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S A D R Ž A J

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CRIMINAL-LAW PROTECTION AGAINST DISCRIMINATION IN THE REPUBLIC OF SERBIA

ABSTRACT: Discrimination represents one of the most severe forms of violation of human rights. Rules prohibiting discrimination are contained in numerous international human rights instruments, while states have enacted laws explicitly prohibiting discrimination and providing protection against it. In accordance with international instruments, as well as constitutional and statutory provisions, it may be concluded that the prohibition of discrimination constitutes a fundamental principle of every democratic society. The legal system of the Republic of Serbia provides various forms of civil-law, criminal-law, misdemeanor, and constitutional-court protection against discrimination. Criminal-law protection against discrimination in Serbia is regulated by the Criminal Code (2005), which prescribes a number of criminal offences related to the prohibition of discrimination, as well as offences containing elements of discrimination, thereby providing protection in cases of discrimination and violations of the principle of equality. Many unlawful acts prescribed as criminal offences by the Criminal Code originated from the criminal offence of violation of equality. For this reason, this incrimination is considered

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fundamental within the corpus of criminal offences protecting the equality of citizens and, accordingly, it constituted the subject of analysis in this paper. Nevertheless, it should be emphasized that the criminal-procedural response to the problem of discrimination, in comparison with other forms of protection, is of a secondary nature, as may be concluded from the overview of the presence of the criminal offence of violation of equality in the practice of judicial authorities in the Republic of Serbia.

Keywords: *violation of equality, discrimination, criminal-law protection, practice of judicial authorities.*

1. Introduction

Article 21 of the Constitution of the Republic of Serbia (2006) stipulates that all persons are equal before the Constitution and the law, that everyone is entitled to equal legal protection without discrimination, and that any discrimination, whether direct or indirect, on any grounds is prohibited, in particular on the grounds of race, sex, national affiliation, social origin, birth, religion, political or other belief, property status, culture, language, age, and mental or physical disability. The same Article further provides that special measures which the Republic of Serbia may introduce in order to achieve full equality of individuals or groups of individuals who are in a substantially unequal position in relation to other citizens shall not be considered discrimination. Discrimination is a "key term in understanding diversity. It involves placing a social group or an individual in the position of persons of lesser value, those whose rights are revoked or diminished, or whose values are denied. It entails equal treatment of unequal persons and unequal treatment of equal persons" (Vidaković et al., 2020, p. 11). Discrimination is "one of the most severe forms of endangerment of human rights and is detrimental both to individuals and to society as a whole" (Đukanović & Milaš, 2018, p. 7).

The word discrimination "is of Latin origin (lat. discriminare) and means to separate, to distinguish. Over time, in practice, and particularly in the field of law, the term discrimination has acquired the meaning of impermissible differentiation" (Petrušić, 2012, p. 7). In practice, discrimination is commonly referred to by various terms: "unequal treatment, making distinctions based on personal characteristics, violation of the principle of equality, differential treatment, deprivation of rights, placing in an inferior position, privileging, favoritism, placing in a superior position, and the like" (Pažin et al., 2012, p. 13). In theory, it is often emphasized that discrimination means "treating someone differently and unjustly because of specific characteristics that the person possesses" (Đuković, 2021, p. 12). Discrimination can be "based on various personal characteristics, which may be real or merely assumed to exist. It can manifest in different areas of social life and can be carried out by anyone, can occur anywhere, and can affect anyone – individuals, groups of people, as well as legal entities" (Janković, Kotević & Pajvančić, 2016, p. 10). Thus, it refers to such "differentiation – exclusion, restriction, or favoritism – of persons in the same or similar situation, carried out because of a personal characteristic (race, nationality, sex, disability, etc.), which endangers, limits, or prevents rights and freedoms, without a justified, reasonable cause and disproportionately" (Vodinelić, 2008, p. 29).

Article 4, paragraph 1 of the Anti-Discrimination Act (2009) provides that all persons are equal and enjoy equal status and equal legal protection, regardless of personal characteristics. In accordance with constitutional and statutory provisions, it can be concluded that the prohibition of discrimination constitutes a cornerstone of every democratic society. Article 2, paragraph 1, item 1 of the Anti-Discrimination Act (2009) defines the terms "discrimination" and "discriminatory conduct." According to these provisions, these terms refer to any unjustified differentiation or unequal treatment, or omission (exclusion, restriction, or giving preference), in relation to individuals or groups, as well as members of their families or persons close to them, either openly or covertly, based on race, skin color, ancestry, citizenship, national affiliation or ethnic origin, language, religious or political beliefs, sex, gender, gender identity, sexual orientation, sexual characteristics, income level, property status, birth, genetic traits, health status, disability, marital and family status, criminal record, age, appearance, membership in political, trade union, or other organizations, and other actual or perceived personal characteristics.

Taking into account that "in specific life situations discrimination does not have only one form of appearance, but is generally manifested in about ten different forms of impermissible behavior, the task of the law is to identify and prohibit all these impermissible forms of discriminatory conduct" (Gajin, 2008, p. 17). The Anti-Discrimination Act (2009), in Articles 5 and 13, prescribes the forms and aggravated forms of discrimination. According to these statutory provisions, the forms of discrimination include direct and indirect discrimination, violation of the principle of equal rights and obligations, incitement to liability, association for the purpose of committing discrimination, hate speech, harassment, degrading treatment, sexual and gender-based harassment, and incitement to discrimination. Additionally, segregation is any act by which a natural or legal person separates other persons or groups of persons on the basis of a personal characteristic without objective and reasonable justification (voluntary separation from others based on a personal characteristic does not constitute segregation). Furthermore, another form of discrimination is incitement to discrimination. In addition to the basic forms, the law recognizes aggravated forms of discrimination, such as: causing and promoting inequality, hatred, and intolerance on the basis of national, racial, or religious affiliation, language, political orientation, sex, gender identity, sexual orientation, disability, or age; promoting or committing discrimination by public authorities and in proceedings before public authorities; promoting discrimination through public media; slavery, human trafficking, segregation, apartheid, genocide, ethnic cleansing, and their promotion; discrimination against a person based on two or more personal characteristics, regardless of whether the influence of individual characteristics can be distinguished (multiple discrimination) or cannot be distinguished (intersectional discrimination); discrimination that is committed repeatedly (repeated discrimination) or over an extended period of time (prolonged discrimination) against the same person or group of persons; discrimination that results in serious consequences for the discriminated person, others, or property, especially in cases where the act constitutes a punishable offense motivated predominantly or exclusively by hatred or intolerance toward the victim based on their personal characteristic.

2. Legal Framework for Protection against Discrimination

At the beginning of this section, it should be noted that discrimination was not prohibited in certain earlier periods. It is well known that the phenomenon of discrimination "is linked to the oldest states and their earliest legal acts, that is, their codes. At the same time, discrimination extends throughout the entire Middle Ages, up to the modern era" (Joksić, 2011, p. 323). Moreover, "in certain historical periods of human societal development, some forms of discrimination were common and widely socially accepted (e.g., slavery, the caste system in India, segregation of Black people in America, etc.). However, with the development of modern societies, many forms of discrimination have become unacceptable and prohibited. Today, rules prohibiting discrimination are contained in numerous international human rights instruments, and states have enacted laws that explicitly prohibit discrimination and provide protection against it" (Petrušić & Beker, 2012, p. 15).

The Republic of Serbia has ratified the most important universal and regional agreements in the field of human rights and the prohibition of discrimination. As a member of the United Nations and a legal successor of the former states – the Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia, and the State Union of Serbia and Montenegro – the Republic of Serbia is a signatory to the most significant international treaties concerning the prohibition of discrimination: the Charter of the United Nations of 1945, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966, and the International Convention on the Elimination of All Forms of Racial Discrimination of 1965.

In addition to the aforementioned, other United Nations conventions are also significant for the prohibition of discrimination, such as the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and others (Milenković, 2010, p. 12). Important Council of Europe documents in this field include the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, ratified in 2003, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the so-called Lanzarote Convention), ratified by the Republic of Serbia in 2010, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence of April 2011, ratified by the Republic of Serbia in 2013 (the so-called Istanbul Convention). In addition to the primary sources of European Union law, which reflect a general commitment to the prohibition of discrimination, the most important EU directives in this area are: Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment regardless of racial or ethnic origin; Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; and Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

Taking into account that the European Convention on Human Rights holds the status of a ratified international instrument in Serbia (Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 2003), "the case law of the European Court of Human Rights is of exceptional importance for the application of anti-discrimination law in the country" (Nikolić, 2008, p. 65). In theory, it is emphasized that the issue of human rights and protection against discrimination represents a relatively new area of law in our national legislation, "the regulation and implementation of which, both within the system of civil-law protection and in criminal proceedings, is often accompanied by politically and socially sensitive issues" (Drobnjak, 2008, p. 51). Considering the aspect of our legislative framework, in Serbia, anti-discrimination laws and provisions have been adopted over the past two decades, which over time have proven to constitute a solid anti-discrimination legal framework, that is, a comprehensive system of legal protection against discrimination based on civil-law, criminal-law, and misdemeanor-law protection.

General and specific anti-discrimination laws have been enacted, such as the Law on the Prohibition of Discrimination (2009), the Law on the Protection of the Rights and Freedoms of National Minorities (2002), the Law on the Prevention of Discrimination of Persons with Disabilities (2006), the Gender Equality Law (2021), the Law on Mobility with the Assistance of Guide Dogs (2015), and the Law on the Use of Sign Language (2015). In addition to these laws, anti-discrimination provisions are also contained in other legislation, including the Labour Law (2005), the Law on Professional Rehabilitation and Employment of Persons with Disabilities (2009), the Health Care Law (2019), the Law on Patients' Rights (2013), the Law on the Protection of Persons with Mental Disorders (2013), the Police Law (2016), and others. Criminal-law protection against discrimination is regulated by the Criminal Code (2005), which prescribes criminal offences that provide protection in cases of discrimination and violations of the principle of equality. At this point, it is also necessary to mention the Strategy for the Prevention and Protection against Discrimination for the period 2022–2030 (2022), which is based on the principles of equality and non-discrimination, equal opportunities and inclusive equality, gender equality, intersectoral and multidisciplinary approaches through continuous cooperation of all actors at all levels, participation, constant collection of statistical data, analysis and evaluation of achieved results for the purpose of creating new measures and activities, and respect for the human rights and freedoms of all citizens of the Republic of Serbia. The Strategy proceeds from the position that the Republic of Serbia is an inclusive society with zero tolerance for discrimination, in which all citizens, regardless of their personal characteristics, have equal opportunities and enjoy all rights and freedoms guaranteed on an equal basis by the Constitution, laws, and international treaties.

3. Criminal-Law Protection against Discrimination

Criminal liability of a discriminator "is provided as an exception in comparative law" (Petrušić et al., 2012, p. 27). International good practice "generally requires that discrimination be treated as a matter of civil rather than criminal law. However, in order to provide comprehensive protection against discrimination, certain serious forms of discrimination may be classified under criminal law" (Equal Rights Trust, 2019, p. 71).

In our legal system, "in order for legal protection against discrimination to be effective and efficient, various forms of civil-law, criminal-law, misdemeanor-law, and constitutional court protection have been prescribed" (Petrušić, 2014, p. 28). Criminal-law protection against discrimination in Serbia is regulated by the Criminal Code (2005), which prescribes a range of criminal offences related to the prohibition of discrimination, as well as offences containing elements of discrimination, providing protection in cases of discrimination and violations of the principle of equality. These criminal offences include: violation of equality (Article 128), violation of the right to use language and script (Article 129), violation of the freedom to express national or ethnic affiliation (Article 130), violation of freedom of religion and performance of religious rites (Article 131), extortion of testimony (Article 136), and abuse and torture (Article 137) from the group of criminal offences against the freedoms and rights of humans and citizens; violation of reputation based on racial, religious, national, or other affiliation (Article 174) from the group of criminal offences against honour and reputation; incitement of national, racial, and religious hatred and intolerance (Article 317) from the group of criminal offences against the constitutional order and security of the Republic of Serbia; violent behavior at a sports event or public gathering (Article 344a) from the group of criminal offences against public order and peace; as well as the criminal offence of racial and other discrimination (Article 387) from the group of criminal offences against humanity and other goods protected by international law.

As can be observed, criminal-law norms criminalizing discriminatory behavior are found in different groups of criminal offences, and although each of the offences listed deserves to be the subject of a separate analysis, the criminal offence of violation of equality (Article 128 of the Criminal Code, 2005) will be presented in more detail below, which "in a way represents a general, fundamental incrimination from which all other incriminations are, in fact, derived, as a form of a special variant of this general incrimination" (Petrušić et al., 2012, p. 29; Dragojlović & Gujić, 2018, p. 38). If human rights are understood as a set of rights that a human being possesses simply by being human, it can be concluded that the entirety of criminal law serves to protect fundamental human rights. However, the majority of prescribed criminal offences protect goods that are clearly limited in relation to other goods (Stojanović, 2012, p. 440). By prescribing the criminal offences in Chapter XIV of the Criminal Code (2005), personal rights and freedoms are protected, that is, rights related to the personality of the holder of those rights. The criminal offence of violation of equality, "considering its protected object, belongs to the category of criminal offences against the right to lawful conduct in relations with public officials" (Čejović & Kulić, 2014, p. 402).

From the perspective of social philosophy, equality represents the existence of equal opportunities for all individuals within a given society, both regarding their contributions to the economic, cultural, and social progress, and in terms of enjoying the benefits of that societal progress. Equality means that all people, regardless of the differences among them, are equal in rights. The principle of human equality is one of the most important principles of modern society, signifying that legal regulation does not make any distinction between individuals or groups whose certain characteristics, which differentiate them from others, are an inalienable part of their identity. However, the natural right to equality has never been a reality for all people. Equality requires non-discrimination, that is, a prohibition of policies that harm an individual or group based on national, racial, religious, sexual, age, or any other difference. One of the most effective and significant means of preventing discrimination remains criminal-law protection.

The criminal offence of violation of equality is "in a way the classical definition of discrimination" (Petrušić et al., 2012, pp. 29–30). It consists of a basic form, prescribed in paragraph 1, and an aggravated form, prescribed in paragraph 2. The protected object comprises the human and citizen rights established by the Constitution of the Republic of Serbia, laws or other regulations, general acts, or ratified international treaties. In other words, according to legal theory, "the object of protection is legal equality of citizens, but not in its entirety, only a specific segment. This legal equality of citizens – the constitutional principle of equality of citizens – is protected under certain conditions" (Dragojlović, 2025, p. 55). This criminal offence provides criminal-law protection against discrimination.

Paragraph 1 prescribes the basic form, which is committed by anyone who, on the grounds of national or ethnic affiliation, race, or religion, or due to the absence of such affiliation, or because of differences regarding political or other beliefs, sex, disability, sexual orientation, gender identity, language, education, social status, social origin, property status, or any other personal characteristic, denies or restricts the human and citizen rights established by the Constitution, laws, other regulations, general acts, or ratified international treaties to another person, or grants them privileges or benefits on the basis of such differences (Dragojlović & Gujić, 2018; Miladinović Stefanović, 2017).

This incrimination represents the realization of the aforementioned constitutional prohibition of discrimination. The act of commission consists of denial or restriction, or of granting privileges or benefits. Denial – represents the complete deprivation of a certain right to a person. That is, a human right guaranteed by the Constitution and established by laws or other regulations is entirely denied, or the person is completely prevented from its exercise (enjoyment). Restriction – consists of the partial deprivation of a certain human right. This right is limited for a person, so they are unable to exercise it fully or appropriately. Granting a privilege – denotes enabling the use of a right as a special advantage. Granting a benefit – is considered any action that provides more favorable opportunities for the exercise of a right. These actions are carried out due to a certain personal characteristic of the person to whom they are directed. In theory, it is explicitly emphasized "that a privilege or benefit granted to someone must not be prescribed or provided by any legal or sublegal act" (Stojanović, 2006, p. 364). This is a consequential criminal offence. The consequence of the act occurs as a violation of citizens' rights to equality in the exercise of guaranteed rights or as a violation of their legal interest. It constitutes any infringement of the equality of the person toward whom the offence is committed in relation to other persons. Anyone can be the perpetrator. The subjective element of the offence is intent as a form of the perpetrator's guilt. For this offence, imprisonment of up to three years is prescribed. The aggravated form of the offence, prescribed in paragraph 2, arises as an offence qualified by a special personal characteristic of the perpetrator (*delicta propria*). This offence exists if the act of commission was carried out by a public official in a special manner – in the performance of official duties, that is, in the regular execution of tasks, responsibilities, or powers in official service when deciding on the rights or freedoms of other persons. For this offence, imprisonment of three months to five years is prescribed.

4. The Criminal Offence of Violation of Equality in the Practice of Judicial Authorities in Serbia

This subsection presents data on the prevalence of the criminal offence of violation of equality in the practice of judicial authorities in the Republic of Serbia, through the following parameters: criminal complaints of adult persons for the period 2021–2023, indictments of adult persons for the period 2021–2023, and convictions of adult persons for the period 2021–2023. Thus, the prevalence of the criminal offence of violation of equality in Serbia can best be assessed through the analysis of the official number of filed criminal complaints and indictments, as well as the convictions handed down against adult perpetrators, in relation to the data statistically recorded for the group of criminal offences against the freedoms and rights of humans and citizens, as well as in relation to the data recorded for all criminal offences at the level of the Republic of Serbia. In the theoretical part of the study, the method of theoretical content analysis was primarily applied, along with the basic methods of concretization and specialization, while in the research part, statistical and analytical-deductive methods, as well as the method of quantitative data analysis, were applied. The research is based on official statistical data from the Statistical Office of the Republic of Serbia.

Table 1. Number of criminal complaints filed against adult persons, by criminal offence, for the period 2021–2023

	Year 2021		Year 2022		Year 2023	
	Total	Known perpetrators	Total	Known perpetrators	Total	Known perpetrators
Republic of Serbia	80632	54240	82958	51414	74504	47760
Criminal offences against the freedoms and rights of humans and citizens	3811	3445	3779	3345	3352	3015
Violation of equality	17	17	15	15	2	1

Source: Bilten, *714*, 2024; Bilten, *702*, 2023; Bilten, *689*, 2022

From the previous table, it can be seen that the number of criminal complaints filed against adult persons for the criminal offence of violation of equality significantly deviates in 2023 compared to previous years. Furthermore, regarding the filed criminal complaints, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation.

Table 2. Number of indicted adult persons, by criminal offence, for the period 2021–2023

	Year 2021		Year 2022		Year 2023	
	Total	Women	Total	Women	Total	Women
Republic of Serbia	31870	3496	30406	3342	31101	3557
Criminal offences against the freedoms and rights of humans and citizens	1351	115	1354	129	1486	128
Violation of equality	—	—	1	1	1	—

Source: Bilten, *714*, 2024; Bilten *702*, 2023; Bilten, *689*, 2022

From the previous table, it can be seen that the number of indictments filed in the observed three-year period against adult persons for the criminal offence of violation of equality does not differ significantly. Furthermore, in this area, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation.

Table 3. Number of convictions, dismissals, and acquittals, by criminal offence, for the period 2021–2023

	Year 2021	Year 2022	Year 2023
	Convictions	Convictions	Convictions
Republic of Serbia	27 508	26200	26919
Criminal offences against the freedoms and rights of humans and citizens	1 051	1086	1164
Violation of equality	—	1	1

Source: Bilten ,*714*, 2024; Bilten, *702*, 2023; Bilten, *689*, 2022

From the previous table, it can be seen that the number of convictions handed down in the observed three-year period against adult persons for the criminal offence of violation of equality does not differ significantly. Furthermore, in this area, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation.

5. Conclusion

Although the possibilities for committing discrimination are numerous, the possibilities for protection against it are equally numerous. Contemporary trends are directed towards prevention, which should include the education and information of citizens about human rights and freedoms from the earliest age.

Legal protection, as a repressive measure of protection, is applied when a violation of equality occurs. Although civil-law liability is given primary importance in comparative law, in the Republic of Serbia, liability is most often sought through criminal proceedings. The reason for this is the fact that discrimination was incorporated into our legislation through the criminal-law sanctioning of its forms. Many prohibited actions prescribed by the Criminal Code as criminal offences have originated from the criminal offence of violation of equality. For this reason, this incrimination is considered fundamental within the corpus of criminal offences that protect the equality of citizens.

What should be particularly emphasized, however, is that the criminal-procedural response to the problem of discrimination (compared to other forms of protection) is of a secondary nature, as can be easily observed from the review of the prevalence of the criminal offence of violation of equality in the practice of judicial authorities in the Republic of Serbia over the presented three-year period. Specifically, the number of criminal complaints filed, the number of indictments brought, and the number of convictions handed down against adult persons for the criminal offence of violation of equality during the observed three-year period do not differ significantly by year. However, in relation to total criminality and to the group of criminal offences against the freedoms and rights of humans and citizens, the criminal offence of violation of equality does not have significant representation according to any analyzed criterion. This certainly leads to the conclusion that in the fight against discrimination, compared to the criminal-law and criminal-procedural treatment of the violation of equality, the predominant response lies in a wide range of general social, political, cultural, and certainly economic factors.

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Conflict of Interest

The authors declare no conflict of interest.

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KRIVIČNOPRAVNA ZAŠTITA OD DISKRIMINACIJE U REPUBLICI SRBIJI

APSTRAKT: Diskriminacija je jedan od najtežih oblika ugrožavanja ljudskih prava. Pravila o zabrani diskriminacije sadržana su u brojnim međunarodnim dokumentima o ljudskim pravima, a države su donele zakone kojima su izričito zabranile diskriminaciju i propisale zaštitu od diskriminacije. Shodno međunarodnim dokumentima, kao i ustavnim i zakonskim odredbama, zaključuje se da je zabrana diskriminacije temelj svakog demokratskog društva. U našem pravnom sistemu propisani su raznovrsni oblici građanskopravne, krivičnopravne, prekršajnopravne i ustavnosudske zaštite od diskriminacije. Krivičnopravna zaštita od diskriminacije u Srbiji uređena je Krivičnim zakonikom (2005), koji propisuje čitav niz krivičnih dela u vezi sa zabranom diskriminacije, kao i sa elementima diskriminacije, i koja pružaju zaštitu u slučajevima diskriminacije i povrede načela jednakosti. Mnoga nedozvoljena postupanja koja su propisana Krivičnim zakonikom kao krivična dela nastala su iz krivičnog dela povrede ravnopravnosti. Zbog toga se ova inkriminacija smatra osnovnom u korpusu krivičnih dela kojima se štiti ravnopravnost građana, i shodno ovome, bila je i predmet analize u ovom radu. Ipak treba naglasiti da je krivičnoprocesni odgovor na problem diskriminacije (u odnosu na druge načine zaštite) sekundarnog karaktera, što se iz pregleda zastupljenosti krivičnog dela povreda ravnopravnosti u praksi pravosudnih organa u Republici Srbiji može zaključiti.

