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COMPENSATION FOR DAMAGE RESULTING FROM THE UNLAWFUL CONDUCT OF PUBLIC ENFORCEMENT OFFICERS

ABSTRACT: The liability of public enforcement officers for damage caused by unlawful conduct is grounded in constitutional guarantees, standards of professional care, and the rules of the law of obligations. The right to compensation for damage derives from the principle of the rule of law and the state's duty to ensure the effective enforcement of court decisions, applying a heightened standard of care inherent to holders of public authority. The current legal framework provides for the personal and unlimited liability of enforcement officers, while excluding state liability, which raises questions regarding its compatibility with legal certainty and the case law of the European Court of Human Rights. As a sustainable solution, strengthening professional standards, mandatory professional liability insurance, and the subsidiary liability of the state in exceptional cases are proposed.

Keywords**:** *liability of public enforcement officers, compensation for damage, constitutional guarantees, tort liability, enforcement procedure, legal certainty, subsidiary state liability.*

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1. Introduction

The institution of public enforcement officers represents one of the most significant contemporary solutions in Serbian positive enforcement law, introduced with the aim of enhancing efficiency and legal certainty in the process of compulsory claim enforcement. The introduction of this judicial profession contributes to strengthening the confidence of investors, citizens, and the business community in the effectiveness of claim recovery (Vojvodić, 2023, p. 31). By delegating public powers to private individuals, a hybrid model has been established in which public enforcement officers, as holders of public authority and subjects of private law, contribute to relieving the courts and improving enforcement efficiency, while simultaneously raising questions regarding their civil liability.

The constitutional order of the Republic of Serbia, based on the rule of law and legal certainty, guarantees the right to compensation for damage caused by the unlawful conduct of holders of public authority as a key mechanism for the protection of individuals, supplemented by the rules of obligations law concerning unlawfulness, causation, and the heightened standard of care of a diligent professional.

The court and public enforcement officers constitute the fundamental bodies of enforcement and security proceedings in domestic enforcement law (Crnjanski, 2024, p. 37). Private-law institutions must not conflict with the public interest, while public law may, in justified cases, intervene in private legal relations in order to guide and regulate them (Milojević, 2020, p. 56). A legal norm has value only when it expresses moral values (Trajković & Drakić, 2024, p. 368). An inefficient enforcement system that fails to provide creditors with legal certainty in realizing guaranteed rights undermines not only individual confidence but also the legal order of the state (Vavan, 2013, p. 227).

In legal theory, the prevailing view is that the civil liability of members of legal professions, such as attorneys, public notaries, and public enforcement officers, is largely shaped by case law and legal doctrine, since special regulations and ethical codes predominantly contain general rules and refer to the application of the general principles of tort law (Petrić, 2010, p. 24).

The specificity of the liability of public enforcement officers lies in the exclusion of state liability, despite the constitutional guarantee of the right to compensation for damage, which calls into question the compatibility of such a solution with the Constitution and the standards of the European Court of Human Rights, according to which the state retains ultimate responsibility for the effective enforcement of judicial decisions.

2. The Constitutional Basis of Liability

The Constitution of the Republic of Serbia (2006) is founded on the principles of the rule of law, the protection of human rights, and the guaranteed right to an effective legal remedy. Within this framework, the right to compensation for damage caused by the unlawful or improper conduct of public authorities and holders of public powers represents one of the fundamental instruments of individual legal protection. Protection against arbitrary, unlawful, or negligent conduct by state entities and persons acting in the public interest forms part of the broader constitutional concept of responsible and transparent governance.

Article 35 of the Constitution of the Republic of Serbia (2006) explicitly guarantees the right of every person to seek compensation for material and non-material damage caused by the unlawful or improper conduct of a state authority, a holder of public powers, or a local self-government body. In this way, constitutional protection goes beyond the classical model of state liability, as it also applies to legal and natural persons entrusted with public powers, including public enforcement officers.

The normative structure of this constitutional provision is based on several key premises: (1) an injured person must not be left without legal protection merely because a public function is exercised by a private entity; (2) the guarantee of compensation has both preventive and reparative functions; and (3) the liability of holders of public powers constitutes an extension of state liability, since the public function retains its public-law character regardless of the entity performing it.

Article 137 of the Constitution of the Republic of Serbia (2006) provides that, in the interest of more efficient and rational exercise of the rights and obligations of citizens and the satisfaction of their needs of immediate importance for life and work, the performance of certain tasks within the competence of the Republic of Serbia may be entrusted by law to an autonomous province or a unit of local self-government. Furthermore, the same provision stipulates that certain public powers may also be entrusted by law to enterprises, institutions, organizations, and individuals. In accordance with this constitutional framework, public powers relating to the conduct of enforcement proceedings have been entrusted to public enforcement officers.

2.1. Public Enforcement Officer as a Holder of Public Powers

A public enforcement officer acts in the capacity of a holder of delegated public powers, performing actions that traditionally fell within the jurisdiction of the courts. Unlike public notaries, who are defined as a service of public trust, enforcement officers are vested solely with public powers (Nikolić, Sibinović, Počuča & Šarkić, 2020, p. 243). A public enforcement officer is an out-of-court, non-state judicial authority competent to decide on and carry out enforcement (Stanković & Trgovačević Prokić, 2020, p. 71). Although organizationally and status-wise a subject of private law, the function performed by the enforcement officer within the enforcement system undoubtedly has a public-law character. Consequently, public enforcement officers occupy a specific position of constitutional liability, distinct from the classical professional liability of private actors.

The constitutional framework governing their position allows for the application of the same standards of liability applicable to state authorities, including the duty of legality and professionalism, the protection of the rights of parties to the proceedings, and the obligation to compensate for damage caused by unlawful conduct. This ensures continuity of legal protection, such that the delegation of enforcement functions cannot lead to a reduction in liability standards compared to the traditional, court-based model of enforcement.

2.2. Constitutional Conflict and the Limits of the Statutory Exclusion of State Liability

The Law on Enforcement and Security (2015) contains a provision in Article 498, paragraph 2, which releases the state from liability for damage caused by the fault of a public enforcement officer. Such a statutory solution raises a constitutional question: whether the legislator is authorized to restrict the constitutional right to compensation for damage by entirely excluding state liability. Starting from the supremacy of the Constitution and the nature of constitutional guarantees, it is clear that the legislator does not have discretionary power to derogate from the essential content of a constitutional right. The state cannot fully absolve itself of responsibility for the effectiveness of enforcement of judicial decisions by delegating public functions to private entities, nor may it allow a situation in which the injured party is left in a legal vacuum due to the potential unenforceability of the liability of a public enforcement officer.

In practice, this issue gains an additional dimension in light of the standards of the European Court of Human Rights, according to which the state retains ultimate responsibility for ensuring the effective enforcement of judgments and the protection of individual rights. This necessitates a different interpretation of the statutory exclusion of state liability—not as absolute, but as an institute whose application must be aligned with constitutional law and the international obligations of the Republic of Serbia.

3. The Obligations-Law Basis of the Liability of Public Enforcement Officers

Civil liability implies an obligation to compensate for damage caused by one legal subject to another (Radovanov, 2009, p. 229). The civil liability of public enforcement officers is based on the general rules of obligations law governing liability for damage, supplemented by special rules arising from the nature of the delegated public function. Unlike classical subjects of private law, public enforcement officers perform a professional activity in the public interest, subject to heightened standards of care, responsibility, and transparency. Public enforcement officers are liable in cases of ordinary negligence, that is, for conduct contrary to the legal standard of the care of a diligent professional. The content of this heightened standard of care is determined in accordance with the rules of the profession and prevailing professional customs (Nikolić, 2002, p. 248). Liability of enforcement officers also exists where damage is caused by gross negligence or intent (Ampovska, 2018, pp. 296–297). Unlike other professions, the relationship between the parties is not contractual in nature, and the conduct of public enforcement officers is strictly governed by the principle of formal legality (Krstić, 2017, p. 205).

Persons engaged in a professional activity are expected to act in accordance with the rules of their profession, with full knowledge and application of professional standards, while their rights and responsibilities are regulated by special legislation (Jug, 2012, p. 444). The civil liability of public enforcement officers is further reinforced by the obligation to conclude insurance against damage arising from the performance of their professional activities vis-à-vis parties and third persons (Jakšić, 2022, p. 896).

Real rights protection is primarily aimed at restoring the injured party's property status to its condition prior to the violation of rights (restitutio in integrum), and only where this is not possible, at compensation for the value of the property in the form of monetary restitution (Tasić & Lazić, 2024, p.

35). Serbian obligations law bases liability for damage on presumed fault and a causal link between the unlawful act and the damage incurred. In the case of public enforcement officers, liability is predominantly classified as tortious, as it arises from the breach of a general statutory duty to act in accordance with the law and professional standards, rather than from a contractual relationship with the injured party. The liability of a public enforcement officer is triggered only when the following elements are cumulatively fulfilled: (1) an unlawful act or omission; (2) the occurrence of damage; (3) a causal link; and (4) fault on the part of the enforcement officer.

Such a concept of liability ensures legal protection for individuals even in situations where they are not in an obligations relationship with the enforcement officer, but nevertheless suffer the consequences of the officer's unlawful conduct in the exercise of the delegated public function.

4. Standard of due care of a competent professional

As a professional, a public enforcement officer is obliged to exercise a heightened standard of the care of a diligent professional, accompanied by a higher degree of liability, from which he or she may be released only in cases of slight negligence (Nikolić & Šarkić, 2022, p. 873). Stricter standards apply to public enforcement officers than to ordinary participants in legal transactions. As professionals performing a delegated public function, they are required to act with due care, in accordance with the rules of the profession, ethical norms, and the law. In this context, the standard of the "care of a diligent professional" implies a higher level of responsibility than the standard of the care of a prudent person, which applies in the general obligations regime.

This standard includes: knowledge of relevant legislation and case law; correct application of substantive and procedural law; professional and impartial treatment of parties; adequate organizational and technical capacity of the office; and the obligation to act diligently and in a timely manner. A breach of these duties constitutes grounds for liability and simultaneously serves as a criterion for assessing fault in civil proceedings for compensation for damage.

The existence of liability of a public enforcement officer is assessed according to the standard of a reasonable, careful, and professionally competent enforcement officer acting under the same circumstances (Masnikosa, 2020, p. 79).

5. Subjects of liability and scope of the damages claim

A public enforcement officer is liable for damage with his or her entire property, which confirms the private-law character of such liability. This liability is not limited by the amount of insurance coverage, nor by the existence of disciplinary liability, which exists independently of civil liability.

The existence and scope of the civil liability of a public enforcement officer for damage caused in the exercise of public powers in enforcement or security proceedings are determined, upon the claim of the injured party, in proceedings conducted by the competent court in accordance with the rules of civil procedure. The existence of disciplinary liability does not constitute a preliminary issue in civil proceedings for establishing the civil liability of a public enforcement officer for compensation of damage[1] (Supreme Court of Cassation, 2018).

The liability of a public enforcement officer also extends to damage caused by the actions of his or her deputy or assistant (Stanković, Palčaković & Trešnjev, 2022, p. 1583). For damage caused by a deputy public enforcement officer, liability is borne jointly and severally by both the public enforcement officer and the deputy. Likewise, they are jointly and severally liable for damage caused by third parties, namely persons to whom the enforcement officer has lawfully delegated certain tasks. Joint and several liability means that the injured party may claim full compensation from any of the jointly liable debtors, while their internal relations are resolved through recourse in proportion to their contribution to the occurrence of the damage. For damage caused by assistants of a public enforcement officer, the public enforcement officer is liable as an employer under the principle of vicarious liability. Liability for damage caused by employees in the course of or in connection with work to third parties implies that the public enforcement officer is exclusively liable for such damage. However, this also entails the right of the public enforcement officer, as an employer, to seek recourse from the person whose conduct caused the damage, for the amount paid to the injured third party. This matter is regulated by Articles 170 and 171 of the Law on Obligations (1978), and pursuant to Article 171, paragraph 3 of the same Law, the right of recourse becomes time-barred within six months from the date of payment of the compensation.

[1] Legal Position of the Civil Law Department of the Supreme Court of Cassation, adopted at the session held on 11 December 2018.

In proceedings for compensation of damage, the party alleging that damage has been suffered bears the burden of proving the existence of damage, a causal link, and the unlawful conduct of the enforcement officer. The burden of proof constitutes a significant procedural obstacle, particularly in situations where it is necessary to establish a causal connection between a procedural action of the public enforcement officer and the damage incurred.

Disciplinary proceedings are not a prerequisite for civil liability; however, the existence of disciplinary liability may have evidentiary significance in civil litigation, thereby confirming the autonomy of the civil liability of public enforcement officers.

6. Legal Framework and the Exclusion of State Liability (Article 498 of the Law on Enforcement and Security)

The normative regime governing the liability of public enforcement officers in the Republic of Serbia is based on a combination of the general rules of obligations law, specific provisions of the Law on Enforcement and Security (2015, hereinafter LES), and professional standards prescribed by competent authorities and the Chamber of Public Enforcement Officers. A central place within this framework is occupied by Article 498 of the LES, which explicitly excludes the liability of the Republic of Serbia for damage caused by a public enforcement officer through fault in enforcement or security proceedings. By adopting this provision, the legislator opted for a model of full personal proprietary liability of public enforcement officers, coupled with the complete withdrawal of the state from the sphere of compensation for damage in such cases. The current framework thus provides for the personal and unlimited liability of public enforcement officers, while excluding state liability, which in practice entails the absence of subsidiary state liability and the risk of unenforceable compensation claims, rendering this solution constitutionally sensitive.

An action for damages against a public enforcement officer cannot substitute the system of legal remedies provided by the LES (Bodiroga, 2023, p. 178). Article 498 of the LES is based on the concept that the delegation of public powers to a private individual does not transfer to the state liability for the consequences of that individual's fault. However, such a statutory solution must also be examined in light of the constitutional guarantee of the right to compensation for damage (Article 35 of the Constitution), the principle of an effective legal remedy, and the international obligations of Serbia, particularly in the field of enforcement of judicial decisions. From the perspective of the constitutional order, the exclusion of state liability cannot be absolute, as

this would otherwise derogate citizens' right to legal protection, especially in situations where the injured party is unable to recover damages from the enforcement officer. This gives rise to the question of a potential constitutional conflict between Article 498 of the LES and Article 35 of the Constitution.

The state is obliged to provide public enforcement officers with the necessary conditions for undertaking direct enforcement actions in accordance with the law (Trešnjev, 2018, p. 397).

7. State Liability in the Light of European Standards and the Case Law of the European Court of Human Rights

The model of public enforcement in contemporary legal systems involves the delegation of public powers to private individuals while retaining the ultimate responsibility of the state for the effective enforcement of final court decisions. This principle derives from the convention-based standards of human rights protection and the case law of the European Court of Human Rights (ECtHR), according to which the state is obliged to ensure an effective mechanism for the enforcement of judicial decisions as an integral component of the right to a fair trial under Article 6 of the European Convention on Human Rights. In the Republic of Serbia, the right to a fair trial has also been elevated to the level of a constitutional principle, as Article 32 of the Constitution guarantees the right to a fair hearing. The enforcement of a judgment (enforceable title) constitutes an integral element of the right to a hearing within a reasonable time (Milutinović, 2016, pp. 172–173).

The ECtHR consistently emphasizes that the right to a fair trial is not limited to the adjudicatory phase, but also encompasses the state's obligation to ensure the execution of judicial decisions. The right to a hearing within a reasonable time implies the right of the parties to an efficient and expeditious procedure, excluding unnecessary delays and requiring compliance with time limits prescribed by national procedural law (Milenković, 2019, p. 170). Otherwise, justice remains merely declaratory and ineffective. The enforcement of judgments therefore represents an integral component of the right of access to justice and legal certainty, which is why the state, even when entrusting enforcement to private entities, retains subsidiary responsibility for the outcome of the proceedings.

The state bears responsibility where it has failed to take effective measures enabling enforcement officers to perform their duties and thereby ensure the compulsory execution of court decisions (Pini and Others v. Romania, Application No. 78030/01). One of the means of guaranteeing the effectiveness

and credibility of judicial systems is ensuring that cases are resolved within a reasonable time (H. v. France, 1989, Application No. 10073/82). It should be noted that delays in enforcement are particularly relevant to violations of the right to a hearing within a reasonable time; while certain delays may be acceptable for a limited period, they must not undermine the very essence of the right of access to a court (Burdov v. Russia, Application No. 59498/00, judgment of 7 May 2002). The ECtHR has clarified that enforcement has autonomous value regardless of the nature of the enforcement order and the preceding judicial proceedings (Estima Jorge v. Portugal, Application No. 16/1997/800/1003, judgment of 21 April 1998). Enforcement proceedings do not serve solely to secure payment of an adjudicated amount, but also regulate essential elements of the debt itself; they are therefore regarded as a continuation of the initial proceedings and taken into account when calculating the overall length of the proceedings (Silva Pontes v. Portugal, Application No. 14940/89, judgment of 23 March 1994). Enforcement proceedings thus constitute an integral part of the "trial" within the meaning of Article 6 §1 of the Convention (Hornsby v. Greece, Application No. 18357/91, judgment of 19 March 1997). It is the duty of states to organize their legal systems in such a manner as to enable courts to comply with the requirements of Article 6 of the Convention, including the right to a hearing within a reasonable time (Zimmermann and Steiner v. Switzerland, Application No. 8737/79, judgment of 13 July 1983). The Court does not prescribe specific means for achieving this objective, as this does not fall within its function; rather, states enjoy discretion in organizing their legal systems and selecting measures to ensure compliance with Convention guarantees (Belilos v. Switzerland, Application No. 10328/83, judgment of 29 April 1988). Delays in the enforcement of judgments may be justified only in exceptional circumstances and only insofar as they do not impair the very substance of the right protected under Article 6 §1 of the Convention (Immobiliare Saffi v. Italy, Application No. 22774/93, judgment of 28 July 1999). The assessment of whether proceedings have been conducted within a reasonable time must be carried out on a case-by-case basis, taking into account the specific circumstances of each case and the criteria developed in the Court's case law (Pretto and Others v. Italy, Application No. 7984/77, judgment of 8 December 1983). Rights guaranteed by the Convention are illusory if a domestic legal system allows a binding judicial decision to remain ineffective, thereby causing harm to the individual party to the dispute (Raylyan v. Russia, Application No. 22000/03, judgment of 15 February 2007).

The case law of the ECtHR thus confirms that the delegation of public powers to private entities does not absolve the state of its duties of regulation,

supervision, intervention, and the guarantee of compensation for damage, whereby the state retains ultimate responsibility for the enforcement system.

8. Critical Review and De Lege Ferenda Proposals

The normative framework governing the liability of public enforcement officers is designed in such a way that the state is exempted from liability for damage caused by a public enforcement officer through fault. At the same time, the Law on Enforcement and Security (LES) provides for the obligation to conclude a contract of professional liability insurance. Such a dual model—full personal liability of the enforcement officer combined with mandatory professional insurance—should, at least in theory, ensure full reparation for injured parties.

The Rulebook on General Conditions for Concluding Insurance Contracts for Public Enforcement Officers (2016) stipulates in Article 3 that, under an insurance contract, a public enforcement officer is insured against liability for damage caused to another person as a result of an error arising from an act or omission of the enforcement officer in the performance of professional activities, as well as for damage to the enforcement officer's premises and to items received into deposit, where such damage is caused to another person through damage, destruction, or loss of the items. The insurance contract shall, in particular, include: (1) the duration of insurance coverage (coverage period), which amounts to 12 months; (2) the types of insured risks, which, under the general insurance conditions, constitute customary risks, such as burglary and robbery, fire, flood, or the consequences of other natural disasters; (3) the insured sum per insured event for the entire coverage period, which amounts to: (a) in the case of liability insurance of a public enforcement officer, at least EUR 100,000 in dinar countervalue at the middle exchange rate of the National Bank of Serbia applicable on the date of conclusion of the insurance contract; (b) in the case of insurance of the public enforcement officer's premises, at least EUR 20,000 in dinar countervalue; and (c) in the case of insurance of items received into deposit by the public enforcement officer, at least EUR 30,000 in dinar countervalue. Liability insurance of a public enforcement officer also covers liability for errors committed by the deputy enforcement officer, assistants, employees of the enforcement officer, and persons who, on behalf and for the account of the enforcement officer, carry out certain enforcement or security actions.

However, the relatively low minimum insured amounts—often disproportionate to the actual value of potential damage in enforcement

proceedings, particularly in cases involving immovable property or complex proprietary relations—as well as the possibility that total damage exceeds the insured sum, shift the burden back onto the enforcement officer personally and create a risk of unenforceability of compensation claims. The LES normatively releases the state from any liability for damage caused by the fault of a public enforcement officer. Nevertheless, the state remains the ultimate guarantor of the effective enforcement of judicial decisions. Consequently, the complete exclusion of any form of subsidiary state liability gives rise to a potential constitutional conflict (Article 35 of the Constitution), a convention-based conflict (Article 6 of the European Convention on Human Rights), and a legal vacuum, as injured parties may find themselves unable to obtain reparation despite the fact that the damage arose in the exercise of public authority. In cases of insolvency of the enforcement officer or where the insurance policy does not cover the damage, the injured party effectively remains without protection.

This is particularly problematic given that public enforcement officers act in the public interest, that enforcement proceedings constitute a continuation of judicial proceedings, and that injured parties may reasonably expect the state to guarantee a minimum level of legal certainty. Such a normative model creates a real risk of violating the principles of legal certainty and effective legal remedy. It should also be noted that, in addition to mandatory insurance, public enforcement officers may conclude additional liability insurance at their own discretion, taking into account standards of professional conduct (Vavan, 2022, p. 57).

8.1. De lege ferenda Proposals

In order to improve the normative and functional system of liability of public enforcement officers, and thereby enhance the level of legal certainty, it would be advisable to introduce a clear model of subsidiary state liability. The state should bear subsidiary liability in limited and clearly defined situations, such as: where the enforcement officer lacks sufficient assets; where insurance coverage does not cover the damage; where damage results from systemic failures of the state in supervision; and in cases involving violations of the Convention rights of the parties. Following compensation, the state should retain a right of recourse against the enforcement officer.

Furthermore, it is necessary to increase the minimum mandatory insurance amounts and to more precisely define the scope of insured risks. This is particularly justified given the continuous increase in the value of

property, while the currently prescribed minimum insurance sums were established by a rulebook adopted in 2016. Minimum insurance amounts should be increased, especially for enforcement actions involving immovable property; the minimum scope of risks that insurance policies must cover should be prescribed, without allowing insurers to undermine the purpose of regulation through exclusions; and the continuous maintenance of insurance coverage should be established as a condition for performing the enforcement profession. In this way, insurance would acquire a genuine, rather than merely declaratory, role as a mechanism for protecting the rights of parties, public enforcement officers, the state, and ultimately, legal certainty itself.

9. Conclusion

The liability of public enforcement officers for damage caused by unlawful or improper conduct constitutes one of the key issues of contemporary enforcement law, as it lies at the intersection of constitutional guarantees, the public-law nature of their activities, and the tort principles of obligations law. Although the introduction of public enforcement officers has contributed to more efficient enforcement and the alleviation of the courts' workload, the delegation of public powers to private individuals has raised complex questions regarding the scope of their liability and the role of the state as the ultimate guarantor of legal protection. The constitutional order of the Republic of Serbia guarantees the right to compensation for damage caused by the unlawful conduct of holders of public authority, thereby confirming that entrusting enforcement to private entities cannot diminish standards of legal certainty. The civil liability of public enforcement officers is based on unlawfulness, causation, and fault, combined with the application of a heightened standard of the care of a diligent professional, including liability for the actions of deputies and assistants. However, the statutory exclusion of state liability, together with limited professional insurance coverage, creates a risk that injured parties may, in certain cases, be left without effective reparation, calling into question the compatibility of the existing framework with constitutional principles and the case law of the European Court of Human Rights. Consequently, a sustainable model of liability must rest on the personal liability of enforcement officers, complemented by subsidiary and clearly defined state liability in exceptional circumstances, as well as by the strengthening of professional standards and insurance mechanisms. Only such a balanced approach can ensure effective enforcement while preserving legal certainty and trust in the legal order.

Conflict of Interest
The authors declare that there is no conflict of interest.

Author Contributions
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NAKNADA ŠTETE ZBOG NEZAKONITOG RADA JAVNIH IZVRŠITELJA

APSTRAKT: Odgovornost javnih izvršitelja za štetu nastalu nezakonitim radom zasniva se na ustavnim garancijama, standardima profesionalne pažnje i pravilima obligacionog prava. Pravo na naknadu štete proizlazi iz načela vladavine prava i obaveze države da obezbedi delotvorno izvršenje sudskih odluka, uz primenu višeg standarda pažnje svojstvenog nosiocima javnih ovlašćenja. Važeći okvir predviđa ličnu i neograničenu

odgovornost izvršitelja, uz isključenje odgovornosti države, što otvara pitanje usklađenosti sa pravnom sigurnošću i praksom Evropskog suda za ljudska prava. Kao održivo rešenje nameće se jačanje profesionalnih standarda, obavezno osiguranje i supsidijarna odgovornost države u izuzetnim slučajevima.

***Ključne reči*:** *odgovornost javnih izvršitelja, naknada štete, ustavne garancije, delikatna odgovornost, izvršni postupak, pravna sigurnost, supsidijarna odgovornost države.*

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THE EMPLOYMENT STATUS OF JOURNALISTS IN THE REPUBLIC OF SERBIA

ABSTRACT: The paper examines the employment status of journalists in the Republic of Serbia, with a focus on individual and collective rights, as well as the mechanisms for their protection. Journalists carry out their profession under different legal arrangements – they may be permanently employed, freelancers, or engaged under contracts for specific tasks. The Law on Public Information and Media (2023) stipulates specific provisions regarding working hours, the right to disconnect, special protection against dismissal, and collective rights. An analysis of the application of the Law on Peaceful Settlement of Labor Disputes (2004) shows that journalists frequently use out-of-court methods to protect their rights, thanks to well-developed trade unions, professional associations, and a high level of awareness. Unlike other employees, who are often unaware of the opportunities offered by the Republic Agency for Peaceful Settlement of Labor Disputes – where procedures can be conducted quickly, efficiently, and free of charge – journalists are willing to use these procedures, thereby further ensuring the protection of their rights and contributing to the stability and professional development of the media sector.

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Keywords: *journalists, employment status, individual rights, collective rights, right to disconnect, trade unions, professional associations, peaceful settlement of labor disputes, Serbia.*

1. Introduction

Although defining the concept of a journalist may seem straightforward, it is fraught with numerous issues both in the Republic of Serbia and in any other country. Most notably, current legislation does not define the concept of a journalist, i.e. it does not prescribe which individual may be regarded as one. In view of this, the author considers a journalist to be any person engaged in journalistic work—whether professionally or occasionally—regardless of the form of their employment arrangements. "The answer to the question of what constitutes journalism is primarily addressed in specialized publications that systematize knowledge of the field (encyclopaedias, lexicons), and by the authors who traditionally begin their professional textbooks by defining the discipline itself. The answers have several common features emphasising that: (a) it is an activity of public importance; (b) it involves the dissemination of information to a large number of unknown users who are located at a considerable distance; (c) the information is transmitted through a medium in a form adapted to the characteristics of that medium; and (d) it concerns information collected and shaped by a professional individual"(Valić Nedeljković & Pralica, 2020, p. 11).

The employment status of journalists has been deteriorating, due in part to the declining share of standard employment contracts and the growing prevalence of employing journalists under temporary and occasional work contracts, author contracts, and service contracts, where one-fifth of journalists now work as freelancers (Krstić & Momčilović, 2021, p. 8). Both male and female journalists and other media workers are equally represented in atypical forms of employment, and their educational structure is almost identical to that of permanently employed journalists and media workers. Among freelancers, the majority are at the beginning of their careers, i.e., those having worked in the media for less than five years. Notably, compared to permanently employed journalists, freelancers predominantly work for online media – mostly private outlets and civil sector media (Milić, Kleut, Milinkov& Šovanec, 2021, p. 6). A number of journalists opt for working as freelancers for reasons mainly related to the freedom to select their topics, to determine how information is disseminated, and to organize their working

hours, but also to choose the audience for whom specific content will be made available (Urdarević, 2022, p. 1).

According to some studies, over the past several decades the media have been pursuing more flexible working arrangements for their employees in order to maximize profits and maintain competitiveness in the marketplace. In this respect, they act like any other employers even though their social role is more important than that of other employers (Banga, Mandal & Mitra, 2019).

In addition to employment-related issues, the job of journalists entails many other challenges, the most serious of which concern personal safety. Namely, when performing their work, journalists are considerably more exposed to security threats than other individuals (Gohdes & Carey, 2017, p. 158). In an effort to strengthen both the safety and overall position of journalists, the Committee of Ministers adopted Recommendation CM/Rec(2016)41 to member states on the protection of journalism and the safety of journalists and other media actors (Recommendation CM/Rec(2016)41).

Section II, paragraph 28 of the Appendix to this Recommendation, states that ensuring the safety and security of journalists and other media actors is a precondition for ensuring their ability to participate effectively in public debate. The persistence of intimidation, threats and violence against journalists and other media actors, coupled with the failure to bring to justice the perpetrators of such offences, engender fear and have a chilling effect on freedom of expression and on public debate. States are under a positive obligation to protect journalists and other media actors against intimidation, threats and violence irrespective of their source, whether governmental, judicial, religious, economic or criminal.

2. Individual rights of journalists

A separate law containing the provisions regulating the employment status of journalists in the Republic of Serbia is the Law on Public Information and Media (2023, Articles 56-66). This Law regulates the specifics regarding the employment status of journalists concerning the right to freely express their views and opinions, not to disclose their source of information, working hours, association, the position of editors, and special protection of journalists.

2.1. Special protection of journalists

Article 56 of the Law on Public Information and Media stipulates that a journalist's employment may not be terminated, nor their salary or other

remuneration reduced, nor may they otherwise be put at a disadvantage, for having published a truthful statement or expressed an opinion in a media outlet, or for having expressed a personal opinion outside the media. A journalist's employment may not be terminated, nor their salary reduced or their position within the newsroom made worse for having refused to execute an order that would violate the legal and ethical rules of the journalistic profession.

The above provision affords journalists special protection against dismissal and placement at a disadvantage due to the performance of tasks related to their profession. With the exception of pregnant women, new mothers, and union representatives, who are guaranteed special protection against dismissal in Articles 187 and 188 of the Labor Law (2005), no other employee category enjoys special protection against dismissal in our legal system. Placing union representatives in an unfavourable position for pursuing trade union activity or on account of their trade union status is prohibited by Article 188 of the above law, and also certain special collective agreements, such as Special collective agreement for employees in primary and secondary schools and student homes (2015, Article 60). However, except for them and journalists, the law does not provide any special protection for other categories of employees. It follows that the legislature recognizes journalism as a profession of particular importance for the society and intends to afford it special protection, especially given the daily pressures that journalists are exposed to when doing their job.

Texts, articles, reports and other media content, other than press releases, third party statements and service information, must be signed with the name and surname, initials or pseudonym of the author or group of authors. Journalists' reports whose meaning has been altered during the editorial process may not be published under their name without their consent. In this way, the journalist's copyright as well as personal and professional integrity are protected.

