront the perpetrator. Consequently, labour law must be integrated with insights from organizational sciences, organizational psychology, and corporate ethics to develop a comprehensive and holistic framework for addressing cyberbullying in the workplace.

5. Concluding remarks

From a theoretical standpoint, cyberbullying may be conceptualized as a behavioral construct that is not only aligned with but also transcends traditional forms of workplace bullying and harassment. It emerges as a distinct psychosocial phenomenon rooted in the digitalization of work processes and reinforced by the increasing dependence on digital platforms and tools that shape interactions within virtual working environments.Analogous to other labour-law institutions that have arisen in response to the digital transition, workplace cyberbullying calls for recognition as a distinct subject of legal regulation. Its specific features – most notably the capacity to be perpetrated *ubiquitously* ('anywhere and anytime') and without the physical presence of the victim – challenge the adequacy of existing frameworks on traditional workplace bullying and harassment, thereby necessitating a *lex specialis* approach within labour legislation.

Workplace cyberbullying can result in chronic stress, anxiety, and depression, reduced productivity, and, in extreme cases, employees leaving their jobs when the environment becomes so toxic that it must be abandoned. In such circumstances, mental health is severely affected not only for the direct victims but also for their colleagues, as the overall work climate becomes unhealthy. This underscores the need to address cyberbullying as an emerging psychosocial risk arising from digitalized workplaces.

In the context of cyberbullying, the traditional hierarchical power imbalance characteristic of face-to-face bullying is often absent. The perpetrator does not need to occupy a position of formal authority; rather, power may arise from anonymity and the affordances of digital technologies. From a legal-theoretical standpoint, this highlights the employer's duty, in coordination with social partners, to take proactive measures to prevent and address cyberbullying, thereby ensuring that all employees are guaranteed a safe, respectful, and legally compliant work environment.

Ratification of the International Labour Organization Convention on the elimination of violence and harassment at work, No. 190, outlinesan obligation for states to adapt their current legislation tothe Convention. The Republic of Serbia has not yet ratified this Convention. Under Serbian law, the level of legal protection is limited: if harassment is perpetrated by a third party – such as a patient, client, or consumer – legal remedies and employer obligations are not clearly established. Furthermore, cyberbullying is not addressed under this law. All of the above underscores the necessity of ratifying the Convention to ensure comprehensive protection against all forms of workplace harassment, including cyberbullying as an emerging legal category.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions:

Conceptualization, S.G., Writing – original draft, S.G.; Writing – review and editing, S.G. and S.Z., Resources, S.G and S.Z. All authors have read and agreed to the published version of the manuscript.

Gligorić Slađana
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu, Novi Sad, Srbija

Zlatanović Sanja
Institut društvenih nauka, Beograd, Srbija

PRISTUP DIGITALNOM UZNEMIRAVANJU NA MESTIMA RADA – KLJUČNI IZAZOVI I EVOLUTIVNA ULOGA RADNOG PRAVA

APSTRAKT: Četvrta industrijska revolucija učinila je upotrebu internet tehnologija i digitalnih alata standardnim elementima savremenih radnih mesta, naročito među zaposlenima tzv. belih okovratnika. Tehnološki napredak uzrokovao je i pojavu novih oblika nedoličnog ponašanja na mestima rada, uključujući i elektronsko uznemiravanje. Ova pojava definiše

se kao neprimereno ponašanje na mestima rada i pravno je neprihvatljiva – bilo da je reč o ponavljanim radnjama ili o pojedinačnom aktu sa trajnim posledicama – a sprovodi se putem imejlova, aplikacija za razmenu poruka, društvenih mreža ili drugih digitalnih platformi, sa ciljem uznemiravanja, zastrašivanja ili omalovažavanja kolega, podređenih, odnosno radnika uopšte. Za razliku od tradicionalnog, „licem u lice" uznemiravanja, koje podrazumeva direktnu interakciju, elektronsko uznemiravanje prevazilazi fizičke granice i odvija se u digitalnom okruženju, kako u toku, tako i van radnog vremena. Njegova upornost čini ga teškim za izbegavanje, jer često prati žrtvu preko digitalnih uređaja, pri čemu predstavlja ozbiljnu pretnju zdravlju i opštem blagostanju radnika.

U radu se primenjuje normativni i uporedno-pravni metod prilikom analize pravnih pravila o elektronskom uznemiravanju na radu u odabranim državama, sa ciljem identifikovanja modela dobre zakonodavne prakse, a u kontekstu unapređenja domaćeg radnog zakonodavstva. Važeće srpsko zakonodavstvo o sprečavanju zlostavljanja na radu ne sadrži izričitu definiciju niti posebno uređuje elektronsko uznemiravanje, što stvara regulatorne praznine i ostavlja radnike nedovoljno zaštićenim. Kako se svet rada sve više premešta u virtuelne i digitalne prostore, postaje neophodan holistički pravni pristup prevenciji elektronskog uznemiravanja prilikom zaštite radnika. Jačanje normativnog okvira od ključnog je značaja ne samo za zaštitu prava radnika, već i za podsticanje zdrave i održive radne sredine.

Ključne reči: *digitalna radna sredina, elektronsko (sajber) uznemiravanje, uznemiravanje na radu, radnopravni aspekti.*

References

1 De Stefano, V., Durri, I., Stylogiannis, C., &Wouters, M. (2020). *"System needs update" – Upgradingprotection against cyberbullying and ICT-enabled violence and harassment in the world of work – ILO Working Paper 1*, Geneva: ILO

2 Einarsen, S., Hoel, H., Zapf, D., & Cooper, C. L. (2011). The Concept of Bullying and Harassment at Work – The European Tradition. In: Einarsen, S., Hoel, H., Zapf, D., & Cooper, C. L. (eds.), *Bullying and Harassment in the Workplace – Developments in Theory, Research, and Practice* (2nd Ed.) (pp. 3–39). New York: Taylor & Francis Group

3 Eurofound (2024). *Workplace bullying, harassment and cyberbullying: Are regulations and policies fit for purpose?,* Publications Office of the European Union, Luxembourg
4 Forssell, R. (2016). Exploring cyberbullying and face-to-face bullying in working life: Prevalence, targets and expressions. *Computer in human behavior*, *58*, pp. 454–460, DOI: https://doi.org/10.1016/j.chb.2016.01.003
5 Harmful Digital Communications Act, 2015, Dowloaded 2025, May 07 from https://www.legislation.govt.nz/act/public/2015/0063/latest/whole.html
6 Healy-Cullen, S. (2017). Is workplace bullying in the eye of the beholder? *Journal of Mediation & Applied Conflict Analysis*, *4*(2), pp. 563–577. DOI: https://doi.org/10.33232/jmaca.4.2.9197
7 Intimate Images and Cyber-protection Act. 2017. Dowloaded 2025, May 07 from https://nslegislature.ca/sites/default/files/legc/statutes/intimate%20images%20and%20cyber-protection.pdf
8 Kociatkiewicz, J., Kostera, M., & Parker, M. (2021). The possibility of disalienated work – Being at home in alternative organizations. *Human Relations*, *74*(7), pp. 933–957. DOI: https://doi.org/10.1177/0018726720916762
9 Martin, W., & LaVan, H. (2010). Workplace bullying – A review of litigated cases. *Employee Responsibilities and Rights, Journal*, *22*(3), pp. 175–194. DOI: https://doi.org/10.1007/s10672-009-9140-4
10 Németh, Z. (2025). Denmark – Future-proof provisions in the fight against cyberbullying In: Pázmándi K., & Hrecska-Kovács R. (eds.), *Cyberbullying, hatecrime and relatedissues: From a comparative perspective* (pp. 341–369). Budapest: Ferenc Mádl Institute of Comparative Law. DOI: https://doi.org/10.47079/2025.kprhk.cyberb.4_14
11 Pothuganti, S. K. (2024). Workplace cyberbullying – A systematic literature review on its definition, theories, and the role of HRD. *Cogent Business & Management*, *11*(1), p. 2408443. DOI: https://doi.org/10.1080/23311975.2024.2408443
12 Pothuganti, S. K. (2025). Digital Harassment in the Workplace – The Impact of Cyberbullying on Employee Well-Being and Engagement. *Asia Pacific Journal of Information Systems*, *35*(1), pp. 73–100. DOI: https://doi.org/10.14329/apjis.2025.35.1.73
13 Schongen, S. (2023). Digitalisation as a prospect for work–life balance and inclusion – A natural experiment in German hospitals. *Social Inclusion*, *11*(4), pp. 225–238. DOI: https://doi.org/10.17645/si.v11i4.7117

14 Smith, P., K., Mahdavi, J., Carvalho, M., Fisher, S., Russell, S., & Tippett, N. (2008). Cyberbullying – Its nature and impact in secondary school pupils. *Journal of Child Psychology and Psychiatry, 49*(4), pp. 376–385. DOI: 10.1111/j.1469-7610.2007.01846.x.
15 Špadina, H., & Ljubić, M. (2024). Cyberbullying and digital exclusion as new forms of workplace mobbing. *Regional Law Review*, pp. 237–249. DOI: https://doi.org/10.56461/iup_rlrc.2024.5.ch19
16 Tomczak, D. L., Lanzo, L. A., & Aguinis, H. (2018). Evidence-based recommendations for employee performance monitoring. *Business Horizons*, *61*(2), pp. 251–259. DOI: https://doi.org/10.1016/j.bushor.2017.11.006
17 Violence and Harassment Convention, 2019 (No. 190), International Labour Organisation
18 Zakon o osnovama sistema obrazovanja i vaspitanja [The Law on the Basics of the Education and Training System]. *Službeni glasnik RS,* br. 88/17, 27/18 – dr. zakon, 10/19, 27/18 – dr. zakon, 6/20, 129/21, 92/23 i 19/25
19 Zakon o sprečavanju zlostavljanja na radu [The Law on prevention of harassment at work]. *Službeni glasnik RS,* br. 36/10

Tošić Jovana[*]
https://orcid.org/0009-0005-7150-3523

UDC: 347.15/.17-054.73(4-672EU:497.11)
Review article
DOI: 10.5937/ptp2504202T
Received on: August 25, 2025
Approved for publication on:
November 5, 2025
Pages: 202-219

INTERNATIONAL PROTECTION BEYOND THE REFUGEE CONVENTION – ANALYSIS OF TEMPORARY AND SUBSIDIARY PROTECTION IN THE EU AND THE REPUBLIC OF SERBIA

ABSTRACT: This article explores the discretionary application of temporary and subsidiary protection mechanisms in the European Union and the Republic of Serbia, set against the backdrop of intensifying global migratory flows. The analysis uncovers a pronounced selectivity in the approach to international protection, which is primarily shaped by political and security considerations. This is most evident in the divergent treatment: the automatic and selective granting of temporary protection is sharply contrasted with the individualized assessment required under regular asylum procedures, despite both situations involving mass influxes of refugees. Through a comparative examination of the EU and Serbian legal frameworks, the paper evaluates the key legal challenges and the scope of political discretion in safeguarding refugee rights. This inherent inconsistency calls into question the coherence of international refugee and human rights law, underscoring the urgent need for harmonized regional responses. By identifying legal inconsistencies, the ultimate goal of this paper is to formulate possible recommendations for future improvements and greater legal consistency in protection mechanisms.

[*]PhD, Legal Officer, Center for Research and Social Development "IDEAS", Belgrade, Serbia, e-mail: tosicjovana92@gmail.com

Keywords: *international protection, temporary protection, subsidiary protection, refugee law, human rights law.*

1. Introduction

1.1. Mass Displacement and the Need for Complementary Protection Regimes

The international refugee law is shaped by the 1951 Convention Relating to the Status of Refugees (189 UNTS 137) and its 1967 Protocol (606 UNTS 267), which established the foundational principles for protecting individuals fleeing persecution (hereinafter: the Convention). While the Convention offers a robust framework for those meeting the definition of a "refugee", its inherent limitations became apparent with the rise of mass influxes, particularly those fleeing generalized violence rather than individualized persecution. Consequently, complementary forms of protection were developed to fill the gaps left by the Convention.

The Refugee Convention and its Protocol form the cornerstone of international refugee law. Its Article 1A(2) defines a "refugee" as an individual with a well-founded fear of persecution based on specific grounds, who is outside their country of origin and unable or unwilling to seek its protection. However, the Convention in its Article 1F also includes exclusion clauses that can deny international protection to those who have committed grave acts, in order to prevent abuse of the asylum system and ensure legal accountability. Although this stems from the moral principle of *suum cuique tribuere* meaning that each person must be given what they deserve (Simeon, 2022, p. 34), the exclusion clauses must be interpreted restrictively and applied based on a full assessment of individual circumstances. The diverse interpretations of these clauses often lead to inconsistent application across jurisdictions (UNHCR, 2003).

Furthermore, refugee law is built on the fundamental principle of *non-refoulement,* established by Article 33(1) of the Convention, which prohibits states from returning refugees to territories where their life or freedom would be threatened. While the Convention provides for certain exceptions, the absolute ban on torture and inhuman or degrading treatment under Article 3 of the European Convention on Human Rights (CETS No. 5, 1950, hereinafter: ECHR) underpins this principle. This ensures that, even if an individual does not meet the specific criteria for refugee status, the state remains obliged to refrain from expelling them to a place where they would face inhumane treatment.

The limitations of the Convention's strict definition and the complexities of its exclusion clauses have created a need for a broader approach to international protection. Consequently, complementary forms of protection were developed to fill in these gaps. These mechanisms extend the protection to individuals who fall outside the scope of the Convention, yet still face serious harm or are part of a mass influx of displaced persons.

1.2. Development of the Concept of Complementary Protection

In response to the challenges of mass displacement, complementary protection mechanisms in the form of subsidiary protection and temporary protection were designed to offer safeguards in circumstances not addressed by the Convention (Chetail, De Bruycker & Maiani, 2016, p. 5). This development was based on sources complementary to the Convention, particularly human rights treaties like the International Covenant on Civil and Political Rights (ICCPR, 1966, Article 7) and the Convention Against Torture (CAT, 1984, Article 3), as well as and the fundamental principle of *non-refoulement* (McAdam, 2021, p. 661).

An important moment in expanding refugee protection was marked by the Convention Governing the Specific Aspects of Refugee Problems in Africa (36400-SL-OAU) of 1969 (hereinafter: the OAU Convention) which broadened the refugee definition beyond individualized persecution, encompassing individuals fleeing "generalized forms of violence" within Africa. The Cartagena Declaration on Refugees from 1984 (Conclusion III) further solidified the concept of complementary protection in Latin America. While these regional instruments might have been better suited to respond to regional mass displacement in the past, they led to the fragmentation of refugee law and their utility became challenged by the globalized nature of forced displacement, which demands more unified and comprehensive international responses and instruments (UNHCR, 2006; Arboleda, 1991, pp. 185–186; Audebert & Dorai, 2010, p. 7).

Against this backdrop, complementary forms of international protection have evolved in both the European Union and the Republic of Serbia. The following sections will examine the contours of this development, its practical implications, and the extent to which these two legal systems converge or diverge in their approach to persons in need of international protection beyond the Convention framework.

2. Comparative Analysis of International Protection in the European Union

2.1. The EU Legal Framework: Subsidiary Protection

The European Union (hereinafter: EU) has developed a comprehensive Common European Asylum System (hereinafter: CEAS) that sets harmonized standards for determining eligibility for international protection and defining the rights to be granted to beneficiaries. The development of CEAS entails progressive legislation, leading to a shift from "voluntary" to "mandatory" aiming for a "full" harmonization of procedures, criteria, and standards (Velluti, 2022, p. 26). Article 78 of the Treaty on Functioning of the European Union (C 326, 26.10.2012.) legally mandates the EU to implement this common asylum policy, ensuring compliance with the principle of *non-refoulement*, the Refugee Convention, and other relevant treaties.

Subsidiary protection was formally introduced by the 2004 Qualification Directive which complemented the Convention and established it as a distinct legal status (Council Directive (EC), 2004/83). The 2011 recast (hereinafter: the Qualification Directive), further harmonized and clarified the conditions for granting international protection across the EU (Council Directive (EU), No. 2011/95). The Qualification Directive is widely recognized for integrating refugee law with broader human rights protection (Lambert, 2006, pp. 161–162).

The Article 15 of the Qualification Directive states that a person eligible for subsidiary protection is a third-country national or a stateless person who does not qualify as a refugee but for whom there are substantial grounds to believe they would face a real risk of suffering serious harm if returned to their country of origin. The "serious harm" refers to death penalty or execution; torture or inhuman or degrading treatment, and a serious individual threat from indiscriminate violence in international or internal armed conflict. This notion must be understood in relation to third-country nationals or stateless persons who are at risk of such harm (Tiedemann, 2012, p. 126). The Qualification Directive elaborates on the concept of persecution by including a non-exhaustive list of acts constituting persecution providing a more detailed framework for a concept not explicitly defined in the Convention.

The Qualification Directive's approach to complementary protection presents several challenges. Its individualistic methodology and demanding proof of personal risk create a disjunction in the treatment of those seeking safety. Beyond this, its discretionary exclusion grounds, extending beyond the

Convention's exhaustive list (e.g., security risks or serious crimes), lead to troubling divergences in the application of exclusion clauses between refugee and subsidiary status. Furthermore, by merely setting minimum standards for subsidiary protection, the Qualification Directive fosters varied national protections (Tsourdi, 2021). When subsidiary protection confers a less robust status, policy incentives may favor granting this diminished protection over full refugee status (Hathaway, 2021, p. 691). However, the Qualification Directive generally formalizes subsidiary protection status, closely aligning beneficiaries' rights with those under the Convention. The Court of Justice of the European Union (hereinafter: CJEU) affirmed this approximation in the *Alo and Osso* case[1] stating that rules on international protection apply equally to refugees and subsidiary protection beneficiaries unless explicitly stated otherwise by the Qualification Directive.

2.2. The EU Legal Framework: Temporary Protection

The EU's international protection framework also includes temporary protection as a response to large-scale arrivals. It aims to offer swift relief and alleviate the significant administrative burdens of acute crises. This concept gained prominence in the early 1990s, catalyzed by the ex-Yugoslav wars. Facing unprecedented displacement, the 1997 Treaty of Amsterdam (C 340, 10.11.1997) established "minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for persons who otherwise need international protection" (UNHCR, 1992; Roxström & Gibney, 2003).