Ključne reči: *povreda ravnopravnosti, diskriminacija, krivičnopravna zaštita, praksa pravosudnih organa.*

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THE RELATIONSHIP BETWEEN THE PROHIBITION OF DISCRIMINATION AND THE PROHIBITION OF HARASSMENT AT WORK AND DURING RECRUITMENT

ABSTRACT: This paper analyzes the relationship between the prohibition of discrimination and the prohibition of harassment at work and during recruitment within the framework of contemporary labor law. Since the prohibition of discrimination is broadly conceived from a legal perspective, and must be applied across all areas of the socio-political and economic system, the paper examines certain aspects of the prohibition of discrimination and some of the possible grounds for unequal treatment of particular categories of persons, namely employees and job applicants. It is precisely in this area that the prohibition of discrimination and the prohibition of harassment significantly overlap, and although they constitute distinct legal institutions, they share a common objective—the protection of employees' dignity at work and in connection with work, as well as the principle of equal treatment for all. The paper provides an overview of the relevant legislation of the Republic of Serbia, theoretical interpretations, and a comparative legal analysis of solutions adopted in European Union law and international law. Special emphasis is placed on the practical aspects of the overlap between discriminatory and harassing conduct, as well as on the importance of addressing these issues and implementing preventive mechanisms by employers in order to create a safe and dignified working environment.

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1. Introduction

The relationship between the prohibition of discrimination and the prohibition of workplace harassment can be viewed from several aspects. One and the initial one is certainly the relationship between the general and special legal institute. Namely, the prohibition of discrimination in the Republic of Serbia is set much more broadly than the prohibition of workplace harrasment and as such has been raised to the level of a constitutional principle, within the framework of "Human and Minority Rights" (Article 21 of the Constitution of the Republic of Serbia, 2006), while the prohibition of workplace harrasment is not, but through a systematic interpretation of constitutional provisions, especially those within the framework of "Human Rights and Freedoms" – dignified and free development of the personality, the right to work, etc., a basis can be found for the prohibition of workplace harassment and harassment in connection with work (Article 23, 60 of the Constitution of the Republic of Serbia, 2006).

In addition of the above, i.e. the relationship between the general and the particular, it is similarly legally regulated in the highest legal act of the Republic of Croatia, with certain differences in relation to the Constitution of the Republic of Serbia. Namely, the Constitution of the Republic of Croatia also raises the prohibition of discrimination to the level of a constitutional principle, but does not use the term "discrimination", but the provision itself defines equality: "Citizens of the Republic of Croatia have the same rights and freedoms, regardless of their work, skin color, sex, language, religion, political or other beliefs, national or social origin, property, birth, education, social status or other characteristics. All are equal before the law." (Article 14 of the Constitution of the Republic of Croatia, 1990) The cited provision is followed by the one concerning national minorities, who are guaranteed equality. The difference compared to the Constitution of the Republic of Serbia is that the provisions related to labor are listed within the framework of "Economic, social and cultural rights", and not in human rights and freedoms, behind the provisions that guarantee the right to entrepreneurship and market freedoms, the right to work, freedom of labor, the right to strike, the right to minimum wage and vacation, etc. (Articles 55-61, Constitution of the Republic of Croatia, 1990).

In EU law, the general prohibition of discrimination is also contained in the provisions of Article 13 of the Treaty establishing the European Community (Đukić, Petrušić & Janković, 2020, p. 28). In the consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union, the prohibition of discrimination is already mentioned in Article 2 and further, in a large number of provisions of the treaties (Consolidated version of the Treaty on European Union and the Treaty on the Functioning of the European Union).

Therefore, after the above, when it comes to the relationship between the prohibition of discrimination and the prohibition of workplace harassment, one can hypothesize that they are different, but that their distinction in practice is sometimes difficult and that this fluid difference actually tends to a kind of encounter in the concept of personal dignity, which must legally exist in all spheres of life, including at work and in connection with work. Therefore, the relationship implies both differences and similarities, and the encounter of both with the same goal – the protection of the dignity of a person at work and in connection with work.

2. Legal framework

Legal regulations regulating the prohibition of discrimination and the prohibition of harassment at work can be divided into domestic and international. The Republic of Serbia has ratified most of the international regulations, and domestic regulations in this area are in line with international standards and obligations that our country has assumed by signing numerous international treaties and ratifying international conventions.

Of the large number of declarations, conventions, directives and international agreements, only the most important and those that are considered fundamental in international circles in the areas of prohibition of discrimination and prohibition of work at work will be mentioned.

1) United Nations Charter, in Article 55, point c, obliges all articles to “respect for human rights and fundamental freedoms for all, without distinction as to race, sex or religion, language (1945).
2) The Universal Declaration of Human Rights, in Articles 1 and 2, guarantees freedom and equality in dignity and rights to all people, regardless of “any distinction, whether such as sex, religion, political or other opinion, national or social origin, property, birth or other status”. One, within it, the right to work is included in the basic human rights, Article 23. (Škorić, 2016).

3) The UN Convention on the Elimination of All Forms of Racial Discrimination is the basic UN document in the fight against racism and discrimination (Law on the Ratification of the UN Convention on the Elimination of All Forms of Racial Discrimination, 1967).
4) International Covenant on Civil and Political Rights (Law on the Ratification of the International Covenant on Civil and Political Rights, 1971).
5) International Covenant on Economic, Social and Cultural Rights (Law on the Ratification of the International Covenant on Economic, Social and Cultural Rights, 1971).
6) Convention on the Rights of the Child (Law on the Ratification of the United Nations Convention on the Rights of the Child, 1990).
7) The International Convention on the Elimination of All Forms of Discrimination against Women (1979) prescribes the responsibility of member states to eliminate all forms of discrimination against women in the exercise of civil, political, economic, social, and cultural rights, not only in public, but also in private life, including the family (Law on the Ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 2002).
8) UN Convention on the Rights of Persons with Disabilities (Law on Ratification of the Convention on the Rights of Persons with Disabilities, 2009).

In the field of protection against discrimination, secondary sources of law are also important – EU directives, the most important of which are: Directive 2000/43/EC, implementing the principle of equal treatment between persons irrespective of racial and ethnic origin; Directive 2000/78/EC, establishing a general framework for equal treatment in employment and occupation; Directive 2002/73/EC implementing the principle of equal treatment for women and men as regards employment, vocational training and promotion, and working conditions; Directive 2004/113/EC implementing the principle of equal opportunities and equal treatment of men and women in access to goods and services; Directive 2006/54/EC of the European Union on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; Directive 2010/41/EU of the European Union on the application of the principle of equal treatment between men and women engaged in a self-employed activity, etc. (Đukić, Petrušić & Janković, 2020, p. 29).

In the international context, and especially for the topic of this paper, the conventions and recommendations of the International Labour Organization (ILO) are also very important. Of the conventions that have been adopted more recently, C190 stands out, the Convention against Violence and Harassment, adopted in 2019, with entry into force in 2021, which the Republic of Serbia has not yet ratified (International Labour Organization). As far as the prohibition of discrimination is concerned, the most significant is Convention C111 from 1958, which entered into force in 1960 and has been ratified by all ILO member states (Singh, 2025).

Based on the international legal framework, the Republic of Serbia has adopted a set of legal regulations concerning the prohibition of discrimination and the prohibition of harassment at work. Although the sets of laws for both institutes are independent and at first glance different, in a large number of articles of the law, they are intertwined. To begin with, the Labor Law (2005, Articles 18–23) contains a standard prohibition outlined as a general regulatory provision. It, under the section entitled "Prohibition of Discrimination", legally treats both discrimination of employees and persons seeking employment, but also the prohibition of harassment and sexual harassment of the same institutes, which would be – the prohibition of harassment at work (Kulić & Škorić, 2020, pp. 89–92).

As a separate institution, the prohibition of discrimination was later regulated by the Law on the Prohibition of Discrimination (2009), within which, again as a general regulation, the prohibition of discrimination in the field of labor is specifically highlighted (Article 16).

The law prohibiting harassment at work was passed in 2010 under the title of the Law on the Prevention of Harassment (or Abuse) at Work, as a separate law that treats this prohibition in more detail, which was originally prescribed by the Labor Law (2005), as part of the general prohibition of discrimination. In the Serbian legal system, there is a certain terminological inconsistency in the institute of prohibition of harassment at work, because different legal regulations are in force at the same time, which have different names for, one might say, the same institute (Škorić & Matijašević, 2018).

However, is it just terminological? Analyzing the provisions of the Labor Law (2005), where harassment and sexual harassment are treated within the framework of the prohibittion of discrimination as "Harassment and sexual harassment are prohibited. Harassment, within the meaning of this law, is any unwanted behavior caused by any of the grounds set forth in Article 18 of this law that is intended to or constitutes a violation of the dignity of a person seeking employment, as well as an employee, and that causes fear or creates a hostile, humiliating or offensive environment. Sexual harassment, within the meaning of this law, is any verbal, non-verbal or physical behavior that is intended to or constitutes a violation of the dignity of a person seeking employment, as well as an employee in the sphere of sexual life, and that causes fear or creates a hostile, humiliating or offensive environment" (Article 21 of the Labor Law 2005) in relation to the definition of the prohibition of abuse from the Law on the Prevention of Abuse at Work (2010) (Workplace harassment) "Abuse, within the meaning of this law, is any active or passive behavior towards an employee or a group of employees of an employer that is repeated, and which aims to or constitutes a violation of the dignity, reputation, personal and professional integrity, health, position of the employee and which causes fear or creates a hostile, humiliating or offensive environment, worsens working conditions or leads to the employee being isolated or causing him to terminate the employment relationship or cancel the employment contract or other contract on his own initiative. Abuse, within the meaning of this law, is also inciting or inducing others to behave as referred to in paragraph 1 of this article. The perpetrator of abuse is considered to be the employer with the status of a natural person or the responsible person of the employer with the status of a legal entity, the employee or group of employees of the employer who commits the abuse referred to in paragraphs 1 and 2 of this article." (Article 6 of the Law on the Prevention of Abuse at Work (Workplace harassment) 2010), many similarities, but also differences, can be found. Namely, the first and mentioned difference is the term used, harassment, versus abuse. Then, the Law on the Prevention of Abuse at Work (2010) defines this behavior more precisely and introduces another type, which is "inciting or inducing others to behave..." Further, according to the systematization and definition from the Labor Law (2005), it follows that harassment is part of discrimination, because it is regulated in that part. Also, according to the Labor Law, from abuse, or harassment, as stated in the text, both employees and persons seeking employment are protected (Article 23 of the Labor Law, 2005), while in the Law on the Prevention of Abuse (2010) this is not the case, because this protection is enjoyed by employees and persons engaged in work on any basis with the employer, the basis on which they work, but not by persons seeking employment (Article 2 of the Law on the Prevention of Abuse (harassment) of the Republic of Serbia, 2010). What is common to both definitions is that the behavior is negative, undesirable and affects the dignity of employees or persons seeking employment. It is precisely in the term "dignity" and everything it represents, as a civilizational achievement, that the key that is the link between the prohibition of discrimination and the prohibition of workplace harassment and in connection with work lies. The above-mentioned differences can be partially justified by the fact that the Labor Law (2005) was enacted earlier, in relation to the laws that prevent discrimination and abuse at work, but also by the fact that the current law and many of its provisions, the circumstances in which we live and the emergence of new forms of work and work flexibility, have made the current law and many of its provisions outdated and ready for changes, including for a completely new Labor Law (Gligorić & Škorić, 2021).

Also, terminological differences are not only specific to domestic legislation. Namely, there are noticeable semantic differences in comparative law as well, and different terms are used to denote this phenomenon. For example, in Australia, the United Kingdom and the USA the term bullying is used (in the sense of persistent mistreatment of an employee that has consequences for the physical and mental health of that person), in France, Belgium and Spain the term psychological harassment is used, while in Germany, Italy, Norway and Denmark the term mobbing is used, which is also the case in the Republic of North Macedonia and the Republic of Montenegro. In Sweden, the term victimization at work has been used since 1993 (Gligorić & Stojković Zlatanović, 2020, p. 35). Of course, it should not be forgotten that the term "harassment" is used as a basic term for all behaviors that may constitute abuse, bullying or violence at work (De Stefano Durri, Stylogiannis, & Wouters, 2020, p.13).

In the legal system of the Republic of Serbia, there are a large number of special laws that primarily prohibit discrimination as a constitutional principle, and listing all of them would further burden the work and take us away from the main topics and hypotheses, which is the relationship between the prohibition of discrimination and the prohibition of workplace harassment and in connection with work.

3. Discussion

After reviewing the legal framework, both international and domestic, related to the prohibition of discrimination and the prohibition of workplace harassment, a historical and legal question arises, which is how the prohibition of discrimination was guaranteed at work, and especially the prohibition of workplace harassment? So, how was respect for the dignity of employees at work guaranteed in Serbia before the adoption of a set of laws that regulated it more precisely in 2009 and 2010? Also, in positive law, another dilemma rise up. Namely, if both the prohibition of discrimination and the prohibition of work harrasment primarily protect the dignity of the person, which law will individuals refer to if their right to dignified work is violated? What is the difference that distinguishes between these two legal institutions, when an analysis of the current labor law has determined that this distinction is not even made in it, but was made only a few years later, with the adoption of special laws?

If we go in order, from a historical and legal perspective, before the current Labor Law of 2005, according to Reljanović and Petrović (2011): "The Serbian (and previously Yugoslav) legal system has long been devoid of regulations that would sanction discriminatory behavior" (p. 186). The same authors state that both discrimination and harasssment existed before the adoption of the currently valid legal regulations, but their sanctioning was "limited by the interpretation of criminal law provisions, i.e. by subsuming various criminal acts under this type of prohibited behavior. Workplace harassment was also "wrapped" under the institute of "chicanopic behavior", which has been developing exclusively in court practice for decades, without explicit legal support" (Reljanović & Petrović, 2011, p. 187). If we look at the current criminal law solutions and provisions of the Criminal Code of the Republic of Serbia, it can be determined that within Chapter 14 Criminal Acts Against Freedom and Rights of Human and Citizen, there is a prescribed criminal part Violation of equality and thus protection of all from discriminatory behavior (Article 128 of the Criminal Code of the Republic of Serbia, 2005).

Further analysis of the same law revealed that there is no criminal offense that sanctions harassment at work and in connection with work, but that there is a criminal offense within the same chapter, "Abuse and Torture", whose essence is human dignity, which is protected by the prohibition of abuse of another person. (Article 137, Criminal Code of the Republic of Serbia, 2005). However, neither abuse (harassment) at work nor other rights based on work enjoy criminal law protection. In the neighboring Republic of Croatia, for example, this is not the case. Namely, the Criminal Code has a special Chapter 12 dedicated to criminal offenses against employment relations and social security, which lists several criminal offenses, such as: violation of the right to work, non-payment of wages, harassment at work, violation of the right to social security and illegal employment (Articles 131-134 of the Criminal Code of the Republic of Croatia, 2011). Also, in Chapter 11, within the framework of criminal offenses against human rights and fundamental freedoms, the criminal offense of violation of equality is prescribed (Article 125 of the Criminal Code, RH), similar to what exists in the Criminal Code of the Republic of Serbia, with the same penalty – imprisonment for up to 3 years, with the difference that in Serbian code there is another form of this criminal offense, namely if the perpetrator is an official in the performance of his duties.

After answering several previously asked questions concerning the historical-legal element and additional analysis of positive criminal legislation, the turn came to practical issues concerning the application of regulations regulating the prohibition of discrimination and the prohibition of harassment at work. Certain inconsistencies in domestic positive legislation have been discussed above, while one of the basic rules in the application of regulations will be highlighted here – *Lex specialis derogat legi generali*. Namely, in accordance with this, the Labor Law of the Republic of Serbia (2005) is to be considered a general law, while the Law on the Prohibition of Discrimination (2009) and the Law on the Prevention of Abuse (Harassment) at Work (2010) are special laws. Special laws have priority over the general law, and issues that one of them does not regulate, the one that regulates the given issues is applied, provided that if both general and special laws regulate the same matter in a different way, the special law has priority. Therefore, the fact that the Labor Law regulates the matter of the prohibition of discrimination and the prohibition of harassment (abuse) in such a way that it can be concluded that they are one institution, by enacting separate laws on discrimination and on the prohibition of harassment, resolves this dilemma and confirms one of the initial hypotheses, which is that these two institutions are separate and different, but that this difference is often fluid and difficult to notice. As another argument that supports the above, there are numerous reports from the Commissioner for the Protection of Equality[1] in which the most common area of discrimination is listed as race and employment, and in a table, for the period 2022-2024, the area of discrimination in labor and employment in relation to other areas of discrimination (Commissioner for the Protection of Equality), as follows:

[1] Specifically established by the Law on the Prohibition of Discrimination in 2009, which law also determined the conditions for its selection, mandate, competences, etc., Articles 28-34, as well as the procedure before the Commissioner, Articles 35-40b of the Law on the Prohibition of Discrimination.

Table 1. Prticipation in % according to different areas of discrimination[2]

Area of discrimination	2022	2023	2024
Work and employment	20,7%	26,8%	20,3%
Proceedings before public authorities	23%	23%	23%
When providing public services or when using facilities and areas	16,1%	10,5%	8%
Public sphere / general public	11,4%	1,3%	2,7%
Health care	7%	7%	7%
Education and vocational training	7,8%	13%	8%
Public information and media	4,0%	4,5%	2,5%
Other areas (Social protection, Private relations, Housing, Justice, Culture, Art, Sports, Other relations)	10%	13,9%	28,5%

Source: Annual reports of the Commissioner for the Protection of Equality for 2022, 2023 and 2024

Based on the table, it can be concluded that the field of work and employment is, unfortunately, one of the fields where discrimination is present. The trend from the latest annual reports is that it is either the first in terms of share or the second, right after the Field of Proceedings before Public Authorities, with the highest percentage being in 2023, with a certain drop in 2024. However, since for the correct interpretation of all reports, numbers and statistics, it is necessary to have a broader social picture, the conditions that exist in a society, the data that will be found in the Annual Report of the Commissioner for 2025 will be very interesting. For now, based on the available data, it is clear why work and employment are inseparable from the institute of prohibition of discrimination, and therefore with the prohibition of work harassment.

Considering that work harassment, in addition to judicial proceedings, can be established, but also resolved in an out-of-court procedure, or in: proceedings before the employer[3], mediation, arbitration before the Republic Agency for Peaceful Resolution of Labor Disputes. Since proceedings before the employer and mediation are confidential, it is impossible to determine their number and content. However, interesting information is published on the official website of the Agency for Peaceful Resolution of Labor Disputes, and it concerns

[2] The table was prepared by the author based on data contained in the Annual Reports of the Commissioner for the Protection of Equalit0y.

[3] It is also an obligation for the employee to first initiate a procedure for protection against abuse before the employer, if the employer, or the authorized person at the legal entity, is not the one who committed the acts of abuse (Article 13 of the Law on the Prevention of Abuse (Harassment) at Work, 2010

harassment at work: “Since the entry into force of the Law on Prevention of Abuse (Harassment) at Work, the Agency has had the most Proposals for initiating an individual labor dispute procedure regarding mobbing. A good indicator is the fact that in the first 2 months of 2015, all 20 Proposals related to mobbing. The employer’s consent is obtained for 1/5 of the proposals, which is proportional to obtaining consent in other labor disputes. Interesting information is that in 30% of cases, mobbing was determined, in 50% it is a violation of other labor rights, and in 20% there is suspicion that it is an abuse of the right to protection” (Republic Agency for Peaceful Resolution of Labor Disputes). Therefore, from the above, it can be concluded that employee work harassment is interpreted much more broadly than is prescribed by theory, law and practice, and other violations of labor rights that cannot be considered harassment in the sense of the legal regulations of the Republic of Serbia are also classified under this act. Previously, it could be attributed to inadequate business policies of employers, which could greatly contribute to the elimination or at least reduction of such phenomena in the workplace if they were clearly defined, not only by state legal regulations, but also by the internal regulations of employers (Saram, Hasan & Aburumman, 2024).

4. Conclusion

In accordance with all of the above, and with the hypothesis set out in the introductory part of this paper, the following can undoubtedly be concluded: the prohibition of discrimination at work and in connection with work and the prohibition of workplace harassment represent two complementary institutes of labor rights protection. Their distinction has theoretical significance, legal distinction, but in practice they are often intertwined. Effective protection of employees, which requires clear procedures, institutional support and continuous harmonization of domestic legislation with the labor standards of the European Union, but also of the International Labor Organization, can greatly contribute to improving the position of employees and people seeking employment. The application of the principles of decent work and equal opportunities are key prerequisites for the development of modern and fair labor relations in the Republic of Serbia. The legal framework exists and is in line with all internationally recognized standards that prevent both discrimination and workplace harassment, but it is necessary to consistently and continuously implement the regulations in practice, to speed up the procedure for resolving such disputes, and above all, to continue educating employees and job seekers about their labor rights and the fundamental right to decent work and respect for human dignity. The aforementioned education is also needed by employers, almost as much as a decisive stance by the state in severely punishing those who do not comply with the prohibitions prescribed by law.

Conflict of Interest
The author declare no conflict of interest.

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ODNOS ZABRANE DISKRIMINACIJE I ZABRANE ZLOSTAVLJANJA NA RADU I PRI ZAPOŠLJAVANJU

APSTRAKT: Ovaj rad analizira odnos između zabrane diskriminacije i zabrane zlostavljanja na radu i pri zapošljavanju u okviru savremenog radnog prava. Kako je zabrana diskriminacije, pravno posmatrano, široko postavljena i nužno ju je primenjivati u svim oblastima društveno-političkog i ekonomskog sistema, u radu se analizira deo zabrane diskriminacije i deo mogućih razloga nejednakog tretmana određenih kategorija lica, i to zaposlenih lica i lica koja traže zaposlenje. Upravo na tom mestu dolazi do značajnog preplitanja zabrane diskriminacije i zabrane zlostavljanja i, iako predstavljaju različite pravne institute, oba instituta imaju zajednički cilj, a to je zaštita dostojanstva zaposlenih na radu i u vezi s radom, kao i jednako postupanje prema svima. Rad sadrži pregled relevantnog zakonodavstva Republike Srbije, teorijska tumačenja, kao i uporednopravnu analizu rešenja u pravu Evropske unije i u međunarodnom pravu. Poseban akcenat stavljen je na praktične aspekte preklapanja diskriminatorskih i zlostavljačkih ponašanja, kao i na značaj bavljenja ovim temama i sprovođenje preventivnih mehanizama poslodavca u stvaranju bezbednog i dostojanstvenog radnog okruženja.