Journalists are not obliged to disclose the source of the information, except for the data relating to a criminal offense or a perpetrator of a criminal offense punishable by imprisonment of at least five years, if such data cannot be obtained by other means. The protection of journalistic sources is prescribed in order to ensure the conditions necessary for pursuing a journalistic profession. Without the prescribed protection of journalistic sources, journalists would generally be unable to carry out their work, given the sensitivity of the data they often publish. The exception to the protection of journalistic sources is prescribed to protect the social interest, to ensure criminal liability for all

serious crimes, for the purposes of prevention and enforcement in the fight against crime.

2.2. Specific feature related to working hours

The Law on Public Information and Media has special provisions relating to the working hours of journalists. Employers are required to determine the working time schedule for all employees in a media organization, in accordance with the Labor Law (2005). The employer must submit a written notice of the working schedule to the employees no later than 48 hours in advance. In case of urgent need, the employer may change the schedule of working hours no later than during the working day for the following day if day if unforeseeable, unavoidable, or unpreventable circumstances arise, provided that the employee is granted the statutory daily rest period in accordance with the law governing employment. The employer may inform the employee verbally about the changes to the working schedule, and issue a written notice within 24 hours.

The Law on Public Information and Media regulates journalists' working hours in a manner distinct from the Labor Law. The differences stem from the specific nature of the work journalists perform. Namely, their work is difficult to plan and, based on such plan, to determine the schedule of working hours; hence the existence of specific provisions related to working hours is justified.

Moreover, due to the specific character of journalism, it is reasonable to consider that a journalist has completed a full working day when they have carried out the daily assignment set by their supervisor. Thus, introducing task-based working time arrangements for journalists are justified. The work of journalists often requires leaving the employer's premises, considerable time preparing and conducting research in order to cover a specific topic they are working on. Therefore, it is almost impossible for them to spend their working hours in the usual way that involves spending a fixed number of hours at the employer's premises. Since it is difficult to clearly distinguish between their working and non-working time (as they often prepare for their work at home), we believe that it is justified for the law to provide for calculating the journalists' working hours based on completed tasks.

Employers may introduce on-call duty in accordance with Article 50 of the *Labor Law*, which stipulates that the time an employee spends performing work during on-call duty is considered working time. On-call duty may not exceed four hours per day or twelve hours per week and cannot be assigned to

employees already performing overtime or working under redistributed hours regime. Compensation for each hour of on-call duty amounts to at least 10% of the employee's base hourly wage. A higher rate may be established by the employer's general act, a collective agreement, or the employment contract

If an employee is called upon to work during an on-call period, such work is considered working time. If this occurs after the regular working day when the employee has already worked full time, the journalist would be working overtime and be entitled to increased pay for overtime work.

2.3. The right to disconnect

Article 62 of the Law on Public Information and Media introduces the right to disconnect, which is a novelty in our legal system. Apart from journalists, this right is not recognized for other categories of employees.

Employees are entitled, in accordance with the employer's working time schedule and annual leave schedule, not to respond to any communication from the employer – regardless of the means used (telephone calls, electronic messages, etc.) – unless extraordinary circumstances arise in the country that directly concern their professional coverage area (such as emergencies, state of emergency, public health crisis, etc.). No disciplinary action or any other adverse consequence may be imposed on an employee for exercising the right to disconnect.

Modern means of communication often blur the boundary between working time and personal time. Due to the widespread availability of mobile and other internet-connected devices, employees are effectively available to their employers at all times. Such availability is a major source of employee stress, which, if constant, can lead to psychosomatic illnesses and declining productivity over time (Von Bergen, Bressler & Proctor, 2019). The right to disconnect, as granted to journalists, represents a measure that should reduce employee stress caused by new working conditions arising from the use of modern communication technologies in the work process.

The importance of the right to disconnect has also been recognized by the European Parliament, which has taken the position that employee health must be protected and that states whose legal systems do not yet recognize this right must regulate it through collective agreements (Rajić-Ćalić, 2023, p. 313).

"In the absence of specific EU regulations requiring the establishment of an explicit right to disconnect, legislation in this area at national level has nonetheless evolved in recent years. This reflects the growing relevance to the

policy debate of concerns over the impact of constant connection, and means that any reporting on relevant national provisions inevitably involves shooting at a moving target."… "In June 2023, nine Member States had legislation providing a right to disconnect (Belgium, Croatia, France, Greece, Italy, Luxembourg, Portugal, Slovakia and Spain). In addition, Ireland adopted a code of practice in 2021; although it has no formal status in law, the courts can use it when deciding on the merits of a case. Four Member States (Belgium, France, Italy and Spain) had implemented some relevant provisions prior to the COVID-19 pandemic. Greece, Portugal and Slovakia adopted legislation containing the right to disconnect in 2021, largely as a result of the increase in telework triggered by the pandemic. New legislation in Croatia was passed in 2022 and in Luxembourg in 2023. In both countries, the provisions entered into force in 2023. The legislation in Luxembourg had been under discussion for some time and is therefore included in this report" (European Foundation for the Improvement of Living and Working Condition [Eurofound], 2023, p. 7).

De lege ferenda, it is the authors' opinion that the right to disconnect should be extended to all employees in our legal system, to the same extent as it is currently provided for journalists, during the next amendment to the Labor Law.

2.4. Position of editor

Every media outlet must have an editor-in-chief, with the capacity of the editor responsible for that outlet. Editors responsible for a specific edition, section or programme unit are accountable to the editor-in-chief for the content under their supervision. Under Article 16 of the Law on Public Information and Media, the editor-in-chief of a national or provincial public service broadcaster, or a media outlet founded by a public institution established by the Republic of Serbia for the purpose of enabling the exercising of the right to public information in the territory of the Autonomous Province of Kosovo and Metohija, or by an institution, company, or foundation for the purpose of enabling members of national minorities to exercise their right to public information in their own language, is appointed and dismissed by the managing body for a term of four years based on a public competition. Article 17 further stipulates that, when selecting an editor-in-chief in a media outlet founded by a national minority council, the opinion of the editorial staff must be obtained by secret ballot.

An editor's employment may not be terminated, their salary reduced, or removed from their position for refusing to execute an order that would violate legal or ethical standards of the journalistic profession. The editor-in-chief may not be a person enjoying immunity from liability and must have permanent residence in the Republic of Serbia.

Editors, like all journalists, enjoy special protection under the labour law. Due to the significance of their role, this protection is twofold: first, as journalists, and second, as editors.

The enhanced protection of editors derives from their responsibility. In addition to subjective liability, editors may also bear objective liability[1]. For example, Article 112 of the Law on Public Information and Media stipulates that if the publication of information or record violates the presumption of innocence, the prohibition of hate speech, the rights and interests of minors, the prohibition on pornographic content, or rights to dignity, authenticity, or privacy, a lawsuit may be filed requesting: 1) a finding that the publication of information or record violated a right or interest; 2) non-publication of information or record and banning republishing of information or record; 3) surrendering, removing or destroying the published record (deletion of video and audio recording, destroying a negative, removal from publications, etc.). Pursuant to Article 114, such a lawsuit is filed against the editor-in-chief of the media outlet in which the information or record was published.

2.5. Representatives and correspondents of foreign media

Representatives of foreign media (editors, journalists, photographers, cameramen and other associates) and foreign correspondence offices have the same rights and duties in performing their activities as their domestic counterparts. To facilitate their journalistic work, such foreign media representatives and correspondence offices may register in the Register of Foreign Media Representatives and Correspondents maintained by the ministry responsible for public information and be issued appropriate identification card based on such registration. A foreign correspondence office, as an organized representative office of a foreign media outlet, acquires legal personality upon registration.

[1] This position was also adopted in the Judgment of the Court of Appeal in Belgrade, Gž3 610/24 of 11 December 2024. In its reasoning, the court stated that the fact that the information published in the disputed article was accurately reproduced from another media outlet, with the source being cited and the plaintiff's initials used instead of his full name and surname, is not sufficient to release the first defendant, as the publisher, from liability for publishing untrue information. In such a case, the editor-in-chief and the publisher are obliged to verify the accuracy and completeness of the information.

The Rulebook on the Procedure for Registration of Representatives and Correspondence Offices of Foreign Media (2024) further specifies the registration process and the issuance of credentials for conducting media activities within Serbia. For the purposes of the Rulebook, foreign media refers to daily newspapers, periodicals, news agency services, radio or television programmes, and electronic editions thereof, as well as independent electronic publications (editorially curated websites) established outside the Republic of Serbia. A foreign media representative is a person who performs media activities (as editor, journalist, photographer, cameraman, or other associate) in Serbia. Representatives residing in Serbia over 90 days receive a press card valid for up to one year, while those residing under 90 days are issued a temporary press card valid for up to 90 days.

3. Collective rights of journalists

Article 64 of the Law on Public Information and Media essentially reaffirms journalists' right to freedom of professional association. Journalists may freely establish their own associations, in accordance with the Law on Associations (2009). Collective labour rights are exercised through trade unions, although professional associations also play an important role in protecting journalists' employment status. Article 65 stipulates that a journalists' association has a legal interest in intervening in a labour dispute involving one of its members, provided the member does not object.

4. Protection of Individual and Collective Rights Through Amicable Means

Although journalists enjoy judicial protection of their individual and collective labour rights, t they may also resolve such disputes amicably under the Law on Amicable Resolution of Labor Disputes (2005, 2009, 2018), which is relatively frequently used in practice. The law allows for the protection of individual labour rights through arbitration, and collective labour rights through conciliation before the Republic Agency for Peaceful Settlement of Labor Disputes. Arbitration is a procedure in which a third independent party, an arbitrator, decides on the merits of the dispute after the parties consent to the process, and makes a final and enforceable decision on the matter in dispute within a short period of time. Conciliation, by contrast, is a process in which the conciliator assists the parties in reaching a mutual agreement on how to overcome all disputes.

According to the records of the Republic Agency for Peaceful Settlement of Labour disputes, journalists relatively often use these mechanisms.[2] Since the adoption of the Law on Public Information and Media in 2013, 25 collective labour disputes have been resolved – nine concerning strikes, six on the application and six on amendment of collective agreements, three on the conclusion of collective agreements, and one concerning union representativeness. In the same period, 510 individual labour disputes were resolved, the vast majority (over 95%) related to salary payments, while others involved workplace harassment, termination of employment, or reimbursement of travel expenses.

In collective disputes related to strikes, the main demands concerned salary increases. Three disputes were resolved through conciliator recommendation, four by mutual agreement. The procedure in the remaining two disputes was discontinued— one due to refusal by the opposing party to participate, and the other due to withdrawal by the initiator. Agreements reached often included the adjustment of job coefficients, appropriate and realistic job descriptions in Rulebooks on internal organisation and job classification, implementation timelines, and the obligation to continue social dialogue in a spirit of mutual understanding.

The conciliator recommendations, issued at the request of one of the parties, involved the payment of increased salaries previously agreed upon in special collective agreements with the employers. There was also relevant case law in these cases, but the parties did not reach agreement on the amount, payment schedules and the entitlement to such payments, so the unions asked for recommendations from conciliators.

Such agreements frequently triggered subsequent individual claims of employees for the payment of increased wages under collective agreements, which explains the relatively high number of individual wage payment disputes. A similar situation was noted in other financial disputes, while in workplace harassment cases, most were resolved by agreement; in only one instance, the parties failed to reach an agreement so the proceeded to court.

The data shows that journalists protect their labour rights relatively effectively, due to several key factors. First, journalists benefit from well-organized trade unions and strong professional associations that provide them with access to relevant information, legal assistance and coordination in

[2] Republička agencija za mirno rešavanje radnih sporova [Republic Agency for the Peaceful Settlement of Labour Disputes]. *Prikaz radnih sporova* [*Overview of Labour Disputes*]. Downloaded 2025, September 28 from https://www.ramrrs.gov.rs/sr-cyr/dokumenta

collective actions. Such institutional support contributes to journalists being better informed about the mechanisms to protect their rights, and willing to actively use them.

The second important factor is journalists possess a higher level of awareness regarding non-judicial mechanisms for labour dispute resolution. Unlike other workers who are often unfamiliar with conciliation and arbitration procedures, journalists are aware that proceedings before the Republic Agency for Peaceful Settlement of Labor Disputes are efficient, completely cost-free, and typically completed within one to two months. This combination of institutional support and knowledge about legal instruments allows journalists to resolve disputes without resorting to lengthy and expensive court proceedings, thereby encouraging the use of amicable conflict resolution methods.

In view of these facts, the high rate of extra-judicial dispute resolution among journalists stems not only from legal protections but also from their developed union and profession framework, as well as proactive awareness of their rights and available mechanisms for settling disputes. These factors collectively enable journalists to exercise greater control over the protection of their labour rights, resulting in more efficient resolution of individual and collective disputes within the media sector.

The predominance of wage-related disputes reflects economic insecurity in the media labor market, while journalists' high level of awareness likely stems both from trade union organization and from the very nature of the profession, which entails familiarity with legal rights and public policies.

5. Conclusion

Journalists practice their profession under various legal arrangements: as freelancers, contractual workers not entering an employment relationship, or employees. This paper provides a detailed analysis of the employment-related rights of journalists in standard employment relationships.

The status of journalists has certain specificities compared to other employees, arising from provisions of the Law on Public Information and Media. Compared to other workers, journalists have distinct regulations governing working hours, the right to disconnect, special protection against dismissal, and collective rights.

The right to disconnect is recognized, within the Serbian legal system, exclusively for journalists. Given its protective nature, the authors believe this right should be extended to all employees in the same manner as it is currently recognized for journalists, and this through amendments to the Labor Law.

Furthermore, analysis of the Law on the Amicable Resolution of Labor Disputes shows that journalists relatively frequently protect their both their individual and collective rights owing to well developed unions, professional associations, and a high level of awareness of extra-judicial mechanisms. The high level of awareness among journalists regarding their rights and the methods of out-of-court resolution of labor disputes is also a product of the specific characteristics associated with their profession. Unlike other workers, who are often unaware of the opportunities provided by the Republic Agency for Peaceful Settlement of Labor Disputes — where the procedures can be quick, efficient, and cost-free — journalists are willing to use these mechanisms, thereby ensuring better protection of their rights and contributing to the stability and professional development of the media sector

Conflict of Interest
The authors declare no conflict of interest.

Author Contributions
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RADNOPRAVNI POLOŽAJ NOVINARA U REPUBLICI SRBIJI

APSTRAKT: Rad istražuje radnopravni položaj novinara u Republici Srbiji, sa posebnim osvrtom na individualna i kolektivna prava, kao i mehanizme njihove zaštite. Novinari obavljaju svoju profesiju po različitim pravnim osnovama – mogu biti stalno zaposleni, frilenseri ili angažovani po ugovorima o delu. Zakon o javnom informisanju i medijima (2023) predviđa specifičnosti u pogledu radnog vremena, prava na isključivanje, posebne zaštite od otkaza i kolektivnih prava. Analiza primene Zakona o mirnom rešavanju radnih sporova (2004) pokazuje da novinari često koriste vansudske metode zaštite svojih prava, zahvaljujući dobro razvijenim sindikatima, profesionalnim udruženjima i visokom nivou informisanosti. Za razliku od drugih radnika, koji često nisu upoznati sa mogućnostima koje nudi Republička agencija za mirno rešavanje radnih sporova, gde se postupak može sprovesti brzo, efikasno i besplatno, novinari su spremni da koriste ove procedure, čime dodatno obezbeđuju zaštitu svojih prava i doprinose stabilnosti i profesionalnom razvoju medijskog sektora.

Ključne reči: *novinari, radnopravni položaj, individualna prava, kolektivna prava, pravo na isključivanje, sindikati, profesionalna udruženja, mirno rešavanje radnih sporova, Srbija.*

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CONSTITUTIONALIZATION OF PATRIOTISM – IS CONSTITUTIONAL IDENTITY POSSIBLE?

ABSTRACT: Constitutionalization of patriotism implies insisting on unquestionable and universal values around which social cohesion is achieved, instead of insisting on differences, which are often insurmountable. Constitutionality is a metavalue, a value above personal and narrow group interests, as well as national, religious, cultural, or political affiliation. The key research question is whether constitutional patriotism can be an alternative to nationalism. In this paper, the author seeks to provide socio-political and legally grounded answers to a number of other dilemmas: whether this concept is suitable for achieving social cohesion and political loyalty in multicultural societies, whether it serves as a tool for the political empowerment of citizens, and whether conflicts in deeply divided societies can be mitigated through it. In addition to the normative consideration of this concept, by applying the empirical comparative law method, the author examines the credibility of constitutional patriotism in states governed by the rule of law with a developed democratic and civic political culture. The findings of the paper show that constitutional identity is not possible in deeply divided societies marked by war wounds and national traumas. Societies accustomed to nationalism as a political technology do not constitute an adequate milieu for the constitutionalization of patriotism.

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Constitutional patriotism is difficult to achieve in an environment characterized by widespread corruption, clientelism, a subservient political culture, and dysfunctional institutions. In other words, the rule of law and a state governed by the rule of law are prerequisites for building a constitutional patriotic identity.

Keywords*: constitutional patriotism, rule of law, nationalism, identity.*

1. Introduction

If a normative reconstruction of modern states were to be made, one would come to the conclusion that each of them was founded by some kind of founding act, starting with the republican one created by a lone founder, through the social contract, and ending with the founding myth. The latter is centered on the negation of all previous historical identities, except the one that builds itself. It could be concluded that the state is the source of its own unity, which in the post-national era is characterized as constitutional patriotism.

Like most concepts of political philosophy, constitutional patriotism is a theoretically vague concept, on which no consensus has been reached in the academic and scientific community. Jürgen Habermas was the pioneer in the theoretical clarification of this term and he had the ambition to devise a form of collective identification of post-national Germany. Habermas redefined patriotic sentiments, moving away from the dominant ethnic and territorial concept of patriotism (blood and soil), focusing on constitutional principles, above all on democracy, the rule of law and freedom of thought as a new connective tissue. Habermas's (1992) intention was to deepen the idea of a political union in the context of European citizenship, "held together by voluntary subscription to a system of government created and maintained by the constitution" (p. 7).

The socio-political reading of the mentioned idea is reflected in the view that in a multinational milieu, the nation cannot be the basis of political unity. Hence, a post-national identity is constituted as a form of political identity based on the appreciation of democratic values of human rights, as a category with a constitutional tradition (Habermas, 1992, p. 17). In other words, the center of gravity shifts from national identity to a new constitutional-political identity. John Eric Fossum (2007) followed up on Habermas's ideas, focusing on the concepts of particularism and universalism that determine commitment as the supporting pillar of constitutional patriotism. For this author, constitutional

patriotism is a bit of an oxymoron because it tries to bridge the universalism of human rights and the particularity of the community of commitment (loyalty) and identification (p. 4). Fossum introduces to the research agenda the notion of "thickness of commitment", which is manifested through exit (exit strategy), voting and loyalty. Exit is measured against the ability of individuals to enter or leave the group, respecting their identity diversity. Historical memory, as the basis of nationalism, leaves no room for leaving the group (in the form of separatism, secessionism), since common history and ethnicity are strong links. Voting in this context is result of consensus of large number of actors who have different expectations and starting points, but who, through discussion and valid argumentation, reach a consensus about the constitutional order, which they consider indisputable. Loyalty is broader than a juridical-political arrangement and it is perceived, most broadly, as a commitment to joint action (Fossum 2007).

Nationalism, as a dominant concept of the 19th century, has largely lost its foothold in post-war Europe. Over time, pluralism of ethnic identities has become a constitutional category in many European states, known as constitutional pluralism. Some authors consider that in order to prevent the tension between nationalism and constitutionalism, a suitable alternative should be found in the form of constitutional patriotism, as a value-neutral and ethnically blind legal structure (Öğr & Gözler Çamur, 2021, pp. 1183–1184).

Müller (2010) sees constitutional patriotism as "a normatively appealing form of civic, national, perhaps even post-national commitment to increasingly multicultural societies" (pp. 9–10). The aforementioned author approaches constitutional patriotism as a "collective learning process", in which the actors in the situation (losers and winners) are aware that their daily political engagement and values are legitimized in their constitutional system (Müller, 2008, p. 85). Müller starts from the assumption that universal moralistic principles legitimize constitutional patriotism because civil disobedience as supra law, protection of minorities, and political debate arise from them. It is easier to detect what constitutional patriotism is not. First of all, it is not a theory of justice *per se*, nor a justification of the democratic and political system. Some authors go a step further, considering that constitutional patriotism is a legitimating paradigm for civil attachment to a sustainable form of government, primarily democratic and moral (Stepanov, 2012, p. 650). Commitment is the biggest challenge since it implies that individuals should determine which values to support while it is up to the state to determine which programs to support.

It is important to point out that the constitutionalization of patriotism is not a theory of justice, but theoretically this phenomenon could be subsumed under the theory of modern pluralistic democracy. Deliberative democracy is based on freedom and equality, as its procedural requirements, which coincide with the concept of modern liberal democracy. Constitutional patriotism is not a normative legitimation of liberal democracy. At its core is the deliberative activity of free members of the political community, who through discussions achieve a broad social and normative consensus, which is also reflected in the constitutional text (Breda 2018). The viewpoints that see constitutional patriotism as civil religion are also unfounded, since the inherited constitutional culture should not be an immutable dogma. Freedom, equality and the goals of constitutional patriotism (finding rational agreements) are its epistemological structure. Everything else is superstructure subject to change.

The theory of constitutional patriotism assumes that discussions/debates on local or national topics led by members of the political community provide individuals with a sense of ownership over general constitutional principles (Cohen & Sabel, 2002). Discussions about the common good can take place informally or within state institutions. Informal discussions do not have the capacity to result in changes to constitutional norms. However, the constitutional norms themselves legitimize the open discussion of laws and policies, which creates an internal feeling of belonging to the constitutional order. Unlike informal discussions, deliberative discussions in public institutions (representative bodies, courts, etc.) have a greater capacity to lead to changes in the constitutional system (Breda 2018).

Constitutional patriotism needs to be viewed from a normative and empirical perspective. Constitutional patriotism is faced with a series of dilemmas and questions that require socio-political and legally thoughtful answers. Constitutional patriotism is a boundless construct, which also sheds light on the dilemma of whether it is more suitable for achieving moderate politics or rather contributes to the development of civic activism. Theoretically, the question of whether the constitutionalization of patriotism is possible in supranational entities is also inevitable, as well as whether elites who seek to marginalize minorities in order to present them as constitutionally unpatriotic are prone to it?

The answer to the question of whether constitutional patriotism can replace nationalism is extremely complex, especially in Serbian but also in all other post-Yugoslav national contexts. At this point, I emphasize that I do not see constitutional patriotism as a supranational identity, and I believe that its essence is not distancing from state and national symbols, such as the flag, coat

of arms, and anthem. Constitutional patriotism seeks to overcome artificially created intolerance and negation of otherness as a ubiquitous phenomenon in multinational societies. The key value of constitutional patriotism is equality before the law, which implies the rule of law, separation of powers and its compliance with the constitution and the law. In the milieu of complex social identities, an ideological Piedmont is needed that would gather citizens around the value of the constitutional order instead of ethnic or some other affiliation. Belonging to certain identities, innate or acquired, constitutional patriotism does not question since the constitution provides guarantees for their enjoyment.

2. Applied constitutional patriotism – comparative experiences

Constitutional patriotism shows loyalty exclusively to the highest legal act as a defense against usurpation of power and centralization of power, giving primacy to democratic values in relation to (ethno)nationalism. Constitutionally, patriotic identity is a civic concept that is not in itself non-national since the constitution itself guarantees citizens the preservation of their otherness, nationality and other personal characteristics. He is the Piedmont that holds together the members of the nation and different nationalities, enabling their inclusiveness and belonging to different cultural and ethnic groups. Constitutional patriotism maintains stability in politically and socially heterogeneous environments, in which attachment to the state and its constitutionalism is tied to citizenship, not to common ethnic and national origin and language. The author of this work does not approach constitutional patriotism as a holy grail, but value-neutrally detects its advantages in nationally heterogeneous environments, which have opted for its norming by socio-political consensus. The spirit of constitutional patriotism prevails in post-war Germany, which faced the Nazi past, in the United States of America, Switzerland, Canada and the European Union, as a supranational category.
Constitutional patriotism is not only an integrating factor, but also a key guardian of legality and guarantor of the apparatus of state coercion, which is applied in case of gross violations of the constitutional order. Constitutional patriotism is primarily based on cosmopolitan, universal values, but the question arises to what extent it can transcend states. This concept has its empirical confirmation not only in the normative documents that will be analyzed in the text that follows, but also in the constitutionally patriotic ethos and solidarity that has taken root among citizens as addressees of constitutional norms. In this way, the dichotomy between rights on the books

and rights in action was avoided despite the constant political challenges and social frictions that exist even in established democracies.

2.1. The Canadian Charter of Rights and Freedoms (Charter)

The Charter of Rights and Freedoms of multicultural Canada (1982) respects diversity, but still gives priority to integration. Reflexivity towards constitutionalism is gradual so that newly arrived members of the community get to know and accept the values and constitutional tradition (Fossum 2007, p. 14). The Canadian Charter of Rights and Freedoms (Charter) is an integral part of the Constitutional Law from 1982, which, through defining the relationship between the state and citizens, guarantees the rights and freedoms of all citizens. The Charter guarantees basic freedoms, such as religious and media freedoms, provided that they do not violate the rights of others or undermine public programs and policies. Democratic rights are reflected in the active and passive voting rights of every adult Canadian and impose the obligation to periodically call elections (at least once every five years), which can be postponed in the event of a state of emergency. According to the letter of the Charter, Canadian citizens and permanent residents have the right to freedom of movement, that is, the right to live or to look for a job anywhere in Canada. This right can be limited in the case of obtaining health and social benefits. The Charter also protects legal rights by ensuring fair treatment within the judicial system (right to a fair trial, protection against arrest without good reason, right to legal representation, prohibition of deprivation of liberty without good reason, legal protection after arrest, protection against cruel and unusual punishment, corpus of judicial rights, primary presumption of innocence). The Charter guarantees the freedom of expression of thoughts and ideas, without the intervention of the executive power, as well as the right to equality, which prohibits any form of discrimination, especially those based on race, national or ethnic origin, skin color, religion, gender, age, physical or mental disability, sexual orientation, residence, marital status.

2.2. Constitutional Patriotism in the European Union

The Charter of Fundamental Rights of the European Union is a normative attempt to find the smallest common content for the peoples of Europe who have shown a willingness to share a peaceful future based on common values. The European Union was formed on the universal values of human dignity, freedom, equality, solidarity, democracy, rule of law, security and justice.

The European Union as a supranational creation does not have a constitution, but through the concept of citizenship of the Union, multiculturalism and national identities of the member states and their organization of government are respected. In other words, the European Union has citizenship, but it has neither a classic *demos* nor a generally accepted codified Constitution, which doesn't mean that its constitutionalization did not occur.

Some authors go a step further, considering that the Union inherits an "anti-revolutionary, uncodified and living Constitution that was created in the process of the constitutionalization of the Union", which they state is the result of "limitation of public authority by legal norms" (Beširević, 2013, p. 27), which occurred when the Union transitioned from an international to a constitutional legal order. Constitutionalization in this context refers to the process of constituting a new legal order (Möllers, 2011, p. 195). Applied constitutional patriotism is possible in the European Union due to the absence of a common cultural and historical heritage of the member states of this supranational organization. The European Union is not based on the national but on the political and legal order and that's why it is easier to build a common constitutionally patriotic identity. The citizens of the member states of the European Union simultaneously inherit their individuality and identity and cultural patterns by building a common European identity, based on universal values.

The Spanish Constitution of 1978 is an applied model of constitutional patriotism, which represents a tectonic phenomenon in Spain's constitutionalism and political history. The Spanish political system and the values on which it is based, as well as the sources of law and the system of territorial organization were redefined by this Constitution (Juberias, 2018, p. 56). The Constitution redesigned classic Spanish nationalism that took on the contours of civic nationalism. Civic nationalism is the opposite of peripheral nationalism and incorporates historical determinism and cultural Spanish patterns. The constitutional arrangements of 1978 gave birth to the democratization and decentralization of Spain and gave primacy to the civil over the ethnic dimension (Muro & Quiroga, 2005, pp. 25–26). In this way, the embryo of constitutional patriotism was established on the inclusive concept of citizenship and the sense of identification with a political system that provides freedom and equality to every individual (citizen). Despite the tendencies of Basque and Catalan separatism, the constitutionally patriotic identity persists, transcending spatial and temporal framework.

3. The limits of Constitutional Patriotism

Critics of constitutional patriotism criticize it for its lack of particularism, that is, the fact that the absence of self-understanding is not enough to feel a strong commitment to foreigners with whom one does not share the same origin, culture, or place of residence. A justified criticism of this concept also refers to its insufficient constitutiveness. In order for a common identity to empower citizens to feel solidarity, attachment and loyalty to politics and institutions, it is necessary for citizens to perceive it as an inseparable part of themselves. The question is whether the constitutional patriotic identity possesses such a capacity since its nature is procedural, achieved by a wider social consensus. Criticism that maps the artificial character of constitutional patriotism, which lacks naturalness, is also established. Constitutional identity is a construct that should provide citizens with a sense of kinship, which, although not inherited, is created through adherence to common institutional values. Democratic citizens who choose to be constitutional patriots should understand the new identity not as a reflection but as a creation that they create themselves (Hayward, 2007, pp. 187–188).

In order to establish constitutional patriotism, a deeply developed legal awareness is necessary, which is the core of the rule of law. The rule of law is two-dimensional category, which has formal and material component. The formal (procedural) dimension of the rule of law gives primacy to the formal regulation of legal acts, without focusing on their content. Legal certainty is in the centre of the formalist rule of law. On the other hand, the material component of the rule of law focuses on conceptual and metalegal landmarks woven into the structure of legal norm, to the moral and value contents embodied in the idea of justice and truth. Hence, the rule of law is understood as the core of a just society (Lauc, 2016, pp. 51–52). According to some authors, the rule of law is compex concept which constitutes ultimately a durable system of laws, institutions, norms and community commitment that delivers accountability, just laws, open government and accessible justice to people in the way most appropriate for governance according to the principles that are universal (Paleri, 2022; Perić Diligenski, 2024).

Constitutional patriotism can be sanative for deeply divided societies, in which intragroup loyalty and identity sensitive to any otherness are created within opposing social groups. Great social distance, social schism, exclusivity, intolerance, unwillingness to dialogue and cooperation with dissenting groups can only be overcome through the constitutionalization of patriotism. The polarizing spiral emphasizes belonging and commitment

to one side, while at the same time social distancing between rival groups (Kopecký, Meyer-Sahling & Spirova, 2022, p. 225). Socially, it is most dangerous when polarization turns into violence directed at members of a rival group, which is not condemned but affirmed as the crowning proof of loyalty and solidarity towards one's own group. It is necessary to avoid the social atmosphere that leads to the so-called zero sum game, i.e. a situation in which the victory of one group is equal to the loss (defeat) of another group (Perić Diligenski, 2023, p. 807).

4. Conclusion

Building a legal culture is a *conditio sine qua non* for a patriotic constitutional environment. A legal (non)culture that obeys the executive power, selective application of law and a tendency towards legal uncertainty is an obstacle on the strengthening of constitutional-patriotic sentiments. The legal order has its own logic, which must not be the art of the possible but a strict adherence to the letter and spirit of the law. Constitutional patriotism is not a *panacea* that can solve all legal and social ills, nor is it a legal transplant that can be grafted into any country, at any time, in any legal order. Authoritarian systems, deeply polarized societies and systems with a poorly developed civil political culture are, as a rule, a foreign body for the constitutionalization of patriotism. In post-war and post-conflict societies, nationalism as a political technology (not nationalism *per se*) favors false national sentiments and narratives that are at odds with universal principles of equality and justice. Turning to particularistic values dilutes the possibility for the constitutionalization of patriotism and the establishment of principles and values with which the majority of members of a society could identify.