Following these events, the Temporary Protection Directive (hereinafter: TPD) came into force in 2001, establishing the EU's legal framework for responding to mass influxes (Council Directive (EC), 2001). While the TPD establishes criteria for activating and terminating temporary protection, it notably lacks a precise definition for "mass influx" or "large number of people." By focusing on objective country conditions rather than individual persecution, it employs an automatism that contrasts with the individual assessment of subsidiary protection. Despite its establishment, the TPD remained inactive for over two decades. Its significance was finally demonstrated in 2022 when the EU triggered the TPD in response to the mass displacement caused by the armed conflict in Ukraine. This allowed for a harmonized EU response, providing immediate protection to displaced persons without the need for

[1] Alo and Osso, Joined Cases C-92/09 and C-93/09, 01.03.2016, ECLI:EU:C:2016:127.

individual asylum procedures. The TPD's prolonged non-implementation prior to 2022, even when the EU faced a serious migration crisis between 2015 and 2017, can be attributed to a multifaceted array of reasons. These include the intricate procedural requirements for instituting a temporary protection scheme, which often presented significant political hurdles for Member States.

Moreover, the indeterminacy of the concept of "mass influx" contributed to reluctance in the TPD's activation, as Member States held differing interpretations. A pervasive political concern was also the widely discussed "pull factor" argument, which posited that activating the TPD might inadvertently "invite" more displaced persons to seek protection within the EU (Ineli-Ciger, 2022, p. 160). The differing responses to the Ukrainian and Syrian displacement crises highlight the influence of political and geostrategic factors on temporary protection activation. Ukraine's geographical and cultural proximity to the EU, coupled with strong geopolitical alignment, fostered greater political will and a unified EU response. Conversely, the Syrian conflict's complex geopolitics, perceived higher security risks, and discriminatory narratives shaped a different perception of Middle Eastern displaced persons (Gluns & Wessels, 2017). The New Pact on Asylum and Migration, effective in 2026, will replace the current temporary protection framework with "immediate protection." This new mechanism, designed for swift crisis response, is envisioned as equivalent to subsidiary protection. It can be granted immediately to predefined groups, particularly those facing an exceptionally high risk of indiscriminate violence from armed conflict in their home country (European Commission, 2020).

3. The principle of Non-Refoulement in Subsidiary and Temporary Protection Regimes

The Qualification Directive, despite encompassing broad exclusion clauses, explicitly prohibits under Article 21 the return of individuals who are at real risk of suffering serious harm in their country of origin. Due to *non-refoulement* being a *jus cogens* norm, even those excluded from international protection cannot be returned if such removal would violate obligations under the ECHR. In practice, this often results in *de facto* protection or a tolerated stay, which leaves individuals in legal limbo without any rights and may incentivize the use of irregular migration routes through smuggling.

On the other hand, the TPD in its Article 28 permits Member States to exclude individuals who have committed serious non-political crimes or

acts contrary to the principles of the UN. However, these terms are vague and broadly defined. The TPD lacks explicit provisions for national security assessments, such as exclusion based on a threat to the community or the security of the Member State as found in the subsidiary protection regime, despite the Commission's guidelines on implementing national security measures (European Commission, 2022). The limited and imprecise scope of the exclusion clauses underscores the TPD's function as a rapid, collective protection mechanism that prioritizes immediate protection over the detailed individual assessments required in refugee or subsidiary protection procedures.

3.1. Relevant Jurisprudence of the CJEU and ECtHR

The CJEU and the European Court of Human Rights (hereinafter: ECtHR) case law demonstrates their pivotal roles in shaping the practical application of temporary and subsidiary protection within the European asylum framework. The CJEU authoritatively interprets EU asylum law, thereby harmonizing protection standards and guiding future legislative developments, for instance, by clarifying key concepts such as "serious harm". In this role, the Court has determined that a crime may be deemed "particularly serious" when it threatens the community's legal order.[2]

The *Elgafaji* case[3] marked the CJEU's first interpretation of the Qualification Directive. In its ruling, the Court adopted a broad reading of the term "individual threat", affirming that a person may face a genuine individual risk even amid indiscriminate violence, provided that the overall intensity of violence in the area is sufficiently severe to endanger civilians. This interpretation rejects strict individual targeting and provides protection for situational risks. Also, it aligns with human rights law mitigating potentially restrictive interpretations of the Qualification Directive. However, the CJEU's characterization of such a threat as "exceptional" still permits the broad interpretation, posing a challenge to consistent application.

Beyond the Qualification Directive, the CJEU has consistently reinforced the *non-refoulement* principle in broader contexts related to EU asylum and return procedures. In the *N.S. v Secretary of State for the Home*

[2] B and D v Asylum and Immigration Appeal Tribunal, Joined Cases C-57/09 and C-101/09, 09.11.2010., ECLI:EU:C:2010:659, para 5.

[3] Meki Elgafaji and Noor Elgafaji v Staatssecretaris van Justitie, Case C-465/07, 17.02.2009, ECLI:EU:C:2009:94.

Department judgment[4] the CJEU ruled that Member States cannot transfer an asylum seeker under the Dublin Regulation if there are substantial grounds for believing that the asylum procedures and reception conditions in the responsible Member State pose a real risk of a *non-refoulment* violation (Regulation (EU), 604/2013). Moreover, in *Aydin Salahadin Abdulla et al. v. Bundesrepublik Deutschland*[5] the CJEU provided guidance on the burden of proof in assessing *non-refoulment* concerning conditions of detention upon return, further strengthening procedural safeguards.

Furthermore, in *K. and Others v. Staatssecretaris van Justitie en Veiligheid*[6] the CJEU confirmed the *non-refoulement* obligation under EU Charter of Fundamental Rights, reaffirming that individuals cannot be removed to a country where there is a serious risk of ill-treatment. These judgments[7] collectively affirm that a third-country national facing a return decision must have a genuine opportunity to submit any facts that could justify refraining from a return decision, including those related to *non-refoulement* risks. The *Alo and Osso* case also contributed to *non-refoulement* by clarifying that the rules on the content of international protection in the Qualification Directive apply equally to both refugees and beneficiaries of subsidiary protection.

The ECtHR establishes minimum human rights standards under the ECHR, which directly shape the obligations of EU Member States as all of them are also signatories to the ECHR. The ECtHR's jurisprudence based on Article 3 ensures protection against inhuman or degrading treatment even for those excluded for security reasons. In *Chahal v. United Kingdom*[8] the ECtHR ruled that this protection is absolute, irrespective of the individual's conduct or security threat, prohibiting return to a country with a real risk of serious harm. This stance was further reinforced in *Saadi v. Italy*[9] where the ECtHR reiterated that the *non-refoulement* obligation stemming from Article 3 is unconditional, serving as an ultimate protection even for individuals deemed a danger to national security or otherwise denied formal protection status.

Moreover, the ECtHR's jurisprudence on the *non-refoulement* extends to inter-state transfers within the Dublin system. A pivotal case, *M.S.S. v.*

[4] N.S. v Secretary of State for the Home Department judgment, Joined Cases C-411/10 and C-493/10, 21.12.2011, ECLI:EU:C:2011:865.

[5] Aydin Salahadin Abdulla et al. v. Bundesrepublik Deutschland, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, 02.03.2010, ECLI:EU:C:2010:105.

[6] K. and Others v. Staatssecretaris van Justitie en Veiligheid, Case C-18/16, 14.09.2017.

[7] See also Khaled Boudjlida v Préfet des Pyrénées, Case C-249/13, 11.12.2014, EU:C:2014:2336.

[8] Chahal v. United Kingdom (1996) Application No. 22414/93, 15.11.1996.

[9] Saadi v. Italy, Application No. 16644/08, 28.02.2008.

Belgium and Greece[10] found violations of Article 3 when Belgium transferred an asylum seeker to Greece due to systemic deficiencies in Greek reception conditions and asylum procedures. This established that a transferring Member State is responsible under Article 3 if it sends an individual to another state where they face a real risk of inhuman or degrading treatment.[11] Furthermore, the case of *M.G. v. Bulgaria*[12] illustrated the paramountcy of *non-refoulement* when protection status is not uniformly recognized across jurisdictions. The ECtHR found that Bulgaria's attempt to extradite a Chechen man with refugee status in Germany would violate Article 3, explicitly noting the issue of lack of mutual recognition of positive asylum decisions.

Regarding temporary protection, the CJEU's jurisprudence on the TPD is limited, while the ECtHR jurisprudence is absent as it only interprets the ECHR provisions. The CJEU has not adjudicated cases on the granting or rejecting of the temporary protection status. Instead, CJEU jurisprudence concerns the interpretation of rights conferred by temporary protection or its procedural implementation by Member States.[13] This limited judicial oversight underscores the political and collective nature of temporary protection mechanism, contrasting with the individualized nature of subsidiary protection.

4. Comparative Analysis of International Protection in the Republic of Serbia

4.1. Serbian Legal Framework: The Asylum Law and Alignment with EU Acquis

The violent disintegration of Yugoslavia and mass displacements in the 1990s prompted the Republic of Serbia (ex-Federal Republic of Yugoslavia) to enact the 1992 Refugee Law (Law on Refugees, 1992). While not a "temporary protection" mechanism in the modern sense, it served as an *ad hoc* legal instrument to address the mass influx of persons fleeing armed conflict, functionally resembling today's temporary protection in its purpose to offer a rapid response to a crisis. A key distinction lay in its status-granting

[10] M.S.S. v. Belgium and Greece, Application No. 30696/09, 21.01.2011.

[11] See also Salah Sheekh v. the Netherlands (Application No. 1948/04, 11.01.2007) where the ECtHR affirmed that the Article 3 "real risk' assessment" must thoroughly consider Country of Origin Information and individual circumstances, especially in situations of generalized violence.

[12] M.G. v. Bulgaria, Application No. 59297/12, 25.03.2014.

[13] Krasiliva, Request for a preliminary ruling from Czech Republic, Case C-753/23, 18.03.2024.

mechanism: while formally requiring an individual approach, the institutional arrangement of the Commissariat for Refugees, focused on reception and care, allowed for a *de facto* automatism in practice, differing from conventional individualized asylum procedures.

Building on this historical context, Serbia's asylum system is legally bound by the international refugee protection framework. The Serbian Constitution establishes this by unequivocally stating that general principles of international law and all ratified international agreements are an integral, directly applicable part of domestic law (Constitution of the Republic of Serbia, 2006). The Constitution specifically grants the right to asylum and protection from *refoulement*. These legal commitments are further operationalized by the 2018 Asylum and Temporary Protection Law, which defines the conditions for granting both subsidiary and temporary protection in Serbia (Law on Asylum and Temporary Protection, 2018).

4.2. Practical Implementation of Subsidiary Protection in Serbia

Subsidiary protection, as regulated by Serbian legislation, is generally aligned with EU's and international standards. While the first instance Asylum Office's employs comprehensive individualized assessments, which involve interviews, evidence gathering, and Country of Origin Information analysis, persistent inconsistencies undermine the decision-making process. The Asylum Office frequently sets a high threshold for proving persecution, potentially denying protection despite credible grounds. Practical observations reveal an inadequate and selective use of COI, contradicting the established ECtHR practice.

The Asylum Office's inconsistent decision-making creates significant legal uncertainty. This is evident in subsidiary protection cases involving healthcare, such as those from Cuba, Nigeria, Bangladesh, Cameroon, and Afghanistan. For instance, in 2022, subsidiary protection was granted to an HIV-positive Cuban citizen due to inadequate healthcare, constituting inhuman and degrading treatment. Yet, in 2024, another HIV-positive individual was denied protection based on the illogical reasoning that their condition was not life-threatening.[14] Such reasoning is ill-founded, as decisions on health conditions for HIV-positive individuals should be

[14] Republika Srbija, Ministarstvo unutrašnjih poslova, Uprava granične policije, Kancelarija za azil [Republic of Serbia, Ministry of Interior, Directorate of Border Police, Asylum Office]. Rešenje br. 26-3283/22, 2024.

consistently based on objective criteria. This approach also contradicts established ECtHR practice regarding medical cases, which generally applies a low threshold for interpretation of Article 3 ECHR. The Court has underlined that removing a seriously ill person to a receiving country where the absence or inaccessibility of appropriate treatment would cause a real risk of a serious, rapid, and irreversible health decline, resulting in intense suffering or significantly reduced life expectancy, amounts to an Article 3 violation.[15] Moreover, the Serbian asylum system's effectiveness is hampered by the Asylum Commission's inoperability and passivity. As a second-instance body, it almost exclusively rules on procedural matters and avoids deciding on case substance. The Commission's record of granting subsidiary status only four times since its establishment is self-indicative (Kovačević & Šemić, 2025). Even though Serbian Asylum Law mirrors Article 17 of the EU Qualification Directive and Article 1F of the Refugee Convention regarding exclusion grounds, significant challenges persist in applying these exclusion clauses in subsidiary protection cases. For instance, while Syrian nationals often receive subsidiary status, they are frequently subjected to security-based exclusion clauses, which are largely applied inadequately due to a lack of evidentiary thresholds.[16] A significant procedural concern is that decisions rejecting asylum applications on national security grounds lack sufficient information or explanation, as these documents are signed as "confidential" under the Law on Data Protection (Law on Personal Data Protection, 2018). This practice legally deprives the beneficiaries of their right to an effective remedy, equality before the law and the ability to dispute negative asylum decisions. It also contradicts established UNHCR guidelines on due process and transparency and is contrary to international standards, especially the ECtHR established practice in *Gaspar v. Russia*[17] which reveals that countries must provide effective opportunities to challenge negative security decisions, ensuring compliance with the Convention rights, particularly right to an effective remedy under Article 13. As previously noted, and not unique to Serbia, a common shortcoming of subsidiary protection is that this practice often results in (only) *de facto* protection or a tolerated stay.

[15] N. v. United Kingdom, Application No. 26565/05, 27.05.2008; Paposhvili v. Belgium, Application No. 41738/10, 13.12.2016.

[16] Republika Srbija, Ministarstvo unutrašnjih poslova, Uprava granične policije, Kancelarija za azil [Republic of Serbia, Ministry of Interior, Directorate of Border Police, Asylum Office]. Rešenje br. 26-3134/23, 2025.

[17] Gaspar v. Russian Federation, Application No. 23038/15, 08.10.2018.

4.3. Practical Implementation of Temporary Protection in Serbia

Serbia's Asylum Law, mirroring the TPD, conceptualizes temporary protection as a collective response to mass displacement, prioritizing immediate relief over extensive individual assessments. Serbia activated temporary protection for displaced Ukrainians in 2022, thereby signaling geopolitical alignment with the EU (Decision on Granting Temporary Protection to Displaced Persons Arriving from Ukraine, 2022). These beneficiaries gained significant practical advantages, including immediate access to private accommodation (if able to secure it) and the labor market, contrasting sharply with asylum seekers in Serbia who face initial reporting obligations to asylum centers and a six-month waiting period for a right to work.

A key distinction between temporary and subsidiary protection in Serbia, consistent with other legal instruments mentioned, lies in their exclusion clauses. For subsidiary protection, these grounds are more explicitly defined, including international crimes, serious non-political crimes, acts contrary to UN principles, and posing a danger to the community or national security while national security assessments exclusively rely on confidential decisions. In contrast to subsidiary protection, the Serbian Asylum Law does not contain specific exclusion clauses when granting temporary protection. However, according to Article 75(4), temporary protection can be terminated if reasons for denying a right to asylum are subsequently identified. This means that the same grounds for exclusion used for refugee or subsidiary status are applicable to temporary protection, but they serve as reasons for revocation rather than initial denial. This procedural distinction implies that temporary protection is granted as an automatic, collective response, with *a posteriori* scrutiny of potential security risks. It remains unclear when and how the Asylum Office determines if an individual already enjoying temporary protection status poses a security risk, which can lead to inconsistencies and potential legal ambiguities.

Furthermore, Serbian law allows individuals to apply for asylum once temporary protection has expired, thereby offering a pathway to a more durable status. The decision to activate temporary protection for Ukrainians clearly illustrates the strong impact of political and geostrategic considerations on national responses to mass displacement. It may be argued that the challenges encountered during earlier crises, when temporary protection was not implemented, served as an important lesson and contributed to the decision to activate it in 2022. Quantitatively, divergence in granted protection in Serbia is stark, highlighting hurdles within asylum and subsidiary protections

compared to the near absence of such for temporary protection beneficiaries: from 2008 to mid-2023, combined asylum and subsidiary protection grants totaled 244 persons, whereas temporary protection in Serbia from March 2022 to May 2024 was granted to approximately 5,300 individuals (UNHCR, 2025).

Finaly, a critical feature of Serbia's temporary protection implementation is the significant legal conflict between statutory limitations and executive practice concerning its duration. While the Asylum Law states that temporary protection may be granted for a maximum of one year, with a potential extension of an additional six months not exceeding one year in total, the Government's subsequent decisions have repeatedly extended this period well beyond this statutory limit (Decision on the Extension of Temporary Protection for Displaced Persons from Ukraine, 2023). The Government's decision, valid until 18 March 2024, remains actively applied in practice as long as "there are such circumstances", despite the legal framework not explicitly providing for such continuous use. This reliance on discretionary government decisions, which effectively overrides the letter of the law, highlights both flexibility and a potential for legal inconsistency in managing prolonged mass influxes. This reveals a fundamental shortcoming of temporary protection: its inherent susceptibility to the state's political will and reliance on political discretion. Within the EU, this is evidenced by Article 4 of the TPD which details the political and procedural mechanisms for activation, underscoring that the final decision remains discretionary for Member States. Likewise, the allocation of decision-making power for temporary protection activation to the Serbian Government highlights its susceptibility to political will.

5. Conclusions and Recommendations

This article demonstrates that both the EU and Serbia apply temporary and subsidiary protection with significant political and security-driven discretion. This selective approach is evident in the stark contrast between the collective activation of temporary protection for Ukrainian refugees and its non-activation for Middle Eastern refugees. Serbia's application of subsidiary protection further highlights critical inconsistencies. Decisions based on security-related exclusion clauses lack transparency and access to effective legal remedies. These practices, coupled with nationality-based disparities, inconsistent outcomes in similar cases, high evidentiary thresholds and unclear extensions of temporary protection, collectively reveal a divergent application of international protection criteria, which leads to legal uncertainty and

heightened risks of *refoulement*. A lack of inherent awareness of *refoulement* risks by Serbian authorities is apparent, as their decisions rely on procedural rather than substantial grounds. To counter these issues and prevent arbitrary outcomes, greater transparency in national security exclusions, lower evidentiary thresholds and consistent use of COI are essential. While universal jurisdiction for the most serious crimes may seem like a logical solution to prevent *de facto refoulement*, it faces practical barriers due to a lack of political will. By reducing political discretion in granting international protection and ensuring greater transparency for effective legal remedies, the integrity of the asylum system can be strengthened, thereby upholding fundamental human rights and refugee law.

Conflict of Interest
The author declares no conflict of interest.