Ključne reči*: diskriminacija, zlostavljanje na radu, mobing, dostojanstvo zaposlenih.*

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THE ROLE OF SPORT IN THE INTEGRATION OF IMMIGRANTS

ABSTRACT: The topic of this paper is highly relevant and of great importance. There is a large number of immigrants worldwide, particularly in Europe, and it is necessary to identify mechanisms that will ensure their successful adaptation to the society into which they have immigrated, both for their own benefit and psychological well-being and for the benefit of society as a whole, including legal certainty and the rule of law. Therefore, this topic requires a multidisciplinary approach, and the authors of this paper are experts in the fields of psychology and law. The aim of the paper is to examine whether and to what extent sport can contribute to the integration of migrants into the host society, particularly in terms of their social inclusion, connection with the local community, reduction of social distance, and development of a sense of belonging. The paper analyzes the psychological role of sport in the integration of migrants, drawing on European research as well as specific Croatian examples, such as Filipino basketball and Indian cricket initiatives, which foster social connectedness, resilience, and cultural adaptation.

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Various scientific methods have been applied in the paper, particularly the inductive and deductive methods; the methods of analysis and synthesis, abstraction and concretization, generalization and specialization; the methods of proof and refutation, classification, and description; as well as the historical, compilation, and comparative methods. The paper concludes with findings that confirm the proposed hypothesis.

Keywords: *immigrants, sport, personality rights, psychological aspect, civil law aspect.*

1. Introduction

Increased population mobility has led to a growing need to develop effective mechanisms for the inclusion of migrants into society, and the subject of this paper is the analysis of the role of sport in their integration. Sport and physical activity have historically received very little attention within the field of refugee and forced migration studies (Spaaij et al., 2019). Although sport is traditionally associated with competitive, recreational, and health-related functions, its significance in contemporary social relations is much broader, and the question of its role in integration processes deserves special scholarly attention. Sport is a powerful but underutilized tool for migrant integration in multicultural Europe. This paper synthesizes academic findings with Croatian case studies to evaluate its practical effectiveness. The aim of this paper is to examine whether and to what extent sport can contribute to the integration of migrants into the host society, through both psychological and civil law perspectives. Various scientific methods have been applied in this paper, particularly the inductive and deductive methods, methods of analysis and synthesis, abstraction and concretization, generalization and specialization, methods of proof and refutation, classification, description, the historical method, and the method of compilation.

2. Migration and the Integration Process

Before analyzing the specific relationship between sport and integration processes, it is necessary to define the concept of migration, distinguish its basic types, and clarify the concept of migrant integration. It is also essential to point out the most common challenges that accompany integration processes, such as language barriers and discrimination (Rajković & Magdalenić, 2024).

2.1. Concept and Types of Migration

Migration can be defined as the movement of people from their usual place of residence to a new place of residence, either within the borders of the same country or across an international border, on a temporary or permanent basis. A migrant is considered to be a person who moves from their usual place of residence to another place or country for various reasons, such as employment, education, family, or better living conditions (International Organization for Migration [IOM]. n.d. Key migration terms). Based on the motives and circumstances of their occurrence, migrations are most commonly divided into economic and forced migration.

2.2. The Concept of Immigrant Integration

Integration can be defined as a dynamic and two-way process of change that places demands on both migrants and the host society. In general, integration can be characterized as the process through which an individual becomes accepted into a society (Gregurović, 2019). At its core, integration involves two parties: migrants, with their characteristics, efforts, and adaptations, and the host society, with its own characteristics and responses to newcomers (Penninx, 2007). However, although integration is typically described as a two-way process involving migrants and the receiving society, more recent approaches suggest the inclusion of a third party: the migrants' country of origin (Blagojević, 2020).

Migrant integration is a complex process of incorporating migrants into the host society (Jurić, 2024). It entails the obligation of the host society to ensure formal rights that enable migrants to participate in the economic, social, cultural, and civic life of the community, as well as migrants' adaptation to the values and standards of that society and their active participation in the integration process, without requiring them to renounce their own cultural identity (Lalić Novak, 2019). In this context, the social connections that refugees establish with members of the local community are particularly important for understanding the integrative role of sport (Jurković, 2023). Integration begins at the moment of arrival in the host country and is considered complete when a migrant becomes an active member of society from legal, sociological, economic, educational, and cultural perspectives (Jurić, 2024).

One of the most important dimensions of integration is social integration (IOM. n.d. Integration and social cohesion: Key elements for reaping the benefits of migration). Social integration can be defined as the extent to which individuals are included in community life and develop relationships with members of the host society (Jennissen, Bovens, Engbersen, & Bokhorst, 2023). It focuses on incorporating individuals into social systems, building relationships, and shaping attitudes toward society as a result of consciously motivated interactions and cooperation between individuals and groups (Gregurović, 2019). In this sense, social integration represents a process of mutual acculturation between two different sociocultural groups that, despite their differences, are equal in rights and obligations (Arjona Garrido, Checa Olmos, Garcia-Arjona, & Pardo, 2012). Cultural integration refers to the inclusion of migrants in the cultural life of the host society, with the degree of adaptation depending on the integration model adopted by that society (Council of Europe [CoE], 1997). Sport and physical activity can provide a space for developing new forms of cultural capital, while simultaneously preserving migrant-specific cultural capital that strengthens identity and helps reduce social exclusion (Smith, Spaaij, & McDonald, 2019). In addition to social and cultural integration, economic integration is particularly important. It involves migrants' effective participation in the labor market, recognition and utilization of their knowledge, skills, and qualifications, and access to employment, training, and career advancement opportunities. The European Commission, in its Action Plan on Integration and Inclusion 2021–2027, emphasizes that migrants constitute a significant part of the European Union's workforce, but often face difficulties in having their competencies recognized and in finding jobs that match their level of knowledge and experience (European Commission [EC], 2020). Finally, migrant integration can also be viewed through the dimension of political participation, that is, involvement in the public and social life of the community (Šimunović, 2024).

2.3. Challenges of Migrant Integration

Immigrants often face numerous difficulties that hinder their full inclusion in society. These challenges may be legal, social, cultural, linguistic, and economic in nature, and they are often interconnected and cumulative. Migrant integration is measured in terms of employment, education, health, social inclusion, and active citizenship in the receiving country (European Union [EU], n.d.). However, while citizens of the European Union have the formal possibility of free access to the labor market, migrants from third countries must obtain work permits, and integration mechanisms across EU member states condition various migrant rights such as social rights, education and schooling, political participation, and others on the possession of a valid work permit (Pajnik, 2012).

Without a work permit, it is not possible to obtain a residence permit; without an individual work permit, it is not possible to obtain permanent residence; without permanent residence, it is not possible to acquire citizenship; without an individual work permit, it is not possible to register with the Employment Office; without permanent residence, it is not possible to access the healthcare system (Pajnik, 2012). Discrimination and stereotypes also represent a serious challenge (Jennissen et al., 2023), which are closely linked to the social isolation of migrants. Additionally, one of the particularly significant challenges is economic marginalization (Penninx, 2007). This is reflected in limited access to employment, insecure and low-paid jobs, lower incomes, and fewer opportunities for professional advancement (Vukojičić Tomić, 2018).

3. Sport and Psychological Well-being of Immigrants

3.1. Sport's Psychological Role in Migrant Integration Pathways

Research has consistently shown positive results when sports programs are actively designed with inclusion in mind. To ensure the highest possible quality of migrant integration in the future we must first understand that sport isn't just a leisure activity, but a deeply intricate system that supports integration in several levels. Firstly, on the individual level it creates opportunities for many social interactions and identity development. Secondly, at the organizational level clubs can act as spaces where inclusion of migrants can be actively facilitated. It is important to mention that their effectiveness depends on inclusive program designs and organizational support, which highlights the fact that integration through sport is not something automatic but needs to be actively facilitated (Borgogni & Digennaro, 2015). These perspectives are supported by findings made by Middleton, Petersen, Schinke, Kao, & Giffin in 2020. Sports, aside from their benefits on physical health, can also be seen as a form of learning where migrants gradually pick up on social norms, expectations and usual behaviours that help them fit in with locals. Integration does not happen immediately; it takes time and effort. If We consider the long-term nature of integration through sports, we can see it provides a structured and continuous environment where relationships can develop over time. For example, stability is created through regular participation in training or club activities, which is important for migrants who have experienced disruption or uncertainty. Sport should be understood as a gradual and ongoing process, rather than just a quick solution for many integration challenges (Middleton et al., 2020; Doidge, Keech, & Sandri, 2020).

Studies view sport as a socializing agent fostering respect for diversity and belonging to the community. Activities such as participating in clubs or programs help migrants build new friendships, learn local customs and develop skills like teamwork (Nagel, Elmose-Østerlund, Adler Zwahlen, & Schlesinger, 2020). Key similarities across the studies were the integration mechanisms that were used, such as active coaching, team-based activities, welcoming environments and a focus on acceptance. Target groups put a focus on refugees, youth, forced migrants and emphasized fun over competition. Participating in sport activities like that enhances their social capital, psychological well-being and improved their physical health. Sport fosters respect for diversity and multicultural dialogue in European societies, serving as a strategic public health and cohesion tool. It promotes shared values like fair play and teamwork, thus helping migrants adapt to local cultures while also reducing prejudice among locals (Hatzigeorgiadis, Morela, Elbe, Kouli, & Sanchez, 2013). Another study shows that in Brighton, UK, sport clubs actively drive refugee inclusion through tailored coaching, team activities, and welcoming environments, stating that refugees reported forming friendships with the locals, learning social norms and gaining confidence in doing so. Those are key steps toward societal integration. Football and multisport programs have proven especially effective when it came to building trust (Doidge et al., 2020). An interesting meta-synthesis of over 40 studies has positioned community sports as vital "sites of integration" for forced migrants. Participants have experienced improvement in the sense of belonging, psychological well-being, all through safe, non-competitive spaces that foster intercultural interactions and skill development like teamwork and communication (Middleton et al., 2020). Refugees in sports clubs described participation as something empowering, saying it is "what makes us strong." Facilitating community ties, self-esteem, and practical skills, outweighed physical benefits in integration outcomes (Stura, 2019). When it comes to youth, especially teenage refugees, findings show improved peer relationship, greater societal adaptation and reduced feeling of isolation from sports programs. They leverage teamwork and cultural exchanges to bridge social gaps and position sports as a great and easily accessible entry point for vulnerable youth (Kölbel, 2025).

We must also take several important limitations into consideration. First and foremost, sport is not automatically inclusive. As stated in "Integration by Sport Activities: Resource or Only a Paradox?", aside from its positive aspects when it comes to the integration of migrants, sports can sometimes also reinforce some existing inequalities. Some of those include barriers such as skill differences, participation costs and cultural expectations, all of which can limit access for migrants. Another limitation would be that the success of sport in promoting integrations is highly dependent on context. Varying factors such as program design, coaching style and even institutional support all play a major role. Without intentional efforts to include migrants, those programs may lead to separation rather than integration with migrants forming their own groups instead of forming meaningful interactions with the wider community. This is supported by Stura (2019), whose findings show that while participants often felt personally empowered, the broader impact on integration was inconsistent.

Some of the strongest and most consistent findings were about the psychological benefits of sport. Participation in sports can provide migrants with a sense of normality, and a sense of structure. Those are particularly important for those who have experienced displacement or trauma. In their study, Middleton et al. (2020) have found that participating in sports is linked to improved wellbeing, which includes better mood, stronger sense of belonging and lower stress levels. All these benefits are closely related to the social nature of sport since individuals can build supportive relationships and feel like they are part of a group. Sport also plays a very important role when it comes to rebuilding confidence and identity. Migrants often face stigmatization and often feel defined by their status of a "migrant". Sport allows them to take on new, and more positive roles like that of a teammate or athlete. Stura (2019) has highlighted how participants described sport as something that made them feel more capable than before, it made them feel stronger. This can also have positive effects that spill over into other areas of life like education or even employment. Lastly, taking part in sports can support emotional coping and mental health. Physical activity is known to reduce levels of depression and anxiety, with these effects being even stronger in group settings due to social support. For the youth in particular, sport can act as a protective factor in reducing the feeling of isolation while helping them build relationships with the local youth (Flensner, Korp, & Lindgren, 2020).

3.2. Examination of Real-World Cases

For the purpose of a comprehensive analysis of the topic, the following will examine several real-life examples, first the Refugee Olympic Team, and subsequently the state of immigrant integration in the Republic of Croatia, with concrete examples. Prior to high profile initiatives, community level interventions demonstrate sport's tangible integrative effects. In Kakuma Refugee Camp, Deng Dak's 'Sports for Cohesion' football program had united 1,500 youth across rival ethnic groups, and in doing so reduced resource conflicts while also facilitating psychological restoration and friendships across the communities (World

Economic Forum [WEF], 2024). This micro-level evidence of belonging and trauma mitigation provides essential context for understanding larger scale efforts.

According to the Olympic Charter, "Any competitor in the Olympic Games must be a national of the country of the NOC which registers them", which means that any refugee athlete does not have the right to represent their host country whose passport they do not hold yet (International Olympic Committee [IOC], 2024). The International Olympic Committee (IOC) then, in partnership with the United Nations High Commissioner for Refugees (UNHCR), created the Refugee Olympic Team. The goal was to allow and help refugee athletes continue their training, and to compete. Those athletes represent a symbol of hope to any and all refugees around the whole world, showing how sports can lead to their dreams becoming reality. The number of members keeps growing each year.

Foreign workers in Croatia, in particular ones from India and the Philippines holding temporary or permanent residence permits, have increasingly turned to sports as an important mechanism for developing community ties, lessening work-related stress and facilitating cultural integration into the Croatian society. Integration is also influenced by the interaction between work and leisure domains, with employment providing stability while sport supports social participation and well-being. This then highlights that sport complements work by addressing the social and psychological aspects of integration (Schmieder, 2025). Participation in group activities such as those addressed key challenges often faced by migrants and refugees alike, from social isolation to diminished self-efficacy by promoting resilience through shared experiences (JRS Croatia, 2024; Šušac, Babić, Franjić & Babić, 2022). This trend aligns very well with the previously mentioned research on the integrative power of sports, where activities like team sports can create a safe space for bonding, intercultural dialogue and empowerment among migrants and refugees (Pinoy385, 2025). In Croatia, the increased influx of these workers has led to the emergence of sport-based initiatives that while preserving cultural identities also bridge the gaps with the local population. For example, the Filipino community shows this through the Philippine Croatia Basketball League (PHBL), an amateur league that is primarily based in Zagreb, and has become a cornerstone of social life for those workers (Pinoy385, 2025). Basketball, which has been deeply embedded in Philippine culture ever since its introduction by American colonizers back in the early 20th century holds unparalleled popularity in the archipelago nation of 117 million people. The Philippine men's national basketball team (which is also known as Gilas Pilipinas) has been a member of the International Basketball Federation (FIBA) since 1936, finishing fifth at the Berlin Olympics that year. Their participation in the 1954 World Championship in Brazil marked the first time an Asian national team has ever competed in the event, and earning the bronze medal have achieved the best-ever finish by any Asian country at the FIBA World Cup to this day. The Philippines hosted the World Championship twice: first in 1978, when Yugoslavia claimed gold and the recently deceased Dražen Dalipagić was named the tournament's best player; the second time was two years ago, co-hosting with Japan and Indonesia. They established the world's first professional Asian league (PBA, est. 1975), which was the second in the whole world after the NBA, and proudly hold historic FIBA achievements like the 1954 World Championship bronze. The PHBL, initiated by Delmar Pulman, was explicitly designed to connect Filipino workers, encouraging interactions with Croats, promoting relaxation from demanding jobs, and has become a major social event (Pinoy385, 2025). It is important to mention its growth from 8 teams in their first season to a record 19 teams in the second season (2024/2025), with Batang Zagreb's 2-1 final series victory over Center Hoops. The matches are often live-streamed, providing their families back home with the ability to cheer them on.

Developments are also evident among Indian workers, who are infusing new energy into Croatian cricket, a sport with niche but historic roots tracing back over 200 years to British naval stations on Vis Island during the Napoleonic Wars (HRT Sport, 2026). Cricket's rhythmic, strategic play offers multiple psychological benefits like improved focus, stress coping via routine, and collective identity reinforcement, and building self-esteem through skill progression (HRT Sport, 2026; Steady Project, 2022). Out of over 200 cricket players in Croatia, out of which over 100 are active, around 70 of them are foreign players. Active foreign players make up 30% of junior players as well. Two emerging clubs include predominantly foreign workers, first being the Indian Šibenik club, which is yet to be officially registered (pre-registration) and Ludbreg (HRT Sport, 2026). These sport-driven gatherings occur against a backdrop of surging migrant numbers, as documented by Croatia's Ministry of the Interior (MUP). Filipinos have received 10,999 residence and work permits in 2023, rising to 14,680 in 2024 and then 17,629 in 2025 (5,648 by February 2026), while Indians saw 15,627 (2023), a peak of 20,502 (2024), 15,400 (2025), and 2,097 in early 2026. That places both nations in the top five right alongside Bosnia and Herzegovina, Nepal and Serbia with annual totals of 172,499–206,529 permits (2023–2025) (Ministry of the Interior of the Republic of Croatia [MUP], 2026). This large demographic shift amplifies the low-barrier utility of sport in combating psychological strain from migration, such as anxiety, positioning it as a public health ally per Croatia's mental health strategy (Ministry of Health Croatia, 2023).

4. Personality Rights as the Foundation for Migrant Protection

According to one perspective, personality rights today represent an increasingly significant portion of civil law worldwide approximately 30% of civil law with a tendency for this proportion to grow (Radolović, 2014). Personality rights are defined as a set of entitlements recognized by norms of objective law over an individual's personal, non-property interests (Klarić & Vedriš, 2025). In the objective sense, personality rights constitute a set of norms within the ethical-legal order that regulate every legal subject's right to express and develop their personality in accordance with their psycho-social development. In the subjective sense, they represent the right of a specific legal subject to demand and ensure that others respect and support the development of their personality, again in accordance with their level of psycho-social development (Radolović, 2006). Thus, each individual, as the holder of subjective rights over their personal interests, may choose to exercise these rights or not, based on their own judgment (Gavella, 2000). Personality rights are defined as rights inherent to a natural person, acquired at birth, while the personality rights of legal entities arise from the nature and social purpose of those entities (Crnić, 2016). They primarily concern the individual sphere of a person, protecting personal attributes and uniqueness in relation to their environment and in public, economic, and official activities (Gorenc et al., 2014).

At the European Union level, the Charter of Fundamental Rights of the European Union was solemnly proclaimed on December 7, 2000, in Nice and became legally binding on December 1, 2009, upon the entry into force of the Lisbon Treaty. This document is of particular importance as it outlines the core values of the EU human dignity, freedom, equality, solidarity, democracy, and the rule of law emphasizing the protection of fundamental rights and respect for the diversity of member states.

In the Republic of Croatia, personality rights are regulated under the Law of Obligations (2005), which stipulates that every natural and legal person has the right to protect their personality rights under conditions defined by law (Law of Obligations, 2005, Art. 19, para. 1). It also specifies which personality rights belong to natural persons and which to legal entities (Law of Obligations, 2005, Art. 19, para. 2.-3.). The reference to "etc." in these provisions indicates that the protection of personality rights also covers other situations where personality rights are violated. Certain personality rights not listed in Articles 19, paragraphs 2 and 3, are recognized only when their content is established through judicial practice. In such cases, courts determine whether a particular personality right has been violated, potentially establishing a new personality right not explicitly listed in the law. However, courts may occasionally mistakenly treat something as a personality right when it is not (Kačer, 2021).

In the context of sport, personality rights acquire an additional dimension as they are exercised within a specific social space characterized by public visibility, market relations, and strong media presence. Sport is not only a domain of competition but also a space of intensive social interaction, where the respect for athletes' dignity, protection of their identity, and preservation of their reputation come to the forefront. Migrants participating in sports activities are particularly exposed to the risk of violations of personality rights, for example through racist incidents, hate speech, or inappropriate media portrayals, which requires effective legal protection. In this sense, personality rights act as a corrective to sporting and market relations, ensuring that economic and competitive interests do not override the fundamental rights of the individual. The right to identity is of particular importance, encompassing migrants' national, cultural, and personal identity, which in sport often manifests through affiliation with a specific community or national team. At the same time, the right to reputation and honour protects athletes from unfounded accusations, discriminatory statements, and media manipulation that can have serious consequences for their professional careers and personal lives. The right to privacy becomes even more significant in the context of pervasive media attention, especially for migrants who are often the focus of public interest precisely because of their origin. The European Court of Human Rights has emphasized that private life is "a broad concept that is not susceptible to exhaustive definition" (Da Lomba, 2017).

Migrants in sport occupy a dual legal position, as they simultaneously participate in contractual relationships as athletes and enjoy protection as holders of personality rights. This dual dimension requires the balancing of different legal interests, with civil law providing protection mechanisms through remedies such as compensation for damages, personality rights protection, and anti-discrimination measures. In practice, personality rights have proven to be a key instrument in combating inequalities and ensuring equal participation of migrants in sport, thereby contributing to their social integration. In this context, sport can be viewed as an important integration mechanism that facilitates the inclusion of migrants in society, but only if their personality rights are effectively protected. Without such protection, there is a risk that sport, instead of serving as a means of integration, becomes a space for reproducing social inequalities and discrimination. Therefore, personality rights are not only individual rights but also a broader social instrument that enables the realization of equality, dignity, and social inclusion in the modern legal system.

The case Slivenko and Others v. Latvia[1] represents a key ruling of the European Court of Human Rights regarding the protection of migrants' personality rights under Article 8 of the European Convention on Human Rights. The Court examined the lawfulness of the applicants' expulsion from Latvia and determined that, although formally foreigners, they had developed strong personal, social, and family ties in the host country. In its reasoning, the Court emphasized that "the concept of 'private life' is not susceptible to exhaustive definition; it covers the physical and psychological integrity of a person and can sometimes embrace aspects of an individual's physical and social identity" (§§ 94–95). The Court highlighted that private life includes the right of a person to develop their identity and social relationships in the country where they reside, especially in cases of long-term residence and genuine integration into the host society (§§ 96–98). This position is particularly significant for migrants, as it confirms that their integration into society, including professional and social activities, constitutes a legally protected aspect of their personality. In the context of sport, this interpretation allows the conclusion that migrants' participation in sports activities, as a form of social inclusion and identity building, forms an integral part of their personality rights, further emphasizing the necessity of legal protection within the civil law framework.

5. Conclusion

Migration is one of the most complex features of contemporary societies, and the issue of integrating migrants represents not only a legal and political challenge but also a social and psychological one. In this context, sport emerges as a field that goes beyond its recreational and competitive functions and can serve as an important instrument for social inclusion, connection, and the development of a sense of belonging. The analysis presented in this study confirms the initial assumption that sport can play a significant role in the integration of migrants, particularly in establishing social contacts and reducing social distance within communities.