Constitutional patriotism cannot even be a generally accepted legal transplant, especially in deeply divided societies, with war wounds and national traumas. In such a milieu, community members reject this concept as a foreign body. National identity is not capable of subordinating to constitutional patriotism in societies accustomed to nationalism as a political technology. Constitutional patriotism implies a developed legal culture and a generally accepted awareness of respect for norms, not only out of fear of sanctions, but also because of confidence in the correctness of the disposition. I believe that constitutional patriotism is not an appropriate form for societies where legal nihilism flourishes and where there is no democratic and participatory political culture. Legal nihilism is reflected in distancing, relativizing and negating the values incorporated in legal norms (Perić Diligenski, 2020, p.

346). Societies with developed clientelism, parochial and subservient political culture, captive and dysfunctional institutions cannot be candidates for the formative process of patriotism norming.

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KONSTITUCIONALIZACIJA PATRIOTIZMA – DA LI JE USTAVNI IDENTITET MOGUĆ?

APSTRAKT: Konstitucionalizacija patriotizma podrazumeva insistiranje na neupitnim i univerzalnim vrednostima oko kojih se postiže društvena kohezija umesto insistiranja na razlikama, koje su neretko nepremostive. Ustavnost je metavrednost, vrednost iznad ličnih i užegrupnih interesa, nacionalne, verske, kulturne ili političke pripadnosti. Ključno istraživačko pitanje odnosi se na to da li ustavni patriotizam može da bude alternativa za nacionalizam. Autor u radu nastoji da pronađe društveno-političke i pravno osmišljene odgovore i na niz drugih dilema – Da li je ovaj koncept pogodan za postizanje društvene kohezije i političke lojalnosti u multikulturalnim društvima, da li je to sredstvo za političko osnaživanje građana i da li putem njega mogu da se ublaže konflikti u duboko podeljenim društvima?

Pored normativnog sagledavanja ovog koncepta, primenom empirijskog uporednopravnog metoda autor ispituje kredibilitet ustavnog patriotizma u pravnim državama sa razvijenom demokratskom i građanskom političkom kulturom. Nalazi rada pokazuju da ustavni identitet nije moguć u duboko podeljenim društvima, sa ratnim ranama i nacionalnim traumama. Društva naviknuta na nacionalizam kao političku tehnologiju nisu adekvatan milje za konstitucionalizaciju patriotizma. Ustavni patriotizam je teško postignuti u ambijentu sa razvijenom korupcijom, klijentelizmom, podaničkom kulturom i nefunkcionalnim institucijama. Drugim rečima, vladavina prava i pravna država jesu preduslovi za izgradnju ustavnog patriotskog identiteta.

***Ključne reči**: ustavni patriotizam, vladavina prava, nacionalizam, identitet.*

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APPLICATION OF ESG STANDARDS IN LABOR RELATIONS IN THE REPUBLIC OF SERBIA

ABSTRACT: ESG standards (*Environmental, Social* and *Governance*) represent a modern concept of sustainable and responsible business, which is increasingly reflected in labor relations throughout Europe, including in the Republic of Serbia. Although Serbia still does not have a single law or strategy that would systematically regulate the ESG obligations of business entities, labor legislation contains most elements of the social dimension of ESG, while certain segments of the governance (G) and environmental (E) components are reflected indirectly through other regulatory areas. In this regard, domestic labor law demonstrates a high degree of normative readiness for the integration of modern ESG principles, particularly in the areas of occupational safety and health, prohibition of discrimination, trade union rights, and transparency. The aim of this paper is to provide a comprehensive analysis of the existing legislative framework of the Republic of Serbia relevant to the application of ESG standards in labor

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relations. Special attention is devoted to the review of judicial practice, which significantly contributes to the operationalisation of ESG principles, especially in cases of discrimination, workplace harassment, violations of occupational safety and health regulations, abuse of corporate powers, and whistleblower protection. The paper also discusses the indirect influence of European regulations, primarily the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD), which, although not formally binding on Serbia, have a significant impact through the operations of foreign investors and affiliated companies. It is concluded that expectations regarding ESG standards in labor relations will inevitably increase, and that it is necessary to further strengthen institutional capacities, improve labor inspection oversight, and develop corporate policies that promote a sustainable working environment.

Keywords**:** *labor relations, sustainable business models, labor rights, worker protection.*

1. Introduction

The concept of ESG standards[1] (Environmental, Social, Governance) represents a framework for evaluating and managing sustainable business operations of companies. ESG standards integrate environmental, social and governance factors into business strategies, with each of the three pillars: (E) environmental protection, (S) social responsibility and (G) corporate governance, having its own specific function and importance.

E – Environmental (environmental protection) is a component focuses on the impact of business on the environment and natural resources. It includes the management of emissions, energy and resource use, waste and the implementation of sustainable practices in supply chains.

S – Social (social responsibility) is a component that encompasses all aspects all aspects of a responsible attitude towards employees, the community and society. In the context of labor law, this means protection of workers' rights, promotion of equal opportunities, safe and healthy working conditions and social dialogue. The social dimension of ESG standards directly affects

[1] Although the term "ESG standards" is used, there is actually no universal ESG standard in the true sense of the word, but there are several criteria and methodologies that serve to define this term.

the quality of working relationships, and the long-term sustainability of the company.

G – Governance (corporate governance): This dimension refers to the way the company is managed, decision-making transparency and management responsibility. It includes ethical business, establishment of clear procedures, compliance with legal and regulatory obligations, protection of whistleblowers, as well as control and supervision mechanisms within the company.

All three components of the ESG standard together form an integrated approach to sustainable business, where environmental and social responsibility go hand in hand with responsible management, and their effect is also reflected in the quality of working relationships, strengthening the company's reputation and attracting investments (Tuškan-Sjauš, Šimunić & Čičak, 2024).

In the Republic of Serbia, although there is no special law regulating ESG, many elements of these standards are already normatively regulated through a set of labor law and special laws. Through the current process of joining the EU and attracting foreign investments, employers are increasingly harmonizing their practices with European rules, especially in terms of reporting, risk assessment in supply chains and human resource management. So, ESG principles become not only a recommendation, but also a strategic necessity.

The aim of this work is to provide a comprehensive insight into the current level of integration of ESG principles into labor relations and identify key challenges and perspectives for further development through the analysis of the normative framework of the Republic of Serbia and its compliance with European Union (EU) standards and legislation, and through court practice.

2. Normative framework of the republic of Serbia relevant to ESG

2.1. Constitutional basis

The Constitution of the Republic of Serbia contains provisions that are directly related to the "S" and "G" components of ESG, including the right to dignity and safe working conditions, prohibition of discrimination, the right to organize a trade union, the right to fair working conditions and the ban on the employment of persons under the age of 15 (Constitution of the Republic of Serbia, 2006, Arts. 55, 60 and 66).

These norms represent the constitutional framework for the elaboration and further development of ESG principles in the field of labour relations. Based on these framework provisions, each of the above-mentioned rights and obligations is defined in more detail by separate laws.

2.2. Labor Law

Labor Law (2005) is the basic regulation governing labour relations explicitly prohibits discrimination in employment relationships (Krstinić & Stefanović, 2025, p. 59). represents the central legal framework through which significant ESG elements—particularly those related to social protection and corporate governance—are already incorporated, namely:

Dignity of the employee – The law stipulates that the employer must respect the personal dignity and integrity of the employee (Arts. 12, 21–23). This includes the prohibition of any form of psychological or physical abuse, mobbing, abusive behavior or belittling of employees (Petrevska, Grujić & Pešević, 2023).

Equal employment conditions – The law clearly prohibits discrimination based on sex, age, disability, religion, nationality or any other personal characteristic (Arts. 18–20). Employers must provide equal opportunity for employment, promotion, training and benefits (Berber, Slavić & Leković, 2019). This provision corresponds directly to the "S" component of the ESG standard.

The right to safe and healthy working conditions – The Labor Law (2005) in combination with the Law on Occupational Safety and Health obliges employers to assess all risks in the workplace and to take measures to protect workers (Labor Law, 2005, Art. 15; Law on Occupational Safety and Health, 2023, Arts. 15–18). This includes providing adequate protective equipment, educating workers on safe work practices, proper maintenance of work areas and equipment, and monitoring the state of safety (Fenwick, Kalula & Landau, (2010). This area is particularly important for ESG because it represents the "S" component – preserving the health and life of employees.

Social dialogue – The Labor Law (2005) guarantees employees the right to establish and join trade unions, as well as the right to participate in collective bargaining as a key mechanism of social dialogue (Arts. 6, 8). Social dialogue is key to ESG, as it allows employees to directly participate in the creation of sustainable and more responsible policies within the company.

2.3. Law on Occupational Safety and Health

The Law on Occupational Safety and Health (2023) is a key regulation for the implementation of ESG standards in employee life and health protection. Its application includes all employers and workers, regardless of the form of ownership or sector of activity. The law prescribes the following obligations and rights:

Risk assessment and management – The employer is obliged to identify, assess and continuously monitor all risks to the safety and health of workers. This includes analysis of work tasks, work environment and processes (Arts. 9–11, 13).

Education and training of workers – The employer must organize regular training of employees on safe performance of work, proper use of equipment and procedures in emergency situations (Arts. 9, 16–18). Education is necessary so that workers recognize the dangers and apply preventive measures, which strengthens the awareness of the safety culture in the company.

Liability of the employer – Non-compliance with the provisions of the law leads to the liability of the employer and can be the basis for compensation of damages to the employee (Arts. 9, 33–34). Judicial practice in Serbia confirms that the employer's responsibility can be determined even when the injury was caused by the negligence of the employee, if the employer did not fulfill the obligations stipulated by the law.

2.4. Law on prevention of abuse at work

The Law on Prevention of Abuse at Work (2010) regulates the protection of the dignity of employees and the prevention of mobbing and psychological pressure in the workplace. This law is directly related to the ESG principle "S", as it promotes a safe and inclusive work environment. Key provisions include:

Definition and forms of abuse – The law defines abuse at work as continuous or repeated negative actions that threaten the dignity, honor, integrity or professional development of an employee (Arts. 6–8). This includes verbal or physical abuse, isolation, unfounded criticism or withholding of information.

Obligations of the employer – The employer is obliged to establish procedures for reporting abuse, to investigate any complaint and to take appropriate measures to protect the victim (Arts. 9–11, 13).

Employee Protection and Sanctions – Employees who report abuse must not suffer consequences for their report (Law on the Prevention of Abuse at Work, 2010, Arts. 13–15, 23–25).

2.5. Law on the Protection of Whistleblowers

This law, which is recent and represents serious progress in the field of regulation and protection of whistleblowers, contains a very important segment of the "G" component of ESG – transparency, the fight against corruption and the protection of workers who report illegalities. The law prescribes the rights of employees who report irregularities, including the prohibition of retaliation, dismissal or other adverse consequences (Law on the Protection of Whistleblowers, 2014). The employer is obliged to establish internal channels for reporting irregularities and to ensure the confidentiality of the whistleblower's identity.

All of this represents the basic corpus of ESG standards in the field of labor relations and the protection of workers' rights, they have long been an integral part of the law, so from that point of view we can say that in the Republic of Serbia we have long adopted the foundations for ESG standards, we just need to consistently apply them in practice.

3. Compliance of Serbian legislation with ESG regulation of the EU

Although the Republic of Serbia is not formally obliged to apply European Union law prior to accession, the accession process itself presupposes the gradual harmonization of national legislation with EU legal standards. In this context, certain EU directives already exert an indirect normative influence on the Serbian legal and economic framework, particularly in the fields of corporate sustainability reporting, supply chain due diligence, occupational safety and health, and equality and non-discrimination (Directive (EU) 2022/2464; Directive (EU) 2024/1760).

The integration of ESG standards into business operations in the Republic of Serbia therefore represents not only an issue of domestic regulatory policy or voluntary corporate social responsibility, but also a process closely connected to European and international regulatory developments. In recent years, the European Union has established a comprehensive regulatory framework for sustainable business practices, covering all dimensions of ESG, with a particular emphasis on environmental protection, social responsibility, and

corporate governance. These standards are already being applied by large multinational companies operating in Serbia, which in turn significantly affects domestic companies involved as suppliers or business partners within European value chains.

One of the key EU instruments in the field of ESG regulation is the **Corporate Sustainability Reporting Directive** (CSRD), which introduces enhanced obligations for companies to disclose transparent, comparable, and reliable information on the environmental and social impacts of their activities, as well as on governance structures, risk management systems, and internal control mechanisms (Directive (EU) 2022/2464). Although Serbia is not an EU Member State, the practical relevance of the CSRD for Serbian companies is evident, particularly for those operating on the EU market or cooperating with European investors and business partners (Đurić & Škrbić, 2024). The gradual adoption of CSRD-related standards encourages the development of internal mechanisms for monitoring and reporting ESG indicators and contributes to greater transparency, accountability, and trust among investors, employees, and the wider public.

In addition to reporting obligations, the EU has further strengthened the ESG framework through the **Corporate Sustainability Due Diligence Directive** (CSDDD), which establishes binding standards for responsible corporate conduct throughout global supply chains, with a specific focus on the protection of human rights and the environment (Directive (EU) 2024/1760). From the perspective of the Republic of Serbia, this directive represents both a regulatory challenge and a strategic opportunity. Serbian companies involved in international supply chains are increasingly required to align their business practices with due diligence obligations, including the prevention of discrimination, abuse, unsafe working conditions, and other unethical practices (Vuković, 2025). At the same time, the implementation of CSDDD principles may contribute to improving internal compliance systems, strengthening risk management, and enhancing the overall sustainability and competitiveness of Serbian businesses in the European market.

Also, at this point it is important to mention Regulation (EU) 2020/852 ("Regulation on Taxonomy"), which stipulates that certain large companies should publicly publish information on how and to what extent their activities are related to environmentally sustainable economic activities. This should certainly be implemented in Serbian legislation, but also in practice. (Kovačević, 2025).

In the following table, we will show the key EU ESG directives and their implementation in the legislation of the Republic of Serbia:

Table 1: Compliance of legislation in Serbia with EU directives

EU directive / standard	Description / area	Corresponding regulation in the Republic of Serbia	Note
CSRD – Corporate Sustainability Reporting Directive	It requires companies to report on the impact of business operations on the environment, society and corporate governance	Law on Accounting + Rulebook on Non-Financial Reporting	Partially implemented – Serbia still does not have a fully binding law on ESG reporting, but companies are encouraged to be transparent and good practices
CSDDD – Directive on Due Diligence in Supply Chains	It prescribes the responsibility of companies for the protection of human rights and the environment in supply chains	Labor Law, Law on Prohibition of Discrimination, Law on Environmental Protection	Partially implemented – there are national regulations covering human rights and environmental protection, but implementation in supply chains is still limited
EU guidelines for reducing emissions and energy efficiency	They set standards for reducing environmental impact	Law on Environmental Protection	Partially implemented – national regulations on energy and environmental protection cover part of the EU requirements, but full harmonization has not yet been achieved
EU guidelines on corporate governance and whistleblower protection	They set the standards of ethical management, transparency and protection of those who report irregularities	Whistleblower Protection Act + Business Companies Act	They enable the "G" component of ESG through risk control, ethical business and responsible management – implemented in Serbia

Source: Author's research

In addition to EU regulations on corporate sustainability reporting and supply chain due diligence, European Union law contains a comprehensive set of directives governing occupational health and safety, which represent an important element of the social dimension of ESG standards. These regulations aim to ensure a high level of protection of workers and to harmonize safety standards across EU Member States.

The central instrument in this field is Council Directive 89/391/EEC (the "Framework Directive"), which establishes the fundamental obligations of employers to assess occupational risks, introduce preventive and protective measures, and provide employees with adequate information and training on health and safety at work.

Building on the principles of the Framework Directive, a number of specific directives regulate particular risks and working conditions. Directive 2009/104/EC prescribes minimum requirements for the safe use of work equipment, while Directive 98/24/EC focuses on the protection of workers from risks related to exposure to chemical agents. Additional directives address ergonomic risks, manual handling of loads, work with display screen equipment, as well as protection against hazardous factors such as noise, vibration, and biological and chemical agents.

Taken together, these directives clearly define employer responsibilities with regard to risk assessment and management, the organization of preventive measures, employee training, the provision and use of appropriate equipment and protective measures, as well as record-keeping and reporting of occupational injuries and diseases. Their close connection with ESG standards is particularly evident in the "S" component, which recognizes employee health and safety as a key factor of socially responsible and sustainable business (Waas, 2021).

Beyond occupational safety and health, EU law also encompasses broader ESG-related standards and guidelines, including those concerning the reduction of greenhouse gas emissions, energy efficiency, equal opportunities and whistleblower protection (World Services Group [WSG], 2025). Compliance with these standards requires companies to improve internal work procedures, strengthen monitoring mechanisms, develop policies for the protection of employee rights, and establish systems for regular non-financial reporting (Pachmann & Tomas, 2024).

Although EU directives formally incorporate occupational health and safety, employee protection and other social standards into the regulatory framework relevant for ESG, their practical effectiveness largely depends on the extent to which these norms are internalized within corporate governance

and business strategies. ESG standards imply a shift from a purely compliance-based approach toward proactive risk management, transparency and social responsibility integrated into decision-making processes. In legal systems such as that of the Republic of Serbia, regulation in this field still predominantly operates in a reactive manner, focusing on sanctioning violations rather than on the systematic prevention of social and labor-related risks.

In the context of the Republic of Serbia, this gap between normative alignment and substantive ESG integration becomes particularly evident, given the limited capacities of supervisory authorities, the need for continuous education of employers and employees, and the development of effective ESG reporting systems. Nevertheless, companies that proactively align their operations with ESG principles may enhance their competitiveness, attract foreign investment and improve their public reputation, thereby creating a functional link between domestic legislation and European regulatory expectations (Sychenko, 2023).

The following table shows the compliance of Serbian legislation with the basic EU directives on occupational health and safety (OHS):

Table 2: Compliance of legislation in Serbia with EU directives on OHS

EU directive / standard	**Description / area**	**Corresponding regulation in the Republic of Serbia**	**Note**
Directive 89/391/EEZ – Framework directive on occupational health and safety (OHS)	Basic obligations of the employer: risk assessment, information and training of workers, consultation and supervision	Law on Safety and Health at Work	Partially implemented – The OSH Law covers the basic obligations of employers, but supervision and uniform application of standards are not yet fully developed
Directive 2009/104/EC – Safety and health requirements for work equipment	Protection of workers when using work equipment	Law on occupational safety and health + Rulebook on machinery and equipment	Partially implemented – machinery and equipment regulations exist, but the application of technical standards varies between industries

EU directive / standard	Description / area	Corresponding regulation in the Republic of Serbia	Note
Directive 98/24/ EC – Chemical substances	Protection against chemicals and dangerous substances	Law on Protection at Work with Chemicals and Rulebook on Classification, Packaging and Labeling of Hazardous Substances	Implemented – regulations on chemicals exist (increased monitoring required)
Directive on ergonomics and weight loading	Physical work and stress	Rulebooks on ergonomics and physical workload of workers	Applied – national regulations cover basic requirements

Source: Author's research

The overview of EU occupational health and safety directives and their corresponding regulations in the Republic of Serbia indicates a moderate level of alignment, with most key requirements formally transposed into national legislation. However, the analysis also shows that practical implementation and effective supervision remain uneven, particularly in the areas of general employer obligations and the application of technical standards across different industries.

4. Case law in the republic of Serbia relevant to ESG standards [2]

Judicial practice in the Republic of Serbia provides practical insight into the implementation of ESG principles in labor relations, especially in the areas of employee rights protection, occupational safety, anti-discrimination and whistleblower protection (Supreme Court of the Republic of Serbia, 2025).

What is interesting to note is that the judicial practice in the Republic of Serbia shows that, although domestic courts do not use the terminology "ESG", they nevertheless regularly resolve disputes that are substantively directly related to ESG components – especially in the area of employee protection (S), occupational safety (E and S), and reporting of irregularities (G).

[2] Judgments and legal positions were reviewed based on publicly available decisions published on the official website of the Supreme Court of the Republic of Serbia (ex Supreme Court of Cassation of the Republic of Serbia).

4.1. Protection against harassment at work (mobbing) – S component of the ESG standard

Judicial practice of the Supreme Court of the Republic of Serbia has significantly contributed to clarifying the legal concept of abuse at work. In one of its decisions[3], the Court confirmed that systematic and repeated negative treatment of an employee, which causes measurable adverse consequences for the employee's professional status or mental health, constitutes abuse at work.

The Court emphasized the employer's obligation to actively prevent such behavior and to ensure effective mechanisms for employee protection (Judgment of the Supreme Court, Rev2 4445/2022).

At the same time, the Court has consistently held that not every unpleasant, strict or inadequate work-related measure amounts to mobbing.[4] Abuse exists only where long-term, unjustified and harmful conduct exceeds the limits of normal work situations (Judgment of the Supreme Court, Rev2 1878/2023).

Furthermore, in assessing mobbing claims[5], courts apply a demanding evidentiary standard, based on a combined evaluation of objective circumstances and the subjective experiences of employees, with particular attention given to medical and other relevant documentation (Judgment of the Supreme Court, Rev2 1299/2023).

4.2. Protection of whistleblowers – G component of the ESG standard

Judicial practice concerning the protection of whistleblowers further illustrates the growing importance of the social and governance dimensions of ESG standards in Serbian labor law. In one of its decisions[6], the Supreme Court emphasized the obligation of employers to establish confidential and effective internal channels for reporting irregularities. The Court clarified that whistleblower protection is activated only when the statutory requirements prescribed by the Law on the Protection of Whistleblowers are met (Judgment of the Supreme Court, Rev-uz 4/2022).

In another decision[7], the Court provided a detailed interpretation of the concept of a "harmful act," highlighting that retaliation against a whistleblower may take

[3] Judgment of the Supreme Court of the Republic of Serbia, Rev2 4445/2022 of 22. August 2023.
[4] Judgment of the Supreme Court of the Republic of Serbia, Rev2 1878/2023 of 23. May 2023.
[5] Judgment of the Supreme Court of the Republic of Serbia, Rev2 1299/2023 of 17. May 2023.
[6] Judgment of the Supreme Court of the Republic of Serbia, Rev-uz 4/2022 of 14. June 2023.
[7] Judgment of the Supreme Court of Cassation of the Republic of Serbia, Rev-uz 5/2020 of 09. December 2020.

various forms, ranging from dismissal to more subtle measures such as workplace pressure or unfavorable changes in working conditions. This decision is important as it confirms a broad scope of legal protection afforded to whistleblowers under Serbian law (Judgment of the Supreme Court of Cassation, Rev-uz 5/2020).

4.3. Occupational safety and health (OHS) – E and S component of ESG

In addition to civil and labor disputes, Serbian judicial practice has also addressed serious breaches of occupational safety and health regulations within criminal proceedings. In one decision[8], the Supreme Court of Cassation held that grave violations of employers' obligations in the field of occupational safety and health may constitute grounds for criminal liability, particularly where a causal link is established between the employer's negligence and the resulting injury or workplace accident. The Court emphasized the importance of expert evidence in determining such causation (Judgment of the Supreme Court of Cassation, Kzz 787/2021).

In a more recent decision[9], the Court adopted an even stricter approach, stressing that failure to implement legally prescribed protective measures represents a serious violation of occupational safety and health regulations. The Court expressly stated that economic or organizational reasons cannot justify the neglect of safety obligations and that responsible persons may incur individual criminal liability for such conduct (Judgment of the Supreme Court, Kzz 289/2025).

4.4. Concluding considerations of case law in the ESG context

A review of judicial practice clearly indicates that domestic courts, although they do not explicitly use the term "ESG", apply regulations from labor law, occupational safety and whistleblower protection in case of labor disputes, which are substantively in the spirit of ESG principles. This means that ESG principles are already unofficially but actually integrated into labor law practice, through decisions that protect the dignity of employees, ensure safety and health at work, and guarantee the protection of those who report irregularities.

Also, judicial practice shows that when deciding, the courts value the factors of "social responsibility" and "responsible management" as relevant for assessing

[8] Judgment of the Supreme Court of Cassation of the Republic of Serbia, Kzz 787/2021 of 07. September 2021.

[9] Judgment of the Supreme Court of the Republic of Serbia, Kzz 289/2025 of 11. March 2025.

the legality of business – which confirms that ESG standards are not just an abstract ideal, but have concrete legal effects and can be subject to judicial supervision.

From an ESG perspective, such judicial protection remains predominantly individual and ex post in nature, focusing on the correction of violations after they have occurred rather than on preventive mechanisms embedded in corporate governance. This confirms that, despite the substantive alignment of judicial reasoning with ESG values, the Serbian legal system still relies primarily on judicial intervention instead of systematic internal risk management and proactive social responsibility of employers. Consequently, case law currently serves more as a corrective instrument than as a driver of comprehensive ESG integration.

However, the analysis also points to limitations: the number of final rulings directly applying ESG-relevant institutes (mobbing, whistleblowers, OHS violations) is relatively modest, and many disputes end in dismissal of claims – indicating that practice is uniform, but that the burden of proof often rests with employees. This means that for the true affirmation of ESG standards in Serbia, the mere existence of norms is not enough — a stronger awareness of workers, better application of laws and more active inspection and judicial supervision is also necessary.

In this sense, judicial practice – with all its shortcomings – is an important indicator that ESG standards are slowly (but realistically) being introduced into labor relations, and that it is possible through the law to protect workers and promote responsible business. As such, it provides a solid basis for further development, but also warns that further development depends on strengthening institutional, procedural and cultural assumptions.

5. Possible directions for improving ESG standards (De Lege Ferenda)

Based on the analysis of the existing legal framework, EU regulatory trends and domestic judicial practice, it can be concluded that ESG standards in the Republic of Serbia are normatively present, but insufficiently systematized and unevenly implemented. The following recommendations do not represent exhaustive legislative solutions, but rather possible directions for strengthening the practical application of ESG principles. Their purpose is to bridge the gap between formal legal protection and effective and responsible corporate governance.

1. **Normative harmonization with the EU ESG framework** – consideration should be given to adopting a special legal act or amending existing labor law regulations to systematize ESG-related obligations.

2. **Strengthening inspection supervision**, particularly in the field of occupational safety and health, to ensure more consistent enforcement of existing norms.
3. **Digitization of internal procedures**, aimed at increasing transparency and traceability of data on working conditions and labor relations.
4. **Gradual introduction of non-financial reporting obligations** for medium and large companies, in line with EU standards and market expectations.
5. **Strengthening employee participation in decision-making**, especially through social dialogue and internal consultation mechanisms.
6. **Continuous education of employers and HR professionals** on ESG standards and their relevance for sustainable labor relations.

6. Conclusion

Although the Republic of Serbia does not have a single legal act regulating ESG standards, a significant part of these principles is already contained in its labor law system. Through the Labor Law, the Law on Safety and Health at Work, the Law on Prohibition of Discrimination, the Law on Prevention of Abuse at Work and other regulations, Serbia has laid a solid foundation for the social component of ESG.

However, challenges still exist with uneven implementation, insufficient reporting, weak social dialogue and lack of obligation to integrate ESG into business strategies. This indicates that the Serbian approach to ESG-related labor standards is still predominantly compliance-oriented, rather than based on a strategic integration of social responsibility into corporate governance. Future trends, including investor demands, EU regulation and market expectations, show that ESG standards will become not only a recommendation, but also a practical necessity.

In that sense, the identified gaps in implementation and governance justify the need for targeted normative, institutional and organizational measures aimed at strengthening the practical application of ESG standards in labor relations

That is why it is necessary to systematically approach their development, strengthening and implementation, because sustainable labor relations are a key factor in the long-term competitiveness of employers and the quality of worker protection in the Republic of Serbia.

Conflict of Interest
The authors declare no conflict of interest.

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

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PRIMENA ESG STANDARDA U RADNIM ODNOSIMA U REPUBLICI SRBIJI

APSTRAKT: ESG standardi (*Environmental*, *Social*, *Governance*) predstavljaju savremeni koncept održivog i odgovornog poslovanja, koji se sve više ogleda u radnim odnosima širom Evrope, pa i u Republici

Srbiji. Iako Srbija još uvek nema jedinstven zakon ili strategiju koja bi sistematski regulisala ESG obaveze privrednih subjekata, radnopravno zakonodavstvo sadrži većinu elemenata socijalne dimenzije ESG-a, dok se određeni segmenti komponente upravljanja (G) i zaštite životne sredine (E) ogledaju indirektno kroz druge regulatorne oblasti. U tom smislu, domaće radno pravo pokazuje visok stepen normativne spremnosti za integraciju savremenih ESG principa, posebno u oblastima bezbednosti i zdravlja na radu, zabrane diskriminacije, sindikalnih prava i transparentnosti. Cilj ovog rada je da pruži sveobuhvatnu analizu postojećeg zakonodavnog okvira Republike Srbije koji je relevantan za primenu ESG standarda u radnim odnosima. Posebna pažnja posvećena je pregledu sudske prakse koja značajno doprinosi operacionalizaciji ESG principa, posebno u slučajevima diskriminacije, mobinga, kršenja bezbednosti i zdravlja na radu, zloupotrebe korporativnih ovlašćenja i zaštite uzbunjivača. U radu se takođe razmatra indirektni uticaj evropskih propisa, pre svega Direktive o korporativnom izveštavanju o održivosti (CSRD) i Direktive o dužnoj pažnji u lancu snabdevanja (CSDDD), koje, iako formalno nisu obavezujuće za Srbiju, imaju snažan efekat kroz poslovanje stranih investitora i povezanih kompanija. Zaključuje se da će se očekivanja u vezi sa ESG standardima u radnim odnosima neminovno povećavati, te da je potrebno dalje jačati institucionalne kapacitete, unapređivati inspekcijski nadzor i razvijati korporativne politike koje promovišu održivo radno okruženje.

***Ključne reči*:** *radni odnosi, održivi poslovni modeli, radna prava, zaštita radnika.*

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REGULATORY ASPECTS OF COSMETIC PRODUCT TESTING AND THE ROLE OF ALTERNATIVE MODELS IN MODERN STRATEGIES

ABSTRACT: Modern regulatory frameworks in the field of cosmetic products increasingly promote the use of alternative methodologies (New Approach Methodologies, NAMs) based on *in vitro*, *ex vivo*, and *in silico* approaches, accompanied by strict limitations or complete bans on animal testing. In such a regulatory environment, interest is growing in models capable of bridging the gap between cellular systems and complex *in vivo* studies. Zebrafish (*Danio rerio*) embryos have been recognized as a potential bridging model due to their high biological relevance, testing versatility, and the more favorable ethical status of early developmental stages. This paper provides a systematized overview of regulatory frameworks in the EU, the USA, Asia, and Serbia, highlighting the degree of acceptance of alternative methods and the specific status of zebrafish in the context of the safety assessment of cosmetic products and ingredients. It analyzes the scientific advantages and limitations of the zebrafish model,

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including genetic similarity to humans, embryonic transparency, and rapid development, as well as limitations that restrict its use as primary evidence in regulatory documentation. The comparative analysis indicates that zebrafish are most appropriately used as a supplementary source of data within weight-of-evidence and NAM-oriented strategies, particularly in early-stage hazard screening and the mechanistic understanding of the effects of new bioactive substances. In line with international trends and the harmonization of the national regulatory framework with EU requirements, the findings suggest that zebrafish embryos represent a valuable research and development tool, but not a substitute for validated methods that form the basis of regulatory safety assessment of cosmetic products.