Tošić Jovana
Centar za istraživanje i razvoj društva "IDEAS", Beograd, Srbija

MEĐUNARODNA ZAŠTITA VAN OKVIRA IZBEGLIČKE KONVENCIJE – ANALIZA PRIVREMENE I SUPSIDIJARNE ZAŠTITE U EVROPSKOJ UNIJI I REPUBLICI SRBIJI

APSTRAKT: Ovaj rad analizira diskrecionu primenu instituta privremene i supsidijarne zaštite u državama članicama Evropske unije i Republici Srbiji, u kontekstu sve izraženijih globalnih migracionih kretanja. Kritička analiza ukazuje na značajnu selektivnost u proceni prava na međunarodnu zaštitu, koja je motivisana političkim i bezbednosnim razlozima. Ovaj fenomen nedvosmisleno proizlazi iz automatske i selektivne primene privremene zaštite, u poređenju sa supsidijarnom zaštitom koja podleže strogoj proceni individualnih okolnosti koja je karakteristična za redovan postupak azila, iako se u oba slučaja radi o masovnim prilivima izbeglica. Takva neusklađenost dovodi u pitanje doslednost međunarodnog izbegličkog prava i prava ljudskih prava, te ističe hitnu potrebu za

harmonizovanim regionalnim odgovorima. Rad komparativno analizira pravne okvire Evropske unije i Republike Srbije, sagledavajući ključne pravne izazove i obim političke diskrecije u pogledu prava na međunarodnu zaštitu. Kroz identifikaciju pravnih nelogičnosti, rad nudi konkretne preporuke za buduće unapređenje sistema međunarodne zaštite.

Ključne reči: *međunarodna zaštita, privremena zaštita, supsidijarna zaštita, izbegličko pravo, pravo ljudskih prava.*

References

1. Arboleda, E. (1991). Refugee Definition in Africa and Latin America: The Lessons of Pragmatism. *International Journal of Refugee Law*, *3*(1), pp. 185–207
2. Audebert, C., & Dorai, M.K. (eds.) (2010). *Migration in a Globalised World, New Research Issues and Prospects*. Amsterdam: Amsterdam University Press
3. Chetail, V. (2016). The Common European Asylum System: *Bric-ŕ-brac* or System? In: Chetail, V., De Bruycker, P., & Maiani, F. (eds.), *Reforming the Common European Asylum System: The New European Refugee Law* (pp. 3–38). Leiden: Brill
4. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, 10.12.1984
5. Convention Relating to the Status of Refugees, 189 UNTS 137, 28.07.1951
6. Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons, OJ L 212, 07.08.2001
7. Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons otherwise in need of international protection and the content of the protection granted (the Qualification Directive), OJ L 304, 30.09.2004
8. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (the Qualification Directive), OJ L 337, 20.12.2011

9. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum. COM/2020/609 final, 23.09.2020
10. European Commission, Communication Providing Operational Guidelines for External Border Management to Facilitate Border Crossings at the EU-Ukraine Borders. OJ C 104I, 04.03.2022
11. European Convention on Human Rights, Convention for the Protection of Human Rights and Fundamental Freedoms. CETS No. 5, 04.10.1950
12. Gluns, D., & Wessels, J. (2017). Waste of Paper or Useful Tool? The Potential of the Temporary Protection Directive in the Current "Refugee Crisis". *Refugee Survey Quarterly*, *36*(3), pp. 57–83
13. Hathaway, J.,C. (2021). *The Rights of Refugees under International Law*. 2nd edn. Cambridge: Cambridge University Press
14. Ineli-Ciger, M. (2022). Immediate Protection in the New Pact on Migration and Asylum: A Viable Substitute for Temporary Protection?. In: Thym, D., & Odysseus Academic Network (eds.), *Reforming the Common European Asylum System: Opportunities, Pitfalls, and Downsides of the Commission Proposals for a New Pact on Migration and Asylum* (pp. 149–166). Baden-Baden: Nomos
15. International Covenant on Civil and Political Rights, 999 UNTS 171, 16.12.1966
16. Kovačević, N., & Šemić, A. (2025). *Poštovanje, zaštita i ostvarivanje ljudskih prava osoba u potrebi za međunarodnom zaštitom: Godišnji izveštaj za 2024. godinu* [*Respect, Protection, and Realization of Human Rights of Persons in Need of International Protection in the Republic of Serbia: Annual Report for 2024*]. Beograd: Centar za istraživanje i razvoj društva IDEAS
17. Lambert, H. (2006). The EU Asylum Qualification Directive, its Impact on the Jurisprudence of the United Kingdom and International Law. *International and Comparative Law Quarterly*, *55*(1), pp. 1–24
18. McAdam, J. (2021). Complementary Protection. In: Costello, C., Foster, M., & McAdam, J. (eds.), *The Oxford Handbook of International Refugee Law* (pp. 693–708). Oxford: Oxford University Press
19. Odluka o produženju privremene zaštite za raseljena lica iz Ukrajine [Decision on the Extension of Temporary Protection for Displaced Persons from Ukraine]. *Službeni glasnik RS*, br. 20/23
20. Odluka o pružanju privremene zaštite raseljenim licima koja dolaze iz Ukrajine [Decision on Granting Temporary Protection to Displaced

Persons Arriving from Ukraine]. *Službeni glasnik RS*, br. 36/22, 21/23 i 21/24
21. Organisation of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa, 10.09.1969
22. Organization of American States, Cartagena Declaration on Refugees, Adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, Conclusion III, 22.11.1984
23. Protocol Relating to the Status of Refugees, 606 UNTS 267, 31.01.1967
24. Roxström, E., & Gibney, M. (2003). The Legal and Ethical Obligations of UNHCR: The Case of Temporary Protection in Western Europe. In: Steiner, N., Gibney, M., & Loescher, G. (eds.), *Problems of Protection: The UNHCR, Refugees and Human Rights* (pp. 167–190). London: Routledge
25. Simeon, J.,C. (ed.) (2022). *Serious International Crimes, Human Rights, and Forced Migration*. London: Routledge
26. Tiedemann, P. (2012). Subsidiary Protection and the Function of Article 15(c) of the Qualification Directive. *Refugee Survey Quarterly*, *31*(1), pp. 123–138
27. Treaty establishing the European Community, as amended by the Treaty of Amsterdam, OJ C 340, 10.11.1997
28. Treaty on the Functioning of the European Union, OJ C 326/47, 26.10.2012
29. Tsourdi, E. (L.) (2021). Regional Refugee Regimes: Europe. In: Costello, C., Foster, M., & McAdam, J. (eds.), *The Oxford Handbook of International Refugee Law* (pp. 887–905). Oxford: Oxford University Press
30. UNHCR Srbija, Izveštaj o izbeglicama iz Ukrajine [The Report on Ukrainian Refugees]. Downloaded 2025, May 03 from https://www.unhcr.org/rs/sta-radimo/operativni-izvestaji/izbeglice-iz-ukrajine
31. UNHCR, Conclusion No. 103 (LVI) on Complementary Forms of Protection, A/AC.96/1021, 07.10.2005
32. UNHCR, Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (HCR/GIP/03/05), 04.09.2003
33. UNHCR, Statement of the United Nations High Commissioner for Refugees to the International Meeting on Humanitarian Aid for Victims of the Conflict in the Former Yugoslavia. Geneva, 29.07.1992
34. UNHCR, The State of The World's Refugees 2006, Human Displacement in the New Millennium. Geneva, 20.04.2006

35. United Nations, International Law Commission, Draft conclusions on identification and legal consequences of peremptory norms of general international law (*jus cogens*). A/77/10, 2022
36. Ustav Republike Srbije [Constitution of Republic of Serbia]. *Službeni glasnik RS*, br. 98/06 i 115/21
37. Velluti, S. (2022). *Reforming the Common European Asylum System: Legislative Developments and Judicial Activism of the European Courts*. London: Springer
38. Zakon o azilu i privremenoj zaštiti [Law on Asylum and Temporary Protection]. *Službeni glasnik RS*, br. 24/18
39. Zakon o izbeglicama [Law on Refugees]. *Službeni glasnik RS*, br. 18/92
40. Zakon o zaštiti podataka o ličnosti [Law on Personal Data Protection]. *Službeni glasnik RS*, br. 87/18

Đurđević Snežana[*]
https://orcid.org/0009-0008-3947-068X

UDC: 341.638:341.9(497.11)
Review article
DOI: 10.5937/ptp2504220D
Received on: August 26, 2025
Approved for publication on:
November 21, 2025
Pages: 220–240

RECIPROCITY AS A CONDITION FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN THE PRIVATE INTERNATIONAL LAW OF SERBIA

ABSTRACT: In many national systems of private international law, reciprocity is still a condition for the recognition and enforcement of foreign judgments in civil and commercial matters. However, in the modern globalized economic and social context, where legal and natural persons enter into cross-border private law relationships and international transactions on a daily basis, the question is whether this condition is justified and necessary. Although many states have taken a more flexible approach to this issue in the last few decades, this condition still exists in the legislation of a certain number of states and is considered to be a major obstacle to the recognition and enforcement of foreign judgments. In the legislation of the Republic of Serbia, reciprocity is also one of the conditions for the recognition of foreign judgments. In order to be able to respond to the ever-increasing economic interest expressed through cross-border trade and investments, it would be desirable to consider amending our applicable legislation, as well as the Republic of Serbia's acceding to the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments. Namely, it has entered into force recently and is aimed at giving a truly global significance to the unification of conditions for the

[*]PhD Candidate, Senior Judicial Associate, The Court of Appeal in Belgrade, Belgrade, Serbia, e-mail: snezana.djurdjevic@gmail.com

recognition and enforcement of judgments. At the same time, this would also eliminate the problem of reciprocity in relations between the Republic of Serbia and states party to the Convention, both in terms of difficulties related to the procedure for its establishment and the recognition of judgments of the courts of the Republic of Serbia in the states requiring diplomatic reciprocity in this respect.

Keywords: *reciprocity, 2019 Hague Convention, judicial cooperation, recognition of foreign judgments.*

1. Introduction

Reciprocity, i.e. the *do ut des* principle, is one of the oldest principles of the international law featuring in international relations even before the formation of the modern state (Southard, 1977, p. 327). Initially, it represented a principle of the international public law applied for the purpose of mutual recognition of certain rights and to induce cooperation between states, but also as a measure for retribution for a hostile action of another state (Michaels, 2009, p. 673).[1] In time, reciprocity has also become one of fundamental principles of the private international law, which is why nowadays it most often features in numerous legal systems as a condition for foreign nationals to enjoy their civil rights, as well as for the recognition and enforcement of foreign judgments.

However, in the modern globalised economic and social context, where legal and natural persons enter into cross-border private law relationships and international transactions on a daily basis, the question is whether the continued application of this condition is justified and necessary, both in practical and theoretical terms. The main practical problems in the procedure for establishing whether the reciprocity condition is met concern the procedure costs and length, as well as the difficulties relating to the interpretation of foreign regulations (in the case of legislative reciprocity) and case law (in the case of de facto reciprocity). The reciprocity condition has also been criticised from the theoretical point of view, as states have been using it as a retaliation measure in their mutual relations. In addition, it cannot always be considered acceptable when it comes to the interests and rights of private persons in

[1] An example of this is the 1629 *French Code Michaud, whose provisions made it impossible to recognise a judgment of a foreign court against French nationals. In response to that, certain states introduced a provision into their laws that made it impossible to recognise judgments of French courts.*

civil and commercial matters, given that the absence of reciprocity between states with respect to the recognition and enforcement of judgments directly affects private parties, as they cannot rely on the *res iudicata* principle as well as on a fundamental principle of legal certainty. In such a situation, due to the absence of reciprocity with regard to a certain issue, private parties are actually penalised and forced to reinitiate proceedings on the merits due to the policy pursued by the states involved. For this reason, the legal provision for the condition of reciprocity for the recognition of a foreign judgment was declared unconstitutional in Japan (Okuda, 2018, pp. 159–170).

In the Republic of Serbia, reciprocity is a condition for foreign nationals to enjoy certain civil rights[2] and features of international procedural law, such as the exemption of foreign nationals from the obligation to pay security for costs (Resolution of the Conflict of Laws with Regulations of Other Countries Act, 1980) (hereinafter: the RCLA) and costs of the proceedings (Court Fees Act, 1994). In the absence of an international treaty that would regulate the issues of private rights of foreign nationals, the rights and position of Serbian nationals in the respective state are first established based on the content of foreign law, which is followed by establishing the rights and position of foreign nationals in the Republic of Serbia. It is interesting that in the Republic of Serbia the condition of reciprocity also found its place in the area of international *litis pendentia*, which is unique in the contemporary private international law. The RCLA stipulates that proceedings shall be terminated by the court of the Republic of Serbia upon request of a party if there is an ongoing dispute before a foreign court on the same legal matter and between the same parties, on condition that the dispute before the foreign court had been instituted earlier, that there is no exclusive jurisdiction of the court of the Republic of Serbia and if there is reciprocity (Article 80 of the RCLA). In this area, the condition of reciprocity indirectly facilitates delivery of contradictory judgments on the same matter, this being to the detriment of legal certainty, a core principle of all legal systems, which seriously calls into question the justification and purposefulness of this legal solution. Moreover, reciprocity also features in the legislation of the Republic of Serbia as a condition for recognising foreign notarial deeds (Article 8 of the Public Notaries Act, 2011), as well as for the recognition and enforcement of foreign judgments, which will be discussed subsequently (Article 92 of the RCLA).

[2] Among other things, reciprocity is a condition for foreign natural and legal persons to acquire ownership on immovable property located in the territory of the Republic of Serbia (Articles 82a and 82b of the Property Relations Act, 1980).

Although the condition of reciprocity is criticised almost in all areas where it appears, this paper will only look at its application with respect to the recognition and enforcement of foreign judgments. The necessity of applying reciprocity in the area is called into question particularly because of the importance of economic interests, international trade and foreign investments. A free flow of judgments is considered a key factor, as it enables parties to rely on the legal system of a certain foreign state and properly manage potential risks that they may encounter when entering into cross-border civil or commercial relationships, investments or trade transactions.

2. Comparative law perspective of reciprocity as a condition for the recognition and enforcement of foreign judgments

In the last few decades, difficulties surrounding the establishment of reciprocity and interests of international cooperation and economy have made many countries start taking a more liberal approach to the issue of reciprocity as a condition for the recognition of foreign judgments. By modernising their rules in the area of private international law and adopting new codifications, some countries have entirely excluded the condition of reciprocity in this respect. According to the research conducted by Elbalti, (2017), this may be noticed on the example of Switzerland,[3] Venezuela (Parra-Aranguren, 1999, p. 341), Lithuania (Krasnickas, 2008, p. 498; Mikelenas, 2005, p. 180), Bulgaria (Jessel-Holst, 2007, p. 383), Poland (Czernis & Mickiewicz, 2013), Spain (Ramos Romeu, 2004, p. 945), North Macedonia (Deskoski, 2008, p. 456) and Montenegro (Kostić-Mandić, 2014/2015, p. 438). On the other hand, in some other states where the condition of reciprocity stayed in force, its application is narrow and is required only in certain areas of law or for certain categories of persons (Article 15 of the Private International Law Act of the Czech Republic, 2012),[4] whereas some countries have introduced the rebuttable presumption of reciprocity (Article 92 of the RCLA; Article 101 of the Private International Law and Procedure Act of Slovenia, 1999).

Nevertheless, reciprocity still exists in many national legislations as a condition for the recognition and enforcement of foreign judgments. This is supported by the research conducted by Yeo (2021), which reviewed the

[3] Under the Swiss Federal Act on Private International Law, reciprocity was only required for the recognition of foreign judgments declaring bankruptcy (Article 166(1)(c)), but the provision was deleted when the Act was amended in 2019.

[4] In the Czech Private International Law Act (Article 10), the condition of reciprocity is only imposed when the recognition of a judgment is required against a Czech national.

legislation of 108 states and established that 34 states (31.5%) still require reciprocity as a condition for the recognition and enforcement of a foreign judgment, while eight states (less than 8%) require diplomatic reciprocity. This means that a foreign judgment cannot be recognised unless there is an international treaty regulating mutual recognition and enforcement of foreign judgments.

However, some case law examples indicate that the states with the most closed 2systems so far, where the recognition of a foreign judgment was virtually impossible (except if there is an international treaty in place), have started to take a more flexible approach to the interpretation of this principle and legal provisions governing it.

China is one of the best examples in that respect. A foreign judgment may be recognised in China based on an international treaty or reciprocity (Zhang, 2014, p. 96). In the absence of an international treaty, reciprocity was interpreted very strictly and required a specific decision of a foreign court recognising the judgment of the Chinese court, which was often very difficult to prove. In practice, Chinese courts tended to refuse to recognise a foreign judgment on a regular basis, even when there was an international treaty in place with a certain state on mutual recognition and enforcement of judgments, explaining such a decision by the absence of de facto reciprocity (Zhang, 2014, p. 96) or by another reason not specified in the international treaty (Tsang, 2017, p. 32). Things have started to change, which is supported by a decision of the Chinese court from 2016 whereby the judgment of the court of Singapore was recognised based on reciprocity, in view of the fact that a judgment of the Chinese court had previously been recognised in Singapore in 2014.[5] In 2022, the Supreme People's Court of China adopted a document (Conference Summary of the Symposium on Foreign-Related Commercial and Maritime Trials of Courts Nationwide) providing new guidance for the establishment of reciprocity with a foreign state with respect to the recognition and enforcement of foreign judgments. In accordance with the guidance, apart from the strict de facto reciprocity, this condition shall also be deemed fulfilled if there is legislative (*de iure*) reciprocity, i.e. if the legislation of the foreign state allows for the possibility of having a judgment of the Chinese court

[5] Judgment of the Nanjing Intermediate People's Court of Jiangsu Province, 2018, Kolmar Group AG v. Jiangsu Textile Industry (Group) Import & Export CO Ltd, 4 CMCLR 17. Similarly, it was based on reciprocity that in 2013 the Chinese court recognised a German order in a case related to the capacity of a foreign bankruptcy administrator nominated by a German court, giving an explanation that the German court had previously recognised the judgment of a Chinese court in 2006 (Elbalti, 2017, p. 203).

recognised, and also if there is reciprocal understanding or consensus between China and the respective foreign state (Li, Cen & Yu, 2024). Based on this guidance, the Maritime Court of Shanghai has recognised a judgment of the English court and opened a new chapter when it comes to the recognition and enforcement of foreign judgments in China.[6]

In addition to China, the Russian Federation is also an example of a state where a foreign judgment could not be recognised without an international treaty in place (Article 409 of the Civil Procedure Code of the Russian Federation, 2002). However, the case law in the last 20 years indicates that the existence of an international treaty, i.e. diplomatic reciprocity, is no longer the only ground for the recognition and enforcement of foreign judgments in the country (Elbalti, 2017, p. 197). This is supported by the cases in which courts in the Russian Federation took a position that the judgments of English courts may also be recognised if there is de facto reciprocity (Decision of the Federal Commercial Court of the Moscow District of 22 February and 2 March 2006), i.e. if the judgments of Russian courts are recognised in practice in a foreign state or if there is an international treaty in place. In the latter case, the recognition of judgments does not have to be expressly regulated by the treaty. Instead, it will suffice if it regulates the right to access to court, which indirectly includes the recognition of a judgment of the state. That is how the Supreme Court of Arbitration of Russia enforced a judgment of the English court referring to the practice of English courts (which quite often recognise and enforce judgments of foreign courts), as well as the economic cooperation agreement concluded between the two states in 1992 and the 1997 Agreement on Partnership and Cooperation between the Russian Federation and the EU (Grishchenkova, 2013, p. 439; Yekini, 2021, p. 34).