At the same time, the study shows that the integrative effects of sport are neither automatic nor uniform across all circumstances. The mere opportunity to participate in sports activities is not sufficient if appropriate social and institutional conditions are lacking to enable the genuine inclusion of migrants. The success of sport as an integration mechanism largely depends on the

[1] *Slivenko and Others v. Latvia*, no. 48321/99, decision of 23 January 2002, European Court of Human rights.

openness of the social environment, the activity of sports clubs and recreational groups, the availability of sports programs, the removal of discriminatory barriers, and the existence of public policies that view sport not only through the lens of elite performance but also as a means of social cohesion and inclusivity. For these reasons, sport should be regarded as an important integrative element.

A particular value of sport lies in its ability to provide migrants with direct contact with the local community in a less formal and more accessible environment than many other social domains. Through joint training sessions, competitions, and sports programs, opportunities are created for communication and mutual acquaintance. In this way, sport can contribute not only to the individual well-being of migrants but also to strengthening social connectedness and mutual understanding between migrant populations and the host community. Additionally, the psychological aspects of sport such as the development of self-confidence, emotional stability, and a sense of acceptance, further confirm that sport can play a vital role in the process of migrants adapting to a new environment. On the other hand, legal analysis shows that the integration of migrants through sport cannot be complete without effective protection of their personality rights. Civil law protection of personality rights ensures that integration is based on respect for the fundamental rights of every individual. Croatian examples, such as Filipino basketball programs and initiatives involving Indian communities, have demonstrated results consistent with European research, showing that sport can build resilience and trust across different cultures while providing significant psychological benefits. These sport programs should not be seen as optional; they are essential for the psychological well-being of migrants and are key to fostering social cohesion. Since migrant integration through sport encompasses social, legal, and psychological dimensions simultaneously, understanding and practically improving it requires collaboration among experts from different fields, particularly lawyers and psychologists, but also kinesiologists, sociologists, educators, and sports professionals.

Conflict of Interest
The authors declare no conflict of interest.

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

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ULOGA SPORTA U INTEGRACIJI IMIGRANATA

APSTRAKT: Tema ovog rada veoma je aktuelna i od velikog je značaja. U svetu, a naročito u Evropi, postoji velik broj imigranata, te je neophodno pronaći mehanizme koji će obezbediti njihovu uspešnu adaptaciju u društvo u koje su imigrirali, kako radi njihove sopstvene koristi i psihološkog blagostanja tako i radi dobrobiti društva u celini, uključujući pravnu sigurnost i vladavinu prava. Stoga ova tema zahteva multidisciplinarni pristup, a autori ovog rada jesu stručnjaci iz oblasti psihologije i prava. Cilj rada je da se ispita da li i u kojoj meri sport može doprineti integraciji migranata u društvo prijema, naročito u pogledu njihove socijalne uključenosti, povezivanja sa lokalnom zajednicom, smanjenja socijalne distance i razvoja osećaja pripadnosti. U radu se analizira psihološka uloga sporta u integraciji migranata, oslanjajući se na evropska istraživanja, kao i na konkretne hrvatske primere, kao što su inicijative filipinske košarke i indijskog kriketa, koje podstiču socijalno povezivanje, otpornost i kulturnu adaptaciju. U radu su primenjene različite naučne metode, naročito induktivna i deduktivna metoda, metode analize i sinteze, apstrakcije i konkretizacije, generalizacije i specijalizacije, metode dokazivanja i opovrgavanja, klasifikacije, deskripcije, istorijski metod, metod kompilacije i komparativni metod. Rad se završava nalazima koji potvrđuju postavljenu hipotezu.

Ključne reči: *imigranti, sport, prava ličnosti, psihološki aspekt, građanskopravni aspekt.*

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PARTICULAR EXAMPLES OF FEDERAL BICAMERALISM AND CONSTITUTIONAL SOLUTIONS IN BOSNIA AND HERZEGOVINA

ABSTRACT: Every form of bicameralism contains certain specific features, as it reflects the particular characteristics of a political community and the interests within it that need to be institutionally expressed. This paper examines distinctive examples of cooperative federal and consociational models (Germany and Belgium), which effectively reflect a higher level of constitutional complexity. However, the primary focus is placed on the constitutional solutions in Bosnia and Herzegovina, as an atypical case. Bosnia and Herzegovina continues to represent a state with significant potential for political conflict, while the constitutional balance conditioned by its complex ethnic structure is still faced with serious legal and political challenges. The aim of the paper is to point to the specificity and rationale of these solutions, as well as to deviations from, or differences in relation to, standard models. Balancing various interests, i.e. preventing majorization, in a state that has undergone both dissolution and aggregation and that possesses a greater conflict potential than other states, requires such a complex mechanism. Nevertheless, the necessary complexity of the mechanism must be accompanied by an appropriate political culture – a lasting commitment to achieving agreement among the constituent peoples.

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1. Introduction

The emergence of bicameralism is linked to profound social and political changes or the dominance of a new ideology, and its developmental path has not been uniform or unidirectional. The physiognomy of bicameralism has been determined by various factors: in some cases long-standing political practice, in others compromises aimed at eliminating internal conflict, ensuring political balance or the coexistence of different collectivities, and more rarely doctrinal findings.

Over time, chambers have changed their function and composition. At times, they reflected a new social order, a political experiment, were part of a struggle for power between old and new political forces, served as a pillar of federalism, or acted as a safeguard against more powerful factors in the political process, etc. Nevertheless, despite ambitious intentions, major innovative interventions did not yield the expected results. Numerous questions shape the physiognomy of bicameralism, many of which have over time become standardized, so that it is possible to speak of its forms, models within those forms, and specific examples with regard to particular issues (De Vergotini, 2015, p. 564).

Although every bicameral system is in some respect unique, this paper focuses on federal forms with cooperative and consociational models (Germany and Belgium), whose logic may be useful in understanding bicameralism in Bosnia and Herzegovina. In analyzing certain issues (composition, election, relations, decision-making), reference will also be made to solutions that represent standards, as well as to specificities characteristic of complex states. However, the emphasis is on the solutions in BiH, as complex and specific ones, in which consociational and federal, cooperative elements are combined or intertwined in the part that exists as law, even though there are many regulations and practices that do not conform to this, since BiH still represents a state with political conflict potential and extra-constitutional factors influencing the constitutional process. Under such conditions, constitutional norms and constitutional interpretation cannot have their full and proper effect.

2. Consociative Bicameralism

Since the 1970s, a process of constitutional reforms has been initiated which, through six phases, transformed Belgium from a unitary into an (asymmetrical) federal state composed of communities and regions, with a clear division of competences (Stanković, 2014). The path from a unitary to a federal state, with a tendency toward further devolution from the federation to communities and regions (even confederalization), was conditioned by the need to manage interethnic differences (Popelier, 2018, p. 224). Multinational states, with the aim of overcoming conflict potential, introduce elements of consociation, most importantly: 1) horizontal division of power among communities (proportional, parity-based); 2) autonomy of segments, especially in matters relating to identity; 3) the right of veto or qualified majority in decision-making; 4) a proportional electoral system and large coalitions (Lijphart, 1977; Savanović, 2012). Consociation may represent a supplement to territorial autonomy and federalism based on an ethnic criterion, particularly in cases of their inconsistent or incomplete institutionalization. Belgian bicameralism also represents an element of the consociational system. In addition to it, consociationalism also includes the status of communities and regions, the parity composition of the Government, the composition of the Constitutional Court, the status of Brussels (Swenden, 2006, p. 258). The development of bicameralism was determined by the division of Belgian society along ethno-linguistic lines into the Flemish and French communities.[1] Legislative power is exercised jointly by the King, the Chamber of Representatives and the Senate (Art. 36 of the Constitution, 2021). However, the actual power of the Senate is already limited by Article 74 – legislative power, except in cases referred to in Arts. 77–78, is exercised by the King and the Chamber of Representatives.

The Senate, as the upper chamber, is mandatorily involved only in relation to two categories of matters: 1) matters listed in Article 77 of the Constitution (2021) – the Senate has the same powers as the Chamber of

[1] The Constitution of Belgium does not refer to a federal parliament in any provision in an integrated way. The constitutional text speaks of the King and the federal chambers (the Chamber of Representatives and the Senate), and in the relevant places “the chambers jointly.” It seems that, from the perspective of the constitutional text, it speaks of two separate organs, not two chambers of a single one. On the other hand, the U.S. Constitution explicitly names Congress – indeed, the very first article of the Constitution expressly states that the legislative power belongs to the Congress of the United States, which is composed of the Senate and the House of Representatives.

Representatives: with regard to amendments to the Constitution, as well as matters that directly affect the federal structure, the status of communities and regions, the electoral system, and the organization of the Constitutional Court; 2) in relation to laws listed in Article 78 of the Constitution (2021) – the Senate has the right to debate bills adopted by the Chamber of Representatives and to propose amendments, but it has neither the right of veto nor the right of initiative, and the Chamber of Representatives decides definitively. Other normative tasks are performed by the Chamber of Representatives, including taxation and budgetary matters. The Government is politically responsible to the Chamber of Representatives, which the King may dissolve in cases determined by the Constitution (2021).

With regard to the composition of the federal chambers, the principle of consociationalism is maximally emphasized. In addition, there are no political parties in this state that cover the entire territory of Belgium (Swenden, 2006, p. 142), so large coalitions are always formed. Following the sixth reform and the Butterfly Agreement (Stanković, 2014, p. 129), the Senate, conceived as the guardian of federalism, consists of 60 senators. Its composition is very complex, but it still primarily consists of ethno-linguistic groups. This means that representatives of the Brussels region must also be distributed into two linguistic groups. What further complicates this system is the fact that the Flemish Community and the Flemish Region have merged, with only one parliament, while the French Community and the Walloon Region are separate entities with different parliaments. The Constitution (2021, Art. 67) provides that 29 senators are elected from the Flemish Parliament or the Dutch-speaking linguistic group in the Brussels region (one must have residence in Brussels); 10 senators are appointed by the Parliament of the French Community; 8 senators are elected by the Walloon Parliament; 2 senators are elected by the French-speaking group of the Brussels Parliament; and one is appointed, from among its members, by the Parliament of the German-speaking Community. These senatorial seats are allocated according to a majority system (with specific variations). In addition, 10 senators are co-opted by the other 50 senators (6:4). The representation of co-opted senators, however, is contrary to the logic of a chamber of federal entities.

The Chamber of Representatives has 150 members (Article 63), elected proportionally, according to the D'Hondt method. For the election of members of this chamber, 10 electoral districts have been formed and the Brussels region. Electoral districts coincide with the linguistic division, so that the Flemish group will always elect and be represented by Dutch-speaking representatives, while the Francophone group will always be represented by

Francophone representatives (from different parties). Only in the Brussels district do voters elect representatives regardless of linguistic affiliation. The allocation of mandates to electoral districts is only generally determined by the Constitution, by the proportionality method. Although there are no formal quotas (as in the Senate), due to population density the majority of this chamber consists of representatives of the Flemish linguistic group, but the Government is never formed solely by votes from this group; instead, it is formed on a parity basis. From the composition of the chambers, it is evident that no member, not even a co-opted one, represents the entire population of the Kingdom; rather, they are representatives of the citizens of the federal entities.

Majority decision-making represents the more frequent method of decision-making – so-called ordinary laws. The primary protective mechanism exists in the adoption of laws concerning the status of regions and communities, elections, etc., where, in addition to a two-thirds majority of members in both chambers, a majority of votes in both linguistic groups is required. The Constitution also contains a mechanism allowing a linguistic group, with three-quarters of the votes of its members, to block the adoption of "ordinary" laws if it considers that such an act harms it – the "alarm bell" procedure, which implies that the proposed act is suspended and returned to the (parity-composed) Government for consideration or amendment (Article 54). Although this is primarily a means of political pressure, which is rarely used, it is part of a comprehensive mechanism ensuring the protection of collectivities.

3. Cooperative Bicameralism

Unlike the evolutive Belgian federalism, German federalism represents an imposed constitutional arrangement upon a defeated state by the Allied powers (the London Agreement of 1948). It is not of an ethnic character, but was intended to ensure constitutional democracy and a center–periphery balance. The inviolability of the federal structure (Article 79 of the Basic Law, 2024), the parliamentary system, bicameralism, a strengthened chancellor, and vertical cooperation constitute the fundamental characteristics of this system. The German federal parliament consists of two chambers – the representative chamber (Bundestag) and the Federal Council (Bundesrat). German constitutional theory (König, 2001, p. 418; Scharpf, 2018; Dalton, 2009, p. 294) emphasizes the fact that members of the Federal Council are representatives of the governments of the federal units. This makes

German bicameralism distinctive, as it is based on the intertwining, and even interdependence, of the legislative body of the Federation and the executive authorities of the Länder. Bicameralism in Germany is an expression of harmonious federalism, based on cooperation, but also on preventing centralization (Čepo, 2013, p. 173).

The Bundestag, from the 21st legislative term (2025), has a fixed number of members (630), elected in general and direct elections (Art. 38(1)) for a term of 4 years. The Electoral Act provides for a mixed electoral system, in which voters have two votes: the first is used to elect a candidate directly in their electoral district, and the second is cast for a party list. The Bundesrat consists of representatives of the federal units, holding an imperative mandate, who are appointed and recalled by the governments of those federal units and act in accordance with their political directives. The federal units do not have equal representation: the number of delegates (approximately 3–6) depends on their population (Art. 51.2) This body functions as an intergovernmental collegial organization, which is characteristic of German constitutional tradition. Voting in the Federal Council is bloc voting, so that it is the delegation that has one vote. Accordingly, although there are currently 69 members of the Federal Council, the number of votes is always equal to the number of federal units (16). The Bundesrat is considered the key institution of cooperative federalism (Colomer, 2007, p. 74).

Legislative competence is shared, but the Bundestag is dominant, which is why German bicameralism is considered imperfect. Pursuant to Articles 70–82 of the Basic Law (2024), 5% of the members of the Bundestag have the right of legislative initiative. On the other hand, the Federal Council has the right of legislative initiative only as a body as a whole; it may propose a bill if the required majority in the Council votes in favor. However, if the legislative initiative originates from the Federal Government, it is obliged to submit the proposal to the Federal Council for an opinion and only thereafter, together with that opinion, forward the bill to the Bundestag. Regardless of the prior opinion, the Federal Council votes on the bill after it has been adopted by the Bundestag. Every bill must be adopted by the Bundestag, while the real power of the Federal Council lies in its right of veto. This veto may be of an absolute or suspensive character, depending on the nature of the subject matter regulated. Namely, there are areas (so-called Zustimmungsgesetze) in which the consent of both chambers is necessary for the adoption of a law (absolute veto). These include laws amending the Basic Law (2024), laws on the financing of federal units, laws affecting the organizational and administrative autonomy of the federal units, and laws relating to the

European Union. With regard to legislative proposals in other areas (so-called Einspruchsgesetze), the Federal Council has only a suspensive veto (König, 2001, p. 418). If the Federal Council raises an objection to a bill adopted by the Bundestag, a "conciliation committee" is formed, consisting of an equal number of representatives from both chambers, tasked with reconciling the text of the bill with the objections of the Federal Council. If mediation fails, the Bundestag may re-adopt the bill in the same wording. In that case, the majority required in the Bundestag must correspond to the majority in the Federal Council that adopted the objection to the bill. Thus, if the Federal Council adopted the objection by a two-thirds majority, the Bundestag must adopt the law by a two-thirds majority in the renewed vote in order to override the veto. Cooperativeness is further confirmed by the institute of "legislative emergency", as a temporary state, which, upon a proposal by the Government, is proclaimed by the President with the consent of the Bundesrat. At the request of the Government, the Bundesrat may then adopt a bill without the consent of the Bundestag. This state may be proclaimed only once during the Chancellor's term of office (Article 81). A similar function is performed by the Advisory Council of the Bundesrat, composed of delegates of the Länder, through which internal coordination and contact with the Federal Government are achieved (see more in DB, 2024).

The Federal Council participates in the election of the Federal President and the Constitutional Court, but not of the Federal Government, the latter is elected by and is responsible solely to the Bundestag. The chambers do not have the same mandate, and dissolution applies only to the Bundestag. These constitutional solutions direct the chambers toward cooperation, which is why procedures related to the veto of the Federal Council are not frequent. Namely, it is not so difficult to achieve a two-thirds majority in the Federal Council to object to an adopted bill, as it is difficult to secure a two-thirds majority in the Bundestag to adopt the law in a renewed vote. In addition, political parties almost always operate at the federal level, so it is common that the coalition forming the majority in the Bundestag also forms the majority in most federal units, thereby securing a sufficient number of votes in the Federal Council (De Vergotini, 2015, p. 448). Constitutional solutions direct one house to the other, thus the cooperation between the two levels of government (Swenden, 2006, pp. 49–57), making German bicameralism relatively strong and cooperative.

4. Bosnian-Herzegovinian Bicameralism – Complexity as Destruction or Balance

Bosnia and Herzegovina (BiH) represents one of the most complex states in terms of constitutional and political structure. However, the cause of this complexity does not lie in the Constitution (2009) itself. The Constitution is a reflection of political relations, a compromise of different interests, with historical, identity-related and international determinants. Nevertheless, constitutional solutions have a feedback effect on society, political relations and processes, institutionalizing them through acceptable mechanisms of articulation, confrontation and implementation. At the same time, inadequate constitutional solutions, as well as their mere nominal existence, may intensify even the smallest conflict potential within a political community. Rarely can the circumstances of the outbreak of an armed conflict be linked to the constitutional process to such an extent as in the case of BiH. Majorization of a constituent people, outside the theory and practice of self-managing socialist constitutionalism (Jović, 2024, p. 441), the vagueness and abuse of constitutional solutions, the blockage of federal bodies, demands for the territorialization of constitutiveness, and a comprehensive constitutional crisis resulted even in armed conflict, following the disintegration of Yugoslavia[2] and, consequently, some of its republics, most notably BiH.[3]

The Constitution of Bosnia and Herzegovina forms part (Annex IV) of the General Framework Agreement for Peace (the Dayton Peace Agreement) of 1995, which brought the armed conflict within it to an end. The concept of the constitutiveness of three peoples, inherited from socialist constitutionalism

[2] On the legal aspects of the concept of the dissolution of, Yugoslavia, see Kreća, 1994, pp. 213–223.

[3] A turbulent political debate, a crisis, and subsequently the collapse of the constitutional institutions of the then BiH were triggered by the issue of decision-making in its Assembly. The obstruction of the Council for the Realization of Equality (Amendment LXX to the Constitution of the SR BiH, 1990), as a constitutional mechanism, the ignoring of provisions on initiating the protection of equality before the Council, and the adoption of political documents with constitutional pretensions (the proclamation of the sovereignty of the Republic and the de facto withdrawal from the Federation), by a simple majority in the Assembly, led to the formation of the Assembly of the Serb People in BiH, a plebiscite on remaining in Yugoslavia, and finally the proclamation of the Republic of the Serb People of BiH on 9 January 1992. Political conflicts and the collapse of institutions also led to armed conflicts.

of which the state of BiH is a product[4], represents the fundamental principle of the Dayton constitutional order. The constitutiveness of peoples was asymmetrically territorialized through the Washington (1994) and Dayton agreements, by establishing an ethno-federation (of Bosniaks and Croats) and an atypical federal-confederal state between the Federation of Bosnia and Herzegovina (FBiH) and the Republika Srpska (RS).[5]

The Constitution of BiH does not determine the form of state organization; however, from the structure and decision-making methods of its institutions, the division of competences between BiH and the entities, as well as the participation of the entities in the institutions of BiH, the conclusion is drawn as to its atypical and extremely complex nature. The Constitution of BiH is an annex to an international agreement, whose signatories are the entities; with the exception of monetary policy, BiH is competent only in international or inter-entity matters; under the Constitution of BiH it does not even possess an apparatus of force; the right of veto exists in all political institutions; entity participation is maximal. On the basis of the totality of

[4] Without entering into historical debates, it is necessary to emphasize that the statehood of medieval Bosnia definitively ended with the Ottoman conquests (by 1463), and that later geographical or administrative notions of "Bosnia/Bosnian" have no state-legal connotation whatsoever, nor any connection with medieval subjectivity, except for partial territorial overlap. Its multi-confessional structure, geographical position, as well as Austro-Hungarian aspirations toward the east or agreements among European powers on the division of spheres of interest in the Balkans, created a notion—an illusion—a deception of the distinctiveness of a territory approximately corresponding to present-day BiH. This notion—illusion, deception (Bosnia. Short of History) of distinctiveness also acquired its political dimension; however, the statehood of BiH has no historical or political continuity whatsoever (Ekmečić, 2011, pp. 544, 546, 549–551), but rests solely on the decisions of ZAVNOBiH and AVNOJ, and on the constitutions of socialist Yugoslavia, as a federal unit of three equal peoples. With its disintegration/dissolution and the international recognition of the new situation, BiH nominally became an independent state. That process was "legitimized" by the opinion of the Badinter Commission (1 and 14), as well as by disputed political documents of the Assembly of BiH and the 1992 referendum. The recognition of independence and membership in the UN in 1992 were not accompanied by internal legitimacy or territorial-political consolidation, while the dominant political and state views of its peoples were completely different; their armed conflict was resolved by the peace agreement on which BiH rests, preserving international-legal continuity and a fundamentally altered internal structure, as well as the factual condition of "international" intervention to the extent of a protectorate.

[5] The interpretations and decisions of the Constitutional Court of BiH concerning the constitutiveness of peoples as a principle contained in the Preamble of the Constitution (2009), according to which it extends to the entities as well, are not based on the normative part of the Constitution; however, they served to create the Court's practice and to justify the imposition of decisions by the High Representative through which the constitutional order of the entities was altered, without any foundation in the Dayton Peace Agreement, thereby strengthening consociationalism at the entity level, and federal, in some cases even centralist, arrangements at the state level (judiciary, electoral law).

elements used to determine the form of state organization, Savić (1999, p. 39) states that: "BiH is a specific, complex state community with predominant elements of a confederal, but also with certain elements of a federal form of state organization", (Kuzmanović also states similarly, 2004, p. 204). Bearing in mind this mixing of elements, we will use the formulation (con)federation.

Furthermore, principles of consociation are strongly embedded in the structure of every institution of BiH. The model of consociation is more rigid than in Belgium, and especially than in North Macedonia and Switzerland, where it is more a matter of political practice (Kasapović, 2005; Stojanović, 2007, pp. 63–87). Lukić (2017, p. 246) states: "The application of parity of the constituent peoples instead of 'pure' proportionality in the composition of the highest joint constitutional institutions of BiH testifies to the fact that the framers of its Constitution were fully and acutely aware of the very deep political fragmentation of society in BiH, and that they understood parity representation to be an indispensable instrument of national balance, as well as of consociational democracy in BiH." Consociationalism has historical and political foundations, and its scope and level compensate for the inconsistent territorialization of constitutiveness. The concept of 3 peoples and 2 entities,[6] which constitute the political and territorial structure of BiH, where two peoples jointly form one federalized entity, has conditioned and further complicated the structure of BiH institutions (Golić, 2020). These institutions are composed of representatives of peoples and entities, which are equated in the case of the Presidency, the House of Peoples and the Constitutional Court, while in the House of Representatives the (con)federal principle is dominant. The interpretation of the majority of judges of the Constitutional Court of BiH (5:4) was different with regard to constitutiveness.