Keywords: *regulatory frameworks, cosmetic product testing, new approach methodologies (NAMs), weight-of-evidence, zebrafish (Danio rerio).*

1. Introduction

Methods for assessing the safety and efficacy of cosmetic products and ingredients are most commonly classified into *in vitro* and *in vivo* approaches, with an increasingly important role of *ex vivo* and *in silico* methods in modern safety-assessment concepts (Barthe et al., 2021; Silva & Tamburic, 2022).

In the European Union (EU), testing cosmetic products and their ingredients on animals is prohibited under the Cosmetics Regulation (Regulation (EC) No 1223/2009), which clearly defines that, for any stage of product development, including product ingredients as well as evidence of safety, data obtained from animal experiments may not be used.

This regulation has stimulated the development and application of the so-called ***New Approach Methodologies*** **(NAMs)**, which enable ethically acceptable and scientifically robust safety assessments. By stimulating innovation in alternative risk-assessment methods and by combining different types of evidence, the need for classical animal testing is eliminated, while predictivity of the safety assessment is enhanced (Baltazar et al., 2020; Silva & Tamburic, 2022).

In silico methods encompass computational models, including QSAR (Quantitative Structure-Activity Relationship) and related approaches, which predict potential biological and toxicological effects of substances based on structure and existing databases, forming an important pillar of next-generation risk assessment in cosmetology (Cronin et al., 2022; Baltazar et al., 2020). ***Ex vivo*** methods use biological material, most commonly excised skin, under conditions

that retain some physiological relevance, which is particularly important for studies of dermal penetration and local effects (Barthe et al., 2021***). In vitro*** methods are conducted on isolated cells, tissues or reconstructed 3D models of human skin, providing high control of experimental conditions and good standardization, although with limitations regarding systemic complexity of an organism (Barthe et al., 2021; Silva & Tamburic, 2022). ***In vivo*** approaches in the field of cosmetics refer, in practice, to controlled studies in human volunteers, with strict ethical requirements and caution in data interpretation, especially regarding historically used irritation and sensitization tests (Scientific Committee on Consumer Safety [SCCS], 2015; Barthe et al., 2021; Robinson, McFadden & Basketter, 2001). Due to ethical and regulatory considerations, modern strategies for evaluating cosmetic ingredients increasingly rely on combining *in vitro*, *ex vivo*, and *in silico* evidence within an integrated **"weight-of-evidence"** approach (Silva & Tamburic, 2022; Baltazar et al., 2020).

In the context of developing new bioactive compounds relevant to cosmetic products, particularly in the early screening phase of effects and safety, **zebrafish models** may represent a useful intermediate level of biological complexity between cell-based systems and classical vertebrate models (Zon & Peterson, 2005; MacRae & Peterson, 2015; Bauer, Mally & Liedtke, 2021). The Zebra fish (*Danio rerio*) is a freshwater species originating from South Asia, naturally distributed across parts of India, Bangladesh, Nepal, Myanmar and Pakistan (Lawrence, 2007; Whiteley et al., 2011). The introduction of zebrafish as a laboratory model intensified during the 1980s, with the work of Streisinger and colleagues representing a foundational milestone in modern zebrafish genetics (Streisinger et al., 1981). Zebrafish has become a widely accepted vertebrate model due to its small size, low maintenance cost, external embryonic development, optical transparency, and suitability for high-throughput testing (Penberthy, Shafizadeh & Lin, 2002; MacRae & Peterson, 2015). Genomic comparisons show that approximately 70% of human genes have at least one clear ortholog in zebrafish, further supporting its translational potential (Howe et al., 2013). Embryogenesis and early organogenesis proceed rapidly, while high fecundity enables the production of large numbers of embryos in a short period, making the model well suited for toxicological and pharmacological screening (Russo et al., 2022). Transparent embryos facilitate direct observation of developmental changes and phenotypic effects of tested substances, and exposure to hydrophilic compounds is often easily achieved by simple addition of the substance to the water (Bauer et al., 2021; MacRae & Peterson, 2015). Thus, the zebrafish embryo model can be viewed as an intermediate step between *in vitro* systems and more complex *in vivo* approaches in the

research and development of active substances, including those with potential dermatological and pigmentation effects (Russo et al., 2022; Qu et al., 2023).

Modern safety assessment and evidence-based substantiation of cosmetic product efficacy increasingly rely on combining *in vitro*, *ex vivo*, and *in silico* approaches, with cautious, ethically strictly controlled use of *in vivo* testing in human volunteers. This shift results from regulatory bans and the strong conceptual orientation toward the 3R principles (Replacement, Reduction, Refinement), alongside the development of integrated risk-assessment strategies that include "weight-of-evidence" and IATA (Integrated Approaches to Testing and Assessment) approaches. Within this framework, zebrafish embryos gain importance as a potential bridging model between reduced cell systems and complex organism-level responses, providing relatively rapid and high-throughput insight into early toxicity signals and certain functional effects of bioactive substances (Strähle et al., 2012; MacRae & Peterson, 2015; Bauer et al., 2021).

2. Aim of the study

Despite considerable progress in developing alternative methodologies and regulatory shifts limiting the use of animal models in cosmetic testing, there remains a pronounced need for reliable, ethically acceptable, and scientifically relevant approaches that can bridge the gap between *in vitro* and *in vivo* systems. Particularly in the early phases of research and development of new bioactive compounds, existing methods are often insufficient to fully characterize the hazard profile, while the regulatory framework simultaneously requires a high degree of scientific rigor. In this context, the motivation for the present study arises from the need to critically examine the regulatory, methodological and practical landscape in which zebrafish models may be applied as scientifically justified components of "weight-of-evidence" strategies in safety and biological-activity assessment of cosmetic ingredients, especially considering that zebrafish aligns with key requirements of modern approaches aimed at 3R compliance and enhancing the predictive value of alternative models.

The aim of this study is to systematize and compare regulatory frameworks in the EU, USA, Asia and Serbia concerning the acceptability of alternative methods and the regulatory status of zebrafish in cosmetic-product testing; to analyze the scientific advantages and limitations of the zebrafish embryonic model in the context of cosmetic safety and efficacy assessment; and to identify realistic possibilities for integrating zebrafish into NAM-oriented strategies. Additionally, the study aims to provide an evidence-based

position on how these data can be used as supplementary, but not primary, evidence in regulatory documentation, particularly in light of harmonization with EU requirements and modern "weight-of-evidence" approaches.

3. Regulatory frameworks and the status of zebrafish (Danio rerio) in cosmetic-product testing

In the European Union, the regulatory context for such an approach is defined by Regulation (EC) 1223/2009 (Regulation (EC) No 1223/2009) and the associated history of the complete ban on animal testing of cosmetic products and ingredients, with the marketing ban fully enforceable since 2013 (European Commission, 2013). Consequently, validated *in vitro* methods, particularly reconstructed human skin systems and defined approaches for key toxicological endpoints, have become central pillars of safety justification, with the Scientific Committee on Consumer Safety (SCCS) guidelines serving as a practical regulatory compass (SCCS, 2015). Concurrently, the European animal welfare framework legally protects fish developmental stages up to the free-feeding stage, which practically allows early embryonic zebrafish testing to be treated more favorably than classical vertebrate models when used in clearly defined research objectives (Strähle et al., 2012). Methodologically, the OECD TG 236 *Fish Embryo Acute Toxicity test* represents a standardized international framework for fish embryonic acute toxicity testing, primarily in chemical and ecotoxicological domains, but its rationale can also be applied as supplementary evidence in early screening of cosmetic raw materials, with cautious regulatory positioning (Organisation for Economic Co-operation and Development [OECD], 2019; European Union Reference Laboratory for alternatives to animal testing [EURL ECVAM], 2014).

In **the United States (USA)**, the federal framework does not require animal testing of cosmetic products as a condition for market placement, whereas the Modernization of Cosmetics Regulation Act (MoCRA) strengthens manufacturers' responsibility to maintain adequate safety substantiation (U.S. Food and Drug Administration [FDA], 2022). At the same time, regulatory practice is becoming more complex due to state-level bans on the sale of animal-tested cosmetics, with California being one of the most prominent examples (Steptoe, 2018). In terms of laboratory animal welfare, it is important to note that *the Animal Welfare Act* does not cover fish, while *the Public Health Service* policy institutionally mandates oversight for vertebrate species used in research funded by relevant sources. Practically, this means that the ethical status of zebrafish and their developmental stages may vary

depending on the institution and funding regime (Office of Laboratory Animal Welfare [OLAW], 2021). In this environment, zebrafish embryos hold real value as an early screening tool in research and internal safety strategies, although without the role of primary regulatory evidence in a cosmetic dossier.

The **Asian** regulatory landscape is heterogeneous, but the dominant trend in major markets is toward reducing or eliminating mandatory animal tests for cosmetic products. China, through *the Cosmetics Supervision and Administration Regulation* (CSAR) and accompanying technical documents, has modernized its safety assessment system and allowed exemptions from mandatory animal tests for certain categories of general cosmetics under defined conditions (Cosmetics Supervision and Administration Regulation [CSAR], 2021; EU SME Centre, 2021). South Korea implemented a ban on animal testing for cosmetic products and ingredients, effective from 2018 (Cruelty Free International, 2018). Japan does not have a general statutory requirement for animal testing of cosmetic products and supports validation and regulatory acceptance of alternative methods through the Japanese Center for the Validation of Alternative Methods – JaCVAM (Japanese Center for the Validation of Alternative Methods [JaCVAM], 2020). India banned cosmetic animal testing in 2014 (Government of India, 2014). In this context, zebrafish embryos gain particular development value as a relatively rapid organismal model for early hazard screening and mechanistic investigation of new bioactive substances, with industry motivation to provide evidence compatible with multiple international markets.

Serbia is regulatory-wise closest to the **European model**. The current framework for cosmetic products and general-use items is largely harmonized with the EU approach, with transitional periods concluded and full implementation of stricter requirements for safety documentation and the Product Information File (PIF) from April 2023 (General-Use Products Act, 2019; Rulebook on Cosmetic Products, 2019; CMS, 2025). The Animal Welfare Act (2009) regulates general principles of animal experimentation but does not provide detailed thresholds for fish embryonic development identical to European interpretations, leaving practical discretion to ethical committees according to the 3R principle and specific study design.

Comparatively, Serbia shares the same strategic direction as the EU and much of the contemporary Asian regulatory landscape, while differing from the USA primarily in the explicitness of prohibitions, and less in scientific logic of safety assessment. In this context, it makes sense to consider zebrafish, particularly zebrafish embryos, as a research and development tool in domestic academic and industrial settings. Their greatest value lies in early filtering

of potentially hazardous raw materials, supplementary hazard profiling, and strengthening "weight-of-evidence" packages for innovative active substances, including biologically active complexes relevant to dermatological and pigmentation indications (MacRae & Peterson, 2015; Bauer et al., 2021). Nevertheless, from a regulatory perspective in Serbia, as in the EU, it is most rational to position zebrafish embryo data as supplementary rather than primary evidence of safety for cosmetic raw materials and finished products, relying on validated *in vitro* methods and clearly structured toxicological assessment within the PIF documentation (European Commission, 2013; SCCS, 2015; Rulebook on Cosmetic Products, 2019; General-Use Products Act, 2019).

The comparative regulatory analysis clearly indicates that regulatory approaches to cosmetic-product testing in the EU, USA, Asia and Serbia are increasingly converging toward NAM-oriented paradigms, with the EU remaining the most detailed and restrictive framework regarding the ban on animal testing and the explicit reliance on validated *in vitro* approaches within PIF and SCCS guidance, while the USA retains federal flexibility alongside growing state-level restrictions, and key Asian markets are rapidly approaching a "cruelty-free" model (European Commission, 2013; SCCS, 2015; FDA, 2022; Steptoe, 2018; CSAR, 2021; Cruelty Free International, 2018).

Comparative assessment of these frameworks allows for precise understanding of the acceptability of alternative methods and the position zebrafish embryos may occupy in different regulatory contexts, confirming that their formal status varies, but trends increasingly favor models that complement the existing NAM system.

A novel practical insight relevant to the region is that zebrafish embryos, thanks to international standardization through OECD TG 236 and the favorable ethical status of early developmental stages in European interpretations, can be rationally positioned as bridging research evidence in early selection and mechanistic validation of innovative cosmetic raw materials, but not as a primary regulatory pillar of safety (OECD, 2019; EURL ECVAM, 2014; Strähle et al., 2012; MacRae & Peterson, 2015).

In Serbia, which has been essentially aligned with EU requirements for safety documentation since April 2023, this creates a logical space for using zebrafish embryos as a supplementary element of the "weight-of-evidence" approach in academic and industrial development, while highlighting the need for clearer national professional guidance to standardize ethical committee expectations and the role of these data in a cosmetic dossier (General-Use Products Act, 2019; Rulebook on Cosmetic Products, 2019; CMS, 2025; Animal Welfare Act, 2009).

4. Conclusion

Analysis of the scientific literature confirms that the zebrafish embryonic model has clear advantages, such as low maintenance costs, optical transparency, and justified translational potential, but also identifies limitations that prevent it from being recognized as primary regulatory evidence. Within this framework, the realistic possibilities for integrating zebrafish into NAM strategies relate primarily to its positioning as a supplementary data source within a "weight-of-evidence" approach, confirming the most practical role of zebrafish in early research and developmental screening, where it contributes to better-informed decision-making and reduction of uncertainty in subsequent assessment phases. With proper methodological standardization and ethical compliance, zebrafish can rationally contribute to research and development processes, but it remains clear that its use cannot replace mandatory validated methods forming the basis of regulatory safety assessment.

The added value of these findings is that the zebrafish model is not proposed as a substitute for validated *in vitro* methods, but as a functional "intermediate step" that can enhance the predictivity of early development and complement integrated risk assessment strategies (IATA), particularly in areas where scientific gaps remain.

In this sense, the study supports the broader concept of contemporary regulatory trends that a "weight-of-evidence" approach requires combining multiple complementary sources of data, including information zebrafish can provide. This contributes to more rational and scientifically justified integration of this model, in compliance with the 3R principles and international standards.

Overall, the findings of this study confirm the set objectives and indicate that zebrafish is a valuable alternative model when used as a strategic complement within integrated NAM approaches, strengthening the scientific basis for safety assessment and promoting further harmonization with contemporary global regulatory trends.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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

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REGULATORNI ASPEKTI TESTIRANJA KOZMETIČKIH PROIZVODA I ULOGA ALTERNATIVNIH MODELA U SAVREMENIM STRATEGIJAMA

APSTRAKT: Savremeni regulatorni okviri u oblasti kozmetičkih proizvoda sve snažnije podstiču primenu alternativnih metodologija (New Approach Methodologies, NAMs) zasnovanih na *in vitro*, *ex vivo* i *in silico* pristupima, uz stroga ograničenja ili potpunu zabranu testiranja na životinjama. U takvom okruženju raste interesovanje za modele koji mogu popuniti praznine između ćelijskih sistema i kompleksnih *in vivo* ispitivanja. Embrioni zebrice (*Danio rerio*) prepoznati su kao potencijalni mostovni model zahvaljujući visokoj biološkoj relevantnosti, mogućnostima

testiranja i povoljnijem etičkom statusu ranih razvojnih stadijuma. Ovaj rad daje sistematizovan pregled regulatornih okvira u EU, SAD, Aziji i Srbiji, naglašavajući stepen prihvatljivosti alternativnih metoda i specifičan status zebrice u kontekstu procene bezbednosti kozmetičkih proizvoda i sastojaka. Analiziraju se naučne prednosti i ograničenja zebrice, uključujući genetsku srodnost sa ljudima, transparentnost embriona i rapidan razvoj, ali i nedostatke koji ograničavaju njenu upotrebu kao primarni dokaz u regulatornoj dokumentaciji. Uporedna analiza pokazuje da se zebrica najracionalnije može koristiti kao dopunski izvor podataka u okviru *weight-of-evidence* i NAM-orijentisanih strategija, posebno u ranoj fazi hazard skrininga i mehanističkog razumevanja dejstva novih bioaktivnih supstanci. U skladu sa međunarodnim trendovima i harmonizacijom domaćeg okvira sa EU zahtevima, rezultati ukazuju da embrioni zebrice predstavljaju vredan razvojno-istraživački alat, ali ne i zamenu za validirane metode koje čine osnovu regulatorne procene bezbednosti kozmetičkih proizvoda.

***Ključne reči*:** *regulatorni okviri, testiranje kozmetičkih proizvoda, alternativne metodologije (NAMs), weight-of-evidence, zebrica (Danio rerio).*

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COMPENSATION FOR NON-MATERIAL DAMAGE FOR MENTAL ANGUISH SUFFERED DUE TO UNLAWFUL DEPRIVATION OF LIBERTY AND WRONGFUL CONVICTION

ABSTRACT*:* Compensation for non-material damage for mental anguish suffered as a result of unlawful deprivation of liberty and wrongful conviction represents one of the forms of compensation for non-material damage. The Constitution of the Republic of Serbia directly guarantees the fundamental rights and freedoms of every person. Violation of an individual's psychophysical integrity is prohibited. Everyone has the right to personal liberty and security (Article 27(1) of the Constitution of the Republic of Serbia). Deprivation of liberty is permitted only on grounds and in a procedure prescribed by law.

In the event of unlawful deprivation of liberty or wrongful conviction, the injured party's freedom and dignity—and consequently their reputation in

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society—are jeopardized. Although the presumption of innocence applies, the proceedings themselves constitute a source of discomfort and stress for the person against whom they are conducted. Such a person suffers mental anguish as a result of unlawful deprivation of liberty and wrongful conviction. In view of the foregoing, the aim of this paper is, on the basis of statutory regulation and relevant judicial decisions, to present general legal solutions in a more concise and systematic manner, as well as to outline the procedure for exercising the right to this type of compensation for non-material damage. The paper also seeks to clarify the subjective and objective circumstances that courts assess when determining the amount of compensation and the merits of the injured party's claim for non-material damage, and to point to inconsistent judicial practice that should be harmonized.

Keywords: *non-material damage, unlawful deprivation of liberty, wrongful conviction, monetary compensation.*

1. Introduction

In the event of a violation of the psycho-physical integrity of an individual, the injured party is entitled to compensation for damage. The two principal forms of compensation are for material damage and for non-material damage. Whereas material damage is exact and relatively determinate, the question of compensation for non-material damage has long been a matter of controversy.

Prior to the entry into force of the Law on Obligations of 1978 (hereinafter: the LOO), awards for compensation for non-material damage were rare. The reason was that neither legal doctrine nor judicial practice had established clear criteria concerning the method, scope, and amount for determining such compensation.

In the legal doctrine, two schools of thought emerged—negative and affirmative. Proponents of the negative view argued that mental and physical suffering cannot be expressed in monetary terms without degrading fundamental human goods. They maintained that equating personal rights with money is improper and that it would be deeply immoral to accept payment for their violation. They further noted that personal rights are already protected by criminal proceedings.

Advocates of the affirmative position conceded that assessing the scope and amount of compensation for non-material damage poses a challenge for the court, but insisted that one cannot ignore the fact that the individual's

psychological equilibrium has been disturbed. Accordingly, they argued, the injured party deserves satisfaction in an appropriate sum, determined not by economic measures, but by considerations of equity.

With the LOO in force, Article 200(2) provides that, when deciding on a claim for compensation for non-material damage and on the amount thereof, the court shall take into account the importance of the injured good and the purpose of such compensation, as well as ensure that the award does not serve ends incompatible with its nature and social function.

According to Oliver Antić, basing his view on the provisions of the LOO, the consequences of non-material damage may be remedied in two ways: by moral (non-material) satisfaction and by monetary (material) satisfaction. Pursuant to Article 199 of the LOO, moral satisfaction is effected by publishing the judgment or a correction, or by ordering the wrongdoer to retract the injurious statement—or by any other measure that achieves the purpose of compensation. Monetary satisfaction, on the other hand, consists of awarding a specified sum of money to the injured party, which may be used for personal redress.

An examination of the subject matter of this study leads to the conclusion that monetary awards are more prevalent in judicial practice than moral satisfaction.

2. Unlawful Deprivation of Liberty and Wrongful Conviction

The Constitution of the Republic of Serbia (2006, hereinafter: the Constitution), in Article 35, provides that anyone who has been deprived of liberty, detained or convicted of a criminal offence without grounds or unlawfully is entitled to rehabilitation, compensation for damage from the Republic of Serbia and other rights established by law. Articles 27–34 of the Constitution set forth the rules relating to every person's right to liberty and security; the procedures governing a person deprived of liberty; the right to defence; the urgency of proceedings; judicial protection; limits on the duration of deprivation of liberty (including pre-trial detention as a measure to secure the accused's presence in criminal proceedings); the presumption of innocence; and the right to a fair trial, which encompasses the prohibition of retroactive application of the law and the principle of ne bis in idem (Petrović & Mrvić Petrović, 2012, p. 368).

Unlawful deprivation of liberty constitutes an unwarranted restriction on freedom of movement resulting from an unjustified order of pre-trial detention or, more generally, from an unjustified deprivation of freedom of movement

in criminal proceedings (Radovanov, 2008, p. 297). If, in renewed criminal proceedings or on appeal, it is established that the conviction was wrongful or that the deprivation of liberty was unjustified, the injured party is entitled to claim monetary compensation or moral satisfaction by way of publication of an acquittal (Radovanov, 2008, p. 297).

The Law on Criminal Procedure of 2011 (hereinafter: LCP) provides, in Article 2(1)(23), that "deprivation of liberty" shall be understood to include arrest, detention, prohibition on leaving one's dwelling, pre-trial detention and custodial stay in an institution, which, in accordance with this Code, is counted as detention.

Article 18 of the LCP provides that a person who has been deprived of liberty or convicted of a criminal offence without grounds is entitled to compensation for damage from the State and to other rights prescribed by law. The State's liability for compensation is based on objective responsibility (Article 172 of the LOO).

In accordance with state liability under Article 172 of the LOO, it is noteworthy that the Appellate Court in Belgrade, in Decision Gž 5736/2011 of 1 February 2012, held that, for purposes of establishing the Republic of Serbia's liability under Article 172 of the LOO, all circumstances, facts, and reasons related to the ordering of pre-trial detention—namely its legal basis—and whether the detention was extended for the same reasons for which it was initially ordered, as well as the conduct of the prosecutor and their approach to ascertaining the true state of affairs in the investigation, are material.

From the reasoning:…"Pursuant to Article 560(3) of the Law on Criminal Procedure, the right to compensation for damage does not belong to a person who, by their wrongful conduct, caused their own deprivation of liberty. This provision excludes the right to compensation even if no criminal proceedings were brought against the detained individual, or if the proceedings were terminated by a final decision, or if the person was acquitted by a final judgment or the indictment was dismissed. The right to compensation under paragraph 1 of Article 560 of the LCP is excluded because that person, by their wrongful conduct, caused the deprivation of liberty. For an injured party to have the right to compensation for unlawful deprivation of liberty, the conditions prescribed in Article 560 of the LCP must be cumulatively satisfied—that is, the prerequisites of paragraph 1 of that provision must exist and none of the negative prerequisites in paragraph 3—relating to the conduct of the injured party as suspect or accused—must occur. Accordingly, compensation will be denied when the injured party's own impermissible conduct caused the deprivation of liberty, provided that such conduct is separately proven

in the compensation proceedings. Impermissible conduct may include any behaviour not aimed at establishing the truth—for example, concealment or attempted escape, which are special grounds for pre-trial detention under Article 142 of the LCP."

This decision underscores that, while the State bears objective liability for unlawful deprivation of liberty, compensation may nonetheless be denied where the injured party's own impermissible actions led to their detention.

From the reasoning of the contested judgment it appears that an investigation was initiated against the plaintiff on 18 June 2001, and on 29 March 2002 pre-trial detention was ordered and a warrant issued. He was taken into custody on 1 March 2004, and detention lasted until 11 October 2004, when it was lifted. However, the first-instance court, due to an erroneous legal position, failed to establish the facts relating to the ordering of detention—namely, the reasons for its imposition and its legal basis—whether detention was extended for the same grounds on which it was initially ordered, as well as the conduct of the plaintiff as the accused and his attitude toward establishing the true state of affairs in the investigation. All of these facts and circumstances are material for determining the Republic's liability under Article 172 of the LOO.

Pursuant to Article 584 of the LCP, an "unlawfully deprived" person is one who was deprived of liberty and against whom no proceedings were instituted, or whose proceedings were finally terminated, or who was acquitted or had the indictment dismissed by a final decision; or one who served a sentence of imprisonment and, on the basis of a motion for retrial or a motion to protect legality, received a shorter sentence than that already served, or a sanction not involving deprivation of liberty, or was found guilty but relieved of punishment; as well as one whose detention lasted longer than the sentence of imprisonment finally imposed; and one who was deprived of liberty due to an error or unlawful act of the authorities, or who was held longer or retained in an institution for enforcement of a custodial sanction.

Compensation does not belong to a person whose own impermissible conduct caused their deprivation of liberty. Article 585(1) of the LCP then specifies the cases in which a person is not considered wrongfully convicted. Thus, a "wrongfully convicted" person is one against whom a criminal sanction was finally imposed or who was found guilty but relieved of punishment, and in respect of whom, upon extraordinary legal remedy, the new proceedings were finally terminated or the indictment was finally dismissed or ended with a final acquittal.

A convicted person has no right to compensation if, by false confession or otherwise intentionally, they caused their own conviction, except where they were compelled to do so; nor if the proceedings were terminated or the indictment dismissed because the injured party, as prosecutor or private prosecutor, withdrew the prosecution, or withdrew a motion following an agreement with the accused. In the case of joint offences (participation in a criminal act), the right to compensation may also extend to individual offences for which the conditions for awarding compensation are met (Article 585(3) of the LCP).

3. Criteria Considered by the Court in Determining the Amount of Monetary Compensation

When assessing the amount of monetary compensation, the court takes into account circumstances such as the duration of the unlawful deprivation of liberty; whether, on behalf of the suspect or convicted person, the facts were published in the media during the proceedings; the severity of the charge; whether the person was held in solitary confinement; the conditions under which the custodial sentence was served; loss of reputation in the community; forced separation from family; the person's age; their status and achievements as a parent; and other circumstances of either subjective or objective character (Radovanov, 2008, p. 299). If a monetary award is granted, it is awarded in a single sum.

The attached decision of the Higher Court in Kragujevac, Gž 2416/2011 of 24 October 2011, states: "When determining the amount of monetary compensation for non-material damage due to unlawfully imposed pre-trial detention, the court considers, in addition to objective circumstances, also subjective factors such as prior convictions, the family status of the accused, and the purpose for which the monetary compensation will serve."

From the reasoning:…"According to the case file and the reasons set out in the contested judgment, the plaintiff filed a claim against the defendant on 18 October 2010 for compensation for non-material damage, and, by written request of 12 August 2010, applied to the Ministry of Justice in B for payment of compensation in the amount of RSD 300,000.00. By final criminal judgment, he was acquitted of the charge of attempted incitement to abuse official position under Articles 359 § 1 in conjunction with Article 34 § 2 and Article 30 of the Criminal Code. The plaintiff had prior criminal convictions and, by a decision of the Ministry of Interior, PD K, PS B, was detained on suspicion of abuse of official position and held in pre-trial detention for

48 hours. In its response to the claim, the defendant admitted the plaintiff's request for payment of non-material damage in the amount of RSD 30,000.00.

Expert examination by a neuropsychiatrist established that during his time in detention the plaintiff experienced stress and an intense affective state—primarily due to personal endangerment and uncertainty regarding his business activities—and was acutely aware of reactions from his professional environment, family, and wider community, exacerbated by press coverage. According to the expert's findings and opinion, for two months following his release the plaintiff displayed elements of post-traumatic stress disorder, and he suffered mental anguish up until the date of the first-instance criminal judgment, but not thereafter."

Starting from the factual findings as thus established, and in accordance with the legal reasoning of the Higher Court, the first-instance court acted correctly when, pursuant to Article 200(1) of the LOO, it ordered the defendant to compensate the plaintiff for non-material damage for mental anguish suffered due to unlawful deprivation of liberty, as well as for mental anguish arising from the violation of the plaintiff's honour, reputation, freedom, and personal rights, in the amount of RSD 50,000.00. The court correctly concluded that mental anguish resulting from unlawful deprivation of liberty constitutes a single form of damage encompassing all harmful non-material consequences affecting the plaintiff's personality that flow from the unlawful deprivation of liberty, and that the stated amount of compensation is appropriate. The court also correctly found, with respect to the existence of the criminal offence and the criminal liability of the perpetrator, that under Article 13 of the Law on Civil Procedure (LCP) it was bound by the final criminal judgment in which the accused was found guilty, and that, pursuant to Article 154(1) of the LOO, the plaintiff's claim for compensation is well-founded. In determining the amount of compensation at RSD 50,000.00, the first-instance court ensured that the award did not serve purposes incompatible with its nature and social function and properly rejected the plaintiff's claim for non-material damage in the amount of RSD 180,000.00 under Article 200(2) of the LOO. The court was also correct in concluding that the plaintiff is entitled to statutory interest on the awarded amount of non-material damage from the date of judgment, pursuant to Article 277 of the LOO, since the amount of non-material damage was fixed by the court on the date of the judgment.

However, the first-instance court misapplied the substantive law of Article 200 of the LOO when, in the operative part of its judgment, it awarded the plaintiff an additional RSD 70,000.00 (bringing the total to RSD 120,000.00). This error arose because the court, in measuring equitable compensation,

failed to consider all relevant criteria—namely, objective criteria such as the time spent in detention (48 hours for questioning the plaintiff) and the plaintiff's opportunity to seek rehabilitation under Article 199 of the LOO, as well as subjective criteria such as the plaintiff's prior unblemished life and his criminal record.

It follows that compensation for mental anguish suffered as a result of unlawful deprivation of liberty and wrongful conviction must be determined with regard to all circumstances of the case (both objective and subjective). The court gives due weight to the findings and opinion of the neuropsychiatric expert in order to render as fair and accurate a decision as possible when fixing the amount of monetary compensation. Injured parties may propose the amount of compensation they consider appropriate, but the final decision rests with the court, which must act within the limits of the claim and not in pursuit of objectives incompatible with the compensation's nature and social purpose.

Thus, the amount of non-material damage awarded to a person serving a sentence under house arrest with an electronic monitoring device cannot be equated with the compensation awarded to a person serving a custodial sentence—see, for comparison, the Judgment of the Appellate Court in Niš, Gž 4892/2018 of 30 August 2018.

From the reasoning:…"By unlawful deprivation of liberty, the plaintiff suffered mental anguish due to the violation of his personal rights. The first-instance court therefore properly granted his claim for compensation for non-material damage, applying Articles 18 and 584(1)(4) of the LCP. However, the defendant's appeal rightly challenges the amount awarded—RSD 150,000.00—on the ground of misapplication of substantive law, namely the provisions of Article 200 of the LOO."

Namely, compensation for non-material damage constitutes satisfaction that alleviates the disturbances suffered in the injured party's spiritual sphere, and in the present case depends on the duration of the unlawful incarceration, the plaintiff's family circumstances, his occupation, and his overall social life. Taking into account all the circumstances of the case—both subjective and objective criteria for fixing the amount of compensation—and the fact that the plaintiff did not serve his custodial sentence in a correctional institution but at his home in N…, where he resided with other family members and enjoyed the benefits of serving the sentence under electronic monitoring, this Court finds that the award of RSD 150,000.00 for non-material damage was excessive. Having regard to his personal characteristics, the nature of the offence, his lack of prior convictions, and the fact that he spent an unjustified

36 days under house arrest due to the statute of limitations on enforcement, a just compensation is RSD 75,000.00.