The recognition and enforcement of foreign judgments is also burdensome in the Netherlands. Under its legislation (Article 431 of the Civil Code of the Netherlands, 1988), no foreign judgments may be enforced, unless this is stipulated by an act or an international treaty. In such a situation, new proceedings will have to be instituted before a court in the Netherlands. However, a 2014 judgment of the Supreme Court of the Netherlands took a position that in a situation like that a judge may use a foreign judgment as evidence and virtually base their decision on it, checking only the conditions examined when recognising the foreign judgment (Fernhout, 2020, p.

[6] Spar Shipping AS v Grand China Logistics Holding (Group) Co. Ltd, (2018) Hu 72 Xie Wai Ren No. 1.

153; Requejo Isidro, 2024). That is why some authors call this a "pseudo-enforcement proceedings" (Elbalti, 2017, p. 211).

In Norway and Sweden, foreign judgments are not recognised if there is no international treaty regulating the issue. Despite that, a foreign judgment has a certain impact in the proceedings, which is not negligible. A foreign judgment shall be eligible for recognition in Sweden if the foreign court applied its own rules, complying with the conflict-of-laws rules of Sweden (Berglund, 2000, p. 529). A foreign judgment shall be considered acceptable in Norway if it was given by a court that would have had jurisdiction in accordance with the rules of the country's private international law. Other circumstances may also be considered in this procedure, including the due process, quality of justice, intrinsic reasonableness, etc. (Boye, 2011).

Interestingly, courts of some states have started concluding agreements on mutual recognition and enforcement of judgments in the last few years. These were concluded because there had been no prior international (interstate) treaties in place between those states regulating the issue. The examples include agreements concluded by the Supreme Court of Singapore with courts in Abu Dhabi (Abu Dhabi Global Market Courts), Dubai (Dubai International Financial Centre Courts), Qatar (Qatar International Court and Dispute Resolution Centre), PR China (Supreme People's Court of the People's Republic of China), Myanmar (Supreme Court of the Union, Republic of the Union of Myanmar) and Rwanda (Supreme Court of Rwanda), as well as the agreements concluded by the Dubai International Financial Centre with various courts in Malesia, Hong Kong, Zambia, China, Australia, the USA and Kenia.[7]

3. International cooperation as a response to the reciprocity problem

In parallel with the developments in national systems of private international and procedural law, many countries have taken steps in the last few decades to improve their mutual cooperation and facilitate mutual recognition and enforcement of judgments by concluding international treaties and thus overcoming problems concerning reciprocity in their mutual relations.

[7] DIFC Courts. Downloaded 2025, June 15 from https://www.difccourts.ae/about/memoranda/judicial

The best example is the European Union and its system of private international law, where very important regulations were adopted governing exceptionally facilitated (the so-called automatic) recognition and enforcement of foreign judgments, but only among member states. With respect to judgments originating from third states, national legal rules apply if the EU has not concluded a separate international treaty (Regulation (EU) No. 1215/2012). To that effect, the EU concluded the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Lugano Convention of 30 October 2007) with Denmark, Iceland, Norway and Switzerland (members of the European Free Trade Association – EFTA). Many other regional instruments regulating the issue have been concluded on a global scale between the South America states,[8] Australia and New Zealand,[9] the Middle East[10] and the Commonwealth of Independent States.[11] One should have in mind that these agreements were concluded between regionally connected states with a high degree of mutual trust and common economic interests, which is why there have been no major difficulties for the unification of rules at that level.

Contrary to that, the negotiating process to create a convention that could be acceded by all states in the world and that would unify rules on the recognition and enforcement of foreign judgments at a global level lasted for nearly 30 years and was far from an easy task. Within the framework of the Hague Conference on Private International Law (hereinafter: the Hague Conference), the negotiation resulted in the adoption of 2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and

[8] A series of international treaties on the recognition and enforcement of foreign judgments has been concluded within the Organisation of American States and MERCOSUR. The most important one is the 1979 Montevideo Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards and the 1992 Protocol on Judicial Cooperation and Assistance in Civil, Commercial, Labour and Administrative Matters.

[9] The 2008 Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement (Agreement). It entered into force on 11 October 2013.

[10] Riyadh Arab Agreement of 6 April 1983 for Judicial Cooperation. It entered into force on 30 October 1985 and is in force in: Algiers, Bahrein, Egypt, Iraq, Jordan, Yemen, Qatar, Kuwait, Lebanon, Libya, Marocco, Mauritania, Oman, Palestina, Saudi Arabia, Somalia, the Sudan, Syria, Tunisia, the United Arab Emirates and Djibouti.

[11] Several international treaties have been concluded within the Commonwealth of Independent States, the most important ones for the recognition of judgments being the Kiev Treaty on the Settling of Disputes Related to Commercial Activities of 20 March 1992 (which entered into force on 19 December 1992) and the Moscow Treaty on Mutual Enforcement of Judgments of Arbitration, Business and Commercial Courts in the Territory of CIS Member States of 6 March 1998.

Commercial Matters (hereinafter: the 2019 Hague Convention), which has recently entered into force.[12] This convention unifies the procedure for recognition and enforcement of foreign judgments in civil and commercial matters, and has a very wide scope of application (Articles 1 and 2 of the 2019 Hague Convention), which is why, if acceded by a large number of states, it could ensure a free flow of judgments at a global level and overcome problems related to the establishment of reciprocity. The scope of application includes judgments in civil and commercial matters excluding: revenue, customs and administrative matters, the status and legal capacity of natural persons, maintenance obligations, other family matters, wills and successions, insolvency, the carriage of passengers and goods, the transboundary marine pollution, liability for nuclear damage, the validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs, the validity of entries in public registers, privacy, defamation, intellectual property, anti-trust (competition) matters, activities of armed forces, law enforcement activities, sovereign debt restructuring through unilateral State measures. Arbitration and related procedures are also excluded. During the negotiation on the 2019 Hague Convention, some experts pointed out that certain states would not be willing to accede to the Convention, as that would establish relations with all states party to the Convention, including even those whose judicial systems they do not find acceptable. For this reason, the 2019 Hague Convention provides for a possibility of making declarations, both in terms of the scope of application of the Convention and the States party to the Convention with which they do not wish to establish relations.

The authors of the 2019 Hague Convention were not able to reach agreement on the grounds for direct international jurisdiction. Instead, it contains criteria that have to be met so a judgment of a foreign court could be recognised and enforced. In a part of our theory of the private international law, it is considered that the criteria specified do not represent the so-called mirror system, but that they are "jurisdictional filters," i.e. criteria of indirect international jurisdiction (Jovanović & Marjanović, 2024, p. 930). The mirror system means that the acceptability of the jurisdiction of a foreign court is evaluated by the requested State in accordance with its own national regulations, meaning that if it is stipulated in the national regulations that the national court shall have jurisdiction according to the defendant's place of residence, then the jurisdiction of the foreign court established according

[12] From the perspective of international law, it entered into force on 1 September 2023.

to the same criterion (the defendant's place of residence) will be considered acceptable (Stanivuković & Živković, 2024). The criteria are universally accepted in the legislation of a large number of states and are aimed at ensuring a certain connection between the defendant and/or the subject of dispute and the country of origin. Article 5 of the 2019 Hague Convention states that there are thirteen grounds for indirect international jurisdiction, which Jovanović & Marijanović (2024) divide by three criteria: 1) grounds concerning the connection between the person against whom recognition or enforcement is sought to the state of origin of the judgement – habitual residence of the person against whom recognition or enforcement is sought in the state of origin of the judgment at the time when they became a party to the proceedings; finding the principle place of business of the person against whom recognition or enforcement is sought – natural person at the time when they became a party to the proceedings, and the judgment concerns their business activity; the circumstance that the person against whom recognition or enforcement is sought was the plaintiff in the proceedings in which the judgment whose recognition is requested was given; 2) grounds concerning the defendant in the proceedings before the court which gave the judgment whose recognition is requested– at the time when the defendant became a party to the proceedings, he maintained a branch, agency, or other establishment without separate legal personality in the State of origin, and the judgment concerns the actions of the branch, agency or other establishment; the defendant argued on the merits before the court of origin without contesting jurisdiction within the timeframe provided in the law of the State of origin, unless it is evident that an objection to jurisdiction or to the exercise of jurisdiction would not have succeeded under that law; 3) grounds concerning certain ways for establishing special jurisdiction of the court which gave the judgment whose recognition is requested – the 2019 Hague Convention expressly lists grounds for jurisdiction for certain types of disputes: from contractual obligations (grounds being the place of fulfilment of the obligation under dispute); lease of immovable property (grounds being the location of the real property); contractual obligations secured by a right in rem in immovable property located in the State of origin (grounds being the location of the real property; non-contractual liability arising from death, physical injury, damage to or loss of tangible property, (grounds being the place of act or omission to act in order to avoid harm); validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing (grounds being the jurisdiction designated in the trust instrument or the principal place of administration of the trust); rights in rem in immovable property (grounds

being the location of real properties); counterclaims; if the jurisdiction arises from a written agreement of the parties, unless that is a prorogation agreement establishing the exclusive jurisdiction of the court selected.

The Convention also sets out clear reasons for the refusal of recognition and enforcement (Article 7 of the 2019 Hague Convention), which are not binding. Article 7 of the 2019 Hague Convention allows for the possibility of refusing recognition and enforcement if the defendant had not been notified in sufficient time and in such a way as to enable them to arrange for their defence. Equal to that is the situation when the method of service of document which instituted the proceedings to the defendant is incompatible with fundamental principles of the requested State concerning service of documents. If the judgment was obtained by fraud or if it is manifestly incompatible to the public policy of the requested state, recognition and enforcement may be refused by the court. The same goes if the judgment is inconsistent with a judgment given by a court of the requested State in a dispute between the same parties or is inconsistent with an earlier judgment given by a court of another State between the same parties on the same subject matter, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State (*res iudicata*). The 2019 Hague Convention (Article 10) gives a discretionary power to courts to refuse the recognition and enforcement of foreign judgments awarding damages, including exemplary or punitive damages, that do not compensate a party for actual loss or harm suffered. This means that, despite the presence of a certain reason for refusal, court may decide to recognise and enforce a foreign judgment. Except in the cases relating to rights in rem in immovable property, the 2019 Hague Convention expressly provides for the possibility of applying national legislation in the event that the criteria stipulated in the Convention are not fulfilled (Article 15 of the 2019 Hague Convention).[13] This provision reflects the *favor recognitionis* principle. Its importance is all the greater if one bears in mind that this is an indirect way to ensure the fulfilment of the diplomatic reciprocity condition, even when the specific judgment which originates from the state party to the 2019 Hague Convention cannot pass the Convention's recognition and enforcement test. Namely, if a foreign judgment does not meet the recognition criteria under the provisions of the 2019 Hague Convention, the state party to the Convention in which recognition is sought may apply

[13] This provision was inspired by Article 7 of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the 1958 New York Convention), which makes it possible for the state party to the Convention to apply its national law in the process of recognition of a foreign arbitral award if it is more advantageous than the rules laid down in the Convention.

the rules of its own national legislation governing the recognition of foreign judgments. If the national law provides for diplomatic reciprocity as one of the conditions for the recognition of a foreign judgment, then the condition must be considered to be met in the specific case, as the transition to the national legislation path was in fact ensured by the 2019 Hague Convention itself. Further, Article 18 of the 2019 Hague Convention allows for the possibility that member states make a declaration that if they accede to the Convention, it will not be applied to certain matters (beyond the matters already excluded from the scope of its application). A state party to the Convention shall also have the possibility of giving notification that the Convention shall not be applied in relations with a certain state party to the Convention (Article 29 of the 2019 Hague Convention). All of this is indicative of the fact that when considering whether to accede to the Convention states have at their disposal different options, both in terms of the scope of application and the states with which they are to establish relations.

4. Reciprocity as a condition for the recognition and enforcement of foreign judgments in the Republic of Serbia

In the private international law of the Republic of Serbia, one of the conditions for the recognition and enforcement of foreign judgments also includes reciprocity with the state of origin of the judgment (Article 92 of the RCLA). This condition has been considerably relaxed by the introduction of the (rebuttable) legal presumption of reciprocity. If rebutted, it shall suffice to establish de facto and material reciprocity. In private international law, reciprocity appears in various forms that may be divided by the method of origination and its content. When it comes to the method of origination, reciprocity may be diplomatic, legislative and de facto. Diplomatic reciprocity is established between two states by an international treaty, be it bilateral or multilateral. In this way, they undertake to mutually recognise judgments in certain matters. Legislative reciprocity means that mutual recognition of judgments arises from the respective foreign state's legislation, while de facto reciprocity requires that judgments of the requested state be recognised in practice in the state of origin of the judgment. With regard to legal content, there is formal and material reciprocity. Formal reciprocity means that judgments of the courts of the requested state may be recognised in the state of origin of the judgment, and material reciprocity means that a judgment of the court of the requested state may be recognised in the state of origin of the judgment under the same or similar conditions as laid down in its legislation.

The Republic of Serbia has diplomatic reciprocity in place with a certain number of states, with which it has concluded bilateral treaties governing the issue of mutual recognition and enforcement of judgments,[14] as well as with states party to certain multilateral treaties governing the issue, but the application of these multilateral treaties is mostly limited to a certain, relatively narrow subject matter of private international law. The existence of these treaties is very important, because at the moment they represent the only certain legal grounds for the Republic of Serbia for the recognition of judgments of domestic courts in the states which expressly require in their legislation that there should be an international treaty in place as a condition for recognising a foreign judgment.

In the absence of an international treaty governing the issue, the establishment of reciprocity is sometimes difficult in the practice of our competent authorities. Under national legislation, an opinion about reciprocity with a certain state is given by the ministry in charge of justice affairs (Article 92 of the RCLA), which does so by interpreting the regulations of a certain state governing the subject matter of recognition and enforcement of foreign judgments. However, if the issue is not governed by law in the respective state,[15] then it has to be determined whether the judgments of Serbian courts are recognised in the state in practice, i.e. whether there is de facto reciprocity, which very often turns out to be a very long and complicated procedure.

To establish reciprocity, the competent authority usually submits a request for information on regulations and case law to a foreign state. Although Article 13 of the RCLA only stipulates two ways in which a court or another competent authority may establish the content of foreign law, it does not exclude the use of other means, such as texts of regulations from official publications, expert opinions on the content of foreign law, and judgments and other decisions of the foreign court that may serve as evidence of the way in which foreign courts act and apply a certain regulation. This approach may be justified by legal certainty and the fact that it is only in this way (if confirmed by the competent foreign authority) that the court may know with certainty whether the regulation is in force in the foreign state at the time. On the other hand, such an interpretation may result in a delay to the

[14] The recognition and enforcement of judgments is governed by bilateral treaties on legal assistance with Bulgaria, Cyprus, the Czech Republic, Hungary, Poland, Romania and the United Arab Emirates, as well as special treaties on the recognition and enforcement of judgments with Greece and France. Besides, special treaties governing the recognition and enforcement of maintenance decisions have been concluded with Austria and Belgium.

[15] That is the case in the countries with the common law system.

procedure in case when the competent foreign authority fails to respond to the request for notification submitted by national authorities for a long time. The request is made to a foreign state in accordance with the rules of international legal assistance, which means through diplomatic channels[16] or in accordance with international treaty, if it is in place with the respective state. This type of communication involves several competent authorities, both national and those of the foreign state, which inevitably results in these procedures taking a long time. What may also happen is that the requested foreign state fails to respond to the request for a certain reason. In such a situation, there is no way to force the respective state to give its response, and the only thing possible is to resubmit the request and intervene through the diplomatic and consular channels in that country. According to the information of the Ministry of Justice – Department of International Legal Assistance in Civil Matters, for an unknown reason it took nearly two years to get the information on the regulations of the British Virgin Islands governing the issue of security for costs. However, political events in a certain state may sometimes make it very difficult to get an information on the content of law. In practice, that was the case with the request of the Ministry of Justice for information on the regulations of Libya governing the acquisition of the property rights. Despite several interventions, the regulations were impossible to get because of current events in the country, change of government and the entire legislative system.

Apart from that, when establishing material reciprocity, it needs to be determined whether the limitations placed by the foreign state on the recognition and enforcement of foreign judgments are the same as or similar to the ones placed in the national legislation. This means that there may be difficulties in interpretation and evaluation whether the reciprocity condition has been met, particularly if this involves different legal systems and different understanding of certain legal principles and notions.[17]

[16] The diplomatic way of communication involves submission of a request for information on regulations to the diplomatic and consular authority of the requesting state in the requested state, which then submits the request to the ministry of foreign affairs of the requested state, which in turn submits the request to the competent authority of the requested state (most often, it is the ministry of justice, which then sends the request to the authority in charge of notification under the national law).

[17] The requested state sometimes only forwards the text of the law without any explanations, which makes it difficult for the ministry to interpret the foreign regulation without any additional guidance. That is why requests have to be resubmitted or additional information has to be requested, which all leads to a delay to the procedure.

In the context of the afore-mentioned difficulties, primarily in the economic field, it is important to consider the possibilities available to the Republic of Serbia to overcome the problems encountered.

Difficulties surrounding the establishment of reciprocity by competent authorities might be resolved by amending applicable regulations. The new draft law that ought to modernise the existing provisions of the RCLA, including, inter alia, provisions on the recognition of foreign judgments, was prepared as far back as in 2014 (hereinafter: the Draft PILA).[18] The Draft PILA contains the condition of reciprocity but only in certain areas: rights in rem, securities held through intermediaries, intellectual property, contractual and non-contractual obligations.[19] The reciprocity presumption was also retained, but the burden of its rebuttal was placed on the defendant in the recognition proceedings.[20] Furthermore, the Draft PILA provides for new ways of proving reciprocity, meaning that in addition to the opinion of the competent ministry, it is also possible to submit documents and expert opinions on the content of foreign law. This is how a compromise was reached among the working group members who were in favour of retaining the reciprocity condition and those who supported its elimination (Stanivuković, 2014, p. 294). A solution was proposed involving the equal application of the reciprocity condition regardless of whether recognition is requested by a domestic or foreign national, thus eliminating the discriminatory character of the current solution, which stipulates that the lack of reciprocity is not an impediment if recognition is requested by a domestic national.[21]

There is no doubt that the Draft PILA represents improvement in the existing legal solutions as to reciprocity as a condition for the recognition and enforcement of foreign judgments, but given that it has not been adopted for more than ten years, we will obviously still have to wait for more advanced solutions.