The Parliament of BiH, under the unusual name "Parliamentary Assembly", is bicameral. Constitutional solutions classify it as a form of bicameralism characteristic of complex states and consociations. An analysis of its composition, election and decision-making reveals a degree and type of complexity that encompasses all complexities encountered in comparative constitutionalism, which, when combined in this manner, produce a new "quality" from the standpoint of legal theory and political practice. These

[6] The Preamble contains the fiction that "the constituent peoples (together with others), and the citizens of BiH hereby determine the Constitution of BiH". The Constitution is the result of a peace agreement concluded by representatives of the peoples. Orlović concludes that civic elements are contained in the principled provisions and provisions on human rights; nevertheless, "the overall value impression is that the greatest specificity of this constitution actually lies in the 'national provisions' combined with provisions protecting the rights of the entities" (Orlović, 2017, pp. 313–314).

solutions function more as instruments of protection[7] than of representation – they are intended to protect what, due to divergent political interests, is potentially (and often) subject to endangerment: entity jurisdictions, equality of peoples, the consociational order, common functions, especially with regard to the extensive interpretation of the provisions on additional competences (Art. 3(5)) of the Constitution, 2009). No matter how complex, these solutions sustain BiH – a collection of several communities lacking any internal political compactness, yet existing within a single whole, even though such compactness is, at least minimally, a prerequisite of every political community. The triple representative function of the bicameral parliament, accompanied by protective mechanisms, should serve the building of trust and a minimum of commonality. Institutional security against majorization in complex states, especially those with a conflictual past, is a prerequisite for political action and stability. However, this also requires an appropriate political culture.[8]

The Parliamentary Assembly consists of the House of Representatives and the House of Peoples. According to Lijphart's criteria, the BiH model of bicameralism would be classified as extremely strong (Lijphart, 1999, pp. 205–211). The chambers are equal,[9] except with regard to the election of the Council of Ministers. Even in terms of oversight of the work of this body and decision-making on the termination of its mandate, equality between the chambers exists.[10] The primacy of the House of Representatives was subtly introduced by the Law on Filling a Vacant Seat of a Member of the Presidency of BiH from 2000. In the event that the office of one of the members terminates before the expiration of

[7] The fear of "becoming a minority" is one of the more significant factors that shaped the entire Yugoslav crisis, and it remains relevant today as well (see more in Jović, 2024, pp. 460–466).

[8] Stanić (2018, p. 45) states: "Swiss democracy is characterized by the desire to achieve compromise and to include as many actors as possible, rather than mere outvoting. Therefore, Swiss parliamentarism and Swiss democracy must serve as a model example for other states developing in that direction, and especially for societies burdened with severe social conflicts."

[9] The example of the equality of chambers in FR Yugoslavia was illustrative. In case the law is not adopted in the same form in both chambers, a parity commission is established. If it does not agree on the text within one month, or if the agreed text is not adopted by both chambers, the text adopted in the Council of Citizens is temporarily applied, and if it is about laws relating to areas of special interest to members, the text adopted in the Council of Republics is temporarily applied, for a maximum of one year. If it is not adopted within that period, the mandate of the Federal Assembly ends (Art. 91-93). This was an example of strong bicameralism.

[10] In Switzerland, there is equality of chambers. In case of disagreement, "various decisions go from one chamber to another until an agreement is reached. During conciliation, only issues on which there are differences are discussed. If an agreement is not reached after 6 readings – 3 in each chamber, a special parity commission is established to reach agreement, with the task of drafting a compromise solution, which is submitted to each chamber for a final vote." (Stanić, 2018, p. 44). There is a similar concept in BiH, with the approval of the Collegium.

the mandate, the Constitution provides that the vacant seat shall be filled *from the relevant entity*, in accordance with the law. The Constitution determines that the *entity performs the replacement*, not that it merely represents the territory from which the replacement is made. The Law, however, prescribes that the election of a new member is carried out by the members of the House of Representatives elected from the given entity, and that any of its members belonging to the people whose seat has become vacant may stand as a candidate, while confirmation is carried out by the delegates of the relevant national caucus in the House of Peoples, by a majority of votes, but their right of veto has been limited (by a decision of the High Representative). If the election from the House of Representatives is not confirmed twice, on the third occasion its members adopt the final decision, without confirmation by the House of Peoples (Arts. 4–6).[11] Instead of being the subject of election, the entities thus become electoral units, which reflects a practice whereby, under the pretext of imprecision of solutions and the elasticity of translations from English, the constitutional text has consistently been adapted to the expansion of the competences of BiH and the reduction of the role of the entities. Given the system of government, this has strengthened the so-called civic principle in relation to the consociational one, and in the filling of a vacant seat from the FBiH, the third election does not guarantee national legitimacy, thereby opening possibilities for majorization (Golić, 2020).

The standard solution of bicameralism in complex states presupposes a representative (lower) chamber as a general civic representation, directly elected on the basis of equal suffrage, where representation of minorities or territories may also be ensured through a statutorily designed electoral system (electoral districts, thresholds, candidacies, lists) (Kutlešić & Golić, 2023, p. 244). In conditions of pronounced inequality (territorial, population-based, historical), or for the protection of certain ethnic groups, it is possible to constitutionally guarantee minimum representation in the lower chamber (Canada, Switzerland). Nevertheless, each member of this chamber represents society as a whole, which is a consequence of the concept of national (*demos*) sovereignty. In BiH, the House of Representatives is, with regard *to its composition*, conceived as a predominantly civic representation, but not a general one. The Constitution (2009) guarantees the representation of representatives elected from the territory of the entities in a ratio of 28:14 in favor of the FBiH. The Constitution guarantees representation of members elected

[11] In BiH, decisions are not made at joint sessions. In some countries it exists, but as an exception (with the election of the head of state, constitutional judges in Italy, declaration of war in Austria; confirmation of election results in the USA, conflicts of jurisdiction, pardons and elections in Switzerland, and due to the difference in the number of houses, depending on the importance of the issue, it can represent an expression of imperfect bicameralism.

from the territory of the entities in the ratio of 28:14 in favor of the Federation of BiH. Although this proportion has at times *approximately* corresponded to the population distribution among the entities, it was neither a model nor a measure for this constitutional ratio.[12] It is based on a rigid principle derived from Yugoslav *(con)federal constitutionalism*, according to which constitutiveness implies parity in all constitutional institutions;[13] thus, two peoples forming an entity grant that entity the right to elect two-thirds of the members of the House of Representatives, without determining the national or other affiliation of voters or candidates. Within this chamber, the principle of asymmetrically territorialized constitutiveness is combined with the civic principle, where the proportion is a constitutional category of 2:1 (rather than a product of statutorily created electoral districts), and elections are general within the *entities*. Furthermore, the nature of representation is open to discussion. "Members of the House of Representatives shall be elected directly from their entity, in accordance with the election law to be enacted by the Parliamentary Assembly" (Article 4.2.a). From this and the preceding constitutional provision, the following conclusions arise: 1) members of the House of Representatives do not have a general representative function of representing the entire population of BiH (citizens as a whole); rather, they represent the citizens of the entity from which they are elected, meaning that a unified civic representation of BiH *does not exist* – instead, there exists a joint (aggregate) civic representation of the citizens of the

[12] The constitutions of complex states contain principles on which direct elections are based (limitations regarding the statutory formation of electoral districts and the allocation of mandates), but never a fixed distribution of mandates among them. Such provisions in rigid constitutions do not serve either the civic or the federal principle. In the lower house in Austria, the allocation of mandates is carried out at three levels (region, province, state). "The federal territory shall be divided into territorially contiguous electoral districts, the boundaries of which may not cut across provincial boundaries; these electoral districts shall be subdivided into territorially contiguous regional electoral districts." The number of representatives is allocated according to the number of citizens with voting rights within such an electoral body (Article 26 of the Constitution). In Switzerland (Article 149), in elections to the lower house, the cantons are electoral districts; the number of representatives elected from them is determined according to the number of inhabitants of the canton, with the proviso that each elects at least one representative. The Constitution of Italy prescribes the direct election of both chambers; the allocation of mandates among electoral districts is proportional to the number of inhabitants, in both chambers. The allocation of mandates is regulated by law. The Constitution designates the diaspora as a special constituency. In the upper house (the Senate), a minimum representation of regions as electoral districts is guaranteed. Former Presidents of the Republic are senators by virtue of office, and the President may appoint five life senators for outstanding merits (Articles 56–60).

[13] While the Yugoslav Constitution (1974) emphasized the constitutiveness of federal units, their parity and the right of veto, thus introducing the confederal principle into a hybrid state system, without consociationalism, the BH Constitution links parity to peoples and entities, through which constitutiveness is territorialized (see Stanković, 2025).

entities, which is not a classical federal principle; 2) according to the Constitution, only members of this chamber are elected in accordance with the election law of BiH (2001); 3) the election law is adopted by both chambers. That consociationalism was also taken into account in the case of the House of Representatives is evident from the example of the leadership of this chamber. Political bodies of BiH do not have a leader with autonomous powers, but a chairperson, whose role is of a protocol and procedural nature. Each chamber elects from among its members one Serb, one Bosniak and one Croat as the chairperson and deputy chairpersons – the Collegium – *with special powers* in cases where the majority does not include the prescribed *entity votes*. They rotate in the position of chairperson. National affiliation is not explicitly tied to entity affiliation.

The House of Peoples has a dual function – the representation of peoples and of the entities (their parliaments) – which is constitutionally emphasized both with regard to its composition and election, as well as the nature of the mandate and the method of decision-making. The parity composition of 5+5+5 consistently reflects the consociational principle, yet not at the general, state level, but rather in an aggregate manner. Each of the delegates of the constituent peoples is elected by the parliaments of the entities: Serb delegates are elected by the National Assembly of the Republika Srpska, while Bosniak and Croat delegates are elected by the caucuses of those peoples in the House of Peoples of the Parliament of the Federation of BiH. The election of the House of Peoples confirms (as in the case of the Presidency) that constitutiveness is territorialized, but asymmetrically (2:1), which results in different modes of election in the FBiH (House of Peoples) and the RS (general representation). The same principle applies to the leadership of this chamber. The Constitution uses the term "delegate" for the members of the House. This formulation is inherited from socialist constitutionalism and implies an imperative mandate. Since the Constitution prescribes that only the election of members of the House of Representatives is regulated by the law of BiH,[14] by the method of *argumentum a contrario*, as well as from the meaning of a delegate mandate,

[14] Federal constitutions almost always regulate the subjects responsible for the election of the upper chamber, whether the election is carried out by citizens or by the parliaments of federal units, governments, or the Governor General upon the proposal of the Government of Canada. Switzerland (Article 150 of the Constitution), however, due to its confederal past, leaves the issue of election and the duration of the mandate to the cantons (Petrov & Simović, 2018, pp. 394–395). The Constitution of BiH determines the subjects of election and does so asymmetrically—the National Assembly as a general representative body and the caucuses of peoples in the upper chamber of the Federation of BiH—but not the duration of the mandate of delegates. The Election Law, by the breadth of its regulation, is more characteristic of regional states; its solutions are often contrary to the constitutions of the entities, introducing confusion into the hierarchy of legal acts.

it is concluded that the entity parliaments are competent, at a minimum, to regulate the procedure for the election of delegates, but also the duration of the mandate, which may be imperative, thereby emphasizing the cooperativeness of the constituent elements (the example of Germany). It is the constitutional right (denied in practice) of the entities to regulate their relationship with the electoral body, and they may also opt for a free mandate. The Election Law of BiH (2001) (not the result of a legislative process, but of imposition), however, equalizes the position of delegates and members of the lower chamber. A free mandate, generally and especially in mono-national federations, may lead to a deformation of the role of the upper chamber. Nevertheless, the consociational character does not support this, nor does the formation of genuine "civic" parties at the level of BiH; instead, large coalitions are formed (Belgium case). The right to nominate and elect Serb delegates belongs to all members of the National Assembly of the RS. From this constitutional provision it follows that the constitutiveness of the Serb people relates to the RS, and in an aggregate manner, through the House of Peoples and other institutions, to BiH as a whole. From the physiognomy of this chamber it follows that Serb delegates protect both the interests of the Serb people and of the RS (quorum and veto). At the level of BiH, through a minimal number of competences, the interests of peoples and entities were to be formulated and confirmed through harmonization and consensus. However, through the usurpation of competences, the National Assembly has been reduced to an electoral unit whose members nominate and vote, while the Central Election Commission carries out the certification of candidate lists and the allocation of mandates.

Bearing in mind that in states of a multinational character majorization may represent a problem for their functioning and legitimacy, as well as a factor for activating conflict potential, especially when the state is not consolidated—which, after all, caused the crisis and collapse of BiH institutions in 1991–92 (Kuzmanović, 2004, p. 136) – solutions are institutionalized to ensure a sufficient level of consensus in decision-making. Classical instruments of federalism (bicameralism, constitutional distribution of competences, participation in federal institutions and in constitutional amendment procedures) provide more effective protection in systems with a larger number of federal units. However, the specificity of relations among ethnic communities, is also addressed through consociation (Belgium). Asymmetrical territorialization of constitutiveness, taking into account the practice and shortcomings of pre-war solutions, careful gradation, avoidance of any potentially contentious situations, and the endeavor that the minimal functions of BiH be exercised by consensus of representatives of peoples and entities, have conditioned a complex system of protective instruments. In decision-making within the Parliamentary Assembly, three levels of protection are ensured: 1) entity interests; 2) constituent peoples; 3) cumulative protection of both interests where they intersect.

All decisions in both chambers are adopted by a majority of those present and voting. “Delegates and members shall make their best efforts to ensure that the majority includes at least one-third of the votes of delegates or members from the territory of each entity.” If the majority does not include this, the members of the Collegium shall endeavor to reach agreement within three days. “If such efforts fail, decisions shall be adopted by a majority of those present and voting, provided that the votes against do not include two-thirds or more of the delegates or members elected from each entity” (Article 4.3). Is such decision-making destructive? In a complex state, the participation of its parts in the majority should not pose a particular difficulty if there is minimal respect for the specific interests of those parts. Namely, a majority of those present and voting should include at least 5 members from the Republika Srpska and 10 from the Federation of BiH, that is, 2 from the RS and 4 from the FBiH; however, no decision is adopted if two-thirds of those elected from the territory of an entity vote “against” (10 from the RS or 19 from the FBiH; 4 from the RS or 7 from the FBiH). This means that these two-thirds *have an absolute veto*.[15] Nevertheless, homogenizing two-thirds of members in a plural society is possible only if the particular interests of those they represent are endangered, because entity interest does not arise in every political issue. Given that the chambers are fundamentally equal, the intention of a high level of protection of the entities is clear. However, the veto is a last resort, since a positive vote of one-third, or agreement of the members of the *Collegium*,[16] or abstention, is sufficient for a decision to be adopted. Only through the cumulative application of protective instruments—the right

[15] An example of a suspensive veto is Article 90 of the Constitution of Spain: Once the Congress of Deputies has adopted a proposal for an ordinary or organic law, its President shall immediately notify the President of the Senate, who shall submit the proposal for debate to the Senate. Within two months of the date of receipt of the text, the Senate may, by reasoned recommendation, veto or amend the text. The veto must be adopted by an absolute majority. The proposal may not be submitted for the King’s sanction until Congress, in the event of a veto, has confirmed the original text by an absolute majority, or by a simple majority if two months have elapsed since the Senate’s intervention; in the event of amendments, Congress shall accept or reject them by a simple majority.

[16] The Collegium of the House may reach agreement with regard *to such* a decision, thereby concluding the procedure, or propose *a new solution*; however, the decision on the new solution is adopted by the prescribed majority, with the right of veto.

of veto of two-thirds of members or delegates, and the requirement that in the House of Peoples the quorum consists of a majority of delegates from each people (three each)—is full protection of entity and national interests ensured. This, however, necessarily implies a high level of agreement (two-thirds) that a certain interest is endangered. Therefore, the decision-making process does not have a destructive potential. In the House of Representatives, the absence of a majority of entity members does not represent an obstacle to decision-making. Since the election of the Council of Ministers is its exclusive competence, the intention of this solution is that, even in the event of a blockage of the House of Peoples, the minimal functions of government are ensured through the Council of Ministers.[17] The entities do not have the right of direct legislative initiative, nor do they participate directly in the adoption of acts of this parliament, (Austria, Germany, Spain). Nevertheless, the described instruments ensure a higher level of their protection. Constitutional solutions do not give rise to claims of the supremacy of the state level, but rather of pronounced cooperativeness, which is developmental by nature.

The instrument intended to protect specifically the interests of peoples has been used more rarely, due to the imprecision of the Constitution (2009), which allowed practice to shape it. Namely, a proposed decision of the Parliamentary Assembly may be declared destructive to the vital interest of a constituent people by a decision of a majority of delegates of that people. For such a decision to be adopted, the consent of a majority of delegates of each people who are present and voting is required. When a majority of delegates of one people raises an objection with regard to invoking destructiveness, the Chair convenes a parity joint Commission, with the aim of resolving the issue within five days. In the event of failure, "the matter shall be referred to the Constitutional Court, which shall, under an urgent procedure, review the procedural correctness of the case". The deeper rationale of this solution lies in the protection of the will of the majority of members of a caucus when, due to political fragmentation, a majority is formed ad hoc or by a majority from one caucus and a smaller number of members from the other two. Furthermore, when there is an interest in adopting a decision but with content different from that proposed (through harmonization), this institute may be distinguished

[17] The creators of these solutions appear to have borne in mind, and sought to prevent, a situation such as the blockage of the Council of Republics and Provinces of the SFRY in 1991. That blockage paralysed the election and functioning of the Federal Executive Council and the adoption of laws on provisional measures (which were enacted in order to prevent the harmful consequences of the failure to adopt laws due to the absence of consent of one of the constituent units – Articles 295, 301-302 of the 1974 Constitution).

from blockade through non-attendance, where, as a rule, insistence is placed on non-adoption of the proposed decision (negative protection). Nevertheless, its elements – the "objection" and the role of the Constitutional Court – render it incomplete. The Constitution refers to "procedural correctness", for which, by linguistic interpretation and legal reasoning, the Constitutional Court could be the only relevant interpreter and adjudicator. However, the Constitutional Court has, *contra constitutionem*, assumed competence to decide on the merits of violations of vital interests (Lukić, 2017, p. 249), although it is difficult to justify a situation in which a non-political, expert body resolves purely political (interethnic) disputes instead of legitimate political representatives.

Stanić (2024, p. 66) correctly observes that, in theory, it has become a commonplace assertion that parliaments have lost their former significance in relation to the government and have become a kind of "talking shops". Nevertheless, BiH is also distinctive with regard to this assertion, because through the described institutes within its parliament various interests intertwine, where large coalitions have more of a technical than a political character, so that divisions from the executive branch are further reflected in the functioning of parliament. Through veto mechanisms, in which both the governing parties and the opposition from the entities often participate, a greater power of parliament is affirmed, which often exceeds the power of the "ruling" majority. Taking into account the aforementioned protective instruments and relating them to the competences of the institutions of BiH, one arrives at the conclusion that the content of the so-called state level should consist of those matters, and only to the extent, upon which the entities (BiH consists 2 entities – Article 1.3) and the peoples agree; that is, that the constitutional framework is based on ethno-(con)federal characteristics, even though its order today functions differently, without any change to the Constitution.[18]

[18] The distancing of constitutional solutions from practice is most illustratively summarized by Blagojević (2014, p. 157): "What has been lacking in our society all these years is the acceptance and development of a particular form of legal and political culture that may be termed a federal legal-political culture. This deficit (in its political part) is primarily the consequence of the fact that integration processes are being used by certain political forces (primarily of Bosniak political provenance) in an attempt to (also with the assistance of foreign factors) deprive the entities (essentially the RS) of as many competences as possible, thereby rendering the need for their continued existence meaningless." On changes in the meaning and scope of the Constitution through the intervention of the High Representative, see: Savić (2004); Pilipović (2017). The impact on this (already faltering) process has also taken on a repressive character in the form of "criminal-law" protection of the "decisions of the High Representative".

The House of Representatives cannot be dissolved, but the Presidency of BiH can dissolve the House of Peoples, which constitutes its discretionary power. Dissolution, comparatively, more frequently applies to the lower chamber, more rarely to both chambers (Italy), and only very rarely to the upper chamber. The purpose of dissolution lies in a dispute between the head of state or the government and parliament, which is referred to the citizens, who arbitrate as to who should prevail within the executive branch (Simović, 2008). Since dissolution does not apply to the House of Representatives, standard theoretical justifications for this institute are not applicable. Bearing in mind the indirect election of the House of Peoples, the fact that it does not participate in the election of the Council of Ministers, and that it does not possess autonomous competences, a possible reason may be conflict between two levels of government or the alignment of its composition with changes in the political composition of entity parliaments. The justification for dissolution cited by Orlović (2018, p. 223) does not apply *here*, namely that by it the executive authority "disciplines parliament by an ultimate measure, bringing their political conflict before the voters." The Constitution also provides for the possibility of self-dissolution of the House of Peoples, if the decision includes a majority of delegates from at least two peoples. Given that the position of a dissolved House is not regulated by the Constitution, its mandate cannot be extended, nor can it perform its functions (e.g. Italy, where, until the newly elected chambers convene, the mandate of the previous ones is extended, Article 61). A blockade of one caucus or a conflict between two levels of government as a reason for dissolution may also lead to a permanent blockade of the Parliamentary Assembly, as there is no mechanism to compel the entities to carry out a new or different election. Therefore, a change in the political majority in entity parliaments, as a result of which a blockade may become illegitimate, represents the only realistic justification for the application of this institute.

6. Final Considerations

There are no universal solutions or evaluations of bicameralism, as the needs that institutionalize it differ. A representative body should reflect society as it is, in which, alongside citizens, there exist diverse collectivities that require representation. Bicameralism always reflects a higher level of plurality. Contemporary federalism strives toward cooperation, which is also expressed through stronger models of bicameralism. It constitutes one of the pillars of federal organization and functioning, and in consociational systems also serves as a protective mechanism in the most delicate form of expressing complexity – political representation. In complex but stable systems, without conflict potential and opposed ethnic interests, simpler solutions may adequately represent society and its constituent parts. In such federal forms, which are predominantly evolutionary, there is a higher level of standardization of solutions. However, where a state contains more complex interethnic relations and a consociational system, by the very nature of such a combination, more complex mechanisms of representation, decision-making and coordination develop. Experience shows that in complex states, in addition to protective mechanisms, it is also necessary to develop a political culture that implies mutual respect and coordination. From the perspective of the analyzed constitutional solutions concerning the Parliamentary Assembly, leaving aside the extra-constitutional evolution of BiH which has further complicated its constitutional system, one arrives at the conclusion regarding the nature of BiH as an ethno-(con)federation. It incorporates and emphasizes all the institutes of both consociational and cooperative federalism. The asymmetrical territorialization of constitutiveness has resulted in the strengthening of consociational elements. The essential characteristic of its parliament, which fundamentally follows the logic of the compared systems, lies in strong bicameralism, consensus among the constituent elements, that is, the highest level of cooperativeness and protection.