4. Specific Features of Compensation for Non-Material Damage Due to Unlawful Deprivation of Liberty and Wrongful Conviction

Historically, under pre-war legislation, monetary compensation for non-pecuniary—or non-material—damage was referred to as "pain money". That term described the mental suffering endured by a person whose personal rights had been violated. Since personal rights are absolute subjective rights, their infringement is a highly sensitive matter (Petrović, 1996, p. 44).

However, compensation for non-material damage is of a strictly personal nature and belongs solely to the injured party, not to their heirs (Salma, 2007, p. 623). The sole exception is that heirs may inherit the injured party's right to compensation for material damage, and, if the injured party has already asserted a claim, the heirs may continue the proceedings only within the scope of that existing claim for material damage (Article 590(1) of the LCP). Heirs may also initiate or continue a claim for compensation after the injured party's death—provided the claim was filed before the statute of limitations expired and the injured party had not renounced it—in accordance with the rules on compensation set out in the LOO (Article 590(1) of the LCP). An injured party is entitled to compensation for both non-material damage and material damage.

In fixing the amount of monetary compensation, the court exercises a free assessment. Because compensation for non-material damage is neither exact nor precise, but depends on the court's free evaluation of subjective and objective circumstances of the case, the award can seem unpredictable.

Through the institution of unlawful deprivation of liberty and wrongful conviction, a person's freedom is among the rights infringed. "Freedom is commonly defined as the ability to live according to one's own choices, and its characteristics are universality (belonging to all persons), comprehensiveness (extending to all aspects of human existence), recognition and protection as one of the highest constitutional values, and limitation (by the rights and freedoms of others and by public interest)" (Petrović & Mrvić Petrović, 2012, p. 143).

All rights are guaranteed by the Constitution and are directly applicable. Any deprivation or restriction must comply both with statutory law and with constitutional principles and provisions.

A person against whom criminal proceedings have been wrongly instituted, yet who has not been deprived of liberty, cannot claim compensation (Petrović & Mrvić Petrović, 2012, p. 151), because such persons remain protected by the presumption of innocence.

Review of judicial practice shows that injured parties typically claim compensation not only for mental anguish suffered during pre-trial detention or imprisonment, but also for mental anguish arising from injury to honour and reputation. "Compensation for injury to honour, reputation, freedom or personal rights is awarded where words (spoken or written), facial expressions or gestures demean a person to such an extent that the act constitutes not only insult or defamation but also mental anguish owing to injury to reputation and honour" (Veljković, 2020, p. 652). Such injury may occur through television, press, radio, or other means.

For a long time, both doctrine and practice debated whether an injured party could claim separate compensation for each form of non-material damage or whether a single award should cover all. It is now settled that a unified sum is awarded, taking into account and weighing every harmful consequence to the person's personality. Particular consideration is given to the injured party's reputation in their community, work environment, profession, age, and health status—i.e., subjective factors—as well as objective factors such as the duration of detention or imprisonment and other circumstances affecting the injured party's mental suffering (e.g., press coverage).

A disputed issue in practice has been whether an injured party may claim compensation for unused annual leave; the answer is no, since the law does not recognize such an entitlement.

When fixing the amount of compensation, the court also considers whether the injured party received moral satisfaction by way of public publication of the judgment. In other words, every circumstance is assessed, as the basis for non-material damage is highly complex, and the award is made in a single sum.

To the extent that the injured party's ability to work was impeded, they are also entitled to compensation for material damage. Likewise, injury to honour and reputation may give rise to a claim for material damage—for example, where an entrepreneur or business owner loses professional standing due to wrongful conviction or unlawful detention (Milošević, 1982, p. 199). Such a claim may also be asserted by persons maintained by the injured party.

Awarding monetary compensation enables the injured party to choose the most appropriate means of restoring the psychological and emotional equilibrium that existed before the harmful event (Antić, 2014, p. 521).

5. Procedure for Exercising the Right to Compensation for Non-Material Damage

The procedure for exercising the right to compensation for damage unfolds in two phases. Pursuant to Article 588(1) of the LCP, before filing a lawsuit for compensation in court, the injured party is obliged to submit a claim to the Ministry competent for justice affairs in order to reach an agreement on the existence of damage, its type, and the amount of compensation. The claim is decided by the Compensation Commission, whose composition and manner of operation are regulated by an act of the Minister competent for justice affairs (Article 588(2) of the LCP).

The proceedings before the competent ministry for reaching a compensation agreement are conducted in accordance with the provisions of the Law on General Administrative Procedure (2016), and the Ministry's Commission may, if necessary, examine evidence and collect relevant information in those proceedings (Petrović & Mrvić Petrović, 2012, p. 157).

The competent authority may grant the injured party's claim in full, partially grant it, or determine that an agreement cannot be reached, in which case it must inform the injured party of that impossibility. In the event of partial grant, the injured party has the right to file suit in court with respect to the ungranted portion of the claim. If, within three months from the date the injured party submitted the claim, no response is received from the competent ministry (administrative silence), the injured party has the right to institute civil proceedings before the competent court in accordance with the provisions of the Law on Civil Procedure (2011).

6. Conclusion

Compensation for non-material damage due to unlawful deprivation of liberty and wrongful conviction is a complex institution, as its infringement encompasses multiple types of non-material harm. The purpose of compensation for non-material damage is to restore the injured party to the position and state they would have occupied had the violation of personal rights not occurred. Given that personal rights lack a market value, deciding on the amount and scope of compensation for non-material damage is a highly sensitive matter. Each person is an individual, and although the court exercises discretion in determining the scope and amount of compensation, the award must not serve aims incompatible with its nature and social purpose. Similarly, compensation for non-material damage must never degrade human dignity.

A fundamental prerequisite for any form of compensation for non-material damage—including this one—is that the injured party has, in fact, suffered mental anguish. If no mental anguish is present, there is no basis for awarding compensation for non-material damage. The court assesses all circumstances of the case, giving particular weight to subjective factors such as the injured party's place of residence, occupation, whether the deprivation of liberty or conviction received media coverage, the injured party's role as a parent, age, and so forth.

A related contentious question is whether close relatives of the injured party may claim compensation for non-material damage arising from the party's unlawful deprivation of liberty or wrongful conviction; the prevailing answer is that they may not. Nevertheless, some legal theorists argue that close family members who themselves suffer mental anguish should be entitled to compensation. We consider that compensation for non-material damage should be awarded to the closest family members—namely, the injured party's children and spouse. In particular, children—especially those attending primary or secondary school—may endure significant distress due to peer teasing, which can be acutely harmful during sensitive developmental stages (puberty). This ground merits further analysis. We do not, however, advocate extending this entitlement to all household members.

When the court awards appropriate compensation for non-material damage, it aims to provide the injured party with satisfaction for the harm suffered. Thus, if the case involving unlawful deprivation of liberty or wrongful conviction was publicized through the media and thereby harmed the injured party's reputation, the court will, upon request, publish a notice of its decision in the same media outlet, stating the unlawfulness of the detention or conviction (Article 592(1) of the LCP). If the case was not publicized, the court will, on request, deliver such notice to the state or other public authorities, the employer, or any other legal or natural person with whom the injured party was employed or associated at the time of the unlawful detention or wrongful conviction (Article 592(1) of the LCP). After the death of the convicted party, the right to file such a request passes to the spouse, a partner in a de facto or other permanent cohabitation, children, parents, and siblings.

It is important to note that judicial practice remains inconsistent. Some prominent scholars have proposed establishing statutory criteria, including ranges of monetary awards and benchmarks for determining the amount of compensation for non-material damage. Such ranges would serve as

guidelines within which the court, in exercising its discretion, would fix the amount of compensation. Previously, courts were constrained by a Regulation on compensation for damage, which prescribed criteria for determining both material damage and the amount of monetary compensation for non-material damage (Varađanin, 2024, p. 202). However, that regulation was declared unconstitutional.

Conflict of Interest
The authors declare no conflict of interest.

Author Contributions
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NAKNADA NEMATERIJALNE ŠTETE ZA PRETRPLJENE DUŠEVNE BOLOVE ZBOG NEOSNOVANOG LIŠENJA SLOBODE I NEOSNOVANE OSUDE

APSTRAKT: Naknada nematerijalne štete zbog pretrpljenih duševnih bolova usled neosnovanog lišenja slobode i neosnovane osude predstavlja jedan od oblika (vidova) naknade nematerijalne štete. Ustavom Republike Srbije (2006) neposredno su zajemčena osnovna prava i slobode svakog lica. Zabranjena je povreda psihofizičkog integriteta ličnosti. Svako ima pravo na ličnu slobodu i bezbednost (član 27 stav 1 Ustava RS). Lišenje slobode je dopušteno samo iz razloga i u postupku koji su predviđeni zakonom. U slučaju neosnovanog lišenja slobode ili neosnovane osude, oštećenom licu je ugrožena sloboda, dostojanstvo, a time i ugled u društvu. Iako postoji prezumpcija nevinosti, sam postupak predstavlja nelagodu i stresno iskustvo za lice protiv koga se vodi. Lice trpi duševne bolove usled neosnovanog lišenja slobode i neosnovane osude. Imajući u vidu navedeno, cilj rada je da se na osnovu zakonske regulative i aktuelnih sudskih rešenja uopštena rešenja prikažu konciznije i preglednije, kao i sam postupak ostvarivanja prava na ovaj vid naknade nematerijalne štete. Prioritet rada je i da se pojasne subjektivne i objektivne okolnosti koje sud ceni pri donošenju odluke o visini naknade i osnovanosti zahteva oštećenog lica za naknadu nematerijalne štete i ukaže na neujednačenu sudsku praksu koju bi trebalo harmonizovati.

Ključne reči: *nematerijalna šteta, neosnovano lišenje slobode, neosnovana osuda, novčana naknada.*

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MEETING OF THE SHAREHOLDERS' ASSEMBLY OF A JOINT-STOCK COMPANY – CHALLENGES OF ELECTRONIC COMMUNICATIONS

ABSTRACT: The development of electronic communications has created the preconditions for defining different, inherently alternative rules compared to the traditional rules of joint stock company law governing the convening and holding of shareholders' assemblies. New methods of notifying shareholders of the shareholders' assembly are being introduced, including the granting of electronic proxies for voting, as well as the participation of shareholders in the work of the shareholders' assembly by electronic means. The rules defined in domestic legislation are harmonized with EU law and provide an adequate response to the needs of practice and to the new conditions and advancements in electronic communications in the field of convening and holding shareholders' assemblies of joint-stock companies. The aim of this paper is to analyze certain issues in this area through an overview of the legislative framework and to highlight the positive effects of the application of electronic communications, such as efficiency, lower costs, and simplicity in the procedure for convening and holding assembly meetings. Examples from the current legal environment indicate the existence of virtual assembly meetings, which are not recognized by the

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Serbian Law on Business Companies. Possible directions for the further development of national legislation in this area include the introduction of virtual assembly meetings, while physical meetings should remain the rule and virtual meetings the exception that companies may use.

Keywords**:** *shareholders' assembly of a joint-stock company, electronic communications.*

1. Introduction

The general meeting of a joint-stock company is the supreme governing body that enables shareholders to stay informed about the activities of the company's management, to actively participate in discussions on important matters, and, most importantly, to exercise their voting rights. The meeting of shareholders represents the primary form of connection between shareholders and the company, with the degree of influence depending on the type of shares held. Upon subscription to shares, shareholders determine the extent to which they will participate in the governance of the company (e.g., shareholders who subscribe to preferred shares waive their voting rights on most issues, unlike those who acquire voting shares). Exercising the right to vote is not mandatory; therefore, merely holding a share that carries voting rights does not necessarily mean that the shareholder will vote at the general meeting. In practice, a significant number of shareholders do not exercise their voting rights and do not attend general meetings of the joint-stock company.

The exercise of voting rights by shareholders at the general meeting of a joint-stock company is influenced by numerous factors. In terms of the relationship between the company and its shareholders, which is shaped by the type of shares subscribed, it is not uncommon for shareholders to opt out of participating in the meeting. This may occur due to lack of time, insufficient financial resources to overcome the geographical distance to the company's registered seat (where meetings are typically held), limited interest in reviewing agenda items or preparing to vote on them, or the perception that their vote will have negligible impact on the course or outcome of the meeting (Višekruna, 2015, p. 503). Such circumstances are further reinforced by the clear separation between shareholders' managerial and economic rights, which raises questions about the role of shareholders in corporate governance – particularly their role in overseeing the company's management.

Legal theory emphasizes that the same measures which facilitate the exercise of shareholder rights also serve to encourage shareholder activism.

Shareholder activism refers to the exercise of rights through which shareholders monitor and influence the management of the company (Lepotić, 2018, p. 106).

Voting rights represent the most important governance right of shareholders, thus the measures that facilitate their exercise have been defined by national legislation. Specifically, shareholders are given opportunity to overcome geographical distance and physical absence from the general meeting of the joint-stock company through the use of electronic communication. In addition to enabling voting in absentia, that is, voting by shareholders who do not physically attend the general meeting, electronic communication also contributes to the more efficient functioning of the assembly. It allows such shareholders to participate in discussions, receive prior information relevant to the agenda and prepare to exercise their governance rights during the meeting. Furthermore, electronic communication opens the possibility of replacing traditional meetings with virtual general meetings (a format not yet recognized under Serbian law), as well as facilitates interaction both among shareholders and between shareholders and the company's management.

Among the most significant developments in the application of electronic communication within the framework of the national corporate law are: the introduction of electronic mechanisms for convening shareholders to the general meeting, enabling participation through digital means and granting electronic proxies for voting. Each of these mechanisms carries distinct advantages and disadvantages, which are identified in this paper as key challenges of electronic communication when compared to traditional rules governing the convening and voting procedures at general meetings of joint-stock companies. Although Serbian legislation does not permit virtual general meetings, the legal recognition and regulation of such meetings have emerged as a novelty in comparative law. This format of general meetings was particularly utilized during the COVID-19 pandemic, serving a practical function in maintaining social distancing. In legal theory, several authors have examined the validity of this approach and offered recommendations for the domestic regulation of this area, including the potential introduction of virtual general meetings (Radović, 2024, p. 371).

2. Electronic Convocation of Shareholders to the General Meeting

In national law, compared to solutions found in comparative law, there are no differences in determining the method of convening shareholders to the general meeting of a joint-stock company (Maričić, 2018, p. 312). The general rule is that holders of bearer shares require a public notice, while shareholders

holding registered shares are invited individually, based on the shareholder register. Serbian law recognizes two methods of convening shareholders to the general meeting: public notice and individual invitation according to the shareholder list, regardless of the absence of bearer shares (Arsić, 2013, p. 93).

The implementation of modern electronic communication has led to changes in how shareholders are convened for general meetings and how they receive information about agenda items.

Serbian legislation sets out specific provisions regulating both the convening of shareholders to the general meeting and the dissemination of agenda-related information, that is, the delivery of information concerning the agenda items for the shareholders' meeting through the use of electronic communication.

The Law on Companies precisely defines the methods by which shareholders are convened to the general meeting of a joint-stock company (Law on Companies, 2011, Article 335, paragraph 3-5).

One common method is the publication of the meeting notice on the joint-stock company's official website. From the company's perspective, this represents the fastest and simplest way to notify shareholders.

In addition, shareholders are individually invited to the meeting at the addresses listed in the consolidated shareholder register. Invitations are typically delivered by registered mail to the shareholder's address. However, if a shareholder has provided written consent, the invitation may be sent via email. In practice, email invitations are most commonly used in joint-stock companies with a smaller number of shareholders.

The Law on Companies prescribes two additional mandatory methods of publishing the meeting notice for all joint-stock companies, except for single-member private companies: publication on the website of the Serbian Business Registers Agency and on the website of the Central Registry.

In terms of the public joint-stock companies, the Law on Companies prescribes that the notice of the general meeting must always be published on the company's official website and on the website of the regulated market or multilateral trading platform where the company's shares are listed.

The notice to shareholders must include, in particular: the date of dispatch; the time and venue of the session; a draft agenda, with a clear indication of the items on which the assembly is expected to adopt decisions, including the class and total number of shares entitled to vote on each item, as well as the required majority for adoption; information on how the session materials can be accessed; instructions regarding shareholders' rights to participate in

the meeting, along with clear and precise information on the rules governing the exercise of those rights, which must comply with the law, the company's articles of association and the assembly's rules of procedure; a proxy form, if the company has prescribed mandatory use of such a form; notification of the record date and an explanation that only shareholders registered on that date are entitled to participate in the meeting; and information on decisions involving the disposal of high-value assets.

The Law on Companies also sets out rules for providing shareholders with information on all agenda items. There are two primary methods for making relevant materials available: at the company's registered office or via its official website, enabling shareholders to access the documents in full (Law on Companies, 2011, Article 335, paragraph 12). Publishing meeting materials online offers a simpler and more efficient alternative to physical access at the company's premises. Additionally, the articles of association may prescribe further methods for distributing meeting materials to shareholders.

Through the defined and previously outlined rules, the legislator has responded to practical demands and the advancement of modern electronic technologies. These technologies, supported by corresponding legal provisions – such as publishing meeting notices on the company's website, making materials available online, and sending invitations to shareholders via email – have been introduced as alternatives to traditional methods, including the delivery of notices by registered mail to shareholders' addresses and the provision of meeting materials at the company's registered office (Radović, 2024, p. 372).

3. Electronic Proxy Voting

One of the key elements of shareholders' voting rights is the right to vote through a proxy. The Law on Companies regulates the concept, the form and the content of the proxy authorization, as well as the conditions regarding the identity of the proxy holder. These legal provisions are designed to encourage shareholder participation in the work of the general meeting.

Pursuant to the Law on Companies, shareholders have the right to authorize a designated person to participate in the general meeting on their behalf, including the right to vote (Law on Companies, 2011, Article 344, paragraph 1). A proxy authorization for voting includes the power to take part in the meeting and the power to exercise voting rights. The proxy holder enjoys the same rights regarding participation in the meeting as the shareholder who granted the authorization. By issuing a proxy for voting, the shareholder

authorizes the proxy to engage in discussions on agenda items, ask questions, put forward proposals and speak during the meeting (Radomirović & Kajević, 2022, p. 804). A proxy holder authorized to vote may be any individual with legal capacity. The company is not permitted to impose specific personal requirements for proxy holders, nor may it limit the number of proxies (Law on Companies, 2011, Article 344, paragraph 3).

However, the Law on Companies stipulates that certain individuals may not act as proxy holders for shareholders. These include: the controlling shareholder of the company or any person controlled by the controlling shareholder; a director or member of the supervisory board of the company, or a person holding such a position in another company that is either the controlling shareholder or under its control; an employee of the company, or a person employed in another company that is the controlling shareholder or under its control; any person deemed to be a related party under the Law on Companies with respect to individuals holding the aforementioned positions; the company's auditor, or an employee of the auditing entity, or a person holding such a position in another company that is the controlling shareholder or under its control (Law on Companies, 2011, Article 345, paragraph 2).

In shareholder law, the traditional rule is that a proxy must be granted in written form. A proxy for voting at the general meeting of a joint-stock company must be issued in writing if granted by a legal entity. If granted by a natural person, the proxy must be in the form of a notarized document, unless the prescribed form has been excluded by the company's articles of association.

Modern electronic technologies have introduced the possibility of granting proxies electronically.

The Law on Companies from 2004 was the first to recognize the option of issuing a proxy via electronic means (Law on Companies, 2004, Article 287, paragraph 2 and 10).

In accordance with the current Law on Companies a public joint-stock company is required to enable shareholders to grant voting proxies electronically, provided that such authorization includes a qualified electronic signature in accordance with the law governing electronic signatures (Law on Companies, 2011, Article 344, paragraph 8-9). On the other hand, a private joint-stock company is not obliged, but may allow electronic proxy voting, provided that the company has made such a method available.

The articles of association of a public joint-stock company must prescribe at least one method by which a shareholder or proxy holder may notify the company of a granted proxy for voting via electronic means. Amendments and

revocation of voting proxies are governed by the corresponding provisions on proxy issuance, meaning that a proxy holder may also be revoked electronically.

According to the Shareholder Rights Directive, Member States are required to enable shareholders to grant and revoke proxies electronically, while companies are obliged to provide shareholders with at least one effective method of notifying the company of a granted or revoked proxy holder via electronic means. EU law establishes one fundamental formal requirement for both the granting and revocation of proxies: the notification to the company must be made in written form (Directive 2007/36/EC, Article 11). Member States may introduce additional formal requirements, but only for the purpose of verifying the identity of shareholders and proxy holders, or to ensure the ability to verify the content of voting instructions. Granting proxies electronically presents several challenges, particularly in the context of e-commerce, including issues related to the identification of shareholders and proxy holders, and the proper notification of the company regarding their identities.

4. Participation in the general meeting by electronic means

The development of electronic technologies has enabled shareholders to participate in general meetings through digital means. In response to practical needs and the evolving conditions of modern business environment, appropriate regulation has emerged in both national and comparative law.

The Shareholder Rights Directive has bound the Member States to allow joint-stock companies to offer their shareholders the possibility of participating in general meetings via electronic communication systems. The right of shareholders to participate electronically in general meetings may be regulated in national legislation either as a mandatory rule or as a default provision. Additionally, in jurisdictions where shareholders do not have a statutory right to electronic participation, companies may nonetheless grant such a right at their discretion. This approach has been adopted in Serbian law, where electronic participation in general meetings is considered a right of the company rather than of the shareholders (Radović, 2024, p. 376). The national legal framework governing electronic participation in general meetings (Law on Companies, 2011, Article 341) was developed in accordance with the Shareholder Rights Directive (Directive 2007/36/EC, Article 8).

The Shareholder Rights Directive regulates the issue of participation in general meetings via electronic means, thus providing for specific modalities

of shareholder involvement. The first modality refers to real-time transmission of the meeting – an audiovisual, one-way broadcast whereby shareholders merely follow the proceedings without the possibility of active participation. Under this modality, shareholders are not entitled to vote and are not counted towards the quorum or the voting majority.

The second modality, defined in the Directive as a real-time two-way communication, enables shareholders to address the general meeting from a remote location, different from the venue where the meeting is physically held. Such shareholders participate actively via an *online* connection and exercise their right to vote.

The third modality of electronic participation, referred to as the mechanism for casting votes, relates to the right of shareholders to vote electronically without appointing a proxy holder physically present at the meeting. A company that allows electronic voting must determine the timeframe for exercising this right: prior to the meeting, during the meeting, or both. Shareholders who vote electronically are considered personally present at the meeting, and their votes are counted towards the quorum and the voting majority.

Serbia's legislative framework on electronic participation in shareholder meetings has been srafted in a manner consistent with the provisions set forth in the Shareholder Rights Directive.

Under national law, the following formats are permitted: (a) multi-location meetings (also referred to as telemeetings), which are held simultaneously at several venues connected via video link. Shareholders at one location can follow the proceedings at another location on a screen, and (b) *online* meetings, which are physical meetings supplemented by the possibility for shareholders to exercise their voting rights either directly or indirectly via the internet.

Based on publicly available data concerning insurance companies with majority domestic ownership operating in the insurance market of the Republic of Serbia, shareholder meetings are convened electronically but held on the premises of the insurer – an unprecedented practice, particularly during the state of emergency caused by the COVID-19 pandemic. Given that the Serbian insurance market is predominantly composed of companies with majority foreign ownership, there is a pressing need for greater representation of domestic insurers. Until such representation is achieved, it is essential to enable present shareholders to exert greater influence through their professional expertise, derived from experience in various commercial and economic entities, on the decision-making processes of management bodies. While the presence of their proxy holders at shareholder meetings remains appropriate, direct participation

of shareholders in electronic meetings would foster more constructive dialogue and communication, thereby contributing to enhanced transparency and efficiency in joint decision-making. In addition to cost reduction, this form of digitalization, through hybrid models combining physical and electronic shareholder attendance, may be regulated by internal corporate acts, ensuring both procedural clarity and a high level of security and confidentiality.

For the purpose of establishing more effective corporate governance in insurance companies (Jevremović, 2025, p. 277), and in line with international principles of corporate governance, as well as the core principles of insurance supervision, the National Bank of Serbia adopted Guidance Paper No. 2 on corporate governance in insurance companies (National Bank of Serbia, 2007). This Guidance Paper does not require the physical presence of shareholders, thereby opening the possibility for shareholders to participate in the work of the assemblies of insurance companies through electronic means.

5. Virtual General Meetings of a Joint-Stock Company

In the era of advancing electronic communications, specialized digital platforms have emerged to facilitate the holding of virtual general meetings of joint-stock companies. These meetings are conducted exclusively *online*, without the physical presence of shareholders, allowing them to participate regardless of their geographic location (Von der Crone, 2003, p. 156).

Virtual meetings, also referred to as meetings held with exclusively remote shareholder attendance, differ from hybrid meetings, which are convened at a designated physical venue. In hybrid meetings, shareholders are given the option to participate electronically instead of attending in person.

Virtual general meetings represent a model of communication between the company and its shareholders characterized by efficiency, cost-effectiveness compared to physical meetings and enhanced quality of shareholder engagement. Virtual general meetings have emerged as a result of the development of modern electronic communications and their integration into the legal regulation pertaining to this subject matter. As a response to the challenges posed by electronic communication, virtual general meetings primarily contribute to increased shareholder attendance. They help overcome the negative impact of geographic distance between shareholders and the meeting venue – a factor that often leads to shareholder passivity.

In legal theory, several shortcomings of virtual general meetings have been identified. These include impeded communication, particularly the reduced interaction between shareholders and management due to the

absence of direct dialogue, which may affect the quality of deliberation and decision-making during the meeting. Furthermore, the implementation of virtual meetings and the development of electronic platforms incur significant initial costs for the company, despite the fact that the meetings themselves do not generate ongoing expenses. Another concern is the mandatory nature of electronic participation for shareholders in virtual meetings.

The identified advantages of virtual meetings have not diminished the value of traditional physical general meetings, which are distinguished by direct and immediate communication between shareholders and management.

From a comparative company law perspective, prior to the most recent economic crisis triggered by the COVID-19 pandemic, most countries traditionally required the holding of physical shareholders' meetings, whereas there were only a few countries whose legal frameworks provided for and authorized virtual meetings (Radović, 2024, p. 383). Scholarly literature refers to Denmark in Europe and the State of Delaware in the United States, the latter being the first to introduce virtual meetings in 2000, today, however, most U.S. states permit virtual and/or hybrid meetings (Chia & Lee, 2021).

The relevant literature defines a meeting as "a gathering of persons in the presence of others. In other words, a meeting requires the physical presence of all participants, which is a face-to-face gathering" (Samat & Ali, 2015, p. 763). Due to such characteristics, physical meetings were largely impossible during the COVID-19 pandemic. As a result of these circumstances, different rules were adopted, some of which were applied only for the duration of the pandemic (Zetzsche, Anker-Sørensen, Consiglio & Yeboah-Smith, 2020, pp. 16–22), while others continued to be applied even after its cessation. Reforms in company law thus proceeded in the direction of digitalization, owing to the impossibility of traditionally holding meetings in person.

In the Member States of the European Union, and subsequently under the influence of the Shareholders' Rights Directive, public joint-stock companies were granted the right to allow shareholders to participate in meetings electronically, with both electronic and physical formats being permitted. Thus, Germany was among the first countries to incorporate hybrid shareholders' meetings into its legislation, although traditionally only physical meetings had existed. Virtual meetings were definitively introduced through the amendments to the Stock Corporation Act in 2022 (Gesetz zur Einführung virtueller Hauptversammlungen von Aktiengesellschaften und Änderung genossenschafts- sowie insolvenz- und restrukturierungsrechtlicher Vorschriften, 2022).

Under the Law on Companies, only physical and hybrid general meetings of joint-stock companies are permitted.

Drawing on the experience of other jurisdictions and the presence of virtual general meetings in comparative legal frameworks, we consider it desirable to regulate virtual meetings within Serbian law as well. When introducing virtual meetings, the fundamental premise should be that physical meetings remain the default format, while hybrid and virtual formats serve as exceptions that companies may choose to adopt (Radović, 2024, p. 390).

6. Conclusion

With the advancement of electronic communications, traditional rules concerning physical attendance at general meetings have undergone liberalization, allowing for absentee voting through proxy holders, written ballots and electronic voting. Proxy voting was the first to be introduced into corporate law, followed by the regulation of electronic proxies, electronic convening of general meetings, while electronic participation in the proceedings of general meetings remains a relatively new modality, one that continues to develop in parallel with technological innovation. The challenges posed by electronic communications in the context of general meetings of joint-stock companies are numerous. We believe that future practice will require continuous monitoring and regulatory adaptation to address emerging issues and harmonize traditional and modern solutions in response to the demands of digital communication. Potential technical difficulties in *online* communication may serve as grounds for contesting shareholder resolutions, thereby opening the door for further legal research and regulatory refinement. The enduring value of traditional physical general meetings remains evident even in the contemporary environment of electronic communications. Therefore, when introducing virtual meetings, physical meetings should remain the default format, with virtual meetings serving as exceptions that companies may choose to adopt.

Conflict of interest
The authors declare that they have no conflict of interest.

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

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SEDNICA SKUPŠTINE AKCIONARSKOG DRUŠTVA – IZAZOVI ELEKTRONSKIH KOMUNIKACIJA

APSTRAKT: Razvojem elektronskih komunikacija stvorili su se preduslovi za definisanje drugačijih, po prirodi alternativnih pravila u odnosu na tradicionalna pravila u akcionarskom pravu, koja se odnose na sazivanje i održavanje sednica skupštine. Uvode se novi načini pozivanja akcionara na sednicu skupštine, zatim davanje elektronskog punomoćja za glasanje, kao i učešće akcionara u radu skupštine elektronskim putem. U domaćem zakonodavstvu definisana pravila usklađena su sa rešenjima komunitarnog prava i daju adekvatan odgovor na potrebe prakse i novonastale uslove i dostignuća elektronskih komunikacija u oblasti sazivanja i održavanja sednice Skupštine akcionarskog društva. Cilj ovog rada je da se kroz prikaz zakonske regulative analiziraju neka pitanja u predmetnoj oblasti, kao i da se ukaže na pozitivne efekte primene elektronskih komunikacija kao što su efikasnost, niži troškovi i jednostavnost u postupku sazivanja i održavanja

skupštinskih sednica. Primeri iz sadašnjeg pravnog okruženja pokazuju prisutnost virtuelnih skupštinskih sednica koje naš Zakon o privrednim društvima ne poznaje. Mogući pravci daljeg razvoja nacionalnog zakonodavstva u predmetnoj oblasti jesu uvođenje virtuelnih skupštinskih sednica, pri čemu fizičke sednice moraju ostati pravilo, a virtuelne sednice izuzeci koje društvo može da koristi.

Ključne reči**:** *sednica Skupštine akcionarskog društva, elektronske komunikacije.*

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ALCOHOLISM AS A CRIMINOGENIC FACTOR IN CRIMINAL OFFENSES AGAINST PUBLIC TRAFFIC SAFETY

ABSTRACT: This paper analyzes alcoholism, that is, the consequences of alcoholism from health, social, and criminal law perspectives, bearing in mind that certain criminal offenses may be closely related to it. Accordingly, the paper presents the effects of alcohol as a criminogenic factor in criminal offenses against public traffic safety, providing an overview of the existing legal framework as well as judicial practice regarding the imposition of criminal sanctions for this offense. Criminal offenses against public traffic safety were selected for analysis due to their significance in the modern world, as well as the fact that today virtually everyone participates in traffic, either directly or indirectly, and may therefore appear as a perpetrator of such an offense or as its victim. Since the consequences of alcoholism can be multifaceted, it is necessary to examine and reassess this issue, particularly in judicial practice, while identifying potential problems encountered in its application.