[18] The Working Group set up by the Ministry of Justice of the Republic of Serbia finished working on the Draft PILA in June 2014. The draft version is available on the website of the Ministry of Justice: https://www.mpravde.gov.rs/sekcija/53/radne-verzije-propisa.php

[19] Under the provisions of the RCLA, reciprocity is not requested only in a marital dispute and in a dispute concerning paternity or maternity, while under the Draft PILA exemption from application was extended to all status, family and inheritance relations.

[20] It is in this way that the Ministry of Justice would be relieved of some duties, as it would have an auxiliary role in this case. Additionally, the reciprocity presumption would be more clearly regulated in these provisions and the burden of proof would be placed on the party having a legal interest in proving the absence of reciprocity.

[21] Discrimination on the basis of citizenship is contrary to the fundamental principles of the European Union, with which the legislation of the Republic of Serbia has to be brought into line.

On the other hand, the accession of the Republic of Serbia to the 2019 Hague Convention needs to be considered. This Convention unifies the procedure for recognition and enforcement of foreign judgments in civil and commercial matters, and has a very wide scope of application, unlike the other Hague conventions, which the Republic of Serbia has ratified and which mostly govern the matters of family law. It sets up a simple, efficient and predictable system for the recognition and enforcement of foreign judgments, which, depending on the number of state parties, ought to ensure a free flow of judgments at a global level, and, by extension, a higher degree of legal certainty in cross-border exchange, trade and investments. At the same time, it should eliminate the problem of diplomatic reciprocity, which some states impose as a condition for the recognition of foreign judgments.[22]

The European Union has already acceded to the 2019 Hague Convention, which afterwards entered into force from the perspective of international law on 1 September 2023. The United Kingdom of Great Britain and Northern Ireland, where the convention entered into force on 1 July 2025, followed suit. The United States of America (hereinafter: USA)[23] and the Russian Federation have signed the convention and are seriously considering its ratification. It has managed to attract even the interest of China, whose system of private international law, as already mentioned, is well-known for a burdensome system of recognition and enforcement of foreign judgments, and yet it is contemplating acceding to the convention. Of the states of South East Europe, the 2019 Hague Convention was signed by Montenegro (21 April 2023), North Macedonia (16 May 2023) and Albania (12 September 2024). As for the Republic of Serbia, its ratification will also emerge as an issue in the context of its being a candidate for membership in the EU. The same is expected from other countries with this status.

5. Conclusion

In view of the presented criticisms and difficulties with respect to the principle of reciprocity, it would be desirable if the Republic of Serbia took certain steps to address them and modernise its system of private international law. One of the possibilities certainly includes amending applicable legislation, whose provisions are outdated and far outmatched in many segments. The new

[22] Of the EU member states, these include the Netherlands, Finland, Denmark and Austria.

[23] The USA signed the 2019 Hague Convention on 2 March 2022, but it has not entered into force there yet.

law has already been drawn up, but has not been adopted yet, even though its solutions have significantly improved the existing provisions on all issues, including reciprocity and the procedure for its establishment. Besides, it is important to consider the Republic of Serbia's accession to the 2019 Hague Convention, which is a global convention for the recognition and enforcement of judgments, with a very wide scope of application. So far, it has entered into force in all EU member states, Ukraine, Uruguay, and recently in the United Kingdom. In 2026, it will enter into force in Andorra, Montenegro and Albania. The Republic of Serbia has still not ratified this convention, although that would ensure diplomatic reciprocity with certain EU states that make the recognition and enforcement of foreign judgments conditional upon that, and thereby also the recognition of judgments of the Republic of Serbia in those states. For the reasons stated, the author believes that accession to the global instrument regulating the issue of recognition and enforcement of foreign judgments would be very beneficial for the Republic of Serbia.

Conflict of Interest
The author declares no conflict of interest.

Đurđević Snežana
Apelacioni sud u Beogradu, Beograd, Srbija

UZAJAMNOST KAO USLOV ZA PRIZNANJE I IZVRŠENJE STRANIH SUDSKIH ODLUKA U MEĐUNARODNOM PRIVATNOM PRAVU REPUBLIKE SRBIJE

APSTRAKT: Postojanje uzajamnosti u mnogim nacionalnim sistemima međunarodnog privatnog prava i dalje opstaje kao uslov za priznanje i izvršenje stranih sudskih odluka u građanskoj i trgovinskoj materiji. Međutim, u savremenom globalizovanom ekonomskom i socijalnom kontekstu, u kome pravna i fizička lica svakodnevno stupaju u prekogranične privatnopravne odnose i međunarodne transakcije, postavlja se pitanje opravdanosti i neophodnosti ovog uslova. Iako su u proteklih nekoliko

decenija mnoge države zauzele fleksibilniji stav po ovom pitanju, ovaj uslov je i dalje prisutan u zakonodavstvu određenog broja država i smatra se jednom od glavnih prepreka za priznanje i izvršenje stranih sudskih odluka. Postojanje uzajamnosti je i u zakonodavstvu Republike Srbije predviđeno kao jedan od uslova za priznanje stranih sudskih odluka. Kako bi se iz ugla postupka utvrđivanja uzajamnosti odgovorilo na sve važniji ekonomski interes iskazan kroz prekograničnu trgovinu i investicije, bilo bi poželjno razmotriti izmene našeg važećeg zakonodavstva, kao i pristupanje Republike Srbije Haškoj konvenciji o priznanju i izvršenju stranih sudskih odluka iz 2019. godine. Naime, ona je nedavno stupila na snagu i teži da unifikacija uslova za priznanje i izvršenje sudskih odluka koja je njome postignuta dobije na istinskom globalnom značaju. Time bi se ujedno otklonio i problem uzajamnosti u odnosima Republike Srbije i država ugovornica te konvencije, kako u pogledu teškoća vezanih za postupak njenog utvrđivanja, tako i u pogledu priznanja odluka sudova Republike Srbije u državama koje u ovom pogledu zahtevaju postojanje diplomatske uzajamnosti.

Ključne reči: *uzajamnost, Haška konvencija 2019, pravosudna saradnja, priznanje stranih sudskih odluka.*

References

1. Berglund, M. (2000). Recognition and Enforcement of Foreign Judgments in Sweden. In: Walter, G., & Baumgartner, S. (eds.), *Recognition and Enforcement of Judgments Outside the Scope of the Brussels and Lugano Conventions* (pp. 529, 532). The Hague: Kluwer Law International
2. Boye, K. (2011). Norway. In: Newman L. W., (ed.), *Enforcement of Money Judgments* (pp. 505-518), New York: Juris Publishing.
3. Civil Procedure Code of the Russian Federation, 2002. Downloaded 2025, June 17, from https://cis-legislation.com/document.fwx?rgn=3569
4. Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted on 10 June 1958, entered into force on 7 June 1959). Downloaded 2025, June 17 from http://uncitral.un.org/instruments/arbitration/conventions/new-york-convention
5. Czernis, M., & Mickiewicz, P. (2013). Poland. In: *Shipping Law*, para 7.1. Downloaded 2025, June 15 from http://www.czernis.pl/public/mypic/Artyku%C5%82y/SP14_Chapter_27_Poland.pdf

6. Deskoski, T. (2008). The New Macedonian Private International Law Act of 2007. In: Bonomi, A., & Romano, G. P. (eds), *Yearbook of Private International Law*, vol. X (pp. 441–458). Lausanne: Sellier European Law Publishers; Swiss Institute of Comparative Law
7. Elbalti, B. (2017). Reciprocity and the recognition and enforcement of foreign judgments: A lot of bark but not much bite. *Journal of Private International Law, 13*(1), pp. 184–218
8. Fernhout, F. (2020). Enforcing Foreign Titles Regarding Monetary Claims in the Netherlands. In: Rijavec, V., Drnovsek, K. & van Rhee, C.H. (eds.). *Cross-Border Enforcement in Europe: National and International Perspectives.* 1st ed. (p. 153). Cambridge: Intersentia
9. Grishchenkova, A. (2013). Recognition and Enforcement of Foreign Judgments in Russia: Recent Trends. In: Bonomi, A., & Romano, G. P. (eds), *Yearbook of Private International Law*, vol. XV (pp. 439–450). Lausanne: Sellier European Law Publishers; Swiss Institute of Comparative Law
10. Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (adopted on 2 July 2019, entered into force on 1 September 2023). Downloaded 2025, June 15 from https://www.hcch.net/en/instruments/conventions/full-text/?cid=137
11. Jessel-Holst, C. (2007). The Bulgarian Private International Law Code of 2005. In: Bonomi, A., & Romano, G. P. (eds), *Yearbook of Private International Law*, vol. IX (pp. 375–386). Lausanne: Sellier European Law Publishers; Swiss Institute of Comparative Law
12. Jovanović, M., & Marjanović S. (2024). Uporedna analiza sistema priznanja stranih sudskih odluka prema Zakonu o rešavanju sukoba zakona sa propisima drugih zemalja i prema Haškoj konvenciji iz 2019. godine [Comparative Analysis of the Systems of Recognition and Enforcement of Foreign Judgments Pursuant to the Serbian Law on Resolution of Conflicts of Laws with Provisions of Other Countries and the 2019 Hague Judgments Convention]. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *58*(4), pp. 925–955
13. Kostić-Mandić, M. (2014/2015). The New Private International Law Act of Montenegro. In: Bonomi, A., & Romano, G. P. (eds), *Yearbook of Private International Law*, vol. XVI (pp. 429-439). Lausanne: Sellier European Law Publishers; Swiss Institute of Comparative Law
14. Krasnickas, M. (2008). Recognition and Enforcement of Foreign Judicial Decisions in the Republic of Lithuania. In: Bonomi, A., & Romano, G. P. (eds), *Yearbook of Private International Law*, vol. X (pp.

493-504). Lausanne: Sellier European Law Publishers; Swiss Institute of Comparative Law
15. Li, A., Cen, C., & Yu, Z. (2024). *Recognition and Enforcement of Foreign Judgments in China*. Downloaded 2025, June 15, from https://jtn.com/en/booksdetail.aspx?type=06001&keyid=0000000000000000008243&PageUrl=majorbook&Lan=EN#
16. Michaels, R. (2009). Recognition and Enforcement of Foreign Judgments. In: R. Wolfrum (Ed.), *Max Planck Encyclopaedia of Public International Law* (p. 673). Oxford: Oxford University Press.
17. Mikelenas, V. (2005). Codification of Private International Law in Lithuania. In: Bonomi, A. and Romano, G. P. (eds), *Yearbook of Private International Law*, vol. VII (pp. 161-182). Lausanne: Sellier European Law Publishers; Swiss Institute of Comparative Law
18. Okuda, Y. (2018). Unconstitutionality of Reciprocity Requirement for Recognition and Enforcement of Foreign Judgments in Japan. *Frontiers of Law in China, 13*(2), pp. 159–170
19. Parra-Aranguren, G. E. (1999). The Venezuelan Act on Private International Law of 1998. In: Bonomi, A., & Romano, G. P. (eds), *Yearbook of Private International Law*, vol. I (pp. 103-117). Lausanne: Sellier European Law Publishers; Swiss Institute of Comparative Law
20. Private International Law Act of the Czech Republic, (2012). Downloaded 2025, June 17 from https://www.brizatrubac.cz/files/clean-translation-czech-pil-am-aka-rev-19-jan-2023.pdf
21. Private International Law and Procedure Act of Slovenia, 1999. Downloaded 2025, June 17 from https://www.uaipit.com/uploads/legislacion/files/0000004965_THE_PRIVATE_INTERNATIONAL_LAW_AND_PROCEDURE_ACT_1999_07_13.pdf
22. Ramos Romeu, F. (2004). *Litigation under the Shadow of an Exequatur – The Spanish Recognition of U.S. Judgments.* Downloaded 2025, June 15 from https://scholar.smu.edu/til/vol38/iss4/5/
23. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, *Official Journal of the European Union*, L351/1
24. Requejo Isidro, M. (2018). Recognition and Enforcement of Judgments. In: Hess, B., Woo, M., Cadiet, L., Menétrey, S., & Vallines García, E. (eds.), *Comparative Procedural Law and Justice* (Part XIV Chapter 7). Downloaded 2025, June 18 from https://www.cplj.org/publications/14-7-recognition-and-enforcement-of-judgments

25. Southard, W. G. (1977). The Reciprocity Rule and Enforcement of Foreign Judgments. *Columbia Journal of Transnational Law*, *16*(2), pp. 327–326
26. Stanivuković, M. (2014). Idealizam i realizam u priznavanju stranih sudskih odluka [Idealism and Realism in the field of Recognition of Foreign Judgments]. *Pravni život*, *63*(11), pp. 283–298
27. Stanivuković, M., & Živković, M., (2024). *Međunarodno privatno pravo – opšti deo* [*Private International Law – General Part*]. Beograd: Službeni glasnik
28. Tsang, K. F. (2017). Chinese Bilateral Judgment Enforcement Treaties. *International and Comparative Law Review 1.* Downloaded 2025, June 18 from https://digitalcommons.lmu.edu/ilr/vol40/iss1/1/
29. Yekini A. (2021). *The Hague Judgments Convention and Commonwealth Model Law – A Pragmatic Perspective*. Oxford, UK; New York, NY, USA: Hart Publishing
30. Yeo, T. M. (2021). *The Changing Global Landscape for Foreign Judgments.* Downloaded 2025, June 18, from https://site.smu.edu.sg/yong-pung-how-professorship-law-lecture-2021
31. Zakon o javnom beležništvu [Public Notaries Act]. *Službeni glasnik RS*, br. 31/11, 85/12, 19/13, 55/14 – dr. zakon, 93/14 – dr. zakon, 121/14, 6/2015, 106/15 i 94/24
32. Zakon o osnovama svojinskopravnih odnosa [Property Relations Act]. *Službeni list SFRJ*, br. 6/80 i 36/90, *Službeni list SRJ*, br. 29/96*, Službeni glasnik RS*, br. 115/05 – dr. zakon
33. Zakon o rešavanju sukoba zakona sa propisima drugih zemalja [Resolution of the Conflict of Laws with Regulations of Other Countries Act]. *Službeni list SFRJ*, br. 43/82, 72/82 – ispr., *Službeni list SRJ*, br. 46/96, *Službeni glasnik RS*, br. 46/06 – dr. zakon
34. Zakon o sudskim taksama [Cort Fees Act]. *Službeni glasnik RS*, br. 28/94, 53/95, 16/97, 34/01 – dr. zakon, 9/02, 29/04, 61/05, 116/08 – dr. zakon, 31/09, 101/11, 93/12, 93/14, 106/15 i 95/18
35. Zhang, W. (2014). Recognition and Enforcement of Foreign Judgments in China. *Kluwer Law International*, p. 96

Lekić Ana[*]
https://orcid.org/0009-0007-0859-5394

UDC: 327.7:502.171
Review article
DOI: 10.5937/ptp2504241L
Received on: August 27, 2025
Approved for publication on:
November 3, 2025
Pages: 241–252

COP29 OUTCOMES AND PERSPECTIVES

ABSTRACT: The COP29 Conference, held in Baku in 2024, represents an important milestone in further advancing and implementing the Paris Agreement in the context of strengthening the global fight against climate change. Considering the not-so-favorable climate conditions and the rising climate crisis, COP29 represents a crucial point for identifying solutions and setting new goals. In that regard, the focus of the conference was aimed at new frameworks for financing climate change, relating to the enhancement of Nationally Determined Contributions (NDC), the adoption of a new collective financing goal after 2025, as well as support for developing countries. Observing the geopolitical situation, it is evident that numerous economic and political challenges can significantly affect the implementation of previously adopted solutions with particular implications for developing countries. Regarding the outcomes of the conference, COP29 has set new guidelines for global climate policy in relation to climate change, yet questions remain concerning its core implementation. The subject of research in this paper will be examining the development of the international climate regime through the prism of outcomes and challenges of implementation of the COP29 standards. Special attention will be devoted to analyzing the key expectations of the international community in the context of achieving the goals set through COP29.

Keywords: *COP29, climate change, Paris Agreement, climate finance, NDC, NCQG.*

[*]Master of Law, Ministry of Justice, Belgrade, Serbia, e-mail: cavic7@gmail.com

1. Introduction

The need to alleviate climate change at the global level is a tendency which has been a consistent trend since the adoption of the United Nations Framework Convention on Climate Change (UNFCCC, 1922) and the Kyoto Protocol to the United Nations Framework Convention on Climate Change (1997), followed by the adoption of the Paris Agreement to the United Nations Framework Convention on Climate Change (2015) at the 21st Conference of the Parties in Paris (hereinafter: UNFCCC). All countries globally are facing contemporary challenges such as climate change, so being aware of the fact that the question of climate change is that of the planet's survival, the countries are making efforts to address it. That raises concerns regarding countries' capacities to establish clear and effective mechanisms in combating climate change. Those exact mechanisms, alongside to the assumption that there exists a developed collective awareness of the dangers of climate change and its consequences, are certainly influenced by the economic power of a country, reflecting in their financial capacities to implement the mentioned agenda.

At first glance, the task of encompassing all the factors that negatively affect climate change may seem simple and thereby identify effective means of combating it, however, the reality is far more complex and truly represents a global challenge of today. In that ambient, alongside international frameworks and mechanisms countries have to also build their own internal capacities in this battle, all of which has to be supported by the political readiness and accountability of each of the countries.

Conceptually observed, countless questions arise concerning climate change on a global level, therefore it is logical to ask the question of whether, in today's practice, the principles of contemporary state policies in the context of climate change are truly being implemented, or whether they remain a collage of good intentions on a paper. Regarding that, the question of whether member countries are following the goals and principles established at COP29, including all previous annual meetings.

The general goal of the COP29 summit, held in 2024 in Baku, Azerbaijan, is of financial nature, which is supposed to replace the previous goal of 100 billion USD annually, while also takes into account the growing needs of developing countries. One segment also refers to existing funds, considering that they are deemed insufficient for overcoming challenges (Regional Center for Environmental Law (RCEL), 2024).

In regards to the discussion above, and given that the focus was placed on climate finance, a concrete consensus was achieved which implies that the financing of developing countries will triple, from the previous goal of 100 billion USD annually to 300 billion USD annually by year 2035 and that every effort will be made by countries to collectively increase climate financing for developing countries to 1.3 trillion USD annually by 2035 (United Nation Climate Change, 2024). Considering the ambitious set goals, they should be approached with caution, as the geopolitical circumstances necessitate confronting the reality of whether such a scale of financial resources can truly be mobilized.

In the light of the rising climate crisis, COP29 undeniably represents a key point in implementing the Paris Agreement and although the expectations of countries can be diverse it is clear that the new currents of strengthening the fight with climate change which will shape the currents of future climate policy.