Constitutional solutions are intended to ensure the legitimacy of decisions, which in such a complex state manifests itself on three levels, which at times overlap: 1) civic legitimacy, but in an aggregate form by entities (direct election of the lower chamber, the method of decision-making within it); 2) entity legitimacy (equal role of the chambers, election of delegates in the entities and decision-making); 3) legitimacy of the constituent peoples (parity, composition of the upper chamber, quorum, the institute of vital interest, collegia). No matter how complex, these solutions reflect the full complexity of society in BiH, burdened by historical *experiences and differing visions of future political development. Balancing among*, hese interests, that is, the fear of majorization, in a state that has experienced both dissolution and aggregation and contains a greater conflict potential than other states, requires such a complex mechanism, including strong bicameralism. The extent to which protective instruments will be used depends primarily on acceptance of the fact that the legitimacy of power and governance must be based on established principles of balance, cooperation and consensus. Otherwise, the question arises as to the direction and intensity in which political processes in BiH would unfold. Moreover, imposed solutions require political abrogation at an appropriate moment.

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OSOBENI PRIMERI FEDERALNOG BIKAMERALIZMA I BOSANSKOHERCEGOVAČKA USTAVNA REŠENJA

APSTRAKT: Svaki bikameralizam sadrži neku posebnost, jer predstavlja odraz posebnosti neke političke zajednice i interesa unutar nje, koje je potrebno institucionalno izraziti. U radu su kao osobeni izabrani primeri sa kooperativnim federalnim i konsocijativnim modelima (Nemačka i Belgija), koji efikasno izražavaju veći nivo složenosti. Ipak, težište je na rešenjima u BiH, kao atipičnim. BiH još uvek predstavlja državu sa politički konfliktnim potencijalom, a ustavni balans uslovljen njenom složenom etničkom strukturom i danas je pred ozbiljnim pravnim i političkim izazovima. Cilj rada jeste da se ukaže na specifičnost i smisao rešenja, odstupanja od uzora ili razlike u odnosu na standardna rešenja. Balansiranje među različitim interesima, tj. strah od majorizacije, u državi koja je doživela i disoluciju i agregaciju, a sadrži konfliktni potencijal veći nego u drugim državama, iziskuje tako složen mehanizam. Ipak, nužnu složenost mehanizma mora pratiti i odgovarajuća politička kultura – trajno opredeljenje za postizanje dogovora među konstituentima.

Ključne reči*: bikameralizam, federacija, konsocijacija, BiH, entiteti.*

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INDIVIDUALIZED RISK ASSESSMENT OF RADICALIZATION IN CRIMINAL JUSTICE SYSTEMS – A LEGAL-FORENSIC APPROACH

ABSTRACT: The phenomenon of radicalization represents a growing challenge for contemporary criminal justice systems, particularly in light of the increasing overlap between criminality and violent extremism. This paper examines the need for an individualized approach to assessing the risk of radicalization within criminal justice systems and their legal frameworks. The main objective of the study is to analyze existing criminal justice mechanisms and assess whether they are adequate for identifying and evaluating the risks posed by individuals involved in extremist activities. The research is based on a qualitative analysis of relevant academic literature, international documents, and selected risk assessment tools used in the context of violent extremism. Particular attention is devoted to the role of the prison environment as a setting in which processes of radicalization may develop, but also be prevented, as well as to the limitations of existing standardized assessment instruments. The findings indicate that current legal approaches often fail to ensure sufficient integration of multidisciplinary knowledge, particularly in the field of risk assessment. The paper argues that the involvement of court-appointed

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experts in the assessment process could significantly improve the accuracy and reliability of judicial decision-making. The main contribution of this paper lies in identifying the key components of an integrated legal-forensic model of individualized risk assessment, combining legal, psychological, and security dimensions. Such an approach may enhance both preventive capacities and the protection of fundamental rights within criminal justice systems.

Keywords: *radicalization, risk assessment, criminal justice system, violent extremism, forensic expertise.*

1. Introduction

In recent decades, radicalization has emerged as a central challenge for contemporary criminal justice systems, raising complex legal, security, and societal concerns (European Commission, 2020; Babanoski, 2020). These challenges are further intensified by evolving terrorist threats characterized by decentralized structures, lone actors, and the use of online platforms for recruitment and ideological dissemination (RAN, 2022).

Radicalization is generally understood as a dynamic and multifaceted process through which individuals adopt extremist beliefs that may lead to violence (Silke & Brown, 2016). Contemporary research emphasizes that this process cannot be reduced to a single cause or profile, but involves a combination of psychological, social, political, and environmental factors (Doosje et al., 2016; Borum, 2011). Importantly, individuals involved in extremist activities often do not significantly differ from the general population in terms of psychopathology, challenging traditional assumptions within criminal law (Horgan, 2005; Horgan, 2008).

A key issue for criminal justice systems is the relationship between criminality and violent extremism, often conceptualized as the "crime–terror nexus". Research indicates that many individuals involved in terrorism have prior criminal histories, suggesting a convergence between these domains (Kupatadze & Argomaniz, 2019). This overlap raises important legal questions regarding classification, prosecution, and risk assessment.

In this context, prisons represent environments where radicalization may both occur and be prevented (Garton Grimwood, 2016; UNODC, 2016). At the same time, the assessment of radicalization risk has become a central issue in both security policy and legal practice. Structured tools such as VERA-2R and ERG22+ have been developed to support this process, although their application in judicial contexts remains limited and contested (van der Heide, van der Zwan & van Leyenhorst, 2019; Monahan, 2012).

Despite these developments, criminal justice systems often lack mechanisms for integrating multidisciplinary expertise into judicial decision-making. In particular, the role of forensic experts in assessing radicalization risk remains insufficiently developed. Given the complexity of the phenomenon, there is a need for approaches that combine legal reasoning with insights from psychology, criminology, and security studies.

Against this background, this paper examines the adequacy of existing approaches to radicalization risk assessment and proposes an integrated legal–forensic model of individualized assessment. It is argued that such an approach may enhance both preventive effectiveness and the protection of fundamental rights within criminal justice systems.

2. Conceptualizing radicalization

The concept of radicalization has become a central analytical framework in contemporary studies of terrorism and violent extremism. Although widely used in both academic and policy contexts, the term remains contested and lacks a universally accepted definition. In general, radicalization is understood as a process through which individuals develop increasingly extreme political, ideological, or religious beliefs that may legitimize the use of violence (Silke & Brown, 2016).

Radicalization is examined through interdisciplinary frameworks, particularly within social psychology and criminology (Borum, 2011; Christmann, 2012; Stanojoska, Babanoski & Ilijevski, 2025). However, the concept itself has been criticized for its ambiguity and overuse in policy discourse (Neumann, 2013).

Importantly, contemporary research rejects the notion of a fixed "terrorist profile". Empirical studies have demonstrated that individuals involved in extremist activities often do not exhibit distinct psychological abnormalities and may not significantly differ from the general population (Horgan, 2008). Instead, radicalization is increasingly understood as a context-dependent process shaped by identity, perceived injustice, social networks, and exposure to ideological narratives.

A key distinction in the literature is between radicalization as a cognitive process and violent extremism as behavioral manifestation. Not all individuals who adopt radical beliefs engage in violence, and the majority of radicalized individuals do not progress to committing terrorist acts (UNODC, 2016). This distinction is of particular importance for criminal law, as it raises questions regarding the point at which radical beliefs become legally relevant. Some authors refer to 'violent radicalisation' to emphasise the violent outcome and differentiate the process from non-violent forms of 'radical' thinking (Neumann, 2010).

This conceptual ambiguity is particularly problematic in criminal law, where legal certainty requires a clear distinction between radical beliefs, extremist rhetoric, and conduct that justifies criminal intervention (Silke & Brown, 2016). This creates significant challenges for legal systems, particularly in determining when radical beliefs transform into legally actionable conduct, while ensuring the protection of fundamental rights.

Given these complexities, it becomes evident that radicalization cannot be adequately addressed through simplified or generalized approaches. For criminal justice systems, this implies the necessity of adopting individualized assessments that take into account the specific circumstances, motivations, and trajectories of each individual case. Such an approach requires not only legal analysis but also the integration of interdisciplinary knowledge, particularly from psychology and criminology.

3. Radicalization in prison systems

Prison systems are increasingly recognized as important environments in the study of radicalization and violent extremism. While imprisonment primarily serves to ensure public safety, detention settings may also unintentionally facilitate processes of radicalization, placing prisons at the intersection of security, rehabilitation, and human rights concerns.

Research indicates that the concentration of vulnerable individuals, combined with social isolation and exposure to radical ideologies, can create conditions conducive to extremist influence (van der Heide, van der Zwan & van Leyenhorst, 2019; Garton Grimwood, 2016; Basra & Neumann, 2020). In particular, individuals with prior criminal backgrounds may be more susceptible to extremist recruitment, reflecting the broader dynamics of the crime–terror nexus (Kupatadze & Argomaniz, 2019).

At the same time, prisons do not inherently produce radicalization. Most inmates do not become radicalized, and distinguishing between legitimate expressions of belief and violent extremism remains a key challenge for prison authorities (UNODC, 2016). In this context, prison conditions and management practices play a significant role. Factors such as overcrowding, lack of activities, and insufficient staff training may increase vulnerability to radicalization, while well-managed environments can mitigate these risks (Silke, 2011; UNODC, 2016). Strategies such as "dynamic security," based on continuous staff–inmate interaction, are particularly important in identifying and preventing radicalization (Council of Europe, 2016).

International frameworks increasingly emphasize individualized approaches to managing radicalized offenders, including rehabilitation and reintegration programs (Marsden, 2019; UNODC, 2016). At the same time, prison authorities must balance security measures with the protection of fundamental rights. Such measures must be necessary and proportionate, in line with legal standards (Ashworth & Zedner, 2014), as overly restrictive practices may produce counterproductive effects (Silke & Brown, 2016).

These considerations highlight that addressing radicalization in prison systems requires a multidisciplinary approach and individualized risk assessment, including the potential contribution of forensic expertise.

4. The crime-terror nexus

The relationship between criminality and terrorism, commonly referred to as the "crime–terror nexus", has become an increasingly significant topic in contemporary criminological and legal literature. Traditionally, crime and terrorism were conceptualized as distinct phenomena, differing in motivation, structure, and objectives. Criminal actors were primarily driven by profit, while terrorists pursued ideological, political, or religious goals. However, recent developments have challenged this clear distinction, revealing a growing convergence between these two domains. This convergence also reflects broader transformations in contemporary security environments, where traditional distinctions between crime and terrorism are increasingly blurred (Schuurman, 2020).

Early models of the crime–terror nexus emphasized cooperation between criminal and terrorist groups, particularly in relation to financing activities (Makarenko, 2004; Ristov, Babanoski, Dimovska & Ivanov 2026). More recent research shifts the focus to individual pathways, showing that many individuals involved in terrorism have prior criminal histories (Kupatadze & Argomaniz, 2019).

This convergence is often explained by shared social and psychological factors, such as marginalization, identity crises, and exposure to violence, which may predispose individuals to both criminal and extremist pathways (Kupatadze & Argomaniz, 2019; Tešović, 2026). In this context, criminal involvement may function as a pre-radicalization phase.

The implications of the crime–terror nexus for criminal law are profound. Legal systems are typically structured around clear distinctions between types of offenses, with separate frameworks for dealing with organized crime, violent crime, and terrorism. However, the convergence of these phenomena blurs these boundaries, raising questions about appropriate legal responses. Issues such as the qualification of acts, the determination of intent, and the application of preventive measures become more complex in cases where criminal and extremist elements are intertwined.

Moreover, the nexus has significant implications for evidentiary standards and judicial decision-making. The assessment of whether an individual poses a risk of violent extremism cannot rely solely on traditional indicators of criminal behavior. Instead, it requires a more nuanced understanding of individual trajectories, motivations, and contextual factors. This further underscores the importance of incorporating interdisciplinary expertise into legal processes.

At the same time, it is important to avoid overgeneralization. Not all criminals become terrorists, and not all terrorists have criminal backgrounds. Some scholars have cautioned against exaggerating the extent of the nexus, emphasizing that relationships between crime and terrorism are often temporary, opportunistic, and context-dependent (Kupatadze & Argomaniz, 2019). This highlights the need for careful, evidence-based analysis rather than broad assumptions.

In contemporary security environments, the crime–terror nexus is further shaped by globalization and digitalization, which facilitate transnational operations and shared infrastructures. Overall, this phenomenon challenges traditional legal frameworks and highlights the need for individualized approaches to risk assessment within criminal justice systems.

5. Risk assessment tools in violent extremism

The assessment of risk in cases of violent extremism has become a central concern for both security practitioners and criminal justice systems. Given that radicalization is a dynamic and context-dependent process, evaluating the likelihood of extremist violence is essential for prevention and legal decision-making.

A range of structured risk assessment tools has been developed, including VERA-2R, ERG22+, and other structured professional judgment (SPJ) models. Early frameworks, such as those proposed by Pressman and Flockton (2012), emphasize the role of professional judgment supported by structured indicators. These tools assess factors such as ideology, intent, capability, and contextual influences (van der Heide, van der Zwan & van Leyenhorst, 2019).

However, their application in legal contexts remains limited due to concerns regarding reliability, subjectivity, and compatibility with due process (Monahan, 2012; Ashworth & Zedner, 2014). As many of these tools originate from security and intelligence frameworks, their evidentiary value in judicial proceedings is often uncertain. The broader implications of such approaches have been examined within the concept of preventive justice (Ashworth & Zedner, 2014), highlighting tensions between risk-based decision-making and fundamental legal principles.

These limitations underscore the importance of interdisciplinary expertise, particularly the role of forensic experts in interpreting risk indicators within specific legal contexts. At the same time, international guidelines emphasize the need for individualized assessments that take into account personal, social, and contextual factors (UNODC, 2016).

In this sense, risk assessment should not be treated as a purely technical exercise, but as a multidisciplinary process integrated into legal decision-making. This provides the basis for developing more comprehensive and legally robust models of individualized risk assessment.

6. The role of forensic expertise in assessing radicalization risk

The growing complexity of radicalization and violent extremism presents significant challenges for criminal justice systems, particularly in the context of risk assessment and decision-making (Doosje et al., 2016; Horgan, 2008). Although structured risk assessment tools provide useful analytical frameworks, they remain limited by methodological uncertainties and contextual variability. In this regard, the integration of forensic expertise represents a crucial complement to existing approaches.

Forensic expertise plays an important role in criminal proceedings by providing specialized knowledge beyond the competence of the court. In the context of radicalization, experts in psychology, criminology, and security studies contribute to the interpretation of complex behavioral patterns and risk indicators. Given the interdisciplinary nature of radicalization (Borum, 2011), its assessment requires a comprehensive approach that integrates psychological, social, and contextual factors.

In particular, forensic experts contribute to understanding individual trajectories of radicalization, including susceptibility to influence, identity dynamics, group affiliation, and exposure to extremist narratives. They also play a key role in distinguishing between ideological belief and behavioral intent, which is essential for legal qualification and the proportionality of measures (Horgan, 2008).

A central contribution of forensic expertise lies in the contextualization of risk. While structured tools identify general indicators, experts interpret these within the specific circumstances of a case, enabling a more nuanced and individualized assessment (van der Heide, van der Zwan & van Leyenhorst, 2019). This reduces the risk of overgeneralization and enhances the quality of judicial decision-making.

At the same time, the inclusion of forensic expertise strengthens procedural fairness and transparency. Expert findings presented in court are subject to scrutiny, cross-examination, and methodological justification, in line with principles of due process (Ashworth & Zedner, 2014). However, several challenges remain, including the lack of standardized methodologies, ethical concerns related to predicting future behavior (Monahan, 2012), and the need for specialized training.

International guidelines emphasize the importance of multidisciplinary and individualized approaches in addressing radicalization (UNODC, 2016). Accordingly, forensic expertise should be systematically integrated into legal procedures, rather than applied on an ad hoc basis.

Such an approach improves both the accuracy of risk assessment and the legitimacy of judicial decision-making by combining legal reasoning with scientifically grounded expertise (Ashworth & Zedner, 2014).

7. Proposed model: integrated legal-forensic risk assessment

The preceding analysis has demonstrated that existing approaches to assessing radicalization risk within criminal justice systems remain fragmented, methodologically limited, and insufficiently aligned with legal standards (Monahan, 2012; van der Heide, van der Zwan & van Leyenhorst, 2019). While structured risk assessment tools offer useful frameworks, and forensic expertise provides essential interpretative capacity, these elements are rarely integrated into a coherent model suitable for judicial application. In response to these shortcomings, this paper proposes an integrated legal–forensic model of individualized risk assessment.

The proposed model is based on the premise that radicalization is a complex, dynamic, and context-dependent process (Doosje et al., 2016; Borum, 2011), that cannot be adequately evaluated through standardized instruments alone. Instead, effective assessment requires the combination of legal reasoning, structured analytical tools, and expert interpretation. The model therefore seeks to bridge the gap between security-oriented methodologies and the requirements of criminal law, particularly in relation to fairness, transparency, and proportionality. In this respect, the model also responds to broader concerns associated with preventive justice, where anticipatory interventions must remain constrained by legal safeguards and proportionality requirements (Ashworth & Zedner, 2014).

At its core, the model consists of three interconnected components: (1) legal qualification, (2) structured risk indicators, and (3) forensic expert evaluation. Operationally, the model proceeds from legal qualification to structured indicator review, and finally to individualized forensic interpretation. This sequential structure ensures that risk assessment remains anchored in legal standards while allowing for flexibility through expert interpretation.

The first component, legal qualification, involves the assessment of relevant legal elements, including the nature of the alleged conduct, the presence of intent, and the applicable legal framework. This stage ensures that the evaluation remains grounded in established legal standards and that any assessment of risk is directly linked to legally relevant criteria. It also serves to distinguish between protected forms of expression and conduct that may justify intervention (Ashworth & Zedner, 2014).

The second component focuses on structured risk indicators derived from existing assessment tools such as VERA-2R and ERG22+. These indicators include ideological commitment, personal grievances, social networks, capability for violence, and situational triggers (van der Heide, van der Zwan & van Leyenhorst, 2019). Within the proposed model, such indicators are not treated as determinative but rather as guiding elements that structure the assessment process. Their role is to ensure consistency and comprehensiveness, while avoiding rigid or mechanical application.

The third and most critical component is forensic expert evaluation. In this phase, qualified experts analyze the individual case in depth, interpreting risk indicators in light of personal history, psychological characteristics, and contextual factors. This includes assessing the individual's trajectory of radicalization, the distinction between belief and intent, susceptibility to influence, and potential for disengagement. The expert's role is to provide a scientifically grounded and methodologically transparent opinion that supports judicial decision-making (Horgan, 2008).

A key feature of the proposed model is its emphasis on individualization. Rather than relying on generalized profiles or assumptions, the model requires a case-by-case analysis that takes into account the unique circumstances of each individual. This approach is consistent with international standards, which highlight the importance of tailored interventions in managing radicalization and violent extremism (UNODC, 2016).

In addition, the model incorporates procedural safeguards designed to ensure compatibility with fundamental legal principles. Expert findings must be subject to scrutiny, including the possibility of cross-examination and methodological review. The use of risk indicators must be transparent and clearly justified, and decisions must be based on a balanced consideration of all relevant factors. This enhances both the legitimacy and accountability of the assessment process.

The proposed model also recognizes the importance of interdisciplinary cooperation (Borum, 2011). Effective implementation requires collaboration between legal professionals, forensic experts, psychologists, and security practitioners. Such cooperation facilitates a more comprehensive understanding of radicalization and supports the development of informed and proportionate responses.

From a practical perspective, the model can be applied at various stages of the criminal justice process, including investigation, trial, sentencing, and post-release supervision. In each of these phases, individualized risk assessment can inform decisions regarding preventive measures, sanctions, rehabilitation programs, and monitoring strategies.

However, the implementation of this model also presents certain challenges. These include the need for specialized training of experts, the development of standardized methodologies, and the allocation of sufficient institutional resources. Additionally, it is important to avoid overreliance on expert assessments or the misuse of risk evaluation as a basis for disproportionate restrictions.

Despite these challenges, the integration of legal and forensic perspectives offers significant advantages. By combining structured analysis with expert interpretation, the proposed model enhances the accuracy, reliability, and legal robustness of radicalization risk assessment. It provides a framework that is both scientifically informed and consistent with the principles of criminal justice.

In conclusion, the proposed integrated legal–forensic model represents a step toward a more comprehensive and balanced approach to addressing radicalization within criminal justice systems. By emphasizing individualization, interdisciplinary cooperation, and procedural safeguards, it contributes to the development of more effective and legally sound responses to violent extremism (Ashworth & Zedner, 2014).

8. Conclusion

The phenomenon of radicalization presents a complex and evolving challenge for contemporary criminal justice systems, requiring approaches that go beyond traditional legal frameworks and strategies. This challenge is not only operational but also conceptual, as the term "radicalization" itself remains contested and subject to varying interpretations in academic and policy discourse (Neumann, 2013). As this paper has demonstrated, radicalization is a dynamic, multifaceted process shaped by a combination of individual, social, and contextual factors. Its increasing connection with criminal behavior, particularly within the framework of the crime–terror nexus, further complicates legal classification and response.

The analysis has highlighted the significant role of prison systems as environments in which radicalization may both develop and be mitigated. While prisons can facilitate processes of extremist influence, they also offer opportunities for intervention, rehabilitation, and disengagement. This dual nature underscores the importance of carefully balanced strategies that combine security measures with respect for fundamental rights.

Furthermore, the examination of existing risk assessment tools has revealed both their practical value and their limitations. Although instruments such as VERA-2R and ERG22+ provide structured approaches to evaluating risk, they cannot fully capture the complexity of individual trajectories. Their application within judicial contexts remains particularly challenging due to issues of reliability, transparency, and compatibility with legal standards.

In this context, the integration of forensic expertise emerges as a crucial element in improving the assessment of radicalization risk. Expert analysis enables a more nuanced understanding of individual cases, bridging the gap between standardized indicators and the specific circumstances of each situation. However, the role of forensic experts must be clearly defined and supported by appropriate methodological and procedural safeguards.

The main contribution of this paper lies in the proposal of an integrated legal–forensic model of individualized risk assessment. By combining legal analysis, structured risk indicators, and expert evaluation, the model offers a more comprehensive and balanced framework for addressing radicalization within criminal justice systems. Such an approach enhances both the effectiveness of preventive measures and the protection of fundamental rights.