Keywords: *alcohol, offenses against public traffic safety, criminal sanctions, judicial practice, legal framework.*

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1. Alcoholism as an addiction disease

Addiction diseases represent a serious global problem of modern society, with a particularly negative impact on the health of children and adolescents. Addiction has devastating effects on the consumer's physical and mental health, but also on his immediate and wider social environment. We can categorize the consequences into those that affect the consumer himself (personal), family and social. When we talk about personal consequences, we usually think of a wide range of effects that affect psychological and physical health. Psychological effects are primarily reflected in the realization of feelings of satisfaction and euphoria (Petrović, 2021, p. 117). The feeling of satisfaction requires occasional or regular intake of a substance in order to create a pleasant mood or to avoid an unpleasant mood (WHO). Physical dependence is characterized by "an adapted (changed) state of the organism, which, after the cessation of intake of the addictive substance, manifests itself in physical disorders" (WHO).

In 1951, the World Health Organization declared alcoholism a disease. According to the above definition, "Alcoholics are persons who consume alcoholic beverages excessively and whose dependence on alcohol is so great that they manifest either open mental disorders or manifestations that affect their physical and mental health, their relationships with other people and their good social and economic behavior or else only prodromes, which indicate disorders of this nature, and, therefore, such persons should undergo treatment" (WHO). The period in which an individual becomes an alcoholic is long and goes through several phases characterized by a slow and imperceptible transition from "normal" consumption to the stage of chronic alcoholism (Nikolić-Ristanović & Konstantinović-Vilić, 2018, p. 86). The initial phase is most often associated with the period of adolescence, while the last phase, chronic alcoholism, depends on the intermediate phases and the intensity and frequency of alcohol use in them. In the literature, a chronic alcoholic is considered a person with pronounced addiction, who consumes alcohol excessively and exhibits mental disorders in the form of loss of control, amnesia, delirium tremens or such manifestations that indicate damage to his physical and mental health and the presence of problems of a social and economic nature.

If we look at the development of alcoholism as a disease of addiction by age category, we can conclude that alcoholism (alcohol addiction) is relatively rare in the population of young people up to the age of 25, and especially up to adulthood. The reason for this is the natural course of development of alcohol addiction, which lasts an average of 10-15 years, although there are exceptions here as well. It should be emphasized that any alcohol

consumption by persons under the age of 18 represents a risky use and even abuse of alcohol, because alcohol consumption during adolescence can affect the development of the brain and there is a greater risk of damage to organs in the developing body. The situation is completely opposite for the elderly. Life changes associated with alcohol abuse in older people are emotional and social problems (bereavement, loss of friends and social status, loss of job, reduced self-esteem), medical problems (chronic pain, insomnia, reduced mobility, cognitive impairment), practical problems (reduced capabilities of self-care). It should be noted that older people have a lower tolerance to the effects of alcohol, which means that they get intoxicated faster and with smaller amounts of alcohol. Also, older people often have regular therapy for the treatment of various physical and psychological problems, which is why there is a great danger of complications from the interaction of drugs and alcohol (Petrović, Pijakić & Matović, 2024, p. 71).

Previous research and available professional literature show that the percentage of men who have the problem of alcoholism as an addiction disease, is significantly higher than that of women who have developed such an addiction (Milošević, Zarić & Mihajlović, 2020, p. 55). However, perhaps a special analysis and research of this problem in women with alcoholism is more necessary, due to the specificity of the role she plays in society, and above all in the family, which is the foundation and basis of a healthy society. Therefore, alcoholism in a woman represents a special social and medical problem considering her biological role and the role she plays in the family, because drinking alcohol does not only have a harmful effect on the woman's body, but is also dangerous for her offspring and family (Konstantinović-Vilić, 2013, p. 97). However, the development of modern society has contributed to the prevalence of this phenomenon, regardless of the gender of the addict. Thanks to changed sociocultural conditions, the position of women in modern society has also changed, which, among other things, has resulted in the fact that an increasing number of women abuse alcohol, i.e. becomes dependent on alcohol, although it is still a smaller percentage (National Guide to Good Clinical Practice for the Diagnosis and Treatment of Alcoholism, 2013, p. 33).

Alcohol consumption is widespread in the Republic of Serbia. It is deeply rooted in our society and is an inseparable part of most customary norms and cultural patterns, which are passed down from generation to generation (Ilić, 2017, p. 17). In this way, the complex systemic process of emergence and development of alcohol abuse and alcoholism is additionally activated and initiated, in which individuals are involved as well as their social environment, and above all the family. The situation in the family is extremely unstable.

The psychological atmosphere is unstable and unpredictable, colored by constant conflicts and emotional upheavals. There is a constant feeling of general insecurity, even formal relationships are being called into question at any moment. Children, as well as parents, can become too prone to conflicts, they can react in mutual relationships in a destructive way. Although the negative sides of alcohol abuse are numerous, the analysis of the problem of endangering public traffic by persons participating in traffic while intoxicated is of particular importance (Merdović & Živaljević, 2021, p. 70).

2. Endangering public traffic in the Criminal Legislation of the Republic of Serbia

The criminal act of endangering public traffic in the Republic of Serbia is regulated by the Criminal Code (2005) and belongs to the group of criminal acts against the safety of public traffic. A road traffic participant who does not comply with traffic regulations and thus endangers public traffic to the point of endangering the life or body of people or property of a larger scale, and as a result of which another person suffers minor bodily injury or causes property damage that exceeds the amount of two hundred thousand dinars, shall be punished by imprisonment for up to three years.

This criminal act, regulated in this way, includes two objects of protection, namely: the safety of public traffic and the other: the life or body of people, that is, property of a larger scale (Risimović, 2007, pp. 83–96).

The action of the criminal act consists of non-observance of traffic regulations. Judging by the title, one could conclude that this is about inaction, but non-observance of the regulations is something else. Namely, it is about acting contrary to traffic regulations, that is, about the active action of the perpetrator (Miloševic, 2022, p. 43). He acts, but not in the way that is provided by the regulations. Therefore, he participates in public traffic, but not in the way that is provided by the traffic regulations.

The consequence of the criminal act consists in jeopardizing public traffic to such an extent that it endangers the life or body of people, that is, large-scale property. However, here we also encounter the phenomenon of gradation of specific danger. In order to make it easier to determine when that level of danger has been achieved, that is, to make it easier to practically distinguish this criminal act from the corresponding traffic violation, the legislator has provided a criterion that eliminates all dilemmas regarding this distinction. The condition for the existence of a criminal act is that a slight physical injury to another person was caused, or property damage exceeding the amount of

two hundred thousand dinars. If there is no specific danger, it will not be a criminal act but a misdemeanor (Božić, 2023, p. 195).

The perpetrator of a criminal act can only be a person who drives a means of transport in public traffic. Which traffic is considered public is regulated by special regulations.

If the criminal act was committed with intent, a prison sentence of up to three years is provided. For criminal acts committed out of negligence, a fine or a prison sentence of up to one year is provided. For serious criminal acts of public traffic safety, in addition to the prison sentence, the imposition of the safety measure of banning the operation of a motor vehicle is mandatory.

In terms of the attitude of the perpetrator towards the criminal act committed while intoxicated in the criminal act of endangering public traffic, there are conflicting opinions in practice. In judicial practice, the prevailing opinion is that intoxication is equated with premeditation. According to the aforementioned understanding, the awareness that one is operating a motor vehicle in an alcoholic state always indicates that the perpetrator has agreed to the occurrence of specific danger as a consequence of this criminal act. This attitude was also taken in cases where the concentration of alcohol in the blood was within the permissible limits. Thus, the Appellate Court in Kragujevac considered that a concentration of alcohol in the blood of 0.42 grams is sufficient for the assessment that there is a possible premeditation even though the current law allowed driving with a concentration of up to 0.50 grams per thousand.[1] Stojanović (2018) points out that this kind of reasoning is very controversial, because the person who operates a motor vehicle in that condition often takes it for granted that the consequence will not occur or that he will be able to prevent it. For this reason, he believes that it would be reasonable to conclude that it was intentional if the intoxication was accompanied by a violation of other traffic regulations, and that a conclusion of a high degree of recklessness could be reached (p. 118).

3. Endangerment of public traffic as a consequence of alcohol consumption in the Republic of Serbia

Traffic is an activity in which even the slightest carelessness can cause serious consequences for the safety of people and property. Research has shown a significant connection between the phenomenon of alcohol consumption and the ability to operate a motor vehicle while intoxicated, in terms of compromising the same as a result of the degradation of many physiological

[1] Kz1 891/2014 dated 19.06.2014.

and psychological functions, which are extremely important in the function of operating a motor vehicle (Dimitrijević-Vavan & Stevković, 2012, p. 254). In an intoxicated state, in addition to the known changes, there are also disturbances in the domains of: psychomotor skills, perception, functions of the senses of sight and hearing, as well as changes in the area of psychic seconds, which is of particular importance in traffic (Krstić, 1977, p. 5).

Under the influence of alcohol is the driver, i.e. the person for whom the analysis of the appropriate blood sample has determined an alcohol content greater than 0.20 mg/ml.

According to the determined content of alcohol in the blood, the degrees of intoxication of the driver are:

1) up to 0.20 mg/ml – mild intoxication;
2) more than 0.20 mg/ml to 0.50 mg/ml – moderate intoxication;
3) more than 0.50 mg/ml to 0.80 mg/ml – moderate intoxication;
4) more than 0.80 mg/ml to 1.20 mg/ml – high intoxication;
5) more than 1.20 mg/ml to 1.60 mg/ml – severe intoxication. (Merdović, Živaljević, 2021, pp. 63–78);
6) more than 1.60 mg/ml to 2.00 mg/ml – very severe intoxication;
7) more than 2.00 mg/ml – complete intoxication (Law on Road Traffic Safety, 2009).

However, statistical reports indicate an increase in the commission of these criminal acts, which creates the impression that perhaps the penal policy for these criminal acts is still inadequate. If we take into account the year 2010, from the statistical reports of convicted adults, it can be seen that the court on the territory of the Republic of Serbia imposed a criminal sanction in 6035 cases, which makes this criminal act one of the most common criminal acts, right after criminal acts against property. In as many as 3,648 cases, the courts imposed suspended sentences. In 2017, the number of criminal sanctions imposed on adult perpetrators of this criminal act was lower, and criminal sanctions were imposed in 2,250 cases, of which suspended sentences were imposed in 1,542 cases (Statistical Annual Report, 2018). However, in 2024. there will be an increase in the imposition of criminal sanctions against adult perpetrators of criminal acts of endangering public traffic, so the court imposed 2,547 criminal sanctions, of which suspended sentences were imposed in 1,544 cases. The aforementioned statistical reports do not provide us with insight into how many convicted perpetrators were under the influence of alcohol at the time of committing the criminal acts. However, the Traffic Safety Agency together with the Ministry of Internal Affairs investigates alcohol-related traffic safety indicators every year. In the following table, it can be

seen that in Serbia, in the free flow of traffic, every 150th driver drives a vehicle under the influence of alcohol (0.65%).

Table 1. % of drivers in traffic under the influence of alcohol

Year	2013	2014	2015	2016	2017	2018
% of drivers	0.95%	-	0.75%	0.71%	0.53%	0.65%

Source: Traffic Safety Agency, 2019., p. 4.

Until 2018, the permitted amount of alcohol in a driver's blood was 0.3 mg/ml, and from 2018 it was 0.2 mg/ml, so the reduction of the alcohol limit led to an increase in the number of intoxicated drivers in the traffic flow in 2018, after the previously established trend of decrease of the percentage of intoxicated drivers. Conducted research by the Traffic Safety Agency determined that alcohol is most present in the summer period, as a factor in causing traffic accidents, that is, during the weekend, i.e. on Saturdays and Sundays. The drivers who died who were driving under the influence of alcohol at the time of the accident are mostly over 55 years old, while compared to women drivers, men who caused traffic accidents under the influence of alcohol were represented in as many as 92% of cases.

By the conducted research in the practice of the Basic Court in Nis, for the purposes of this scientific paper, in the period from 2010-2018., the intoxication of the drivers was analyzed when committing the criminal act of endangering public traffic. The aforementioned research determined that the percentage of drivers who were intoxicated at the time of committing the criminal act was as follows:

Table 2. % of drivers in traffic under the influence of alcohol

Year	2010	2011	2012	2013	2014	2015	2016	2017	2018
% of drivers	25%	11.1	11.5%	18.1%	16.6%	53%	33.3%	33.3%	25%

Source: Author's research[2]

[2] The author's research for the purposes of this scientific work includes the analysis of convictions for the criminal offense of endangering public traffic provided for in Article 289 of the Criminal Code of the Republic of Serbia, in the practice of the Basic Court in Niš in the period from 2010-2018. year. The observed period is adequate for the needs of the mentioned research because it represents a long enough interval to look at the existing problems in court practice using scientific methods, especially the court's penal policy for this crime. Bearing in mind that changes to the legal regulations in this area are underway, this gives the conducted research a special scientific and justified importance.

Based on the data from the table, it can be seen that the largest number of criminal acts of endangering public traffic under the influence of alcohol in the period from 2010 to 2018., were committed in 2015, in as many as 53% of analyzed cases. In 2010, the perpetrators of criminal acts were mostly in a state of severe and moderate intoxication, in 2011, in the majority of cases, it was a matter of moderate intoxication, as in 2012, in 2013, the majority of drivers committed the aforementioned criminal act in a state of very severe intoxication, in 2014 and 2015, the state of moderate intoxication prevailed in the perpetrators of the criminal act of endangerment of public traffic, in 2016, the state of high intoxication, in 2017, moderate and severe intoxication were equally represented, and in 2018, high intoxication was also represented. An inspection of the court decision established that in 2012,[3] 2016,[4] and 2017[5] there were persons who were previously convicted for the same criminal act, but the court, in addition to that, imposed suspended sentences in the mentioned cases for this criminal act. In the mentioned cases, the court also in earlier verdicts imposed a suspended sentence, except in 2012. when the person was released from the punishment and imposed a safety measure of banning him from operating a motor vehicle, so the question arises of the possibility of achieving the purpose of punishment based on this court practice.

4. Endangerment of public transport in comparative legislation

Observing the comparative practice of this criminal act, it can be observed that in the legislation of certain countries, alcohol itself as a criminogenic factor is included in the nature of the criminal act. The criminal legislation of Germany specifically states "Whoever drives in road traffic although: due to the consumption of alcohol or other intoxicants; or due to a mental or physical deficiency is unable to drive safely; or seriously violates traffic regulations and recklessly does not take into account the side he is driving on; inappropriately overtakes and inappropriately drives while overtaking; inappropriately drives across pedestrian crossings; drives too fast at places with poor visibility, at intersections or railway crossings; does not keep to the right side of the road in places with poor visibility; turns, drives in reverse or in the opposite direction of traffic, or attempts to do so on the road or highway; fails to mark vehicles that have stopped or are broken down on the road although it is required for traffic

[3] Verdict 14K. no. 3274/12 dated 11.04.2013.
[4] Verdict 1K.no.214/16 dated 06.05.2016.
[5] Verdict 8K. 741/17 dated 21.11.2017.

safety reasons; and thereby endangers the lives or bodies of people or property of greater value, shall be punished by imprisonment for up to five years or by a fine.[6] In this way, the responsibility of drivers as well as other traffic participants has been increased, but also toughened, which can be taken as a good example of foreign practice, especially since in the last 150 years our criminal law has been developing in imitation of the German one (Milanović, 2005, pp. 237–250). This is not an isolated example, say the criminal legislation of Sweden, while in some cases, as with the Criminal Law of Louisiana, operating a vehicle while intoxicated and endangering traffic, represents a more serious form of this criminal act (Louisiana Criminal Code, 1942).

Criminal Code of Poland[7] (1997) the criminal offense of endangering public traffic is regulated in Chapter XXI, as criminal offenses against traffic safety. Article 178a paragraph 1 states that "anyone who drives a motor vehicle on land, water or in the air under the influence of alcohol or opiates shall be punished by a fine or a prison sentence of up to two years." Paragraph 4 of the same article stipulates that "if a person has already been legally convicted for the crime referred to in paragraph 1 or has been banned from driving a motor vehicle, and has repeated the crime while intoxicated or under the influence of opiates, he will be punished by a prison sentence of three months to five years." Such a legal solution can have a positive effect in terms of preventive policy in the execution of this criminal act, which can also represent a good example of foreign practice, especially considering the data from the research, where there was also a return among the perpetrators.

5. Conclusion

The question of amending the Criminal Code and toughening the penalties, when it comes to the criminal act of endangering public traffic, is very often raised by the public, as well as the Law on Road Traffic Safety, precisely because of the large number of these criminal acts committed in practice. Practice also indicates that a large number of these criminal acts are committed as a result of alcohol consumption. However, our legislator in the Criminal Code (2005) does not provide for the execution of this criminal act under the influence of alcohol, not even in the case of one of the

[6] California Penal Code. Downloaded 2025, August 15 from https://law.justia.com/codes/california/code-pen/

[7] The Criminal Code of Poland was adopted in 1997. Downloaded 2025, August 15, from https://www.unodc.org/cld/uploads/res/uncac/LegalLibrary/Poland/Laws/Criminal%20Code%20(Poland).pdf

criminal acts against public traffic safety. So the future changes could move in the aforementioned direction, bearing in mind that by this regulation the legislator left to the courts to take into account the said circumstance and evaluate it when imposing sanctions, and this can be a double-edged sword and lead to uneven judicial practice. Having in mind the research carried out in the judicial practice of the Basic Court in Nis, a series of illogicalities and different sentencing of perpetrators of criminal acts while intoxicated can be observed. In one of the analyzed cases, the court even considered intoxication as a mitigating circumstance, because the perpetrator had a low alcohol level of 0.89 per thousand at the time of the criminal act. In the aforementioned case, the medical expert determined that this degree of intoxication led to the occurrence of certain psychophysical disorders, which led to a reduced ability to operate a motor vehicle and assessed him as responsible for causing the traffic accident.[8] This kind of practice requires that future amendments to the Criminal Code (2005) move in the aforementioned direction, based on comparative legislation, because it is not enough for the intoxication of drivers while driving to be regulated only by a separate law.

Certainly, the question of the practice of imposing criminal sanctions by the courts also arises. Therefore, the focus should not be only on changing the legal regulations, but it should include the problem of mild and seemingly inadequate sanctioning by the courts. Bearing in mind the data of the Traffic Safety Agency, which determined that as many as 80 people lose their lives annually due to driving under the influence of alcohol, contributes to the fact that the problem of imposing criminal sanctions by the courts must not be ignored. Of course, changing the legal regulations and finding more adequate legal solutions should be a priority, but first of all it is necessary to determine the problems faced by judicial practices, so that the changes in the law will enable their solution.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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

[8] In the aforementioned case, the injured party suffered a serious physical injury (Verdict 12 Kno. 2042/13 dated 28.01.2014.)

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ALKOHOLIZAM KAO KRIMINOGEN FAKTOR KOD KRIVIČNIH DELA UGROŽAVANJA JAVNOG SAOBRAĆAJA

ABSTRACT: U ovom radu analiziran je alkoholizam, odnosno posledice alkoholizma sa zdravstvenog, društvenog, ali i krivičnopravnog aspekta, imajući u vidu da neka krivična dela mogu biti usko povezana sa njim. Samim tim rad je prikaz dejstva alkohola kao kriminogenog faktora i krivičnih dela ugrožavanja javnog saobraćaja, dajući osvrt na postojeću zakonsku regulativu, ali i praksu sudova, kada je reč o izricanju krivičnih sankcija za ovo krivično delo. Za analizu i istraživanja izabrana su krivična dela ugrožavanja javnog saobraćaja, upravo iz razloga njegovog značaja u savremenom svetu, ali i činjenice da su danas svi uključeni u saobraćaj na direktan ili indirektan način, pa se samim tim mogu javiti

kao izvršioci ovog dela ili njegove žrtve. Kako posledice alkoholizma mogu biti višestruke, nužno je i proučavanje i preispitivanje, naročito u praksi sudova, uz ukazivanje na eventualne probleme sa kojima se praksa suočava.

Ključne reči: *alkohol, ugrožavanje javnog saobraćaja, krivične sankcije, sudska praksa, zakonska regulativa.*

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SUBJECT MATTER AND NATURE OF LABOR DISPUTES

ABSTRACT: This paper examines the legal framework and judicial practice concerning labor disputes in the Republic of Serbia, with particular emphasis on the application of the Labor Law (2005). It analyzes the fundamental concepts of the employment relationship, the conditions for its establishment, court jurisdiction, the typology of claims (constitutive, condemnatory, declaratory, and combined), and the substantive law nature of the preclusive period for filing claims. Special attention is devoted to exceptions concerning employees lacking legal capacity and cases involving incorrect legal guidance, in accordance with the principle in dubio pro laboris. Methodologically, the paper combines a normative analysis of the legislative framework with a critical review of the case law of the Supreme Court of Cassation and empirical examples, enabling the identification of key challenges and effective mechanisms for the protection of employees' rights. The analysis indicates continuity in judicial practice both before and after the entry into force of the Labor Law (2005), emphasizing the balance between legal efficiency, the protection of employees' interests, and the legitimate interests of employers. The conclusions underscore the importance of integrating theoretical and practical aspects of labor law, the necessity of improving institutional and preventive mechanisms, and the role of judicial practice in safeguarding legal certainty and the stability of employment relations. The paper contributes to a deeper understanding

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of the complexity of labor disputes, the application of the principle of preclusion, and the effective protection of employees' rights, providing a basis for enhancing legal practice and fostering a secure and stable working environment.

Keywords**:** *labor dispute, preclusive period, employment relationship, legal protection.*

1. Introduction

Labour law constitutes a branch of law that regulates employment relationships, that is, the social and legal relations arising from work. An employment relationship is defined as voluntary, personal, organised and dependent work, established on the basis of contractual obligations between the employee and the employer, accompanied by the obligation to comply with work rules and to perform tasks in accordance with the employer's instructions, for the purpose of exercising the right to remuneration and other rights and obligations prescribed by law and collective agreements (Reljanović & Misailović, 2021, p. 25). An employee is a natural person who enters into an employment relationship, while an employer may be a legal or natural person, domestic or foreign, employing one or more workers (Labour Law, 2005).

The establishment of an employment relationship represents the concrete realization of the constitutionally guaranteed right to work, thereby fulfilling both the social and the individual purpose of labour (Simonović, 2020, p. 20).

In this manner, society secures labour force for general needs, employers acquire adequate human resources, and employees attain economic and social security. The legal basis for establishing an employment relationship is derived from international conventions, including the acts of the International Labour Organization (ILO), as well as the domestic legislative framework, whereby the Labour Law (2005) defines both general and specific conditions for entering into employment (Brković & Urdarević, 2020, pp. 44–57).

General conditions include the minimum age and the ability to perform work, as certified by competent medical authorities, while specific conditions depend on the employer's internal regulations and encompass professional qualifications, prior work experience, passing of examinations, specific skills, foreign language proficiency and information technology competencies. The Rulebook on the Organisation and Systematisation of Jobs prescribes in detail the organisation of workplaces, professional criteria and the number of employees required for the efficient performance of tasks.

Issues related to the establishment of employment relationships remain a central topic of labour law, as they enable effective legal and social regulation of employment relations, harmonised with international standards and national legislation.

2. The Concept and Significance of Labour Disputes

A labour dispute represents a legal mechanism for the protection of rights arising from an employment relationship and may be initiated by either the employee or the employer. When an action is brought by the employee, the proceedings are defined as a *labour dispute*, whereas an action initiated by the employer constitutes a *dispute arising from an employment relationship*. Although both are connected to employment relations, these concepts are not synonymous: a labour dispute encompasses exclusively claims brought by the employee against the employer, while a dispute arising from an employment relationship also includes claims brought by the employer against the employee (Reljanović & Misailović, 2021, p. 17).

The specific nature of these proceedings is reflected in their purpose—ensuring expedited and efficient resolution of disputes, thereby protecting the economic and social interests of both employees and employers. The Civil Procedure Act (CPA), Article 435, imposes an obligation on courts to give particular attention to the prompt resolution of disputes arising from employment relationships, reflecting the high social importance of labour rights and the stability of the labour system.

Judicial practice clearly underscores the necessity of distinguishing between a labor dispute and a broader civil action arising from an employment relationship. In this context, the Supreme Court of Serbia, in judgment Rev. 3524/96 of 11 November 1996, held that the active locus standi to initiate a labor dispute lies exclusively with the employee, whereas the employer may appear solely as the defendant in such proceedings, or, alternatively, as the claimant in a broader civil action arising from the employment relationship (Ivošević, 2009, pp. 280–281). This distinction enables the uniform application of procedural rules and ensures equality of the parties, in accordance with Article 36, paragraph 1 of the Constitution of the Republic of Serbia, which guarantees equal protection of rights before the courts. Contemporary legal scholarship emphasizes the necessity of harmonizing procedures in all civil actions arising from employment relationships to ensure that the protection of the rights of employees and employers is consistent and effective, while judicial practice becomes more predictable and transparent (Ivošević, 2011,

pp. 450–458; Vukadinović, 2007, p. 158; Pavlović Nedeljković et al., 2017, p. 175).

This approach achieves a modern standard of procedural equality that meets the requirements of market-oriented employment relations and promotes legal certainty in labor matters.

3. Jurisdiction and Initiation of a Labour Dispute

A labour dispute constitutes a form of judicial protection of rights arising from employment, which is exercised in court proceedings. In accordance with Article 67 of the Constitution of the Republic of Serbia (2006), everyone is guaranteed the right to legal assistance under conditions prescribed by law. Article 195, paragraph 1 of the Labor Law specifies that a dispute is initiated against an employer's decision "by which the employee's right has been violated," but only once the employee "becomes aware of the violation of the right." This legal principle has also been confirmed in case law, as illustrated by the presuda Rev. no. 3524/96 of 11 November 1996, which stated that only the employee possesses active standing to initiate a labor dispute, whereas the employer cannot act as a plaintiff in such proceedings (Ivošević, 2012, p. 112).

The court emphasized: "Judicial protection can only be exercised by an employee whose employment right has been violated. Without a rights violation, there is no judicial protection. The plaintiff consented to the right by which his employment status was determined. Since his interest was thus satisfied, judicial protection became redundant. Consequently, the lower courts acted correctly in dismissing the lawsuit" (Ivošević, 2009, p. 281).

1. Jurisdiction of the Court in Labor Disputes. According to the provisions of Article 24 of the Law on the Organization of Courts, the competent court for deciding labor disputes is the basic court of first instance within the territory where the employee is located. The basic court of first instance adjudicates disputes concerning the establishment, existence, and termination of the employment relationship, as well as the rights, obligations, and responsibilities arising from the employment relationship, including compensation for damages suffered by the employee in the course of or in connection with work. This statutory provision enables a clear distinction of jurisdiction in labor disputes, ensures legal certainty, and precisely defines the procedural boundaries applicable to employment matters (Law on the Organization of Courts, 2023).

2. Initiation of Proceedings. – A labour dispute is initiated by filing a statement of claim (Jovanović, 2015, p. 359). Under Article 195, paragraph 1 of the Labour Act, a claim may be filed by an employee whose rights have been violated, as well as by a representative of the trade union to which the employee belongs. An employee whose right has been infringed is entitled to file a claim without any additional conditions, even if the employee is a minor. The claim may be filed personally or through an authorised representative. A trade union representative may file a claim only if expressly authorised by the employee. In this context, the representative acts as a procedural proxy who has acquired the status of a trade union representative in accordance with the statute of that organisation (Ivošević, 2007, p. 286).

Depending on the nature of the claim, an action may be: *constitutive* – seeking the annulment of a decision, agreement, or other individual act; *condemnatory* – seeking an order for monetary performance (payment of wages, wage compensation, other earnings, or damages) or non-monetary performance (reinstatement, re-examination of a right, entry of service period into employment records, or delivery of employment documents); or *declaratory* – seeking the determination of a right (such as entitlement to annual leave, occupational safety protection, or rights arising from redundancy) or of a legal relationship.

3. Filing of the Claim and Time Limit. – Pursuant to Article 195, paragraph 2 of the Labour Act, the time limit for filing a claim in a labour dispute is 90 days from the date of adoption of the employer's decision or from the moment the employee became aware of the violation of his or her rights. This period constitutes a mandatory temporal framework within which the claim must be lodged.

The method of calculating this time limit depends on whether the violation of rights resulted from a specific decision of the employer or from a factual act. Where the violation arises from an employer's decision, the time limit for filing a claim begins to run on the day the employee receives that decision. The period commences on the first day following receipt of the decision and expires upon the lapse of 90 days, unless the law provides otherwise. In this context, Articles 185, paragraphs 2 to 4, and Article 193, paragraph 2 of the Labour Act provide *ipso iure* that, if the employee refuses to accept service of the decision, the employer is obliged to draw up a written record of such refusal and post it on the notice board. Upon the expiry of eight days, service is deemed to have been effected.

Where the violation of rights stems from a concrete factual act of the employer, the time limit for filing a claim begins to run from the moment the employee becomes aware of the violation of his or her rights. In such cases, the time limit commences on the first day following the acquisition of knowledge and lasts 15 days, as prescribed by law.

The date of service of a decision is determined in accordance with the rules on service previously explained, which, if properly applied, leave no room for doubt or dispute. However, identifying the date on which the employee became aware of the violation of rights is not always straightforward. That date must be linked to the moment of full certainty as to the existence of the violation. This determination is easier when the infringement manifests through clear and tangible signs, such as preventing the employee from accessing the workplace or performing assigned duties. By contrast, in cases of non-obvious violations – such as omissions or failures to act – the moment at which awareness of the violation arises may be significantly more difficult to establish. In such situations, the court should apply the rule of *in dubio pro laboris* (in case of doubt, in favour of the employee), meaning that it should refrain from hastily concluding that a violation has occurred and instead await the point at which it becomes unequivocally clear that the employee's rights have been infringed.

Furthermore, the rule requiring that a claim in a labour dispute be filed within 90 days from the date of service of the decision or from the moment of awareness of the violation constitutes a strict rule, with no apparent exceptions. Nevertheless, it may be argued that exceptions do exist with respect to monetary claims, for which Article 196 of the Labour Act prescribes a limitation period. That period amounts to three years from the date the obligation arose, and since it would be rendered meaningless if subordinated to a 90-day preclusive period, it follows that where a limitation period applies, a preclusive period does not. The time limit for filing a claim in a labour dispute is therefore a substantive-law preclusive time limit, and its expiration results in the loss of the right to judicial protection and the dismissal of the claim.

This point is underscored by the decision of the Supreme Court of Serbia, Rev. 3118/94 of 6 October 1994, which emphasized that only the employee has the right to judicial protection in a labor dispute and that the period for exercising this right constitutes a substantive preclusive (peremptory) period. The Court stated: "The period within which judicial protection may be sought constitutes a substantive preclusive period, and failure to act within this period results in the loss of the right to judicial protection. A claim filed after this period is untimely and must be dismissed. The loss of the right to bring a

claim entails the loss of the right that the claim was intended to protect. This loss of rights is definitive and cannot be restored. Accordingly, the employer's final decision becomes conclusive and binding."