The following text will examine the context of the outcomes achieved and the perspectives of COP29.

2. Historical overview of the COP

To begin with, if we were to consider the formulation of the COP, including its essence, the very nature of its name translates literally as the "Conference of the Parties" referring to the countries that have ratified the UN Framework Convention, the Kyoto Protocol, or the Paris Agreement. It is important to emphasize that each COP conference achieves a certain balance between political compromises, specific considerations, and economic interests.

In practice, all countries that have ratified the aforementioned acts constitute the Conference of the Parties (hereinafter: COP) and, as a part of this Conference, are tasked with making decisions and monitoring the implementation of the Convention in an institutional and all-inclusive manner, aiming to enable more effective enforcement. Of course, the aforementioned description carries a certain simplicity and, in a way, the notion of a perfect idea with the tendency for better outcomes, in the sense that the signatory countries meet once annually and, by consensus, adopt decisions intended to are meant to ensure positive results. In that way, we get to the word "result" where it is expected that "COP" truly has an effect in the practice of signatory countries. We can conclude that in reality, COP in fact opens up the opportunity for discussion and creates new policies, yet there is an evident challenge of its practical implementation (Arora & Arora, 2023). However, there is a long path from the idea to its realization and sometimes, implementation can sometimes

be hindered by institutional and administrative barriers within signatory states, as well as by the awareness of citizens, combined with the countries' financial readiness and capacity to participate fully in a single objective, namely, the stabilization of climate change.

Undoubtedly, at the level of the United Nations, there are several educational bodies responsible for the task of implementation of the UN Framework Convention, however, according to Todić and Dimitrijević (2012), COP represents factually the most important body within the UN Framework Convention which holds annual meeting, therefore its importance is indisputable.

In order to understand the entirety of the COP concept it is a necessary to understand the core of international treaties which it is based on, so chronologically examining, the UN Framework Convention was adopted in 1992, aiming to stabilize the concentration of greenhouse gasses (GHGs) in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Subsequently, in 1997, the Kyoto Protocol was adopted, which defined the obligations to limit GHG emissions, primarily targeting obligations of developed countries, and doing so in a way that countries from Annex I during their first period of engaging (2008-2012) have to reduce their total GHG emissions by at least 5% in comparison to 1990 levels (Todić, 2016). For example, under the Kyoto protocol, considering developed countries, USA were obligated to reduce greenhouse gas emissions by 7%, EU in entirety by 8%, Japan and Canada by 6%, while Australia, Iceland, and Norway got the opportunity to increase their emissions, and when it comes to Russia, New Zealand and Ukraine, they were required to stop their emissions on a basic level (Todić, 2016). The Paris Agreement, adopted in 2015, helped significantly reinforce the previously established principles and goals and a key aspect of this agreement is that it provided a framework for the actions of countries even after 2020, which elicited positive reactions in many countries, as well as in European Union (Todić, 2016). The main goal of the Agreement is to limit global warming to below 2° C. In order for the global warming to be limited to 1.5° C it is essential for companies, countries, and organizations to decarbonize as quickly as possible (Aliyeva, 2021).

Based on the previously discussed points, it can be concluded that from the adoption of the Framework Convention to the Paris Agreement, countries have developed awareness and showcased the political will to more concretely define obligations that need to be fulfilled in the context of climate change.

A review of the history of the Conference of the Parties is indispensable too, taking us to 1995, when the first COP was held in Berlin, Germany.

This moment can be considered as the beginning of the institutionalized global negotiations on the topic of climate change. Starting from then, the signatory countries have tended to select different locations or even different countries within regions recognized by the UN for their annual meetings. It is important to highlight the decisions made in Berlin, as they guided the further development of this field. At the Berlin Summit, it was decided to establish an ad hoc Committee for negotiations on a protocol or other legal instrument by 1997, which would include specific obligations for countries for a period after 2000. Furthermore, it was agreed to initiate a joint financial activities project involving both developed and developing countries, and to continue the provisional use of the Global Environment Facility, which serves as the financial mechanism of the UN Framework Convention (Bodansky, 2001).

When examining the importance of all COP conferences held to date, it is evident that not all have contributed to the expected extent. In correlation with that, and from the perspective of tangible results and what these Conferences have delivered for humanity, it must be acknowledged that over that past 30 years, the amount of human carbon dioxide emissions have doubled, which can be seen as a failure of the undertaken measures (Maslin, 2020).

The ambitious goals set at COP29, based on the consensus among countries, are intended to guide agreement on the directions of future actions by countries in order to achieve the objectives established by previously ratified conventions. Through the analysis and evaluation of the outcomes of previous Conferences, an evolution in the approach to climate change issues becomes evident, highlighting that COP29 emerges at a moment when concrete, rather than merely declarative actions are more necessary than ever before.

Considering the continuity of previous conferences, the next chapter is dedicated to the analysis of expectations and goals as they have been set.

3. Goals and expectations of COP29

This chapter aims at analysis of crucial expectations of COP29, where it is primarily important to consider that the conference was held at a time when the international community is striving towards aligning climate change initiatives with economic and political realities. Additionally, the specificity of the political context must be taken into account, given the location of the conference, as Azerbaijan is a country whose economy largely depends on fossil fuel exploitation, mainly that of oil and gas (Townend, 2024).

This is reflected directly in the goals. Regarding the objectives of COP29 and the agreed positions adopted in Baku, the UN Executive Secretary for

Climate Change, Simon Stiell, emphasized in his concluding remarks that a new financial goal had been achieved at the UN Climate Conference, describing it as an insurance policy for humanity. He stated: "This deal will keep the clean energy boom growing and protect billions of lives. It will help all countries to share in the huge benefits of bold climate action: more jobs, stronger growth, cheaper and cleaner energy for all. But like any insurance policy – it only works – if the premiums are paid in full, and on time" (United Nations Climate Change, 2024).

The focus of the conference in Baku was surely on the financial aspect, specifically the new collective quantified goal for climate financing (hereinafter: NCQG), given that developing countries demanded a more clear and concrete support for the implementation of climate policies (Hill & Mahat, 2024). The conference held historical significance, as financial decisions were adopted that represented a historic increase in financial flows, and negotiations also addressed Article 6 of the Paris Agreement, enabling the carbon market to become a major component of future climate finance (Arora, 2025). Additionally, the focus of the conference in Baku were also developing countries, with the aim of directing greater financial resources to them (Arora, 2025). While these measures appear promising, it is truly questionable if their implementation is possible, since the synchronization of many factors is required, as emphasized by Arora (2025).

One of the priorities of COP29 was directing revenue of developed countries towards low and middle income countries with the goal of financing different components that are tied to extreme weather conditions (Arora, 2025). Furthermore, regarding the financial priority hierarchy, which was set through NCQG, the priority was given to: financing for climate change mitigation, financing for climate change adaptation, and lastly compensation for losses and damage (Stiell, Guterres & Lagarde, 2024). This implies that financing for climate change mitigation provided by developed countries would be directed to developing countries, which would help prevent a significant increase in domestic costs in developing states, and further help in preventing escalation on domestic losses and damages for those countries (Stiell, Guterres & Lagarde, 2024).

In this paper we already mentioned that the most important conclusion of the Conference in Baku is that the new public quantified goal will triple from 100 to at least 300 billion USD yearly, as a form of support for developing countries, as well as the goal that financing of developing countries reaches a value of 1.3 billion US dollars yearly until 2034, which represents a wider initiative (Bhattacharya, Songwe, Soubeyran & Stern, 2024). Additionally,

an important segment of the Conference held in Baku is the more and more ambitiously established contributions (hereinafter: NDC), where it is expected that developing countries update their NDCs until 2025, which according to existing estimations require climate financing ranging between 455 and 584 billion dollars yearly by 2030 (Climate Partner, 2024).

Considering the aforementioned financial goals, and in the context of expectations and the achievement of truly realistic results, it is questionable whether the stated financial framework is indeed feasible, or rather too ambitious. In this sense, the issue arises regarding the realism and to some extent the failure in fulfilling earlier goals from previous conferences. The stated goal, therefore, to a certain extent raises doubts about its feasibility.

Analyzing the objectives and expectations of the ambitiously set frameworks, the realization of the agreement requires clear political will as well as precise mechanisms for collection and allocation of funds. In this regard, potential problems could arise concerning the fulfillment of obligations by donor countries. Furthermore, institutional, administrative, and technical support in many developing countries lacks the capacity to implement large-scale climate projects, and special attention should be given to this issue in the context of striving to achieve all established expectations.

All of the above casts doubt on the highly ambitious goals. It is undeniable that strategically, it is important to take all measures regarding mitigating the consequences of climate change and that those are crucial projects for the survival of humanity, which makes the financial framework set for COP29 understandable. However, concern remains since even the previous goal set in the Copenhagen Conferences, which was set to 100 billion dollars yearly wasn't entirely achieved, or has been "hardly met" (AP News, 2024).

Accordingly, in addition to clearly defined ambitious goals, it is essential to ensure a mechanism for their implementation, and the question here remains whether the stated frameworks will deliver the desired results till the next Conference.

4. Perspective COP29

Even though COP29 brought an advancement in regards to climate financing, and can be considered an important moment in the evolution of climate negotiations, there remains an open question of its implementation, meaning that it will be necessary to monitor whether the obligations agreed upon will be carried out.

The aforementioned geopolitical situation, in correlation with the location of COP29, seems to send a somewhat ambiguous message, considering that the topic was that of climate change" and that Azerbaijan is a country whose economy heavily relies of fossil fuels. Due to the increasing complexity of the geopolitical situation, the issue of energy security comes into focus, raising the question of whether the most pressing issue at this moment is the consequences of climate change or ensuring continuous global energy security. There is undoubtedly a global race to secure energy resources, while at the same time the visibility of climate change and its consequences necessitates increasing financial investments by countries to mitigate these impacts. This appears to be a constant struggle between the two sides, with the question of how to reconcile them. In this sense, clearly set goals at COP29 represent hope for a good perspective and expectations regarding this very big global problem – climate change. Looking at COP29 and the agreement reached, the agreement on NCQG is presumed to raise ambition, provide greater clarity and open the possibility for cooperation in this area (Watson, Tan, Pettinotti & Colenbrander, 2024).

Considering the ambitious setting of goals and financial frameworks, we can say that COP29 in Baku represents an important turning point and provides a good foundation for further negotiations. According to an analysis published in the journal Science (Buchner, 2024), COP29 is designated as the "Finance COP" because the focus of the Conference is on the mobilization of funds. Also, it is very important to emphasize the agreement on Article 6 of the Paris Agreement, which refers to international emissions trading, bearing in mind that after nine consecutive conferences there was no agreement on the aforementioned article, and the norms of the supervisory structure, transparency and mechanisms for the carbon credit market were finally established (Blomfield & Ferris, 2024).

All of the above indicates that the next Conference, COP30, which will be held in Belém (Brazil), will represent the key event, primarily the first steps in the implementation of the new NCQG and NDCs should already be visible. In this connection, and in the context of the perspective of COP29, it is necessary to look at the upcoming COP30. At the COP30 meeting, and according to the Open Science Charter initiative, it is emphasized that scientific data should be open, in order to achieve the goal of accelerating climate solutions. Also, Marina Silva, Minister of Environmental Protection and Climate Change of Brazil, pointed out that COP30 should mark the transition from the declaration phase to the implementation phase, planning the end of use of fossil fuels and enhance forest protection (Villamil, 2024).

Summarizing the above, and looking at the perspective of COP29, the fact is that a clear intention to make concrete and long-term decisions has been expressed, and the intention of the international community for the existence of consistency and the creation of large-scale goals for the best possible results in the future can be seen. For now, we cannot speak with clarity about a more concrete perspective of COP29, because it remains to see the results in practice, i.e. for states to undertake obligations to mitigate climate risks, as well as the question of whether the next COP will confirm this current direction and transform global climate policy.

5. Concluding remarks

The conference in Baku showed once again that the existence of complexities around climate negotiations is evident, but also a key message about climate consensus and solidarity was also sent. The states have certainly expressed their readiness for further negotiations and improvement of cooperation, for which compromises and the states' agreement to additional compromise solutions are always necessary, and once again the continuity in the development of global climate policy has been demonstrated.

COP29 resulted in agreements on defining the NCQG of 100 billion dollars, partial progress was made in the implementation of market mechanisms from Article 6 of the Paris Agreement, countries were invited to improve their NDCs by COP30, work continued on the operationalization of the loss and damage fund, and the need for a just energy transition and the advancement of the global adaptation goal was additionally emphasized.

In accordance with the above, and considering that COP29 is also called the "financial COP", the question arises whether the mentioned financial measures to be taken really answer the pressing questions about climate finance, because it often happens that the agreed activities are lacking, given the frequent lack of political will to implement them. Also, an indispensable segment in order to achieve the set goals implies the harmonization of energy, economic and climate interests, which complicates the process of realization itself. Also, some progress can be expected if national policies are harmonized with the conclusions adopted at COP29.

It remains to be seen in the future whether concrete agreements will produce the expected results, and whether COP29 will remain just another in a series of conferences that had partial results, or whether it will really have concrete results in full. In this regard, perhaps C29 will be remembered in history as a tipping point and turning point that provided a new direction

in the fight against climate change, or it will be remembered as just another compromising agreement.

Conflict of Interest
The author declares no conflict of interest.

Lekić Ana
Ministarstvo pravde Republike Srbije, Beograd, Srbija

COP29 ISHODI I PERSPEKTIVE

APSTRAKT: Konferencija COP29, održana u Bakuu 2024. godine predstavlja važan trenutak dalje nadgradnje i sprovođenja Pariskog sporazuma u kontekstu osnaživanja borbe protiv klimatskih promena. Imajući u vidu ne tako povoljne klimatske prilike i klimatsku krizu koja je u usponu, COP29 predstavlja ključnu tačku za pronalaženje rešenja i postavljanja novih ciljeva. Sa tim u vezi, fokus konferencije bio je usmeren na nove okvire za finansiranje klimatskih promena, a koje se odnose na povećanje nacionalno utvrđenih doprinosa (NDC), zatim usvajanje novog kolektivnog cilja finansiranja nakon 2025. godine, kao i podrška zemljama u razvoju. Posmatrajući geopolitičku situaciju evidentno je postojanje mnogobrojnih ekonomskih i političkih izazova koji u velikoj meri mogu da utiču na implementaciju svih do sada donetih rešenja, a koji se pogotovo reflektuju na države u razvoju. Ako govorimo o ishodima konferencije, COP29 je postavio nove smernice u vezi sa globalnom politikom oko klimatskih promena, ali se postavlja pitanje njegove suštinske implementacije. Predmet istraživanja u radu predstavljaće sagledavanje razvoja međunarodnog klimatskog režima kroz prizmu ishoda i izazova implementacije standarda COP29. Posebna pažnja biće posvećena analizi ključnih očekivanja međunarodne zajednice u kontekstu ostvarivanja ciljeva postavljenih kroz COP29.

Ključne reči: *COP29, klimatske promene, Pariski sporazum, klimatsko finansiranje, NDC, NCQG.*

References

1. Aliyeva, H. (2021). The Role of the COP26 Summit in Climate Change. *Интернаука*, (44), pp. 12–15
2. AP News. (2024). *COP29: Developing countries remain skeptical after past climate finance delays*, November 15 Downloaded 2025, June 10 from https://apnews.com/article/74c972d892eb99c079622953102dd54c
3. Arora, P. (2025). COP29: Achieving net zero through financial sustainability. Environmental Sustainability, *8*, pp. 1–6
4. Arora, P., & Arora, N. K. (2023). COP27: A summit of more misses than hits. *Environmental Sustainability*, *6*(1), pp. 99–105
5. Bhattacharya, A., Songwe, V., Soubeyran, E., & Stern, N. (2024). *Raising ambition and accelerating delivery of climate finance*. London: Granthan Research Institute on Climate Change and Environment, London: School of Economics and Political Science.
6. Blomfield A., & Ferris W. (2024). *Article 6 developments at COP29 and their implications for carbon markets*. Downloaded 2025, June 10 from https://www.clydeco.com/en/insights/2024/12/carbon-trading-and-article-6-at-cop29
7. Bodansky, D. (2001). The history of the global climate change regime In: Luterbacher, U., & Sprinz D., F. (eds), *International relations and global climate change* (pp. 23–39). London: Cambridge
8. Buchner, B. (2024). COP29's climate investment imperative. *Science*. DOI:10.1126/science.adu3212 Downloaded 2025 July 15 from https://www.science.org/doi/full/10.1126/science.adu3212
9. Climate Partner (2024). *COP29 outcomes: What they mean for climate finance and carbon markets*. Downloaded 2025, June 12 from https://www.climatepartner.com/en/knowledge/insights/cop29-outcomes-what-they-mean-for-climate-finance-and-carbon-markets
10. Hill, C., A., & Mahat P. (2024). *Was COP29 in Azerbaijan a failure?* Council on Foreign Relations. Downloaded 2025, June 15 from https://www.cfr.org/expert-brief/was-cop29-azerbaijan-failure
11. Kyoto Protocol to the United Nations Framework Convention on Climate Change, December 10, 1997. United Nations Treaty Series, 2303, 162
12. Maslin, M. A. (2020). The road from Rio to Glasgow: A short history of the climate change negotiations. *Scottish Geographical Journal*, *136*(1-4), pp. 5–12
13. Paris Agreement to the United Nations Framework Convention on Climate Change, December 12, 2015, T.I.A.S. No. 16-1104

14. Regionalni centar za ekološko pravo (RCEL), *COP29: Ključni zaključci*. [Regional Center for Environmental Law (RCEL), *COP29: Key conclusions*]. Downloaded 2025 July 17 from https://rcel.rs/sr/cop29-kljucni-zakljucci/
15. Stiell, S., Guterres, A., & Lagarde, C. (2024). COP29: The Economic Case for a New Common Quantified Goal of Climate Finance (NCQG) at Scale. *Financial Times,* Downloaded 2025 July 15 from https://e-axes.org/wp-content/uploads/2024/11/COP29-PB_11_20_2024a-1.pdf
16. Todić, D. (2016). Pariski sporazum o klimi u svetlu ciljeva i principa savremene politike i prava životne sredine [Paris agreement in the light of the objectives and principles of the contemporary policy and environmental law]. *Megatrend revija*, *13*(3), pp. 45–62
17. Todić, D., & Dimitrijević, D. (2012). Klimatske promene i Ujedinjene nacije [Climate change and the United nations]. *Pravni život*, *61*(12), pp. 259–276
18. Townend, R. (2024). *Azerbaijan's climate leadership challenge: COP29 and the 'Troika' – an opportunity and a risk for global climate governance*. London: Chatham House.
19. United Nation Climate Change (2024). *UN Climate Change Conference Baku – November 2024*. Downloaded 2025 July 17 from https://unfccc.int/cop29
20. United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107
21. Villamil E. (2024). *COP30 will be key to redefining the future of the planet, says Marina Silva in India.* COP30 Official Website. Downloaded 2025 July 10 from https://cop30.br/en/news-about-cop30-amazonia/cop30-will-be-key-to-redefining-the-future-of-the-planet-says-marina-silva-in-india
22. Watson, C., Tan, E., Pettinotti, L., & Colenbrander, S. (2024). *Did COP29 end with a good New Collective Quantified Goal decision?* Downloaded 2025, June 10 from https://odi.org/en/insights/did-cop29-end-with-a-good-new-collective-quantified-goal-decision/

Končar Sonja[*]
https://orcid.org/0009-0009-1281-9076

UDC: 334.73(497.11:497.5)
Review article
DOI: 10.5937/ptp2504253K
Received on: October 8, 2025
Approved for publication on:
November 2, 2025
Pages: 253–268

FORMATION OF COOPERATIVE CAPITAL – CHALLENGES, LEGAL FRAMEWORK AND DEVELOPMENT POTENTIAL

ABSTRACT: A cooperative, as a specific form of business entity primarily focused on the joint realization of the aspirations of its members, holds a significant position in modern business flows, affirming itself as a relevant factor in the sustainable development of a social community. On a global level, cooperatives are faced with many complex challenges, among which the problem of securing adequate financial prerequisites for their functioning is especially emphasized. In that regard, the formation of cooperative capital as a basic financial resource intended for business operations, represents one of the key challenges in terms of survival and further development of the cooperative sector. Although different factors influence the availability of cooperative capital, legislative support represents a key determinant since the compliance of the legal framework with modern business tendencies and current practices within the formation of the cooperative capital area, as well as the level of its flexibility and efficiency in application, significantly determines the development potential of a cooperative. At the same time, this fact opens up space for critical consideration of existing legal solutions within the field. In this paper, we first analyze the modern business environment

[*]PhD Candidate, University Business Academy in Novi Sad, Faculty of Law for Commerce and Judiciary in Novi Sad; Public Defender's Office of the City of Novi Sad, Novi Sad, Serbia, e-mail: ksonja052@gmail.com

and the importance of cooperative capital formation, considering current solutions and development perspectives in this area. Subsequently, using a comparative method to examine the legal frameworks of Serbia and Croatia, the domestic legislation is critically assessed in the segment related to the formation of cooperative capital. The aim of this paper is: 1) to examine whether the existing model of cooperative capital formation within positive legislation enables a cooperative's competitive market positioning and contributes to its sustainable development, and 2) to offer solutions through *de lege ferenda* proposals for improving the legislative framework in the field of financing cooperative business operations, in accordance with contemporary economic trends.