In conclusion, addressing radicalization requires a shift toward individualized, interdisciplinary, and legally grounded approaches. The integration of forensic expertise into risk assessment processes represents a promising direction for future development, contributing to more informed, transparent, and proportionate responses to violent extremism, in line with broader shifts toward preventive justice models that emphasize risk management alongside the protection of fundamental rights (Ashworth & Zedner, 2014).

Conflict of Interest
The authors declare no conflict of interest.

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INDIVIDUALIZOVANA PROCENA RIZIKA RADIKALIZACIJE U KRIVIČNOPRAVNIM SISTEMIMA – PRAVNOFORENZIČKI PRISTUP

APSTRAKT: Fenomen radikalizacije predstavlja sve veći izazov za savremene krivičnopravne sisteme, posebno u svetlu sve izraženijeg preklapanja kriminaliteta i nasilnog ekstremizma. Ovaj rad razmatra potrebu za individualizovanim pristupom proceni rizika od radikalizacije u okviru krivičnopravnih sistema i njihovih pravnih okvira. Glavni cilj istraživanja jeste analiza postojećih mehanizama krivičnog pravosuđa i ispitivanje njihove adekvatnosti za identifikovanje i procenu rizika koji predstavljaju lica uključena u ekstremističke aktivnosti. Istraživanje se zasniva na kvalitativnoj analizi relevantne naučne literature, međunarodnih dokumenata i odabranih postojećih alata za procenu rizika koji se koriste u kontekstu nasilnog ekstremizma. Posebna pažnja posvećena je ulozi zatvorskog okruženja kao prostora u kojem se procesi radikalizacije mogu razvijati, ali i sprečavati, kao i ograničenjima postojećih standardizovanih instrumenata procene. Rezultati ukazuju na to da postojeći pravni pristupi često ne obezbeđuju dovoljnu integraciju multidisciplinarnih znanja, posebno u oblasti procene rizika. U radu se zastupa stav da uključivanje sudskih veštaka u proces procene može značajno unaprediti tačnost i pouzdanost sudskog odlučivanja. Glavni doprinos ovog rada ogleda se u identifikaciji ključnih komponenti integrisanog pravnoforenzičkog modela individualizovane procene rizika, koji objedinjuje pravne, psihološke i bezbednosne dimenzije. Takav pristup može unaprediti kako preventivne kapacitete tako i zaštitu osnovnih prava u okviru krivičnopravnih sistema.

Ključne reči: *radikalizacija, procena rizika, krivičnopravni sistem, nasilni ekstremizam, sudsko veštačenje.*

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CONSERVATION OF PROTECTED AREAS AND THE SUSTAINABLE DEVELOPMENT OF RURAL TOURISM – CHALLENGES IN BUSINESS LAW REGULATION

ABSTRACT: Rural areas possess natural capacities for tourism development and an authentic tourism offer, the value of which has been increasingly recognized by a growing number of tourists in recent years. This paper focuses on a more precise definition of the concept of rural tourism, the concept of sustainable development, the legal treatment of the protection of natural assets and the parameters that define them more closely, as well as on clarifying the mutual influence and interdependence between the environment and rural tourism. A significant characteristic of rural tourism is certainly the aspiration to minimize the impact on the ecological elements of the areas visited by tourists. This principle is particularly important in situations where the tourism offer includes protected natural values and protected natural areas. An increasingly popular aspect of tourism offers includes the consumption of domestic, indigenous products, as well as familiarization with the customs and culture of the local population. It is clear that such forms of tourism are associated with visits to protected natural areas. What is of paramount importance in such situations is the existence of environmental awareness among all participants, as well as the preservation of protected areas and a

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healthy environment, as a necessary starting point for the development and improvement of tourism in general, and rural tourism in particular.

Keywords: *sustainable development, rural tourism, tourism industry, environment, protected areas.*

1. Introduction

The right to a healthy environment is one of the fundamental human rights. However, through its activities, humans alter the natural environment, often in ways that disrupt natural balance. The preservation and protection of the environment "represent an imperative in contemporary society. The environment is, in essence, one of the pillars of sustainable development, and in this context it can be emphasized that sustainable development implies finding a balance between social development, economic progress, and environmental protection" (Matijašević Obradović, 2017, p. 21). According to Article 3 of the Law on Environmental Protection (2004), "the environment is a set of natural and created values whose complex mutual relationships constitute the surroundings, that is, the space and conditions for life."

Tourism is an economic activity that records continuous growth. Owing to globalization and its effects, tourism experienced strong expansion in the second half of the twentieth century and at the beginning of the twenty-first century. It may be stated that "every society has its habits, and tourism, as one of them, represents a mass socio-economic phenomenon with numerous positive effects" (Matijašević Obradović, 2016, p. 26). Tourism is often viewed "as goal-oriented, planned and motivated behavior, where expectations of the traveler play the most important role in the decision-making process regarding travel" (Wall & Mathison, 2006). Precisely because of this characteristic, tourism may also be regarded as a point of contact between urban and rural environments.

Jovičić (2000) emphasizes that tourism is one of the most efficient ways of valorizing natural assets and cultural heritage, and that tourism is not an irreversible consumer of natural elements; rather, with controlled tourism development, the development of a particular area can also be achieved. This is of particular importance bearing in mind that the objectives of the Law on Nature Protection (2009), as defined in Article 2, include: "the protection, preservation and enhancement of biological (genetic, species and ecosystem), geological and landscape diversity; harmonization of human activities, economic and social development plans, programs and projects with the sustainable use of renewable and non-renewable natural resources and the long-term preservation of natural ecosystems and natural balance; sustainable use and/or management of natural resources and assets, ensuring their function while preserving natural values and ecosystem balance; timely prevention of human activities that may lead to permanent depletion of biological, geological and landscape diversity, as well as disturbances with negative consequences for nature; determination and monitoring of the state of nature; improvement of the condition of degraded parts of nature and landscapes." It should also be emphasized that, pursuant to Article 3 of the Law on Environmental Protection (2004), a protected natural asset represents a preserved part of nature with special values and characteristics (geodiversity, biodiversity, landscapes, scenery, etc.), which has permanent ecological, scientific, cultural, educational, health-recreational, tourism and other significance, and as such enjoys special protection as a public interest asset.

The Law on Tourism of the Republic of Serbia (2019), in Article 2, prescribes that the regulation of relations in the field of tourism is based, inter alia, on the principle of sustainable tourism development as a "harmonized system of technical-technological, economic and social activities, founded on economic development, preservation of natural and cultural assets, and the preservation and development of the local community." Considering that "rural areas in Serbia cover about 85% of the territory and are home to more than half of the total population (55%), with a population density of 63 inhabitants per square kilometer" (Matijašević Obradović & Bingulac, 2015, p. 86), the following sections of the paper will focus on a more precise definition of rural tourism, the concept of sustainable development, the legal treatment of natural asset protection and the parameters that define them more closely, as well as on clarifying the mutual influence and interdependence between the environment and rural tourism.

2. The Importance of the Development of Rural Tourism and the Concept of Sustainable Development in Contemporary Theory and Legal Acts

Tourism "plays a key role in local economic development" (Rogerson & Rogerson, 2014; Karampela, Kizos & Spilanis, 2016, p. 161). Tourism may be "primarily viewed as an economic sector that simultaneously promotes economic growth and equality, as it involves the use of local inputs—local goods as well as the engagement of the local workforce" (Mansury & Hara, 2007, p. 213). In less developed regions, "the local community may derive very significant socio-economic benefits from tourism, and the development of this economic sector may represent an important turning point for further development at the local level" (Zhenhua, 2003, pp. 465–466). In this context, rural tourism may be defined as "tourism of rural areas, whose primary resource is the natural environment and a healthy living environment" (Cvijanović, Matijašević Obradović & Škorić, 2017, p. 871). This is particularly important to emphasize given that significant opportunities for tourism development in Serbia are precisely linked to rural areas.

Rural areas are attractive to tourists, "among other reasons, because they offer a wide range of recreational and leisure opportunities" (Ružić, 2012, p. 219). Bearing in mind that as much as 75% of the world's poor live in rural areas, and that more than one third of rural areas are located in arid and semi-arid regions (Chaudhry & Gupta, 2010), the view may certainly be supported that "the introduction of new non-agricultural activities (particularly rural tourism) may generate additional income, enabling improvements in quality of life and the prevention of demographic decline in rural areas" (Popesku, 2008, p. 13). Accordingly, "rural tourism is recognized as a tool for the revitalization of rural areas" (Roselyne, Morteza & Babu, 2012, p. 37), and as a development concept "that goes beyond and transcends the framework of a specific form of tourism" (Malinić, Gajić, Vujadinović & Šabić, 2022, p. 378).

As the foundation of any future practical action aimed at the development of tourism in general, and rural tourism and ecotourism as increasingly prevalent forms of tourism in particular, theoretical positions and orientations presented in contemporary literature are emphasized. These positions are unanimous in highlighting the importance of the aforementioned forms of tourism supply, especially in terms of ecological improvement of specific localities and their economies (Todorović & Bjeljac, 2007; Pavlović & Đorđević, 2013; Udovč & Perpar, 2007). Consequently, tourism is "often initiated as an alternative that can potentially contribute to more positive development by attracting visitors, population, and investments, thereby creating new employment and income opportunities in rural areas" (Asa, Lundmark & Pettersson, 2016, p. 20; Halseth, Markey & Bruce, 2010).

Within the concept of sustainable development, "emphasis is placed on the broader context of social development and the role of the local community. In addition to economic issues, this context includes social issues and, over time, environmental concerns, with the aim of maximizing the development potential of each area and improving the quality of life of the local population" (Malinić et al., 2022, p. 376). The concept of sustainable rural development "began to be applied in the 1980s. At its core, it is interactively linked to and conditioned by the trend of reducing poverty in underdeveloped regions worldwide" (Počuča, Matijašević Obradović & Drašković, 2017, p. 1249).

Within the promotion of sustainable agriculture and rural development, "emphasis is primarily placed on: the environment, rural development organizations, development communications, education, local population (local stakeholders), science and technology" (Simonović, 2008, p. 4). It is concluded that rural tourism and ecotourism "could lead to a new relationship between the environment, work, and leisure, in terms of the sustainability of rural areas" (Fagioli, Diotallevi & Ciani, 2014, p. 166).

According to theoretical perspectives, "rural areas of Serbia possess a solid basis for planning and developing rural tourism; however, it should be borne in mind that the level of its development cannot be uniform across the entire country, given that rural areas differ in terms of climatic characteristics, landscapes, population density, economic activities, as well as the problems and challenges they face" (Malinić et al., 2022, p. 379).

According to the conclusions of the SWOT analysis of tourism in the Republic of Serbia, conducted on the basis of an analysis of the state of the tourism sector, comparisons with identified competitor countries, an analysis of development documents and official policies of the Republic of Serbia, and assessments of reports by relevant international institutions on the state, directions and prospects of economic and tourism development in the Republic of Serbia, as presented in the Tourism Development Strategy of the Republic of Serbia for the period 2016–2025 (2016), the following emerges: (1) the Republic of Serbia possesses the necessary strengths for tourism development—an attractive and diverse natural environment, authentic gastronomy and cultural heritage, as well as the largest city in the region with a recognized destination image for conferences, events and entertainment; (2) the legal framework provides the basis for a modern and efficient organization and development of tourism and related industries; (3) despite a solid legal foundation, the sector remains insufficiently regulated, with serious capacity deficiencies in tourism governance and national marketing, and delays in implementing necessary public investments, which has slowed product development and commercialization; (4) the weaknesses of tourism in the Republic of Serbia largely stem from internal constraints that must be eliminated in the short term.

Given that "the environment and tourism are connected by very strong interactive links" (Počuča & Matijašević Obradović, 2020, p. 17), one of the key issues in planning rural tourism is undoubtedly environmental protection. In this regard, it is necessary to review the legal treatment of the protection of natural assets and the parameters that define them, as elements of sustainable rural tourism development in Serbia.

3. Legal Treatment of the Protection of Natural Assets as an Element of Sustainable Rural Tourism Development in Serbia

According to Article 3, item 3 of the Law on Environmental Protection (2004), "natural values are natural resources consisting of: air, water, land, forests, geological resources, flora and fauna." The same article defines a protected natural asset as "a preserved part of nature with special values and characteristics (geodiversity, biodiversity, landscapes, scenery, etc.), which has permanent ecological, scientific, cultural, educational, health-recreational, tourism and other significance, and therefore enjoys special protection as an asset of public interest" (item 4). Article 4, item 60 of the Law on Nature Protection (2009) defines natural values as "parts of nature that deserve special protection due to their sensitivity, vulnerability or rarity, for the purpose of preserving biological, geological, morphological and landscape diversity, natural processes and ecosystem services, or for scientific, cultural, educational, health-recreational and other public interests."

The International Union for Conservation of Nature (IUCN) has defined basic categories of natural assets "which serve as guidelines for the categorization of protected areas at the global level. These guidelines relate to six management categories. For each management category, a definition and management objective, categorization, and mode of management of the protected natural asset are provided" (Avramović & Ilić Petković, 2018, p. 78). The following table presents protected natural assets according to this categorization.

Tabela 1. Protected Natural Assets According to the International Union for Conservation of Nature Classification

Category	Name	Purpose of Protection
I (Ia and Ib)	Strict Nature Reserve / Wilderness Area	Managed mainly for scientific purposes or to protect wilderness.
II	National Park	Managed primarily to protect ecosystems and for recreation.
III	Natural Monument	Managed primarily to protect specific natural values.
IV	Habitat / Species Management Area	Managed through active interventions
V	Protected Landscape / Seascape	Managed primarily to protect landscape values.
VI	Managed Resource Area	Managed mainly for the sustainable use of natural ecosystems.

Source: Avramović, 2014, p. 46

According to Article 27 of the Nature Protection Law (2009), the following categories of protected natural assets are distinguished: protected areas (strict nature reserve, special nature reserve, national park, natural monument, protected habitat, area of exceptional characteristics, nature park); protected species (strictly protected wild species, protected wild species); and movable protected natural documents.

The categorization of protected areas in the Republic of Serbia, depending on the value and importance of the protected area, is carried out in three categories, as shown in the table below.

Table 2. Categorization and Declaration of Protected Natural Assets in Serbia

Category	Protected Natural Asset	Declared by
I	Protected area of international, national, or exceptional importance	Government of the Republic of Serbia
II	Protected area of provincial/regional or great importance	Government of the Republic of Serbia / Competent authority of the Autonomous Province
III	Protected area of local importance	Competent authority of the local self-government unit
IV	National park	Law

Source: Avramović, 2014, p. 48

The evaluation of a protected natural asset for categorization "is based on the following criteria: 1) intrinsic properties of the asset, which include: authenticity and autochthony (degree of originality); representativeness (degree of relic, endemic, uniqueness in its kind and rarity); diversity (richness of natural phenomena, events, and processes); integrity (functional unity); landscape attractiveness; age; and preservation of the asset; 2) function and significance of the asset, which may include: ecological; cultural-historical; educational; scientific-research; developmental, etc.; 3) endangerment of the protected natural asset, characterized by: uniqueness (rare in its type or occurrence, or with limited geographic distribution); typicality (representative of its type in a specific space and time); and preservation (in terms of originality)" (Avramović, 2014, p. 48).

According to Article 28 of the Nature Protection Law (2009), protected areas are those "that have significant geological, biological, ecosystem, and/or landscape diversity and that are important as habitats for bird species and other migratory species in accordance with international regulations may be declared as protected areas of general interest. Protected areas may be transboundary, connected with protected areas of neighboring countries. The management plan and protection measures for a protected area that is transboundary with a neighboring country are established by agreement with the competent authorities of that country, with the consent of the Ministry."

According to official data from the Institute for Nature Conservation of Serbia in 2021, based on applied institutional nature protection measures over seven decades, the area of protected areas in Serbia was 678,237 ha, or 7.66% of Serbia's territory. In 2021, there were 471 protected areas: 5 national parks, 18 nature parks, 21 areas of exceptional characteristics, 70 nature reserves, 6 protected habitats, 315 natural monuments, 36 areas of cultural and historical significance protected under previous environmental and cultural heritage laws, as well as 1,784 strictly protected wild species and 860 protected wild species of plants, animals, and fungi (Institute for Nature Conservation of Serbia, 2021).

According to analyses presented in the United Nations Development Program (UNDP) in Serbia, "Serbia covers 8,836,100 ha, divided into three major natural complexes. Serbia's status as one of the biodiversity centers in Europe is largely determined by its geological age, geomorphological composition, climatic conditions, and especially its role as a refuge for numerous species during the Ice Age. Thus, the Balkan and Pannonian regions preserve numerous endemic-relict floral elements from previous geological periods" (Flores & Obradović, 2015, p. 9).

According to the Rulebook on the Criteria for Evaluation and Procedure of Categorization of Protected Areas (2015), protected areas are "areas with significant geological, biological, ecosystem, and/or landscape diversity and are declared protected areas of general interest by an act of protection. In addition to the stated values, habitats of bird species and other migratory species significant under international regulations may be declared protected areas of general interest." Evaluation, i.e., determining the value and importance of a protected area, according to this rulebook, "is carried out in relation to the expression of the main natural features, phenomena, and processes of interest for area protection, as well as the function and purpose of the area. Accordingly, protected areas are categorized into three categories: of exceptional (international, national), of great (provincial/regional), and of local importance" (Institute for Nature Conservation of Serbia, 2025).

According to Article 6 of the Rulebook, a protected area can be classified as Category I – of exceptional importance if it meets the following criteria: it has attributes of originality and authenticity that make it a unique or exceptionally rare space, natural object, or phenomenon in Serbia, and/or represents in whole or contains a unique or particularly prominent example of Serbia's natural heritage in terms of biological, geo-geographical, and landscape values and expression of the main characteristics of these values, such as size, abundance, shape and appearance, structure and composition, age, preservation, and more, and/or clearly expresses exceptional diversity and interdependence of the living world, abiotic factors, and human influence, and/or ensures effective spatial and functional integrity in relation to strategic objectives of nature protection and sustainable use in Serbia, and/or creates an extraordinarily impressive image of beauty, interest, and excitement in nature, and allows for strong perception and experience, and/or includes or represents part of officially established internationally significant areas, and/or allows for functions and purposes of interest for Serbia, primarily for scientific research, educational activities, preservation of cultural heritage of exceptional importance, and implementation of sustainable development projects of strategic importance.

A strict nature reserve, natural monument, or habitat is included in Category I if it meets at least three of these criteria; a special nature reserve, nature park, or area of exceptional characteristics if it meets at least four criteria; a national park if it meets all seven criteria.

According to Article 7, a protected area can be classified as Category II – of great importance if it meets the following criteria: it has attributes of originality and authenticity that make it a specific or rare space, natural object, or phenomenon in an autonomous province or region, and/or represents a very significant representation of Serbia's natural heritage, unique or exceptionally rare in the province or region, by biological, geo-geological, and landscape values and expression of main characteristics of these values, such as size, abundance, shape, appearance, structure, composition, age, preservation, and more, and/or reflects high diversity and interconnection of life communities, plant and animal populations, and natural factors, as well as special beauty and landscape features characteristic for the province or region, and/or ensures effective spatial and functional integrity in relation to long-term goals of nature protection and sustainable use in the province or region, and/or allows functions and purposes of interest for the province or region, primarily scientific and educational activities, preservation of cultural heritage of great importance, and implementation of sustainable development projects of provincial/regional importance.

Category II includes a strict nature reserve, natural monument, or habitat if it meets at least two criteria; special nature reserve, nature park, or area of exceptional characteristics if it meets at least three criteria.

According to Article 8, a protected area is classified as Category III – of local importance if it meets the legal requirements for protection, has values of interest to the municipality or city, and does not meet the criteria of Articles 6 and 7 of this Rulebook..

The Institute for Nature Conservation of Serbia maintains the Central Register of Protected Natural Assets in accordance with the Rulebook on the Method and Content of Maintaining the Register of Protected Natural Assets (2010).

4. Connection and Interdependence of the Environment and Rural Tourism

As can be concluded from the previous discussion, "the goal of rural tourism development in Serbia is the development of a socially, economically, and ecologically sustainable product" (Petrović & Grujović, 2015, p. 57). In protected areas, various forms of tourism can develop, "which are not in conflict with sustainable development. Most often, these areas host tourist movements associated with sustainable tourism, ecotourism" (Vuković, Cvijanović & Gligić, 2008, p. 64), green tourism, rural tourism, etc. Observing certain principles, such as "raising awareness and respect for preserved nature and culture, as well as conserving and managing natural and protected areas, allows a tourist destination to achieve numerous benefits, both in terms of economic profit, ecological conservation of space, and building the destination's image" (Vujović, Cvijanović & Štetić, 2012, p. 66).

Today, there is a general agreement that rural and ecotourism "represent the best way to help the local population and protected areas. It is an ideal component of a sustainable development strategy, where natural resources can be used as tourist attractions without harming the tourist areas" (Jegdić, 2010, p. 66).

For the success of any tourism initiative, key elements include: "low impact on natural resources in protected areas; respect for local culture and tradition; generation of revenue for the conservation of protected areas; educating all participants about their role in protection, and more" (Drumm & Moore, 2005, p. 15).

5. Conclusion

The generally accepted notion of rural space is that it encompasses all areas not classified as urban, whose main characteristic is agricultural production as the primary activity. Generally, rural space includes sparsely populated (or uninhabited) and undeveloped areas, forests, water areas, karst and rocky terrain, mountains, agricultural land, and villages, as well as areas with low infrastructure. As such, rural space has natural capacities for tourism development and authentic tourist offerings, whose value has been increasingly recognized by tourists in recent years.

In recent years, we have witnessed rapid development of rural tourism, closely linked with ecotourism, whose principles regarding environmental protection, natural values, and conservation of protected areas are identical to those promoted by rural tourism.

This paper presents the concept and characteristics of rural tourism as a special form of tourism, which has become an increasingly important segment of overall tourism development in the early 21st century. The concept of sustainable development is further defined, as well as the legal treatment of natural asset protection and the parameters that define it, and the interrelationship between the environment and rural tourism is explained.

A key feature of rural tourism is the aim to minimize impact on the ecological elements of the areas visited by tourists. This principle is especially significant when tourist offerings include protected natural values and areas. An increasingly popular component of tourism offerings includes the consumption of local, authentic products and learning about the customs and culture of the local population. Clearly, this form of tourism is associated with visiting protected natural areas. What is most important in such situations is the ecological awareness of all participants, and the preservation of protected areas and a healthy environment as a necessary foundation for the development and improvement of tourism in general, and especially rural tourism.