A court cannot adjudicate such a matter, as clearly indicated in the decision of the Supreme Court of Serbia, Rev. 1722/93 of 27 March 1993, which states: "By failing to act within the prescribed period, the plaintiff has lost the right to bring the claim, resulting in the court's inability to issue a merits-based decision concerning the subject matter of the dispute. Given that the lost right to judicial protection cannot be restored, any statements in the appeal regarding the existence of a subjective right that was intended to be protected are irrelevant. Courts are not competent to rule on such a right" (Ivošević, 2007, p. 287).

This decision confirms that, once a claim is barred by preclusion, the court dismisses the action not only with respect to requests for annulment of the contested decision, but also regarding claims seeking restoration of the previous state, such as reinstatement to employment, payment of contributions, compensation for lost wages, and similar remedies. This clearly illustrates the principle of legal certainty and the irrevocability of rights after the expiration of a preclusive period, as well as the limitation of the court's authority to cases in which the employee has timely exercised their rights. This is evidenced in the decision of the Supreme Court of Serbia, Rev. 416/95 of 14 February 1995, which emphasized: "When the subject matter of a labor dispute is a final decision, an untimely claim is dismissed with respect to all requests" (Ivošević, 2007, p. 287).

This position of the court confirms the substantive-law nature of the filing deadline, which decisively affects the method of its computation. Previously, missing the deadline resulted in the permanent loss of the right to file a claim, even if the last day fell on a Sunday or any other day when the court was not in session. However, the approach in practice has evolved, not due to amendments to the Labor Law, but following the adoption of new regulations in the Civil Procedure Code, which enabled a more balanced legal approach to the protection of employees' rights.

According to Article 106, paragraph 5 of the Civil Procedure Code, it is expressly stipulated that if the last day of the deadline for filing a claim falls on a public holiday, Sunday, or any other day when the court does not operate, the deadline is extended and expires on the next working day. Although the filing deadline is strictly defined and cannot be arbitrarily extended or shortened, judicial practice in certain circumstances allows for a relativization of this rule, in order to protect employees from the harmful consequences of

incorrectly issued legal instructions or the party's inability to properly assess the situation. For instance, an employee who has filed a claim in accordance with guidance provided in a legal instruction, even if the formal deadline has expired, will not be subjected to preclusion.

This principle was confirmed in the decision of the Supreme Court of Serbia, case no. Rev. 4754/93, dated 19 January 1994, which stated: "The claimant filed the lawsuit after the expiration of the 15-day deadline because the legal instruction incorrectly indicated that the deadline for filing was 30 days from the date of delivery of the final decision. A party cannot bear harmful consequences due to errors in the legal instruction regarding the procedural remedy; therefore, the employee's claim cannot be dismissed."

A similar position was expressed in the Supreme Court of Serbia's decision Rev. 4819/93, dated 26 January 1994: "A claim in a labor dispute is considered timely even if it reaches the competent court after the expiration of the deadline, provided that it was filed with an incompetent court prior to that deadline due to ignorance or an obvious mistake" (Ivošević, 2007, p. 288).

These judicial positions clearly confirm that the substantive-law deadline for filing a claim is relativized in situations where the employee acted in accordance with legal guidance or made an inadvertent procedural error, thereby ensuring the protection of the employee's rights and legal certainty in labor disputes.

Preclusion does not affect employees who are incapable of understanding or managing their own actions. This principle was explicitly confirmed in the decision of the Supreme Court of Serbia, case no. Rev. 2517/92, dated 2 July 1992, which stated: "For a person who is incapable of understanding the significance of their actions and managing them, and if no guardian is appointed, the time limit for initiating proceedings to protect rights does not begin to run. Such a person is unable to perform any voluntary act, including receiving the decision, which would trigger the start and end of the preclusive period."

A similar position was expressed in the decision of the Supreme Court of Serbia, case no. Rev. 26176/94, dated 8 June 1994: "The preclusive period for filing a claim in a labor dispute does not apply to a person who is incapable of reasoning, as such a person is unable to perform the voluntary act of receiving the decision that would trigger the start and end of that period" (Ivošević, 2007, p. 288).

Judicial practice also allows for the relativization of strict preclusion when the employee acts in accordance with erroneous legal guidance or submits a claim to a competent court even after the expiration of the deadline, as established in decisions Rev. 4754/93 and Rev. 4819/93.

In labor-related civil proceedings, the strictness of preclusive deadlines is mitigated for employees who are incapable of reasoning or who act in accordance with incorrect legal guidance. This principle is derived from the Law on Civil Procedure (2011 and subsequent amendments, Chapter XXIX, Articles 436–441), which governs labor dispute procedures, deadlines for filing claims, expedited dispute resolution, and exceptions for incapacitated individuals.

Amendments to the Law have also clarified the deadlines for appeals: whereas the previous law (Article 438) provided for an eight-day deadline to file an appeal in labor disputes, the current law applies the general provision of Article 367, according to which the appeal period is fifteen days, thus ensuring equal treatment of labor disputes and other civil proceedings (Reljanović & Misailović, 2021, p. 83).

Such statutory and judicial practice enables a balance between the efficiency of judicial proceedings and the protection of employees' rights, as well as predictability of court decisions, representing the foundation of the procedural understanding of the institution of preclusion in labor disputes, while maintaining its relevance within the contemporary normative framework.

4. Judicial Practice Following the Entry into Force of the Labour Law (2005)

Judicial practice established after the entry into force of the Labor Law in 2005 confirms the continuity of previously adopted procedural stances regarding the legal nature of the time limit for exercising judicial protection in labor disputes. In the decision of the Supreme Court of Cassation, Rev2 1816/10, it was emphasized that the deadline for filing a claim to protect rights arising from an employment relationship constitutes a substantive preclusive period. Failure to comply with this deadline results in the employee definitively losing the right to judicial protection, whereby the court is not authorized to examine the merits of the claim, but is obliged to dismiss the claim as untimely. This interpretation confirms the consistency of judicial practice in applying the institution of preclusion and contributes to ensuring legal certainty and predictability in the protection of rights arising from employment relationships.

At the same time, judicial practice maintains the protective function of labor law in situations where the employee acts in accordance with incorrectly provided legal guidance. Based on the principles of legal certainty and the

protection of the weaker party in an employment relationship, the Supreme Court of Cassation, in decision Rev2 1451/12, held that an employee cannot bear detrimental consequences due to erroneous instructions regarding a legal remedy. Under such circumstances, a claim filed in accordance with incorrectly provided legal guidance is considered timely, even if it was formally submitted after the statutory deadline had expired. This stance confirms the consistent orientation of judicial practice toward the protection of employees' rights and prevents lapses by the employer or the decision-making authority from resulting in the loss of the right to judicial protection.

With regard to determining the moment at which an employee becomes aware of a rights violation, contemporary judicial practice consistently applies the principle of protecting the weaker party in the employment relationship. In this context, the limitation period for filing a claim begins to run from the moment the employee became aware, or ought to have become aware, of the rights violation. The Supreme Court of Cassation, in decision Rev2 306/16, emphasizes that, when establishing this moment, any doubts must be interpreted in favor of the employee. This position reflects a general principle of labor law, often expressed in legal theory by the Latin maxim *in dubio pro laboris* (in case of doubt, in favor of the worker).

Such an approach confirms the enduring relevance of judicial practice and its adaptability to the contemporary normative framework.

5. Judgment

A judgment in a labour dispute substantively decides the merits of the claim, with the character of the judgment depending on the type of lawsuit filed.

Constitutive (transformative) judgment – This type of judgment annuls the individual act of the employer that is the subject of the dispute, thereby producing a transformative effect (*ex tunc*), i.e., all consequences of that act cease to exist (Stojanović & Matić, 2017, p. 136). The most frequent contentious situations in labour law concern decisions on the termination of an employment contract, cessation of employment due to completion of service, agreements on termination of employment, or decisions on suspension from work, in accordance with Article 179 of the Labour Law (2005). By annulling the individual act, a state is restored that did not previously exist, thus protecting the rights of the employee and ensuring legal certainty in the employment relationship.

Condemnatory judgment – This corresponds to a claim for an order of performance, whereby the court directs the employer to fulfil monetary or non-monetary obligations. Monetary obligations include payment of wages, compensation for lost wages, other earnings, or damages, while non-monetary obligations may include reinstatement of the employee, re-examination of rights or obligations, registration of work experience, or payment of social security contributions. All of these obligations require a request from the employee, as the court does not act *ex officio* (Article 108, Paragraph 2 of the Labour Law). The time limit for enforcement of the order in a labour dispute is eight days (Article 438 of the Law on Civil Procedure).

Declaratory judgment – This type of judgment is issued when the purpose of the lawsuit is to establish the existence of a right or legal relationship between the parties. Examples include the right to annual leave, part-time work, or rights within programs for resolving workforce reductions. It may also pertain to changing an employment relationship from fixed-term to indefinite-term (Stojanović & Matić, 2017, p. 138).

Judgment with a combined ruling – This applies when the claim consolidates multiple legal consequences, combining constitutive, condemnatory, and declaratory judgments in accordance with the claims submitted. The judgment becomes final (*res judicata*) when no further appeal is possible. At first instance, this occurs when the parties waive the right to appeal or miss the deadline for filing it. At the second instance, finality is achieved when the appellate court rejects the appeal and confirms the first-instance judgment.

Deadline for finalization of the dispute – Pursuant to Article 195, Paragraph 3 of the Labour Law, an individual labour dispute should reach finality within six months from the date of filing the claim. This provision is declarative in nature, as in practice, the duration of proceedings depends on the complexity of the case, fact-finding, and any appeals or revisions. Finalization may be postponed if the appellate court annuls the first-instance judgment or remands the case for retrial, as well as in the event of a revision (Reljanović & Misailović, 2021, pp. 83–85).

Enforcement of the judgment – A judgment in a labor dispute can be enforced only once it becomes final and binding. However, only condemnatory judgments, which order the fulfillment of monetary or non-monetary obligations – such as payment of wages, compensation for damages, contributions to social security, reinstatement of the employee, or return of the employment record book – are enforceable. In contrast, constitutive and declaratory judgments are not enforceable, as their effect is realized

upon the pronouncement of the judgment itself – annulment of a decision or establishment of a right operates *ex tunc.*

The substantive legal basis for compensation arises from Article 191 of the Labor Law, which provides for reinstatement to work, payment of compensation equivalent to lost wages, and payment of the corresponding social security contributions for the period during which the employee did not work (Simonović, 2017, p. 77).

Enforcement of a judgment in labor disputes is initiated after the expiration of the deadline for voluntary compliance. If the employer fails to comply with the final and enforceable decision, the employee may file a motion for compulsory enforcement in accordance with the Law on Enforcement and Security.[1] The particularity of this procedure lies in the exclusive jurisdiction of the court over the reinstatement of the employee, whereby the court may impose monetary penalties to compel compliance, taking into account all relevant circumstances and the economic capacity of the employer.

6. Conclusion

Employment relationships form the foundation of the socio-economic order, integrating legal, economic, and social dimensions that shape the functionality of the modern labor system. Labor disputes arising from violations of these relationships require careful balancing between the protection of employees' rights and the legitimate interests of employers, with efficiency and legal certainty remaining the primary objectives.

Through an analysis of the fundamental concepts of employment, the conditions for its establishment, and the typology of labor disputes, the study has demonstrated that labor law regulation is sophisticated, with clearly defined mechanisms for safeguarding employees' rights through claims, court competencies, procedural deadlines, and the enforcement of judgments. Particular attention has been given to the practice of the Supreme Court, which, through the principle *in dubio pro laboris* and strict observance of limitation periods, enables a balanced approach and prevents arbitrary restrictions on employees' rights.

[1] Article 288: "Enforcement for the satisfaction of a monetary claim against an enforcement debtor who is a legal entity, entrepreneur, or natural person engaged in business activity shall be carried out by the enforcement organization on all dinar and foreign currency funds in the accounts of the enforcement debtor, except for those funds exempted from enforcement by law. The procedure and manner of conducting enforcement shall be governed by the regulations regulating payment transactions."

Simultaneously, in cases involving factual conduct by employers, courts exercise full jurisdiction, thereby ensuring substantive justice and reinforcing the corrective function of labor law. Trends in modern legal systems favoring alternative dispute resolution mechanisms have proven effective in reducing the burden on courts and expediting proceedings. Nonetheless, judicial practice remains indispensable in complex cases, where impartial assessment and adjudication contribute to the maintenance of legal certainty and stability in employment relationships.

In light of the social and economic significance of stable employment relations, the continuous improvement of the legal and institutional framework is imperative. An efficient and equitable system for resolving labor disputes, combined with preventive mechanisms, constitutes a key prerequisite for long-term sustainability and economic development. Well-regulated and stable employment relations not only strengthen legal certainty and social cohesion but also enable the formation of a modern and competitive economic environment.

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PREDMET I PRIRODA RADNIH SPOROVA

APSTRAKT: Rad istražuje pravni okvir i sudsku praksu u oblasti radnih sporova u Republici Srbiji, sa posebnim osvrtom na primenu Zakona o radu (2005). Analizirani su osnovni pojmovi radnog odnosa, uslovi zasnivanja, nadležnost sudova, tipologija tužbi (konstitutivne, kondemnatorne, deklarativne i kombinacione) i materijalnopravni karakter prekluzivnog roka za podnošenje tužbi. Posebna pažnja posvećena je izuzecima za nesposobne zaposlene i slučajevima pogrešno izdate pravne pouke, u skladu sa principom *in dubio pro laboris*. Metodološki, rad kombinuje normativnu analizu zakonodavnog okvira, kritički pregled sudske prakse Vrhovnog kasacionog suda i empirijske primere, omogućavajući identifikaciju ključnih izazova i efektivnih mehanizama zaštite prava zaposlenih. Analiza pokazuje kontinuitet sudske prakse pre i posle stupanja na snagu Zakona o radu (2005), naglašavajući balans između pravne efikasnosti, zaštite interesa zaposlenih i legitimnih interesa poslodavaca. Zaključci ističu značaj integracije teorijskih i praktičnih aspekata radnog prava, neophodnost unapređenja institucionalnih i preventivnih mehanizama, te ulogu sudske prakse u očuvanju pravne sigurnosti i stabilnosti radnih odnosa. Rad doprinosi razumevanju kompleksnosti radnih sporova, primene principa prekluzije i efektivne zaštite prava zaposlenih, pružajući osnovu za unapređenje pravne prakse i razvoj sigurnog i stabilnog radnog okruženja.

Ključne reči: *radni spor, prekluzivni rok, radni odnos, pravna zaštita.*

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LEGITIMACY AND LEGALITY OF REVOLUTION IN THE THEORETICAL THOUGHT OF EDMUND BURKE

ABSTRACT: Within legal doctrine, a longstanding debate has persisted as to whether revolution may be regarded as a legitimate and lawful means of altering state authority. From the perspective of a democratic constitutional order, revolution constitutes a violent change of state authority; however, within certain ideological frameworks, it is perceived as an instrument for transforming authoritarian regimes. Historical experience demonstrates that while some revolutions have constituted the only "effective" remedy against autocracy, others have served merely as a means of its establishment. The French Bourgeois Revolution and the October Socialist Revolution represent the opposing poles of these interpretations. Each, in its own manner, revealed both positive and negative consequences, as they were ultimately betrayed by their leaders, who appropriated them for their own ends. This study employs a range of scientific methods—most prominently historical, comparative, inductive, and hypothetico-deductive—in pursuit of an integral approach aimed at highlighting the importance of Edmund Burke's theoretical thought. It should not be overlooked that the distinguished Serbian legal theorist Slobodan Jovanović devoted particular attention to this author, especially in the context of examining revolution as a means of violently replacing one political order with another.

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1. Introduction

Edmund Burke was born in Dublin on January 22, 1729, and passed away in Beaconsfield on July 9, 1797. He was a writer, political thinker, and erudite scholar, but also an anti-revolutionary and a model for all those who reject the ideas of rapid and reckless transformation of social and political reality. Although Irish by origin, Burke occupies a prominent place at the very pinnacle of English political thought. He possessed a keen ability to discern the manifold forms of legal abuse that may arise during periods of mass social upheaval. For this reason, part of his intellectual engagement was devoted to the study of law as a legitimate instrument for the regulation and organization of social relations.

Following family tradition, Burke initially chose to pursue legal studies. However, owing to a combination of circumstances, he abandoned them and instead turned toward a practical engagement with the socio-political conditions prevailing in England and France at the time. It may therefore be argued that such immediacy in observing people and events enabled him to develop and later steadfastly defend his own distinctive views. His prematurely interrupted legal career ultimately created the opportunity for his subsequent political engagement. Burke became a supporter of the Whigs, working actively to strengthen and unify the party. In 1765, he was appointed secretary to the Marquess of Rockingham, the leader of a prominent Whig faction. Around the same time, he entered the House of Commons, marking the beginning of his active participation in English political life. However, it was precisely through his experience of English parliamentarism that Burke came to perceive both the advantages and the deficiencies of an insufficiently structured political system, in which power tended to contract in an unnatural and exclusive manner.

The roots of Burke's later political engagement may be traced to the constitutional contradiction that emerged during the reign of King George III. The essence of the problem lay in two opposing positions concerning whether supremacy in controlling the collective executive power should belong to the King or to Parliament. Burke articulated his views on this issue in his 1770 pamphlet *Thoughts on the Cause of the Present Discontents*. In this work, he opposed King George III, arguing that the monarch had no right to appoint ministers, as such matters properly fell within the competence of Parliament,

the representative body of the people. In Burke's conception, as the role of Parliament gained increasing importance, political parties were to become the principal political agents, serving as the crucial link between the monarch and Parliament. Within these parties, the political will of the people was, in Burke's view, embodied and subsequently channeled through the distinct branches of government.

Guided by such convictions, Burke made active efforts to strengthen and enhance parliamentary control over royal authority in England. In doing so, he did not adhere to a purely numerical understanding of democracy, whereby governance is reduced to the attainment of a parliamentary majority. Rather, he maintained that democracy cannot meaningfully be quantified in such terms. His views on this matter are well known: members of Parliament, he argued, must not serve merely as passive transmitters of the will of their constituents. Instead, the political—and by extension, the social—role of popular representatives (delegates or members of Parliament) ought to be directed toward the pursuit of the common good. In practical terms, this implies that a representative should act on the basis of personal judgment and conviction, remaining entirely unburdened by populist pressures.

Another sphere of Burke's engagement concerned the American colonial question in the latter half of the eighteenth century. Edmund Burke vehemently and passionately opposed the British imposition of the *Stamp Act* of 1765. This Act introduced new tax burdens on the American colonies, prompting ten of them to refuse its implementation. In response, the colonies adopted the *Declaration of Rights and Grievances*, which called for a boycott of British goods and the rejection of all direct taxation. Consequently, the British Parliament repealed the *Stamp Act* the following year. A decade later, in 1776, thirteen British colonies declared their independence from the Kingdom of Great Britain and established the United States of America.[1]

Burke's intellectual engagement may be situated within the context of three major revolutions: the Glorious Revolution in England of 1688, the American Revolution for Independence of 1776, and the French Revolution of 1789. The central intellectual and political questions of the late eighteenth century were profoundly shaped by the interpretation and understanding of these transformative social upheavals (Raunić, 2013, p. 158).

[1] The American colonies in question were the following: Delaware, Pennsylvania, New Jersey, Georgia, Connecticut, Massachusetts Bay, Maryland, South Carolina, New Hampshire, Virginia, New York, North Carolina, Rhode Island and Providence Plantations.

The objective of this paper is to provide a scholarly examination of Edmund Burke's political thought regarding the legitimacy and legality of revolution as a form of social upheaval. We believe that Burke's theoretical framework remains highly relevant today in light of contemporary global events. His substantive insights as an 18th-century philosopher serve as invaluable material for any researcher in this field.

2. The legitimacy and legality of revolutionary change of state authority

2.1. Edmund Burke's Critique of the Revolutionary Transformation of State Authority

In both political and legal theory, opinions diverge regarding the necessity of revolutionary change in government and the moral superiority of a gradual transition from one political order to another—presumed to be more just and equitable. Numerous theorists have claimed the right to defend revolution with persistence and conviction, often operating within, yet at times exceeding, the boundaries of their own ideological frameworks. Unfortunately, even those thinkers were not immune who, driven by their own interests, spoke in favor of the revolution, since it was precisely through it that they attained high positions within the state apparatus. Yet, some among them later voiced profound disillusionment with the course of events, acknowledging that the revolution had betrayed its own principles—and, subsequently, those who had once placed their faith in it.[2]

Edmund Burke belongs to the group of theorists who regarded revolution as an impermissible means of replacing one political order with another. Citing a number of adverse social, political, and economic indicators, Burke, in his *Reflections on the Revolution in France*, emphasizes in particular: "*In July 1789 (a period that shall always be remembered), the finances of the city of Paris were still in good condition; revenues covered expenditures, and the city at that time had a balance of one million (forty thousand pounds sterling)*

[2] A clear example of this perspective is found in Leon Trotsky, who wrote about the *betrayed revolution* in the Soviet Union. However, Trotsky did not abandon the thesis of the necessity of revolutionary transformation of an existing order; rather, he predicted that such a change would ultimately be carried out by the bureaucracy within the USSR itself. He thus argued that one must distinguish between *social revolutions*, which replaced feudalism with a bourgeois order, and *political revolutions*, which, without altering the economic foundations of society, merely overthrew the existing ruling formations (Trotsky, 1973, p. 220).

in the bank. The expenses incurred by the city after the Revolution amounted to 2,500,000 livres. Because of these expenses and the considerable reduction in voluntary contributions, there occurred not a temporary, but a complete lack of money." (Burke, 2001, p. 280)

Burke is rightly regarded as the founder and steadfast defender of conservatism, defining it as a deeply rooted worldview. While conservative ideology rests upon an established hierarchy of values and a traditional way of life grounded in inherited social patterns and the experiences of previous generations, the negative outcomes of the French Bourgeois Revolution further reinforced conservative political orientations and the corresponding value system. This system emphasized the importance of the family, the Church, the state, and various professional and guild associations. In this context, Vojislav Stanovčić cites the view of Ljubomir Tadić, who criticized Burke's considerable influence on the thinking of both his contemporaries and later generations. Tadić argues that Burke's popularity should primarily be attributed to the activity of conservative forces (Stanovčić, 2022, p. 140).[3] Nevertheless, Burke's conservatism should not be equated with the positions of certain authors who criticize only specific revolutions, rather than revolution as a means of changing power itself. Thus, Radomir Lukić directs his critique toward the French Bourgeois Revolution, questioning the attainability of its fundamental principles—liberty, equality, and fraternity.[4]

Edmund Burke, in his works, offers a profound analysis of the practical consequences of the French Bourgeois Revolution. In them, he expresses open contempt for the actions of the revolutionaries, marked by recklessness and cruelty amid an atmosphere of chaos and the insecurity of every individual. These represent the most peculiar and absurd actions, in which crimes and

[3] Tadić's view should be accepted only conditionally, since there were other thinkers—skeptics of a conservative orientation—who had left a significant mark even before Edmund Burke. They may be credited with helping Burke to recognize the importance of social conventions, which arise from and rest upon stable social relations. Moreover, Burke was also associated with the liberal intellectual circle, to which the renowned economist Adam Smith made a notable contribution (Stanovčić, 2022, p. 168).

[4] "Freedom and equality, as the rallying cries of the Revolution, thus expressed the program of the Revolution—one that had already begun to be realized in practice, if not yet in constitutional and legal terms. The third slogan, fraternity, insofar as it referred to French society and not to the international ideology of the Revolution, further deepened the significance of the previous two slogans as their logical complement and as a completion of the desired transformation. It signified the emergence of the French nation—unified and fraternal—in place of the old estate divisions, under which, instead of a nation, there had existed a kind of feudal international. Despite the many conflicts and wars between feudal states, these wars were not fought over national causes but rather over particular feudal interests" (Lukić, 1989, p. 655).

follies intertwine. Such monstrous, and at times even tragicomic events, reveal the diverse human passions that inevitably succeed one another and occasionally overlap. Thus, feelings of contempt and indignation, laughter and tears, mockery and horror alternate — emotions that, under normal circumstances, would never coexist. Burke openly criticizes those who perceive these revolutionary circumstances in a completely different and self-serving way. In short, such events evoke in them no feelings other than triumph and rapture (Burke, 2001, pp. 17–18).

Every form of revolutionary government is, by its very nature, unjust and incompatible with an established political and legal order. Nevertheless, Edmund Burke does not extend unconditional approval to governments formed under regular circumstances. His conservatism is neither rigid nor dogmatic, for he recognizes that any form of authority may degenerate into tyranny if the prevailing conditions allow it. Such decay, he argues, is most often fostered by excessive individualism and the social atomization of citizens, which render them vulnerable to the encroachments of despotic power. Burke underscores the necessity of competence within the higher political strata — a competence that must be commensurate with wisdom and a genuine capacity to safeguard the broader interests of society. Without such qualities, those in positions of authority cannot fulfill their essential function as regulators of political and social order.

Burke reinforces his opposition to individualism through a profound analysis of human nature. Drawing on the inherent traits of human character, he argues that individuals are far more prone to surrender to their passions than broader social groups. It is evident that Burke had in mind the fact that individuals are often incapable of fully mastering their emotions and impulses, thereby rendering themselves vulnerable to the temptations and challenges inherent in the exercise of political power. In political and legal theory, such views are commonly attributed to what is termed "Burkean conservatism," a framework that also encompasses certain ambiguities — notably, an aversion to constitutional reform and an inherent skepticism toward radical institutional change (Jones, 2015, p. 1125).

It should not be overlooked that the essence of Burke's political philosophy is closely tied to his affiliation with the Whigs. His political allegiance is inseparable from his views on the state and on the individuals who exercise authority within it. Edmund Burke extended the applicability of his ideas beyond the borders of England, grounding his arguments in major historical events in other nations where revolution served as a means of overthrowing established governments. In this respect, Huntington observes that although

Burke stands on equal intellectual footing with John Locke in the context of America, he holds an equally significant position within the English political tradition (Young, 1994, p. 662).

A crucial aspect of Burke's political thought lies in his strong emphasis on morality. He insisted that moral integrity must be present in politics, arguing that immoral individuals contribute most to the corruption of state authority. Their lack of virtue, in his view, serves as the principal instrument in undermining key state institutions — particularly the parliament. However, Burke's insistence on moral virtue in political life did not always receive unqualified support within academic circles. The British theorist H. L. A. Hart, for instance, acknowledges that a consensus on moral judgments is, in certain cases, essential for the preservation of a community. Yet, he cautions that it does not necessarily follow that every practice which public morality might condemn is of equal importance to the community. Hart therefore proposes two key questions: first, whether a practice that offends moral sentiment is indeed harmful; and second, what the broader consequences of such a practice might be in relation to the general principles of morality (Trajković, 2011, p. 263).

2.2. Burke's (Non-)Opposition to the Military Resolution of State Affairs

As an ideologue of conservatism and a proponent of systematic, evolutionary change within society—particularly in matters concerning the state—Edmund Burke also articulated his views on the military resolution of political issues. It is well known that Burke belongs among those conservative thinkers who refused to believe in the success or efficacy of abrupt social transformations. "His conservatism rested on an organic conception of the state, an aversion to individualism, and a profound respect for tradition, continuity, and the balance of political forces as the essential conditions for preserving order. In Burke's view, the state is a living organism, uniting past, present, and future generations through the social contract. It evolves gradually, and any radical political rupture disrupts its natural development toward more just and stable arrangements. The legitimacy of a political order rests on its prescription—on the fact that it has endured over time. Social life and the development of the state cannot be founded upon the ideas of isolated individuals, for it is the accumulated experience of centuries, perpetuated and transformed into customary habits (in the sense of inherited prejudices), that binds together different generations in thought and behavior. He maintained

that the essential role within the state is not played by individuals, but by the elements of civil society—an idea crucial to understanding the English political tradition" (Starčević & Kajtez, 2018, p. 782).

Burke's political and legal foresight can be credited with his somber predictions regarding the ultimate outcome of the French Bourgeois Revolution, which historically degenerated into Napoleon's dictatorship. Napoleon, in fact, capitalized on all the weaknesses inherent in revolutionary regime change and on the failings of its leaders, who lacked the inclination and capacity to establish lasting solutions to fundamental questions of governance. Under such circumstances, a well-organized army—structured according to strict military principles and resilient to political interference—can assume a decisive role. However, Burke was careful to emphasize the need to delineate the scope of influence and power among different segments of the military hierarchy. In particular, he warned against the undue influence of the officer corps over the soldiers, who represent the most sensitive element within any army's structure. Unlike his predecessors, Burke identified the potential danger arising from the separation and increasing autonomy of officers and enlisted men—developments that ultimately undermined the fragile revolutionary government in France. Indeed, even in contemporary contexts, the relationship between the officer corps and the rank-and-file soldiers remains a crucial factor in the overall functioning and stability of any military organization (Starčević & Kajtez, 2018, pp. 786–787).

In this regard, recent research highlights the importance of more active communication between the military leadership and the broader society.[5] Within contemporary military structures, this often takes the form of managerial representation, which includes presiding over meetings and negotiations aimed at achieving defined objectives. The armed forces, therefore, should not remain a passive actor, blind to opportunities for broader cooperation—cooperation that, in turn, secures their continued relevance and respected role within society (Milošević Stolić & Marček, 2017, p. 202). Accordingly, Edmund Burke conceives of the military as an entity that must never allow itself to become a weapon turned against its own fundamental interests. His insight in this respect once again proves both prescient and enduring, remaining applicable across vastly different historical and social contexts.

[5] The Ministry of Defence of the Republic of Serbia continuously conducts training programs involving officers and non-commissioned officers to enhance internal and external communication. These activities are carried out in accordance with adopted strategic documents that define regional security challenges.

3. A contribution to slobodan jovanović's critique of Edmund Burke

Slobodan Jovanović extended his intellectual thought across several different fields of social sciences, all connected by a shared aim — to explain specific political processes through the actions of their key participants. While the core of his theoretical thought reveals an explicit effort to distinguish the political from the social context of every revolution, in examining the French Bourgeois Revolution, Jovanović directs certain criticisms not only at its leadership but also at the theorists who were among its harshest critics. Thus, his intellectual critique also targeted Edmund Burke, a strong representative of conservative thought who viewed revolution as an illegitimate means of changing state power. Jovanović primarily reproached Burke for overemphasizing the political dimension while neglecting the social aspects of the French Bourgeois Revolution (Terzić & Joksić, 2021, pp. 312–313). Therefore, Edmund Burke can be regarded as a critic of modern democracy and political rationalism (Terzić, 2020, p. 90). In this, one may also find the reasons behind the eventual failure of the French Bourgeois Revolution and, conversely, the success of socialist revolutions across the world.

The question of the relationship between morality in politics and morality outside of it represents a distinct area where debates in political and legal theory are most intense. It is quite certain that Jovanović and Burke are in agreement regarding the necessity of moral discipline in individuals — both when exercising authority and when using freedom. Slobodan Jovanović emphasizes the utilitarian approach characteristic of English statesmen. Such an attitude aligns with the general model of Anglo-Saxon political thought, and arguably, with its practical understanding of law as well. Therefore, practicality and morality in politics should not be attributed solely to Edmund Burke, but rather to the entire Anglo-Saxon Protestant ethos. In fact, this ethos is as practical as it is moral, maintaining a careful awareness of the interdependence between these two notions. Consequently, Burke actively advocated for moral discipline as the most reliable means of achieving the common good in any society (Milosavljević, 2011, p. 290).