Keywords: *cooperative, cooperative capital, comparative analysis, de lege ferenda.*

1. Introduction

A cooperative represents an autonomous association of entities joining in voluntarily with the aim of satisfying their economic, social and cultural aspirations through a jointly owned and democratically controlled enterprise. As a specific form of organizational structure, a cooperative's identity is based on clearly defined social values – self-help, self-responsibility, democracy, equality, fairness and solidarity, while its business operations are based on the application of the voluntary and open membership principle, democratic control by its members, economic participation of its members, autonomy and independence, education, training and information, inner cooperative cooperation and responsibility towards the community (International Cooperative Alliance [ICA], 1995). Special characteristics of cooperative organizing and operations are determined by the mentioned cooperative values and principles (Nikolić, 2014, p. 15).

The importance of cooperatives on a global level is emphasized by the fact that there are 2,94 million registered cooperatives worldwide, with over 1,2 billion cooperative members (Eum, 2017, p. 12). As opposed to classic business enterprises, the main purpose of the cooperative is not the realization of profit as a primary goal, but the satisfaction of economic, social and development needs of its members, where it significantly contributes to the sustainable development of local communities and society as a whole (Fernandez-Guadaño, Lopez-Millan & Sarria-Pedroza, 2020, p. 1). Also, a cooperative has a significant role in the strengthening of global economic

stability, incentivizing economic growth and increasing employment, while at the same time representing a key factor in the improvement of sustainability and social responsibility (Sudarić, Lončarić & Zmaić, 2019, p. 290). However, a cooperative is also a direct participant in the market competition with other business entities, operating as a financially viable and competitive form of organization, and essentially represents an economic organization since the achievement of business success and economic gain is a necessary prerequisite for its survival (Vitez, 2018, p. 19; Dabić, 2011, p. 132). In the modern, highly competitive market environment, cooperatives are forced to compete with profit-oriented business entities whose primary motivation is the maximization of gains. Such entities have at their disposal a wide array of available and varied sources of capital, enabling them, especially within the long-term investment domain, a competitive advantage compared to others whose business model is based on cooperative values and the application of cooperative principles (Li, Jacobs & Artz, 2015). As per the above mentioned, within the modern market context, one of the most serious challenges for cooperatives is the securing of adequate financial resources, since the formation of cooperative capital as a central instrument for sustainable business operations and the implementation of development policies, represents a basic condition for their long-term market competitiveness. Although cooperatives, like other business entities, have at their disposal different additional capital raising methods, the selection of appropriate sources of financing makes it harder while risking the cooperative identity and alignment with profit oriented organizations (Nikolić, 2018, p. 73). Also, and even though the availability and stability of capital for financing of business obligations is influenced by a number of factors, undoubtedly the legal and institutional framework has a decisive input on the defining of sources of cooperative financing. In that regard, as an entity simultaneously comprising both a market and social component (Benavides & Ehrenhard, 2021, p. 973), determined by identity based cooperative principles, a cooperative finds itself in a specific position requiring a precisely shaped and functionally aligned normative institutional frame. It is precisely because of this that the theme of this paper is the consideration of modern economic flows, current perspective in terms of formation of cooperative capital, with critical analysis of relevant legal solutions in Serbia and Croatia with the implementation of comparative methodology, all with the aim of considering in what measure current laws and regulations in the Republic of Serbia enable the cooperative sector to adequately respond to current tendencies within the cooperative capital formation area. The choice of analyzed legislation in this paper is based on their joint legal succession, as well as the fact that the

Croatian cooperative system is aligned with European legal standards, which enables insight into different models of securing.

2. Complexity of current business climate and challenges to the cooperative sector

Modern global business atmosphere is marked by factors initiating a high level of instability, creating pressure on economic organizations and demanding a constant evaluation of their competitive capabilities for successful functioning in a highly competitive environment (Nikolić, 2009, p. 15). Basic qualities of a modern business system are fast technological development, the globalization process, climate change and political uncertainty, simultaneously generating new development possibilities for business entities but also representing serious challenges. Understanding these characteristics and challenges is not only important for large international companies, but also for cooperatives intending to remain competitive and sustainable in such an environment. Globalization, open markets and over the border economic dependence represent the bases of the modern business system that enables a faster flow of goods, services, capital and knowledge (Vujičić, Staletović, Stevanović & Gavrilović, 2022, p. 28). However, global financial connections are subject to risk and uncertainty due to the fact that local crisis, such as pandemics, geo-political conflicts and energy disruptions, can quickly escalate, generating significant consequences for distant economies. Also, and regardless of the benefits of globalization, many countries are faced with equal market access problems, as well as access to technologies and financial instruments, which makes the use of global economy opportunities more difficult (Yu, 2024). Technologies such as automation, digital platforms and artificial intelligence intensely and continuously change the ways of production, distribution and consumption, increasing efficiency while, at the same time, confronting business entities with ever more increasing challenges for adaptation and investment (Ayinaddis, 2025). In that regard, within the modern business environment, the development and sustainability of entities on the market, regardless of their industry, greatly depends on a high level of integration of digital technologies in their business operations (Dukić Mijatović, Uzelac & Mirković, 2022, p. 1226), which implies the need for additional investments. A specific characteristic of the modern business system is the intense climate change demanding a need for sustainable management of resources, as well as the transition of production processes in terms of use of renewable energy sources (Manera & Serrano, 2022). Key

challenges of the modern business atmosphere are reflected in the fact that industrial growth and increasing demand for resources leads to a degradation of the environment (Guo, Meng, Luan & Wang, 2023), while, simultaneously, the transition towards more sustainable technologies requires significant investments. Also, high fluctuations of interest rates, currency rates, cost of energy and raw materials, can destabilize companies without sufficient immunity or diversification. Restrictions in global trade, tariffs, politicization of economic outcomes as well as different forms of sanctions, represent an uncertainty factor, greatly hindering the planning of production processes for all market actors. In that regards, business entities with insufficient capital for the implementation of new technologies and development of digital capacities are faced with a significant risk of falling behind compared to the competition. Accordingly, we can conclude that the modern global business atmosphere, marked by the mentioned characteristics, imposes to cooperatives a need for constant adaptation and strengthening, and that their capability to face challenges greatly depends on the securing of adequate capital for investment into innovation, digitalization and business sustainability, as well as the building of capacities for risk management on an unstable market. Without adequate financial resources, cooperatives risk losing their competitive position, weakening their socio-economic legitimacy. At the same time, appropriate capital reinforcement potentially enables them to become stable, long-term, sustainable participants in a global economy. In that regard, as all other business entities, cooperatives also need mainly stable capital, access to new sources of financing, flexibility in financing and efficient support, defined by appropriate legislative and institutional framework.

3. Cooperative capital formation models within the modern business context

Most developed countries economies basically rely on privately owned companies, where profit dominates as a key motivator of economical dynamics. Although such approach motivates the maximization of private benefit, it frequently results in the neglect of wider social good and collective interests (Mills, 2009, p. 1). As opposed to privately owned companies, cooperatives represent a business model focusing on the satisfaction of its members, as well as the sustainable development of a wider community. However, although the satisfaction of members and community needs is the imperative of cooperative operations, cooperatives also strive towards the realization of positive business results, continuous growth and preservation of stability

and predictability of the socio-economic environment they operate in, which implies the realization of the need for adequate capital. Capital is the basic financial resource of every business entity, since it ensures stability, continuity and business sustainability. In that regard, cooperative capital has a significant role in the financing of main development activities, preservation of liquidity and long-term business operations of the cooperative. The specificity of cooperative capital is reflected in its, two-fold, economic and social dimension which requires a special normative treatment compared to the capital of companies. Namely, cooperative capital is different from the capital of classic business entities because it is directly tied to the cooperative identity, that is, the value and principle base on which the cooperative functions. As per the stated, the method of formation of cooperative capital is, in great measure, determined by basic cooperative self-help values, as well as the principle of democratic control by its members, the economic participation of members, autonomy and independence. Namely, the self-help principle implies that the cooperative members, through their own resources and joint engagement satisfy their aspirations, democratic control by the members ensures that all members participate in the decision making process per the one member – one vote principle, economic participation means that members invest capital into the cooperative and equally participate in the distribution of surplus realized through business operations, while the principle of autonomy and independence implies that cooperatives are to remain independent organization under the control of its members, regardless of their cooperation with external partners or the use of investment resources, supplied by governmental or international institutions (ICA, 2015).

According to Rouse and Von Pischke (1997), traditionally and in accordance with the cooperative identity, the cooperative capital is gathered from three basic sources: directly from members through cooperative contributions, from retained earnings, and from external sources. The most frequent method of cooperative financing comes directly from its members, where capital in form of cooperative contribution represents a form of dedication of members to the cooperative and a financial share retrieved only when leaving the cooperative. The second important source of capital is the retained earnings, and it represents a collective ownership of the cooperative used for long-term needs such as investments in technology, education and improvement of business operations. Aside from these internal sources of capital, cooperatives are in a position of using external financing sources, including cooperative and commercial banks, suppliers, government and donor agencies, where all assets can be in form of grants, short or long term loans, as well as commercial

credits. Nikolić (2018), emphasizes that modern cooperatives, as per their different raising capital models, can be divided into three large groups, where the first group is comprised of traditional cooperatives where capital is formed exclusively through members contributions, as well as the surplus of income the members have decided not to mutually distribute.. The second group is made of new generation cooperatives where part of the capital is formed by member's contributions, while part can be raised from shares issued by the cooperative. The third group, the most current model present in a large number of European countries since the end of the 1980's as well as the United States since the beginning of the 21st century, are cooperatives with investors where members can become individuals who are not users of the cooperative services, but have invested capital into the cooperative enabling them to have all the rights the users have, including voting rights. These cooperatives raise capital in part from contributions of their members/users, and in part from external members, where these members only invest into the cooperative but don't use its services.

Even though member's contributions and capital from retained earnings ensure business stability and long-term development without the risk of debt, if the economic sustainability of modern cooperatives relies only on capital investments of their founders, that is members, such a model becomes hardly sustainable in the long term (Dukić Mijatović, Uzelac & Mirković, 2022, p. 1234). In that regard, it is emphasized that cooperatives need constructive, stable and controlled capital, and that it is of global importance to find mechanisms through which individual savings and citizen's assets can be transformed into cooperative, and not non-exclusively investor capital (Robb, Smith & Webb, 2010). Beginning with the fact that in a dynamic and uncertain business environment the preservation of competitive position and long-term sustainability depends on the capabilities of the business entity to align its resources with market circumstances (Gardašević, Carić, Kovačević & Egić, 2022), the conquering of modern market challenges requires creating adequate financial instruments that, without disrupting the essential elements of cooperative identity, enable individuals to efficiently invest into cooperatives. In that way, cooperatives would become a competitive and attractive alternative for investors, where capital flow would potentially be diversified and the domination of private sector in investment choices would decrease. In its essence, this process comes down to finding a model that enables citizens to place assets they do not currently need in a way that will both satisfy their needs for security as well as the capital needs of the cooperative. In that regard, and with the aim of strengthening the cooperative

sector, it is necessary to offer specific suggestions to potential investors and to promote cooperative capital as a sustainable and socially responsible and long-term alternative in comparison to the traditional forms of credit and profit oriented capital (ICA, 2013).

One of the main challenges in the business operations of cooperatives with investors comes out of potential differences in the interests of members-users and members-investors. Namely, while members-users aim towards the most beneficial business operations conditions, members-investors are mainly interested in maximizing profit at the end of the business year. Such a membership structure creates a possibility for a conflict of interest but, as emphasized by Avsec (2009, p. 122), their presence does not have to necessarily lead to dysfunction. Namely, members-investors can only realize dividends if the cooperative operates successfully in collaboration with active members, which creates interdependence and obliges both membership categories to consider the interests of others. Also, taking into account that the lack of balance between external and internal capital, especially in a situation of dominance of members-investors, can lead to a formation of weak and unsustainable cooperatives (Yu & Nilsson, 2019), the implementation of an optimal balance between different types of capital of interest groups poses a central challenge for the preservation of cooperative identity and long-term sustainability of the business model of cooperatives with investors.

4. Legislation for formation of cooperative capital in Serbia and Croatia

In continuation we will show a review of law and regulations, regulating the formation of the cooperative capital sector in Serbia and Croatia.

According to cooperative laws and regulations (Law on cooperatives, 2015), depending on the defined foundation goals and estimated financial needs, cooperatives secure assets for their operations through members contributions or membership fees, in accordance with the establishment agreement and cooperative rules. The share capital is formed based on cooperative member's contributions and cannot be less than 100 dinars, while the cooperative rules determine the minimum individual contribution of the cooperative member. A member can have just one contribution in the cooperative, where contributions of the members don't have to be equal. The law states that the member's contributions can be both cash and non-cash, where the non-cash contributions are considered to be objects and rights expressed in cash value. The share capital of the cooperative can, by decision

of the cooperative assembly, be increased only in a traditional manner, as follows: contributions of new members, increasing contributions of existing members or through capitalizing retained earnings, that is, assets available for such purpose. Cooperatives founded without members contributions, ensure the assets for establishing business operations through membership fees, where the fee is established through cooperative rules in an amount equal for all founders as well as those members joining the cooperative after its establishment.

According to Croatian cooperative laws and regulations (Law on cooperatives, 2011) in order to realize the business activity and to service its obligations toward third parties, a cooperative uses members contributions, assets realized through business activities and other cooperative activities, as well as assets gathered through different means. A special place in the structure of assets for the realization of business activities is occupied by the member's contribution, which can be initial or additional. The initial contribution is a cash amount each member is obliged to contribute during the establishment of the cooperative or when joining an existing cooperative. The amount is determined by decision of the cooperative assembly and is equal for all members, where the law determines the minimum amount. The additional contribution is an additional investment the member can make along with the initial contribution, and the amount is also determined by the cooperative assembly. Although the contribution is almost always introduced as cash, the Croatian cooperative legislation enables the introduction of contributions in objects and rights, the value of which is estimated through court evaluation. Aside from the members, the law states the possibility for the contribution to be introduced into the cooperative by a person who is not a member, but is interested in its operations. In those cases, mutual rights and obligations are subject to a special agreement between the cooperative and the investor, while their contributions are treated separately in bookkeeping. The rules of the cooperative can envision that a representative of an investor, elected in accordance with internal acts, can represent the views of the investor at the assembly, especially when decisions that can impact the safety and feasibility of their contributions are being made. Also, the Croatian cooperative legislation states the possibility of having the rules of the cooperative manage the possibility of having members ensure operational assets through membership fees.

Accordingly, a comparative analysis of legal frameworks of Serbia and Croatia indicates a significant difference when it comes to the inclusion of external investors into the cooperative sector. And while the Serbian legal

framework still favors traditional forms of financing, with an accent on initial contributions, membership fees and profit as a mechanism for securing capital, the Croatian legal model enables additional inclusion of external investors, more precisely regulates the types of contributions and envisions an active participation of the investor in the decision making process, under certain conditions, which leads to differences in the level of openness to alternative forms of capital and institutional flexibility when it comes to the structuring of financial instruments. In that regard, we can determine that the Croatian model shows a higher adaptability to modern economic trends, while preserving cooperative identity through membership protection mechanisms and control in decision making processes.

5. Conclusion

In today's economic environment, cooperatives are facing increasing challenges in securing capital. Traditional sources of funding, such as membership contributions and retained earnings, are no longer sufficient to meet the complex demands of a competitive market and dynamic technological changes. One potential solution is the inclusion of external investors, which enables cooperatives to expand their financial capacity, provided that the cooperative identity is preserved through clearly defined normative control mechanisms.

Differences in the degree of normative openness toward this model can be observed through a comparative analysis of the legal frameworks of Serbia and Croatia. While the Serbian legislative framework maintains a traditional approach and does not recognize the institute of investor membership, the Croatian model allows for the inclusion of external investors under clearly prescribed conditions, types of contributions, and decision-making rights. This approach demonstrates greater adaptability to modern global economic trends and institutional readiness to preserve the cooperative identity through legislative innovations while also enabling cooperatives to remain competitive in a market economy.

Accordingly, it is assumed that the implementation of this model into Serbia's cooperative legislation would allow for a diversification of capital sources, increase the financial resilience of cooperatives, and strengthen their position within the economy. Starting from the premise that it is the state's responsibility to create progressive legislation to ensure the development of cooperatives (Vitez, 2010), there is a clear need to design and implement a stimulating legislative framework that will enable the cooperative sector to

develop sustainably and to ensure its fair position in the market, equal to that of traditional enterprises.