Slobodan Jovanović criticizes Burke for a certain degree of inconsistency in drawing conclusions within a broader political context. He deliberately begins with an individual case and then attempts to determine the wider consequences of a particular political action, constitutional and ultimately, of a given policy. As was his habit of exaggeration, Edmund Burke often attributed to events potential outcomes that, in fact, never occurred. Being an

imaginative thinker, Burke frequently projected his personal impressions onto political life. In doing so, he justified the formulation of general conclusions to which he persistently aspired. This tendency diminished both the intellectual and historical reach of his overall scholarly work. Taking a further step in his unrealistic depictions, Burke exaggerated the influence and moral shortcomings of the king's associates. Jovanović notes that they were nowhere near as dreadful and malevolent as Burke portrayed them, which reflects his lack of objectivity in perceiving people and events. They were certainly not unrestrained Machiavellians intentionally undermining the constitutional issue that arose from the French Revolution. However, in making this critique, Jovanović did not seek to diminish the intellectual significance of Burke's theoretical thought but rather to present it realistically—with all its strengths and flaws (Jovanović, 1935, pp. 313–314).

Burke's attitude toward the Church carries a number of distinctive features that shaped his theoretical thought. He upholds the thesis of the divine origin of the state, which, according to him, can be authentically interpreted only by members of the clergy. In this way, the possibility of infallible interpretation of God's will is effectively excluded, while the circle of those entitled to interpret it at all is significantly restricted. Burke's conservatism was subjected to sharp criticism by many thinkers with revolutionary leanings. Speaking from their own ideological standpoints, they often labeled Edmund Burke as a man who stubbornly—and, according to some, entirely without justification—defended the existing order and the established state of affairs within it. Slobodan Jovanović, too, was at times accused of approaching state matters from a "privileged" position of an intellectual closely aligned with the upper social strata. However, the fact that his doctrine was not imbued with a religious conception of the world fundamentally distinguishes him from Burke and other conservative theorists of his time.[6]

An important segment of Edmund Burke's thought belongs to the social element of his theory. This standpoint rests on Burke's views that emphasize the role and social significance of tradition, public opinion, class, political parties, and all other actors that do not operate, strictly speaking, within the framework of existing laws. Consequently, state mechanisms cannot reach these influential social groups. Against them, any form of state power is

[6] "Slobodan Jovanović was aristocratically educated; therefore, he approached social issues from an extremely narrow and exclusive aristocratic point of view. Communist activists, who were at the same time the leading Marxist theorists of the interwar period, reduced Jovanović's scholarly objectivity and neutrality to a false bourgeois objectivism — i.e., to subjectivism" (Milosavljević, 2012, p. 129).

powerless to fight; it is therefore more advantageous for the state to try to win them over through cunning persuasion. In this way, Burke expresses a sociological perspective, even though sociology at that time had not yet been established as an independent social science. Thus, Slobodan Jovanović attributes to Burke's political and legal standpoint a distinctly social character—though without denying his firm opposition to all forms of tyranny (Jovanović, 1935, pp. 316–317).[7]

Comparing the ultimate reach of Burke's theoretical thought with that of his contemporaries and later authors, Slobodan Jovanović believed that the dark forebodings surrounding the French Bourgeois Revolution had, for the most part, come true. His prophetic predictions about the failure of every revolution proved to be, to a considerable extent, accurate.

4. Conclusion

It is well known that revolutions have always represented a radical departure from the existing order. They tended to disparage everything that came before while simultaneously promising the rise of a new and more just society. Carried on the wings of such visions, the masses joined the revolutionaries without having a clear understanding of the "bad present" or the "better tomorrow." However, shortly after the first successfully executed revolutions, the question arose concerning the legitimacy of the newly established government and the legality of the decisions it made.

Edmund Burke belongs to the group of thinkers who expressed open aversion toward revolution. In both his writings and public activity, Burke opposed all those who sought to justify revolution—especially those who regarded it as a legitimate means of changing state power. He also challenged the legality of revolutionary decisions by pointing to the numerous flaws of the French Bourgeois Revolution. According to him, it represented a model of an undemocratic coup and the very source of the future dictatorship that emerged with Napoleon's rise to power.

[7] It seems that this view of Burke's, as well as Jovanović's remarks directed toward him, remain relevant in light of contemporary global developments. First in public life, and then gradually in political terminology, the term "deep state" has taken root and become established as a synonym for social groups possessing pronounced power tied to their economic, political, media, and other forms of influence. These groups politically outlast every change in government and continue to control key social processes regardless of shifts at the top of political authority. Moreover, they directly influence the overthrow of political leaders who resist their power and refuse to submit to their influence.

Slobodan Jovanović offered a critical analysis of Burke's theoretical thought and political positions. He regarded Burke as an ideologist of conservatism, centered on the belief that nothing in society should be radically changed. Burke justified his views through unconvincing praise of existing holders of state power. If we were to judge Burke from the perspective of Jovanović's theoretical reflections, we could point to the social dimensions of state functioning and an overt exaggeration in his criticisms of others.

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LEGITIMITET I LEGALITET REVOLUCIJE U TEORIJSKOJ MISLI EDMUNDA BERKA

APSTRAKT: U pravnoj doktrini više vekova unazad postoji polemika o tome da li revolucija može biti legitimno i legalno sredstvo promene državne vlasti. Iz ugla demokratskog državnog uređenja revolucija predstavlja nasilnu promenu državne vlasti, ali iz ugla određenih ideologija ona predstavlja sredstvo promene autoritarnih poredaka. Istorija nas uči da dok su pojedine revolucije bivale jedini *delotvoran* lek protiv autokratije, druge su bile samo

sredstvo njenog uvođenja. Na različitim polovima ovih pogleda nalaze se Francuska buržoaska revolucija i Oktobarska socijalistička revolucija. Svaka na svoj način pokazala je i pozitivne i negativne posledice, jer su bile izneveravane od strane svojih vođa koji su se njima samoposluživali. U radu je korišćeno više različitih naučnih metoda od kojih preovlađuju istorijski, komparativni, induktivni, hipotetičko-deduktivni, a sve u cilju integralnog pristupa, kojim se nastoji ukazati na važnost teorijske misli Edmunda Berka. Ne treba zaboraviti da je naš veliki pravni teoretičar Slobodan Jovanović posvetio posebnu pažnju upravo ovom autoru u kontekstu razmatranja revolucije kao sredstva nasilne promene jednog političkog poretka drugim.

***Ključne reči*:** *legitimitet, legalitet, revolucija, državna vlast, Edmund Berk, Slobodan Jovanović.*

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LEGAL CHALLENGES OF DIGITAL ASSETS – NORMATIVE FRAMEWORKS AND DEVELOPMENT PERSPECTIVES

ABSTRACT: Digital assets have become a significant and indispensable part of the modern financial system and have brought innovations in the areas of payments, investments, and financial intermediation. However, their expansion brings numerous regulatory challenges, particularly with regard to preventing money laundering, user identification, the legal treatment of decentralized finance, and privacy protection. Approaches to the regulation of digital assets vary significantly among jurisdictions – while some countries introduce comprehensive legislation, others apply restrictive or fragmented policies. Serbia has positioned itself as one of the first countries in the region to adopt a specific Law on Digital Assets (2020), thereby establishing a regulatory framework for this market. This paper analyses the legal challenges of digital assets, exploring national and international regulatory approaches, including the European Union's MiCA Regulation. It also examines the need to strike a balance between fostering innovation and ensuring the stability of the financial system. The key finding is that continuous international cooperation and a flexible regulatory framework are necessary to enable the sustainable development of digital assets and the technologies that support them.

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1. Introduction

Digital assets, also known as crypto-assets, represent an innovation in the financial sector that can, and will, largely replace certain "traditional" banking and capital market services, especially in the area of payments and investments. New financial intermediaries, which offer services similar to traditional banks and stock exchanges, often operate outside the framework of standard regulatory regulations, taking advantage of the so-called regulatory arbitrage. This situation poses challenges for financial regulators, who must balance between encouraging innovation and preserving the stability of the financial system.

Regulatory approaches in different countries vary – from complete bans on digital asset trading to more flexible strategies based on risk assessment and the introduction of tailored control mechanisms. The increased presence of digital assets and their wider application have aroused the interest of regulatory authorities, which face real challenges, such as money laundering, transaction security and user protection.

The emergence of digital assets dates back to 2008, when the paper on bitcoin, the first cryptocurrency, was published. Although bitcoin remains dominant, many other forms of digital assets have also developed, most often encompassed by the term digital tokens. Their technological basis is based on "distributed ledgers" and advanced cryptographic methods for protecting data and transactions.

Serbia is one of the few countries that has adopted comprehensive digital asset regulation. Although the justification for such a law in a country with an underdeveloped capital market is questionable, the adoption of the Digital Asset Law in 2020 demonstrates the country's ambition to position itself as a technologically advanced market. This law seeks to align domestic legal frameworks with global trends, but also to find a specific regulatory approach tailored to local needs. This paper analyzes the legal challenges of digital assets, exploring existing norms on a national and supranational basis, as well as possible directions for its further development.

2. Digital assets as one of the forms of financial technology innovation

Digital assets rely on distributed ledger technology (DLT), which enables public documentation of transactions through a system of linked blocks (*blockchain*). These blocks of data are created by solving complex algorithms, either through a mining process, where distributed networks of computers confirm transactions, or through consensus mechanisms implemented in distributed applications and smart contracts (Jovanić, 2021). Regardless of the specific method, the key feature of this technology is the automatic verification and exchange of value based on predefined conditions. These transactions are recorded through decentralized nodes of the computer network, thus achieving an alternative validation system, independent of centralized databases. Some authors therefore believe that blockchain technology lays the foundation for a new private legal framework of rules known as *lex cryptographica* (Filippi & Wright, 2018).

In financial markets, DLT represents an innovative model of corporate financing, especially in the context of startups. The offering of investment tokens enables efficient capital raising, while digital assets in general bring significant changes to modern financial systems, but also new risks. Financial technology (FinTech) is not only transforming the way financial services are provided, but also introducing new players to the market, challenging traditional financial institutions and arguably creating regulatory challenges (Enriques & Ringe, 2020).

Key risks associated with digital assets include their potential use for money laundering and terrorist financing, threats to monetary and financial stability, and circumvention of existing regulations related to financial services, capital markets, and tax obligations. The decentralized nature of these systems further increases the potential for abuse (FATF, 2014).

Unlike traditional financial institutions, which are usually highly capitalized entities subject to prudential regulation, FinTech enables smaller, non-depository institutions to access financial markets and customers without having to comply with stricter regulatory requirements. This phenomenon poses a challenge for regulators, as it undermines the principle of competitive neutrality on the one hand, while contributing to greater accessibility of financial services on the other (Gabor & Brooks, 2017, p. 423). Practice shows that technological innovations often outpace the speed of legislative responses. The increasing complexity of the financial environment forces regulators to adapt their approaches, especially in terms of balancing between encouraging innovation and minimizing risk.

A key regulatory dilemma is how to achieve an appropriate level of oversight over digital assets without unnecessarily restricting their development. Prematurely enacting strict regulations could jeopardize innovation and reduce the international competitiveness of the domestic financial sector. Therefore, regulatory approaches increasingly rely on the principles of so-called soft law, flexible rules and innovative supervision methods (Ringe & Ruof, 2020, p. 613). Financial market regulators have a key role in assessing the risks associated with digital assets and adjusting the regulatory framework to ensure a balance between legal certainty and business flexibility. Timely involvement of regulators in innovation processes allows market actors to adapt at reasonable compliance costs (Fenwick, Vermeulen & Kaal, 2017, p. 561).

3. Advantages and risks of digital assets

Although there is still no empirical evidence of significant use of digital assets in financial markets, their potential benefits are not negligible. The main advantage lies in the enormous potential of applying distributed ledger technology in finance, which can improve the efficiency and cost-effectiveness of financial transactions in the future. The reason for the great interest of legislators and international financial organizations in digital assets is precisely the cost-effectiveness and efficiency, which are achieved by eliminating intermediaries (such as banks and payment card companies), thereby reducing transaction costs and enabling faster transaction execution (World Bank Group, 2017). This is particularly beneficial for cross-border payments, small and medium-sized enterprises, as well as countries with underdeveloped financial sectors.

Digital assets also offer greater security thanks to the decentralized nature of the technology, while tokenization of virtual currencies and other property rights is becoming an important source of financing for small companies, especially in the IT industry sector, where it is most widely used. Although the advantages of digital assets are significant, the list of problems and risks that accompany their widespread use is much longer. The value of digital assets, especially virtual currencies, is highly volatile, which is a consequence of an underdeveloped market and the lack of appropriate market infrastructure. This creates high risks for consumers and investors, who are often exposed to losses due to market instability and the lack of clear rules on risk disclosure (Mihajlović, 2021).

In addition, the digital asset market is prone to abuses, such as price manipulation, the dissemination of misleading information, the misuse of insider data, and fraudulent initial token offerings. Security risks, such as the loss or theft of virtual currencies and tokens, fraud, and unauthorized use of data, are also present. The use of digital assets can also be associated with money laundering and terrorist financing, which must be taken into account when formulating legal regulations. Serbian legislation recognizes these risks and seeks to provide adequate consumer protection, as well as to ensure market integrity and prevent abuse. The following will analyze the main types of digital assets in the Serbian legal system, with special attention paid to how well the existing legal framework corresponds to the risks of the digital asset market.

The main types of digital assets include various forms of assets that differ in purpose, functions, and content. According to data, at the beginning of 2021, there were about 4,500 forms of digital assets, and about 3,000 new ones were created during that year.

The main types of digital assets are:

1. Payment tokens (cryptocurrencies) – Used as a means of payment, similar to cash or electronic money, but often used for investment purposes (including stablecoins).
2. Investment tokens – These tokens grant rights similar to those held by shareholders in companies, such as the right to dividends or voting rights.
3. User tokens – Provide the right to use products or services within a predetermined system.
4. Hybrid tokens – A combination of previous tokens, they serve different purposes that may change over time.

In the legislation of the Republic of Serbia, digital assets are defined as digital records of value that can be used as a medium of exchange or for investment purposes, with the exception of digital records of legal currencies. The legislation recognizes three basic types of digital assets:

1. Virtual currencies – They are not issued by a central bank and do not guarantee their value, but are accepted by individuals and legal entities as a means of exchange.
2. Digital tokens – Represent intangible property rights in digital form, which may include various user rights, including the right to use goods or services.

3. Stable digital assets – Associated with values that have little change, such as official currencies or stable property rights.

The law does not differentiate between types of digital tokens, allowing for flexibility in their application. Also, stable digital assets are not specifically regulated, and their application is managed like other types of digital assets.

4. Creating a regulatory framework for digital assets

Financial regulators are trying to strike a balance between the need to regulate new forms of financial intermediation, the long-term consequences of which are still uncertain, and preserving the competitive potential of new technologies. While technological advances bring new risks, they also provide regulators with tools to improve the efficiency of resource management. One of the key consequences of the digital transformation in financial services is the increasing digitization of regulatory processes.

One of the challenges in digital financial intermediation is ensuring a technology-neutral approach to regulation. This principle, which was originally developed in the field of information and communication technologies, operates at three levels (Koops, 2006, p. 77):

- *Outcome-based regulation* – Regulators regulate the end result, not the specific technology used to achieve it.
- *Activity-based regulation* – The same activities are subject to the same regulatory framework, regardless of the technology used.
- *Regulatory neutrality* – The application of regulatory instruments must not favor one technology over another.

The literature highlights several advantages of this approach (Van der Haarl, 2007). The need for frequent legislative amendments is reduced, thereby reducing regulatory costs. Also, in conditions of technological uncertainty, a neutral regulatory stance brings greater legal certainty for innovators, investors and users, encouraging innovation. However, taking into account the specific risks of digital technologies – in particular the possibility of misuse of blockchain technology for illegal financial activities, it is questionable whether a completely neutral regulatory approach is sustainable. In decentralized systems, technological neutrality cannot be the dominant regulatory strategy.

The regulation of digital assets poses a dilemma between fostering innovation and preserving financial stability and consumer protection – two fundamental goals of financial regulation. Many regulators have taken a

cautious approach in the initial stages, choosing to monitor the market before taking concrete measures. The first regulatory steps have focused primarily on preventing money laundering, combating the financing of terrorism and protecting market integrity, especially in relation to cryptocurrencies, which were the first widely recognized form of digital assets (Auer & Claessens, 2018). However, despite regulatory efforts at the national level, the global nature of digital assets makes supervision difficult, as transactions take place without territorial restrictions. Some countries, e.g. Malta, Lithuania, the Bahamas, the United Arab Emirates and Serbia (through the Digital Assets Act), have embraced digital assets as an opportunity to strengthen the financial sector and international competitiveness (Jovanić, 2021). However, a fragmented regulatory framework in the absence of a single global framework creates room for regulatory arbitrage, with players in this market understandably choosing jurisdictions with the most favorable legal conditions.

4.1. Global level

At the international level, various organizations are working to establish a global regulatory framework. The Committee on Payment Systems and Market Infrastructures (CPMI), which operates under the auspices of the Bank for International Settlements (BIS), is focused on central bank digital currencies (CBDCs), while the International Organization of Securities Commissions (IOSCO) is dealing with the regulation of initial coin offerings (ICOs). At the same time, the Basel Committee on Banking Supervision (BCBS) is analyzing the risks to which banks are exposed through crypto-assets.

In response to concerns about heavy-handed government regulation, self-regulatory organizations (SROs) have emerged to represent the interests of the FinTech sector. These organizations promote voluntary standards to ensure the integrity, fairness, and efficiency of the market. Among the most notable are the Code of Conduct developed by the Association for Digital Asset Markets (ADAM) and the Virtual Commodity Association (VCA), which works to set guidelines for best practices and cooperation with regulators.

Cryptocurrencies were the first form of digital asset to attract regulatory attention. From a global perspective, regulatory responses can be categorized into four main approaches (Gaudamuz & Marsden, 2015; Jovanić, 2020):

- Complete ban – Some countries have opted for a complete ban on cryptocurrencies, believing that the risks outweigh the potential benefits. However, due to the decentralized nature of blockchain and the impossibility of completely banning internet access, this strategy

is difficult to implement. Countries that have banned cryptocurrencies include Bangladesh, Nepal, Kyrgyzstan, Bolivia, Ecuador, Indonesia, and Algeria.
- Partial restrictions – Some regulators have banned only certain cryptocurrency-related activities, rather than imposing a complete ban. These restrictions typically involve prohibiting crypto payments or prohibiting financial institutions from doing business with crypto firms.
- Regulation through existing laws – Some countries apply existing regulations to cryptocurrencies, treating them as financial instruments.
- Special regulatory framework – More advanced economies are developing special laws that regulate cryptocurrencies and their use.

The debate over global regulatory coordination remains open, as regulators and industry seek to strike a balance between the security of the financial system and technological innovation in the digital sector. The regulatory environment for blockchain and financial technologies has been evolving, with regulators initially being cautious and cautious about the risks of cryptocurrencies and blockchain technology. However, some countries have adopted a more flexible approach, allowing start-ups focusing on blockchain technology to operate in controlled environments for a period of time to assess the benefits and challenges of new technologies. This approach, known as a "regulatory sandbox", allows innovators to test their products and services in a controlled environment, while ensuring consumer and market protection. Regulatory sandboxes have become common in countries that strive to compete in the global financial market, allowing regulators to engage in dialogue with FinTech companies to better understand and adapt to new technologies (FSB, 2017).

While this approach reduces regulatory uncertainty and encourages experimentation, risks may emerge that will only become apparent after testing is complete. An inexperienced regulator may have difficulty managing these risks, which can threaten financial stability (Zetzsche, Buckley, Barberis & Arner, 2017). At the same time, technological innovations have led to advances in financial regulation aimed at increasing transparency and monitoring risks. Traditional command-and-control regulation, which relies on sanctions, may no longer be sufficient due to the complexity of financial engineering risks. In response, "RegTech" (regulatory technology) and "SupTech" (supervisory technology) have emerged. These innovations simplify compliance, reporting, and regulatory oversight using digital tools. For example, regulators can now

digitally access banking systems, automatically process consumer complaints, and monitor areas that require closer supervision. These technological advances aim to improve efficiency in managing financial sector risks and ensuring compliance (Broeders & Prenio, 2018).

Current regulatory approaches to the regulation of digital assets in different jurisdictions, such as Singapore, Australia and the United States, demonstrate that digital assets can be treated as property or as a financial instrument, depending on the specific characteristics of each form. In Singapore, for example, digital assets can be regulated as a financial instrument depending on the rights incorporated into the specific form of digital assets, while Australian regulation also applies rules relating to financial instruments.

In American law, the "bundle of rights theory" explains property rights that apply to both physical and intangible things, including cryptocurrencies as forms of digital property (Lee, 2024). This theory can be applied to cryptocurrencies such as bitcoin, which are considered property and can be subject to rights such as possession, control, and disposal. Different approaches point to the need for further development of normative systems that will allow flexibility in relation to the rapidly changing characteristics of digital assets, thereby enabling better integration into the global market.

4.2. European legislation

The European Union (EU) has taken important steps towards harmonizing the regulation of digital assets. In September 2020, the European Commission presented its Digital Finance Strategy, including a draft Markets *in Crypto-Assets Regulation* (MiCA). This regulation covers different types of digital assets, with some subject to a new regulatory framework, while investment tokens (which resemble securities) are regulated through existing EU capital market rules (Zetzsche, Annunziata, Arner & Buckley, 2021). The draft MiCA proposes specific requirements for crypto-asset issuers and service providers, including mandatory licenses, capital and liquidity requirements, investor information obligations, and dispute resolution mechanisms. These regulatory initiatives preceded research by the European financial regulatory authorities (EBA, 2019; ESMA, 2019, according to Jovanić, 2021) and the European Central Bank (ECB, 2015, according to Jovanić, 2021).

Legal regulation of digital activities and the distribution of technology for market innovation is essential to foster transparency, consumer protection and the safe development of digital asset markets across countries. The European Union (EU) is leading the way in regulating crypto-assets, in particular

through *the Markets in Crypto-Assets Regulation* (MiCA). This regulation aims to create a uniform framework for digital assets within the EU, ensuring that digital values are defined, regulated and standardised. According to MiCA, crypto-assets are defined as "digital representations of value or rights" that can be transferred and stored electronically using distributed ledger technology (DLT) or similar technologies. This clear definition helps to reduce market risks by enforcing consumer protection, transparency and ensuring compliance with a set of rules.

Despite efforts, the regulation of digital assets remains complex due to the evolving nature of the technology. For example, the term "crypto-asset" in MiCA is applied broadly, encompassing not only blockchain-based technologies but also any digital asset issued through DLT or other similar technologies (Maia & Vieira dos Santos, 2024). The ambiguity in defining and classifying these assets, especially when it comes to non-blockchain technologies, poses a challenge to innovation, as firms must navigate legal complexities and bear compliance costs. The principle of technological neutrality suggests that laws should remain flexible, allowing for application to both blockchain and non-blockchain technologies, but this also complicates legal clarity.

Other countries have also made significant strides in regulating digital assets. For example, Belarus introduced *the Decree on the Development of the Digital Economy* (2017), which formally recognizes digital tokens as records within the blockchain system, serving as proof of ownership of objects of civil law (Efimova, Sizemova & Chub, 2024). Similarly, Russian *Federal Law No. 259-FZ* (2020) classifies digital assets as digital rights, aligning them with property laws in the Russian Civil Code, which also affects the way property is treated legally (Siddiqui et al., 2022).

Albania has also been proactive with its *Law No. 66/2020* on Financial Markets Based on Distributed Ledger Technology. This law focuses on the categorization of digital tokens, including asset-backed tokens, payment tokens, security tokens, and service tokens. This regulatory approach provides a comprehensive legal framework for the digital asset market (Caushi, 2024).

4.3. Republic of Serbia

The Law on Digital Assets of the Republic of Serbia, adopted in 2020 and with the start of implementation in 2021, is one of the latest legal normative acts aimed at regulating the market of cryptocurrencies and other forms of digital assets. This law defines digital assets as a digital record of value that can be used for digital purchase, sale, exchange or transfer, for the purpose of

exchange or investment. In addition, the law allows for the issuance of digital assets for the purpose of trading or providing services related to them, as well as the establishment of pledge or fiduciary rights over them (Stojšić Dabetić & Mirković, 2024).

The Law on Digital Assets (2020) recognizes two basic forms of digital assets: virtual currency and digital token. Virtual currency is defined as a medium of exchange, and its issuance and use are supervised by the National Bank of Serbia. On the other hand, a digital token represents an intangible property right in digital form, and its issuance and use are supervised by the Securities Commission. In practice, however, the boundaries between these forms are often not clearly defined, so it is possible for a digital asset to simultaneously encompass the characteristics of both a virtual currency and a digital token, creating a hybrid form of property. This hybrid form can have different rights and be used as a medium of exchange , as is the case with bitcoin, which is used to exchange value but does not grant rights to its holder.

The legislator in Serbia approaches the regulation of digital assets by creating a special legal regime, which creates a specific regulatory framework for these activities. Although the law refers to the application of regulations governing the capital market, enforcement and security, a large part of the regulations related to digital assets is covered by the Law on Digital Assets itself. This law is considered systemic legislation that defines over 40 technical terms that are, from the perspective of traditional property law, innovative and specific to this area (Mirković, 2023).

However, regulating digital assets at the national level can lead to fragmentation of legal norms. Given the cross-border nature of digital assets and their lack of constraints by borders, there is a need to develop a supranational regulatory framework. In 2023, the International Institute for the Unification of Private Law (UNIDROIT) set out the "Principles for Digital Assets and Private Law", which provide technically neutral principles that can be applied to all forms of digital assets. These principles enable predictability in digital asset transactions and support economic savings, given the expected growth of the global digital asset market.

The fundamental principles proposed by UNIDROIT are concerned with redefining legal concepts related to control, ownership and other property rights, emphasizing their application in different legal systems. Accordingly, these principles represent a contemporary challenge for legislation, as they seek to find globally applicable and technologically neutral rules that would be flexible in relation to the rapid development of digital technology and the evolution of social and market norms.

Serbia followed a similar path by enacting *the Law on Digital Assets* (2020), which aims to improve the functioning of the digital asset market and protect consumers. The law emphasizes market stability and eliminates abuses through strict regulations against insider trading and market manipulation (Đurić & Jovanović, 2023).

The Law on Digital Assets in Serbia, which entered into force in December 2020, aims to regulate the purchase, sale and exchange of cryptocurrencies. Prior to its adoption, this area was rather undefined, located between existing laws and a gray area. The law entered into force on 29 June 2021, giving entrepreneurs providing services related to digital assets six months to comply with its provisions and apply for appropriate licenses.

The main goal of the Law is to encourage the development of blockchain technology, tokenization and financing of innovative projects in Serbia, which should provide entrepreneurs with easier access to financing. The Law covers several areas, including:

1. Issuance and secondary trading of digital assets in Serbia;
2. Providing services related to digital assets;
3. Lien on Digital Assets;
4. Anti-money laundering and counter-terrorist financing measures related to digital assets;
5. Supervision by the Securities Commission and the National Bank of Serbia.

Digital assets are defined as digital records of value that can be bought, sold, exchanged, or transferred electronically, excluding legal tender or other financial assets regulated by other laws. The law distinguishes between two forms of digital assets: 1) virtual currency and 2) digital tokens. Virtual currencies are not issued by a central authority, and their value is not guaranteed by a government institution, while digital tokens represent intangible property rights in digital format (Stojanović & Pandžić, 2021).

The competence for regulating this area is divided between the National Bank of Serbia (NBS), which is responsible for virtual currencies, and the Securities Commission, which regulates digital assets that have the characteristics of financial instruments. The law also excludes the liability of the Republic of Serbia, the NBS and the Securities Commission, so users or service providers are liable for any losses incurred from transactions with digital assets.

The law also regulates the issuance and trading of digital assets. Issuers must prepare a "white paper" with the necessary information for investors,

although the possibility of issuing without this document is limited. The law also allows for trading of digital assets on organized platforms, over-the-counter markets, or through the use of smart contracts, which automatically execute actions according to previously defined conditions.

Service providers related to digital assets must have the legal form of a business entity and meet specific requirements depending on the types of services they offer. For these services, the minimum share capital must be between 20,000 and 125,000 euros, depending on the volume of business, and it is necessary to obtain a license from the NBS or the Securities Commission. Although the law is a significant step for the digital economy of Serbia, it does not regulate the area of cryptocurrency mining, which is strictly regulated in many countries. Practice will show in which areas the law needs to be amended and whether its framework can be effectively implemented.

5. Conclusion

The regulatory framework for digital assets is becoming increasingly complex, highlighting the need for comprehensive and adaptable regulations that are in line with the specific needs of different jurisdictions. This complexity highlights the importance of creating regulations that can evolve to meet future challenges. Policymakers and regulators face the task of developing strategies that are both flexible and forward-looking, while ensuring transparency in the regulatory process.

While individual countries have made progress in regulating digital assets, international cooperation remains crucial to creating common standards that will enable global market innovation. These legal frameworks, such as MiCA and national regulations, are essential to shaping a more predictable and secure environment for the development of digital assets and technologies.

By analyzing the regulatory framework at the international and national levels, insights have been revealed that can be used to develop and implement new rules. Four issues in the industry are particularly important: anti-money laundering (AML), know-your-customer (KYC), regulatory and technical sandboxes, decentralized finance (DeFi), and privacy and security issues.

During this period, it is crucial that legislators and regulators pay attention to these issues and maintain an ongoing dialogue with private sector stakeholders, especially those developing the digital asset system . This dialogue ensures that regulations not only respond to current needs, but are also adaptable to future challenges. A well-defined and flexible regulatory framework, based on diverse global experiences, is essential. It provides the

necessary clarity for the industry and enables policymakers to navigate the challenges of this rapidly evolving industry.

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PRAVNI IZAZOVI DIGITALNE IMOVINE – NORMATIVNI OKVIRI I PERSPEKTIVE RAZVOJA

APSTRAKT: Digitalna imovina postala je značajan i neizostavan dio savremenog finansijskog sistema i donijela inovacije u oblasti plaćanja, investiranja i finansijskog posredovanja. Međutim, njena ekspanzija nosi sa sobom brojne regulatorne izazove, naročito u pogledu sprečavanja pranja novca, identifikacije korisnika, pravnog tretmana decentralizovanih finansija i zaštite privatnosti. Pristupi regulaciji digitalne imovine značajno variraju između jurisdikcija – dok pojedine zemlje uvode sveobuhvatne zakone, druge primjenjuju restriktivne ili fragmentirane politike. Srbija se pozicionirala kao jedna od prvih zemalja u regionu koja je donijela poseban Zakon o digitalnoj imovini (2020), čime je uspostavljen regulatorni okvir za

ovo tržište. Ovaj rad analizira pravne izazove digitalne imovine, istražujući nacionalne i međunarodne regulatorne pristupe, uključujući MiCA regulativu Evropske unije. Takođe, razmatra se potreba za balansiranjem između podsticanja inovacija i osiguranja stabilnosti finansijskog sistema. Ključni nalaz je da je neophodna kontinuirana međunarodna saradnja i fleksibilan regulatorni okvir kako bi se omogućio održiv razvoj digitalne imovine i tehnologija koje je podržavaju.

***Ključne riječi*:** *digitalna imovina, kriptoimovina, regulativa, finansijska stabilnost, AML, KYC, DeFi, regulatorni sandbox, Srbija, MiCA.*

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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).

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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.

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

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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).

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

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(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.)

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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.

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(Criminal Procedure Code, 2011)

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

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

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Example:

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

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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
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