In this context, current legal provisions should be reconsidered, supplemented, or amended with the following proposed solution, directed at lawmakers as a *de lege ferenda* proposal.

It should be provided that, fully respecting the cooperative identity, individuals interested in the cooperative's operations may participate in the financing of its business activities through contributions. This would allow them to support the sustainable development of the cooperative and the improvement of cooperative business activities, therefore contributing to the overall economic development of the wider community. However, it is particularly important to keep in mind that a legal framework alone does not guarantee the achievement of predetermined goals without effective and substantive implementation, which is essential for delivering the expected results (Dukić Mijatović, Ozren & Stoiljković, 2023, p. 11). Even the best cooperative law is no guarantee for establishing an effective cooperative system (Hagen, 2002, p. 48).

Therefore, alongside legislative changes, it is necessary to develop institutional support mechanisms and public policies focused on affirming cooperatives as a relevant and competitive form of economic organization in the modern economy. In this regard, promoting the importance of cooperatives and attracting and encouraging investors or other parties interested in the cooperative's operations, under the condition of fully respecting the cooperative identity, to participate in forming cooperative capital, would be essential prerequisites for the effective and comprehensive application of the proposed legal solutions.

Conflict of Interest

The author declares no conflict of interest.

Končar Sonja
Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe u Novom Sadu; Pravobranilaštvo Grada Novog Sada, Novi Sad, Srbija

FORMIRANJE ZADRUŽNOG KAPITALA – IZAZOVI, PRAVNI OKVIR I PERSPEKTIVE RAZVOJA

APSTRAKT: Zadruga, kao specifičan organizaciono-pravni oblik privrednog subjekta, usmeren pre svega na ostvarivanje zajedničkih aspiracija svojih članova, zauzima značajnu poziciju u savremenim privrednim tokovima i afirmiše se kao relevantan činilac održivog razvoja društvene zajednice. Na globalnom nivou, zadruge se suočavaju sa brojnim i složenim izazovima, među kojima se posebno ističe problem obezbeđivanja adekvatnih finansijskih pretpostavki za njihovo funkcionisanje. U tom kontekstu, formiranje zadružnog kapitala, kao osnovnog finansijskog resursa namenjenog poslovanju, predstavlja jedan od ključnih izazova u pogledu opstanka i daljeg razvoja zadružnog sektora. Iako na dostupnost i stabilnost zadružnog kapitala utiču različiti faktori, legislativna podrška predstavlja ključnu determinantu, budući da usklađenost pravnog okvira sa savremenim privrednim tendencijama i aktuelnim praksama u oblasti formiranja zadružnog kapitala, kao i stepen njegove fleksibilnosti i efikasnosti u primeni u značajnoj meri određuju razvojne potencijale zadruga. Istovremeno, ova činjenica otvara prostor za kritičko razmatranje postojećih zakonodavnih rešenja u predmetnoj oblasti. U radu se najpre, kroz analizu savremenog privrednog ambijenta i značaja formiranja zadružnog kapitala, razmatraju aktuelna rešenja i razvojne perspektive u ovoj oblasti, dok se potom, primenom komparativne metode i upoređivanjem zakonskih okvira Srbije i Hrvatske, kritički sagledava domaća regulativa u segmentu koji se odnosi na formiranje zadružnog kapitala. Cilj istraživanja u ovom radu je: 1) da se ispita da li postojeći model formiranja zadružnog kapitala u pozitivnom zakonodavstvu omogućava konkurentno tržišno pozicioniranje zadruge i doprinosi njenom održivom razvoju, i 2) da se kroz predloge *de lege ferenda* ponude rešenja za unapređenje zakonodavnog okvira u oblasti finansiranja zadružnog poslovanja, u skladu sa savremenim ekonomskim trendovima.

Ključne reči: *zadruga, zadružni kapital, komparativna analiza, de lege ferenda.*

References

1. Avsec, F. (2009). Članstvo korisnika i investitora u zadruzi: uporedni pregled uređenja u evropskom privrednom prostoru i SAD [Membership of users and investors in a cooperative: comparative review of organization in business space of the USA]. *Strani pravni život, 53*(2), pp. 85–126
2. Ayinaddis, S. G. (2025). Artificial intelligence adoption dynamics and knowledge in SMEs and large firms: A systematic review and bibliometric analysis. *Journal of Innovation & Knowledge, 10*(3), p. 100682. Downloaded 2025, September 14 from https://www.sciencedirect.com/science/article/pii/S2444569X25000320?via%3Dihub
3. Benavides, A. F. C., & Ehrenhard, M. (2021). Rediscovering the cooperative enterprise: A systematic review of current topics and avenues for future research. *Voluntas: International Journal of Voluntary and Nonprofit Organizations, 32*(5), pp. 964–978. DOI:10.1007/s11266-021-00328-8
4. Dabić, Lj. (2011). Zadruge kao poseban pravnoorganizacioni oblik (uporednopravni pristup) [Cooperatives as an individual legal and organizational form (comparative and legal approach)]. *Pravo i privreda, 48*(4–6), pp. 126–150
5. Dukić Mijatović, M. S., Ozren, U. N., & Stoiljković, A. V. (2023). Corporate social responsibility and sustainable development: International legal framework for goals achievement and some theoretical insights. *Pravo – teorija i praksa, 40*(1), pp. 1–16. DOI:10.5937/ptp2300001D
6. Dukić Mijatović, M. S., Uzelac, O. N., & Mirković, P. R. (2022). Digital token in the business function of cooperatives. *Ekonomika poljoprivrede, 69*(4), pp. 1225–1239. DOI: 10.5937/ekoPolj2204225D
7. Eum, H. S. (2017). Cooperatives and employment: Second global report for CICOPA. CICOPA. Downloaded 2025, September 15 from https://www.cicopa.coop/wp-content/uploads/2018/01/Cooperatives-and-Employment-Second-Global-Report-2017.pdf
8. Fernandez-Guadaño, J., Lopez Millan, M., & Sarria-Pedroza, J. (2020). Cooperative entrepreneurship model for sustainable development. *Sustainability, 12*(13), p. 5462. Downloaded 2025, September 13 from https://www.mdpi.com/2071-1050/12/13/5462
9. Gardašević, J., Carić, M., Kovačević, M., & Egić, S. (2022). Prikaz modela strategijske analize od značaja za poslovanje preduzeća i

donošenje strategijskih odluka. [Presentation of the strategic analysis model of significance for company operations and strategic decision making] *Ekonomija – teorija i praksa, 15*(1), pp. 81–97. DOI:10.5937/etp2201081G

10. Guo, X., Meng, X., Luan, Q., & Wang, Y. (2023). Trade openness, globalization, and natural resources management: The moderating role of economic complexity in newly industrialized countries. *Resources Policy, 85*, Article 103757. Downloaded 2025, September 13 from https://www.sciencedirect.com/science/article/abs/pii/S0301420723004683?via%3Dihub#preview-section-introduction
11. Hagen, H. (2002). Current trends in comparative cooperative law. *Pravo – teorija i praksa, 19*(9), pp. 48–61
12. Zakon o zadrugama [Law on cooperatives]. *Narodne novine*, br. 34/11, 125/13, 76/14, 114/18, 98/19
13. International Cooperative Alliance [ICA]. (1995). Statement on the cooperative identity. News No. 5–6/1995, 3. Downloaded 2025, January 15 from https://www.ica.coop/en/cooperatives/cooperative-identity
14. International Cooperative Alliance [ICA]. (2013). Blueprint for a co-operative decade. Downloaded 2025, January 15 from https://ica.coop/sites/default/files/2024-01/blueprint_for_a_co-operative_decade_-_english.pdf
15. International Cooperative Alliance [ICA]. (2015). Guidance Notes to the Co-operative Principles. Downloaded 2025, January 15 from https://ica.coop/sites/default/files/basic-page-attachments/guidance-notes-en-221700169.pdf
16. Li, Z., Jacobs, K. L., & Artz, G. M. (2015). The cooperative capital constraint revisited. *Agricultural Finance Review, 75*(2), pp. 253–266. Downloaded 2025, September 15 from https://www.emerald.com/afr/article-abstract/75/2/253/59677/The-cooperative-capital-constraint-revisited?redirectedFrom=fulltext
17. Manera, C., & Serrano, E. (2022). Management, Cooperatives and Sustainability: A new methodological proposal for a holistic analysis. *Sustainability, 14*(12), p. 7489. Downloaded 2025, September 14 from https://www.mdpi.com/2071-1050/14/12/7489
18. Mills, C. (2009). *Funding the future: An alternative to capitalism*. Mutuo. Downloaded 2025, September 15 from http://www.mutuo.co.uk/latest-releases/funding-the-future-an-alternative-to-capitalism-by-cliff-mills/
19. Zakon o zadrugama [Law on cooperatives]. *Službeni glasnik RS*, br. 112/15

20. Nikolić, M. (2009). *Evolucija zadružnog zakonodavstva u Evropi* [*The evolution of cooperative law in Europe*]. Beograd: *Društvo agrarnih ekonomista Srbije.* Downloaded 2025, September 15 from https://daes.org.rs/2009-nikolic-evolucija-zadruznog-zakonodavstva-u-evropi/
21. Nikolić, M. (2014). *Primena zadružnih vrednosti i principa i njihov uticaj na poslovanje poljoprivrednih zadruga u Srbiji – doktorska disertacija* [*Implementation of cooperative values and principles and their influence on business of agricultural cooperatives in Serbia – doctoral thesis*]. Beograd: Univerzitet u Beogradu, Poljoprivredni fakultet]. Downloaded 2025, January 15 from https://nardus.mpn.gov.rs/handle/123456789/4833
22. Nikolić, M. (2018). Modeli finansiranja zadruga [Models of financing the co-operatives]. *Finansije, 73*(1–6), pp. 66–88
23. Robb, A. J., Smith, J. H., & Webb, J. T. (2010). Co-operative capital: What it is and why our world needs it. In: *Financial Co-operative Approaches to Local Development Through Sustainable Innovation*, Trento, Italy. Downloaded 2025, September 15 from https://library.uniteddiversity.coop/Cooperatives/Co-operative_Capital-What_it_is_and_Why_Our_World_Needs_It.pdf
24. Rouse, J. G., & Von Pischke, J. D. (1997). *Mobilizing capital in agricultural service cooperatives*. Rome: Food and Agriculture Organization of the United Nations. Downloaded 2025, September 15 from https://www.fao.org/4/w5069e/w5069e03.htm
25. Sudarić, T., Lončarić, R., & Zmaić, K. (2019). Bioeconomy challenges in cooperative development. *Ekonomski vjesnik/Econviews: Review of Contemporary Business, Entrepreneurship and Economic Issues, 32*(2), pp. 333–345. Downloaded 2025, September 15 from https://scispace.com/pdf/bioeconomy-challenges-in-cooperative-development-4eociwze9e.pdf
26. Vitez, M. (2010). O nekim imovinsko-pravnim pitanjima zadruga u Srbiji [About some property law cooperative issues in Serbia] In: Tomić, D. (ed.), *Agrarna i ruralna politika u Srbiji : tematski zbornik, 3: Održivost agroprivrede, zadrugarstva i ruralnog razvoja [Agrarian and Rural Policy in Serbia: thematic proceedings, 3: Sustainability of Agrarian Economy, Cooperatives and Rural Areas]* (pp. 107–126). Beograd: Društvo agrarnih ekonomista Srbije
27. Vitez, M. (2018). Neki aspekti korporativnog upravljanja zadrugom. [Certain aspects of corporate management of a cooperative]. *Pravo – teorija i praksa, 35*(1–3), pp. 18–35. DOI: 10.5937/ptp1803018V
28. Vujičić, S., Staletović, M., Stevanović, M., & Gavrilović, M. (2022). Organizacione strukture preduzeća u savremenim uslovima poslovanja

[Certain organisational structures of companies in modern business conditions]. *Ekonomija: teorija i praksa, 15*(4), pp. 25–41. DOI: 10.5937/etp2204025V

29. Yu, L. (2024). The challenges and opportunities of globalization for developing countries' macroeconomics. *Advances in Economics, Management and Political Sciences, 76*, pp. 220–225. Downloaded 2025, September 13 from https://www.ewadirect.com/proceedings/aemps/article/view/11321
30. Yu, L., & Nilsson, J. (2019). Social capital and financial capital in Chinese cooperatives. *Sustainability, 11*(8), p. 2415. Downloaded 2025, September 14 from https://www.mdpi.com/2071-1050/11/8/2415

INSTRUCTIONS TO AUTHORS

FOR WRITING AND PREPARING MANUSCRIPTS

The editorial board of the journal "Law - Theory and Practice" requests that authors submit their texts for publication in accordance with the following instructions.

The journal publishes texts in the fields of law, economics, and social sciences. The journal accepts scientific articles, reviews, critical analyses, regulatory analyses, commentaries on court decisions, student papers, and other contributions. Texts should be submitted in both English and Serbian via the online OJS platform.

(http://casopis.pravni-fakultet.edu.rs/index.php/ltp/about/submissions).

The accepted papers will be published in English.

All submitted texts are subject to review. Each scientific paper is reviewed by a minimum of two reviewers selected by the editorial board.

The editorial board reserves the right to adjust the text to the journal's editorial standards.

General Information for Writing Papers:

The submitted text must be written in Microsoft Word, using the Times New Roman font, size 12 pt, in Latin script, with 1.5 line spacing. Use 25 mm for all margins. The text length should not exceed 12 A4 pages, including text, tables, images, graphs/charts, references, and other attachments.

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

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

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

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

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

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

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

After the Conclusion (i.e., following the Acknowledgments section) and before the author's affiliation and the summary in Serbian, the author should include a **Conflict of Interest Statement** as follows:

Conflict of Interest

The authors declare no conflict of interest.

After the Conflict of Interest Statement, it is necessary to specify the contributions of each author and co-author, if the manuscript has more than one author. This section is **not required** if the manuscript is authored by a single individual.

There are **14 Contributor Roles** defined by the **Contributor Role Taxonomy (CRediT),** which you can review at: https://credit.niso.org/

Please assign the contributions of each (co-)author according to this taxonomy. You may list either the full names or only the initials of the authors. For example:

Author Contributions

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.

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

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

RULES FOR IN-TEXT CITATIONS

When citing a source written by a single author:

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

Example:

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

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

Example:

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

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

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

When citing a source written by two authors:

Use "and" or "&" between the authors' last names, depending on whether the authors are mentioned in the sentence.

Examples:

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

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

When citing a source written by 3-5 authors:

For the first-time citation, list all authors:

Example:

(Cvijanović, Matijašević Obradović, & Škorić, 2017)

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

Example:

(Cvijanović et al., 2017)

When citing a source written by 6 or more authors:

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

Example:

(Savić et al., 2010)

When citing a text authored by an organization:

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

Example:

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

When citing texts by authors with the same surname:

Use the authors' initials to avoid confusion.

Example:

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

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

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

Example:

(Dragojlović, 2018a) (Dragojlović, 2018b)

When citing two or more texts in one citation:

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

Example:

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

When citing a newspaper article with a specified author:

Example:

It was reported in *NS uživo* (Dragojlović, 2021) that... In the reference list, format this reference as follows:

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

When citing a newspaper article without a specified author:

Example:

As published in *Politika* (2012)

In the reference list, format this reference as follows:

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

When citing personal correspondence:

Example:

According to Nikolić (2020),

In the reference list, format this reference as follows:

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

When citing a text in press:

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

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

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

Example in text:

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

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

Note:

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

Example for reference in a footnote:

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

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

When citing laws and other regulations:

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

Example:

(Criminal Procedure Code, 2011)

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

This rule also applies to laws or other regulations that are no longer in force.
Example:
(Criminal Code of the Republic of Serbia, 1977)

When citing international regulations, it is sufficient to mention the abbreviated name of the document along with its number and the year it was adopted.
Example:
(Regulation No. 1052/2013) or (Directive 2013/32)

When citing a text with an unknown publication date or author:
For works with an unknown date, use "n.d." (non-dated) in place of the year.
Example:
Their significance for parliamentary processes is immeasurable (Ostrogorski, n.d.)
If the paper uses a reference to a paper by an unknown author, cite the title of the paper and include the year if known.
Example:
All that has been confirmed by a mixed, objective-subjective theory (Elements of a criminal offense, 1986, p. 13).

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

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

References Section:

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

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

Example of referencing with a DOI number:

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

Example of referencing with a URL:

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

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

References

1. 1. Agencija za privredne registre. Privredna društva [Companies]. Downloaded 2020, January 10 from https://www.apr.gov.rs/o-agenciji.1902.html
2. California Secretary of State. Downloaded 2020, December 15 from https://www.sos.ca.gov/business-programs/
3. Dukić-Mijatović, M. (2011). Korporativno upravljanje i kompanijsko pravo Republike Srbije [Corporate Governance and Companies Business Law of the Republic of Serbia]. Pravo -teorija i praksa, 28 (1-3), pp. 15-22.
4. Dragojlović, J., & Bingulac, N. (2019). Penologija između teorije i prakse [Penology between theory and practice]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
5. Dragojlović, J. (2021). Anketirani Novosađani za vraćanje smrtne kazne u Ustav [Novi Sad residents surveyed to return the death penalty to the Constitution]. NS uživo, January 22.
6. Gopalsamy, N. (2016). A Guide to Corporate Governance. New Delhi: New Age International.
7. Jesover, F., & Kirkpatrick, G. (2005). The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries. Corporate Governance: An International Review, 13 (2), pp. 127-136. DOI: 10.1111/j.14678683.2005.00412.x
8. Milosavljević, B. (2015). Pravni okvir i praksa primene posebnih postupaka i mera za tajno prikupljanje podataka u Republici Srbiji [Legal framework and practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (ured.), Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse [Special measures for secret data collection: between law and case law] (pp. 5-33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15 from https://bezbednost.org/wpcontent/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podata ka_-_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.

Disclaimer

The views expressed in the published works do not necessarily reflect those of the Editors or the Editorial Staff. The authors bear full legal and moral responsibility for the ideas and opinions presented in their articles. The Publisher accepts no liability for any claims, damages, or compensation arising from the content of the published works.

The English proofreader and editor assumes responsibility solely for the quality of the English translation of the titles and abstracts of the scientific papers. The authors are responsible for the accuracy and quality of the English translation of the full text of their papers.

Pravni fakultet za privredu i pravosuđe u Novom Sadu
Univerzitet Privredna akademija

Pravni fakultet za privredu i pravosuđe u Novom Sadu
Univerzitet Privredna akademija

Novi Sad, Geri Karolja 1
Tel: 021/400-499,
469-513, 469-518
www.pravni-fakultet.edu.rs