Conflict of Interest

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OČUVANJE ZAŠTIĆENIH PODRUČJA I ODRŽIVI RAZVOJ RURALNOG TURIZMA – IZAZOVI PRIVREDNOPRAVNE REGULATIVE

APSTRAKT: Ruralni prostor ima prirodne kapacitete za razvoj turizma i autentičnu turističku ponudu, čiju vrednost poslednjih godina prepoznaje sve veći broj turista. Pažnja u radu usmerena je na bliže određenje pojma ruralnog turizma, koncepta održivog razvoja, zakonskog tretmana zaštite prirodnih dobara i parametara koji ih bliže određuju, kao i na pojašnjenje međusobnog uticaja i uslovljenosti životne sredine i ruralnog turizma. Značajna osobina ruralnog turizma svakako je težnja da se što manje utiče na ekološke elemente područja koje su turisti odlučili da posete. Ovaj princip naročito je značajan u situacijama kada turistička ponuda uključuje zaštićene prirodne vrednosti i prirodna područja. Sve popularnija sfera u formiranju turističkih ponuda uključuje konzumaciju domaćih, autohtonih proizvoda, kao i upoznavanje sa običajima i kulturom lokalnog stanovništva. Jasno je da se takav oblik turizma veže uz posetu nekim zaštićenim prirodnim područjima. Ono što je u takvim situacijama zapravo i najznačajnije jeste postojanje ekološke svesti svih učesnika, te očuvanje zaštićenih područja i zdrave životne sredine, kao neophodne polazne osnove za razvoj i unapređenje turizma uopšte, a naročito ruralnog turizma.

***Ključne reči**: održivi razvoj, ruralni turizam, turistička privreda, životna sredina, zaštićena područja.*

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CHILD ABUSE AND NEGLECT – PREVENTION AND CRIMINAL LAW RESPONSE

ABSTRACT: Child abuse and neglect are phenomena that have been at the center of public and professional debates on the protection of children's rights over the past several decades. The introductory part of the paper provides a conceptual definition of abuse and neglect, addresses the determination of age limits in relation to children, and examines the effects that abuse and neglect have on children. The second part discusses various approaches to identifying the modalities of child abuse and neglect, including the standard of gross neglect. The third part focuses on preventive activities and provides an analysis of the advantages and disadvantages of home monitoring of a child's family from (pre-)birth. The criminal law response to child abuse and neglect is accompanied by a research component in which the author analyzes available official statistical data and draws conclusions regarding the overall number of criminal offences involving child abuse and neglect. The paper also offers suggestions for possible improvements in the field of prevention and reviews collected judgments, as well as the difficulties associated with assessing insufficiently valid data for drawing more general conclusions. The concluding discussion presents proposals for improving the current state of child protection from violence, particularly through preventive measures, trained professionals, and the establishment of a comprehensive system for protecting children from victimization.

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1. Introduction

Since the beginning of the 21st century, we have witnessed the existence of numerous studies related to child abuse and neglect. Regardless of the published results of these studies, newly accumulated knowledge in this area, and adopted international standards in domestic legislation and practice, we are still without a generally accepted definition and a conceptual definition of this phenomenon (Pavlović, 2013). If we add to previous, the ever more current discussion about the concept of a child, and the responsibility of children in criminal law, but also the concept of a victim in domestic legislation and practice (Kolarić, 2026), new and more new questions arise, while there are still no answers. Often irreconcilable views are whether the age limit of criminal responsibility of children should be raised or lowered above or below 14 years of age, how to distinguish between a child and a minor perpetrator of a criminal offense, or a child and an adult perpetrator of a criminal offense. None of these dilemmas diminishes the positive obligation of the state to participate in the protection of children's rights. The beginning of resolving these previously given issues would be trust in the system institutions, inter-institutional cooperation and, in parallel, the reform of certain legal solutions (Pavlović, 2026).

Only by posing the problem of child abuse and neglect and defining the terms we do arrive at what is the basic idea of this paper, which is prevention and criminal law reaction. A child can often find himself/herself in the role of both a victim of neglect and abuse, and at the same time a perpetrator of a serious criminal offense. The indisputable criminological connection between a child and the community from which he/she comes (biological family, guardianship, foster family) and delinquent behaviour does not mean that there is no civil and criminal liability of parents. Only by working on each specific case, it is possible to determine where bad parenting ends, and the criminal liability of parents for the child's illegal actions is determined.

In the Republic of Serbia, there are good results in the field of tertiary prevention and the state's response/reaction after the child abuse and neglect occurs, through the work of safe houses, emergency care shelters for child victims, daycare centres for children and children's shelters, or through the work and activities of school teams in preventing adolescent (peer) violence in schools. All of the mentioned are to be commended. Likewise, through the work of the non-governmental sector, accredited and implemented programmes for the protection of children from violence are present and in practice. However, the problem is that the non-governmental sector is not spread evenly throughout the entire territory of the Republic of Serbia with its activities, and it still carries out its activities mainly according to the project financing model. On the other hand, a well-networked system of social protection services does not provide a sufficiently efficient and sufficient range of services. Systemic and organized prevention in identifying families at risk and working with these families is what should be the priority and further developed. Without timely detection of a neglected and abused child, all criminal legal responses/reaction will be in vain, we are obliged due to the events from the recent past and multiple murders (Pavlović, 2024) committed by children (persons under 14 years of age) or young adults, to work both preventively and to have a ready institutional response within the protection system that we strive for. It means that the effectiveness of protection does not depend primarily on criminal legal protection (and threatened punishment) which is *the ultima ratio* social reaction when the consequences have already occurred, but rather prevention and protection must be based on the created conditions for the realization of social obligations in order to protect the rights of the child, and therefore in the context of protection from abuse and neglect.

2. Defining child neglect and abuse

Defining neglect and abuse is not simple due to the diverse modalities of violence against children, as well as the fact that the behaviours covered by this framework are determined by biological, social and (criminal) legal aspects (Pavlović, 2013). According to Stojaković and Mandić (1984), child abuse can be viewed from three similar perspectives: 1. medical, which includes physical and mental trauma that violence leaves as a consequence, 2. criminal legal perspective through legal incrimination under Article 193 of the Criminal Code (2005) “Neglect and abuse of a minor” and other related criminal offenses, and 3. social protection perspective, appreciating the measures taken by society for the benefit of the victim.

In relation to the concept of a child, we could say that it is a person under the age of 18, and this is fully in line with the standards of convention solutions and the Criminal Code (Stojanović, 2019). However, the relativization of this concept is visible in some other regulations, such as those in the field of family law, labour law, or human rights.

Thus, Article 23 of the Family Law (2005) allows a minor over the age of 16 to marry, based on a court's permission and a statement of physical and mental maturity. The Labour Law (2005) requires that a person entering into an employment contract must be at least 15 years of age, while according to health care regulations, a child can be examined without the knowledge of the parents after the age of 15 (although the parents still have the obligation to take care of the child and his or her health).

This relativisation leads to the need to re-examine crimes against sexual freedom in the context of its established limits. The issue is further complicated by comparative solutions and situations imposed by life. Thus, in Spain, sexual intercourse with a child who has reached the age of 13 is permitted, while in Finland or Russia this age limit is 16 years, and in Turkey it is even 18 years of age (Pavlović, 2013).

But in practice, the word abuse creates even more dilemmas, regarding its phenomenology, namely physical, sexual and psychological violence. Abuse (i.e. violence against children) does not only involve contact behaviours, in order to be considered a criminal offense. Most authors agree that non-contact behaviours can also be incriminated as acts of abuse. For example, parents walking around naked in front of their children or lascivious sexualised speech can be acts of abuse (Pavlović, 2013). If we add to this the vocabulary that professionals (i.e. lawyers who practice criminal law) use in public discourse, the problem of defining abuse gains even more weight. In the context we are discussing, the following terms are also used: gross neglect, neglect of parental rights and duties, abuse, aggressive behaviour towards a child, child exploitation, beaten up child syndrome, child victims of human trafficking, child abandonment, and others. Determining whether any of these or similar behaviours is abuse or not, according to Stringer (2012), depends on whether the action itself or the consequences that may occur subsequently are considered. This author emphasizes that it depends on the level of repetition and severity of the abuse, as well as the age of the child.

Such considerations necessarily belong to more criminological, victimological or psychological solutions, but the criminal law concept of child neglect and abuse is also derived from them. In positive national criminal legislation, Article 193 of the Criminal Code (2005) emphasizes the act of gross neglect, the status of parents, guardians and those who have a duty to care for the child, as well as those who force the child to work for profit (Pavlović, 2026).

Despite mentioned, this article does not define what abuse is, but rather emphasizes gross neglect and spoiling of a child. What is clear, is that this criminal act is viewed/considered as a criminal act against the family. In Article 134 of the Criminal Code (2005), the legislator partially defines the concept of abuse and torture, through the framework of violation of human dignity and discrimination. However, even with the above-mentioned acts of commission in connection with abuse and torture, we do not get a complete definition, but its parts are found in the criminal acts of aggravated murder, murder of a child during childbirth, serious and minor bodily injuries, the criminal act of rape, sexual intercourse with a child, inducing a minor to participate in sexual acts, and others, as well as the criminal acts of domestic violence and human trafficking.

Additional clarification on the issue of determining child neglect and abuse is provided by the World Health Organization's definition. According to the WHO, abuse includes all forms of physical and/or emotional abuse, sexual abuse, neglect or negligent treatment, as well as commercial or other exploitation, which result in actual or potential harm to the child's health, survival, development or dignity, in the context of relationships of responsibility, trust or power (World Health Organization).

With the explanation from *the General Protocol for the Protection of Children from Abuse and Neglect,* we also come to the integration of the concepts of emotional abuse and neglect. This is emotional abuse, which according to Išpanović-Radojković and Ignjatović (2011) represents "repeated behaviours of parents or guardians, whether in the form of actions or inactions, that cause or reinforce feelings of worthlessness, rejection or inadequacy in the child, cause the child psychological suffering and can cause serious and lasting impairment of the child's emotional, cognitive or social development" (p. 42). According to these authors, emotional abuse implies a behavioural pattern of an adult towards a child, which is constantly present or repeated, but in any case, it cannot be considered incidental.

At the end of this analysis, we should note that certain authors use neglect and negligence/carelessness as synonyms. Thus, Stringer (2012) states that neglect is a case when parents or guardians do not take sufficient care of the physical, psychological and emotional development of a child. However, the authors Išpanović-Radojković and Ignjatović (2011, p. 38), quite rightly, in addition to physical and emotional neglect and negligence/carelessness, they also add the often health negligence and educational neglect. According to media reports, dental care for a child has been neglected, and the experiences from the pandemic caused by the Covid-19 virus have only reopened problems and dilemmas regarding the immunization of children. The fact is that our criminal legislation does not pay enough attention to the development of perinatal medicine and has not yet paid enough attention to protection from neglect and violence against the unborn child, whose legal subjectivity has already been recognized in comparative legislation (Pavlović, 2022).

Let us add educational neglect and abuse of children, which refers to supporting a child's curiosity, his/her educational needs and allowing a child to spend an unjustified amount of time online/networking. According to Pavlović, the victimisation to which children are exposed through hate speech on the Internet is precisely the result of neglecting the child (Pavlović, 2024a).

The imperative to understand the concept of child abuse and neglect is not merely theoretical in nature, but also has practical implications, because in the future, it is precisely through a defined framework that violence against children could be defined preventively and with the aim of preventing child victimisation. The standard of gross neglect, as stated in the Criminal Code, implies specific endangerment. Parents or guardians do not have to know what the criteria are that determine gross neglect, but rather, disregard for the best interests of the child is more than a sufficient element for the existence of gross neglect, and thus the child's neglect and abuse (Pavlović, 2026, p. 49).

3. Modalities for preventing child neglect and abuse

Almost daily changes in the social climate, frequent scientific (and media) reports on child victimisation and the commission of serious crimes against life and body have created the conditions for the creation and implementation of new models of violence prevention directed towards children. Other countries experiences show us that the creation of such programmes is necessary, but we should not forget the *sui generis specificities* that belong to each community, so direct implementation is not the best way, but only a good basis for work on detecting, preventing and deterring all forms of violence against children (Pavlović, 2013).

While dealing, for the most part, justifiably, with ways to prevent and sanction physical punishment of children, insufficient attention is often paid to other forms of victimisation. In countries such as the USA, preventive activities are therefore mandatory, introduced through appropriate legislation. Measures are established that are intended for the general public, but also for professionals who work with perpetrators of criminal acts and victims of violence (Pavlović, 2013). As with the definition of neglect and abuse, preventive measures are divided into different categories, which are grouped into primary, secondary and tertiary prevention, i.e. general prevention relating to families at risk and preventive measures that are taken after victimisation (Petković & Pavlović, 2016). A very acceptable division is also made (MacLeod & Nelson, 2000), which implies proactive programmes for families in which violence has not been registered, or reactive programmes for children and families where victimisation has been recorded.

In this context, we distinguish between activities aimed at children, at non-violent parents, and preventive activities aimed at all abusers (Pavlović, 2013). The idea of social welfare services functioning at full capacity as institutions where programmes for new and young parents are developed, family centres are formed, and the like, deserves special attention and further work should be done on its development. The development of protection programmes that are accredited and implemented will be most useful if they can be implemented in every community and for all victims (and abusers), while their usefulness must be constantly monitored, so that the results can be also visible. In terms of prevention, we will devote our attention to one of the programmes for the prevention of physical neglect and abuse, or violence against children, bearing in mind the fact that a review of the case law of the Basic Courts in the Republic of Serbia has registered this as the most common form of (gross) neglect of children.

Home visiting programmes have existed in our country in their most basic form through teacher visits to the environment which the child comes from, up to the barriers to such activities that have been set up by invoking privacy and privacy protection. The consequences that we have repeatedly mentioned are a call for the resumption of such activities.

Home visits are preventive models introduced before World War II, in the 1930s in Denmark, with the aim of reducing the mortality rate among newborns (Giardino & Knipping, 2010). This form of home visits was introduced in the USA only in the 1960s (Kempe, Silverman, Steele, Droegemueller & Silver, 1962).

Professionals in the field of prevention and health care start home visiting during a woman's pregnancy and continue them after childbirth. This creates family mentors in the field of reproductive health, prenatal and postnatal difficulties. This is not just about health, psychological and social services, but also provides the family with basic knowledge about children's needs, potential, development dynamics and more. However, the fact is that home visiting programmes as a preventive tool do not produce spectacular results. Thus, according to a study cited by Petković and Pavlović (2016), it is emphasized that the decrease in victimisation in families that were included in the home visiting programme is not necessarily related to the visiting itself, because similar data are also found in groups of families that were not included in this programme (Gessner, 2008). The key conclusion from the study by Duggan et al (2004) is that despite home visits, there was no reduction in risk factors. The fact that most abusers are unwilling to use social services is additionally depressing. Thus, the rate of revictimisation is at the same or similar level, regardless of the home visiting programme and activities related to the programme itself.

From the still unpublished results of the research realised in the period 2020-2025 and the final judgments regarding the criminal offense of Neglect and Abuse of a Minor under Article 193 of the Criminal Code (2005), and from the database of the Basic Courts in Subotica, Sremska Mitrovica, Zrenjanin, Novi Sad and Sombor (a sample of 129 judgments was reviewed), we note that 72% of the cases involved recidivism, and that these cases mostly involved children under the age of 7, but it was not possible to state from the sample itself whether any preventive programme was implemented or not for the perpetrators of the crimes. Given that these are mostly summary criminal proceedings where the reasonings of the court decision were omitted, most of the data was therefore not available to the researcher.

However, regardless of the questionable effectiveness of home visits, as well as the fact that unfortunately not all families are covered by this programme, the fact is that many families at risk can be identified through this type of work, if this was not already the case. The financial aspect that this preventive model implies should not deter us from its further implementation. This concept has an irrefutable assumption that early childhood is a risky period in which a child is easily victimized and which therefore requires special support for parents or guardians and supervision of their relationships with the child. The importance of monitoring is not in question, but rather it is a protective factor against early victimisation and abuse and neglect and taking appropriate measures if necessary. Prevention programmes, based on home visits or other forms of work with children and perpetrators, also differ in their duration, while the goal is always the same. Although the majority of cases remain undetected, this does not diminish the need to implement all available prevention models.

In relation to the continuation of family monitoring and other forms of work with perpetrators and victims, it is clear that, in addition to comparative experiences, reformed models of assessing the risk of neglect and abuse of children should be considered, bearing in mind the fact that until the forbidden consequence occurs, violence against children often remains “within four walls”, so this is a problem that requires special attention and resolution. The former model of monitoring the family which the child comes from should be discussed in a modern form and the possibilities of its re-actualization should be considered, in order to maintain the prevention model in continuance.

4. Criminal response to child neglect and abuse

Data on child abuse and neglect were for a long time kept in the general report of the Supreme Public Prosecutor's Office (formerly the Republic Public Prosecutor's Office), and only since 2023 these data have been separated through the Periodic Report on the Public Prosecutor's Office's actions regarding criminal offenses under Article 184 Mediation in prostitution, Article 193 Neglect and abuse of a minor, and Article 388 Human trafficking committed to the detriment of minors of the Criminal Code. This Report was presented and is being prepared with the support of the OSCE Office in Belgrade. Although it concerns children and families, this special report does not provide data from Article 193, paragraph 1, Neglect and abuse of a minor, although gross neglect and neglect of a child by a responsible person who does not carry out their duties of caring for and raising a child is of exceptional importance for taking measures in order to prevent child victimisation.

According to Pavlović (Pavlović, 2026) and in accordance with the data publicly available on the VJT website, in the period from January 1st, 2023 to Decembre 31st, 2023, and according to a special periodic report of the VJT, in relation to the criminal offense under Article 193, paragraph 2 of the Criminal Code (2005), a total of 53 persons were reported in the Republic of Serbia, with 62 minors as victims. In relation to this number of reported persons, 36 procedures were conducted in which evidentiary actions (and investigations) were carried out, after which 30 indictments were filed, and 15 convictions were issued. Two acquittals were issued. Two convicts were sentenced to 6 months in prison with a probationary period of 2 years, one person was sentenced to 10 months of house arrest and a ban on approaching and communicating with the injured party for 2 years, one person was sentenced to 3 months in prison with a probationary period of one year, and one person was sentenced to 4 months in prison with a probationary period of 2 years. During the same period, the court sentenced another 6 persons (in different proceedings) to prison sentences ranging from 4 months to 10 months with probationary periods of 1 year, then 1.5 years to two years. At the same time, one person was sentenced to 4 years in prison with a probationary period of 11 months and the security measure of expulsion of the foreigner from the country, while one person was sentenced to an unconditional prison sentence of 1 year and 6 months (Supreme Public Prosecutor's Office, 2023).

As stated in the Periodic Report for 2024 (Pavlović, 2026), in relation to the criminal offense under Article 193, paragraph 2 of the Criminal Code, a total of 35 persons were reported, with 47 minors as victims. There were also 42 procedures in which evidentiary actions (and investigations) were carried out, after which 15 indictments were filed, and 10 convictions were issued. There were no acquittals in 2024 either, while prison sentences ranging from 3 months to 8 months were imposed, with probation periods of one to two years, while one person was sentenced to a security measure of mandatory psychiatric treatment and custody in a health institution (Supreme Public Prosecutor's Office, 2024).

During 2025, according to the Special Report of the Criminal Procedure Code (Pavlović, 2026), and in relation to the criminal offense under Article 193, paragraph 2 of the Criminal Code, a total of 68 persons were reported, with 70 minors as victims. 64 procedures were also conducted in which evidentiary actions (and investigations) were carried out, after which 8 indictments were filed, and 4 convictions were issued. 4 suspended sentences were issued, two of 4 months in prison with a probationary period of 1 and 2 years, as well as two suspended sentences of 3 months in prison with a probationary period of 1 year. There were no acquittals (Supreme Public Prosecutor's Office, 2025).

At the time of writing this paper, we did not have access to, nor data were publicly published on the misdemeanour punishment of perpetrators of some of the acts of child neglect, such as the misdemeanour punishment of parents for not attending school, begging of children, etc., which could make this elaboration more complete. The entirety of the observation of the acts of commission in the case of child neglect allows us to see whether the protection of the best interests of the child is complementary, coordinated and proportionate, which is the only way to prevent their (further) victimisation.

The criminal legislation of the Republic of Serbia has mainly focused on the incrimination of the criminal offense of Neglect and Abuse of a Minor, with minor changes in the last few decades. The problem with this criminal offense is that it is included in the group of criminal offenses against marriage and family, which exist in different social circumstances, but also the family, whose role has changed significantly compared to the moment when the incrimination was committed (Pavlović, 2026). The consequences for children due to changes in the family and around the family (and not only these changes) are going to be increasingly visible. Family and social values are also changing due to the increasing influence of technological achievements in our lives, changes in standards and the achieved level of human rights, etc. Although the paper itself gives increased importance to the criminological and victimological approach in dealing with the titled topic, this does not mean that we are currently advocating the thesis of forming a special group of criminal offenses against children. Adopting such a position would require numerous amendments to the Criminal Code, which is not realistic at this time. Until we enter into such a reform, we accept the existing system of the Criminal Code, which is based on the protection of certain legal assets, which in this specific case is the family, and not the personal status of the victim (child).

This criminal offense has unjustifiably been left out of the public's focus of interest. One of the reasons could be the introduction of the criminal offense of domestic violence, which partly includes the act of committing abuse and neglect (Jovanović, 2010), partly because of the standard that is not fully defined (gross neglect), and partly because a causal connection is required between neglect and a state of neglect, which is generally very difficult to prove. The criminal offense under Article 193 neglect and abuse of a minor has two paragraphs. The first refers to neglect, or gross neglect of a child (*delictum proprium*). The obligation of care and upbringing includes parents, guardians, adoptive parents and other persons who have this duty. The penalty is imprisonment for up to three years.

The second paragraph of Article 193 of the Criminal Code refers to the abuse of a minor by a parent, adoptive parent, guardian or other person who abuses or forces the minor to work excessively or to work not appropriately for the minor's age, or to beg, or who, out of selfishness, forces the child to perform other actions inappropriate for his or her age. The acts of commission referred to in this paragraph are punishable by imprisonment from three months to five years. After reviewing the relevant literature and a certain number of published studies, we did not see any mention in court practice of actions against a member of a foster family and of forcing children from foster families in rural households to work excessively, which is an issue that will require special criminological and victimological treatment in some of the research works (Pavlović, 2026).

In order to make it easier to identify and qualify this criminal act as the criminal act of neglect and abuse of a minor under Article 193 of the Criminal Code (2005), it is necessary to work further on the education of both the detection authorities, the prosecution authorities and the court in the coming period. The interpretation and methodology of the law, along with the direct application of the Convention on the Rights of the Child and the relevant protocols, mean that when analysing the factual situation, modern standards for the protection of the rights of the child must be taken into account, which means ensuring the minimum conditions for physical, psychological and social-health development, because without their presence we are already talking about gross neglect of the child. As John Stuart Mill would say, according to *the harm principle,* a criminal legal reaction is always justified when there is a concrete or foreseeable harmful consequence for the child, even if such a consequence has not occurred.

5. Final considerations

Considering the number of 178 child victims of violence in the period from 2023 to 2025, for the criminal offense of neglect and abuse of a minor under Article 193, paragraph 2 in connection with paragraph 1 of the Criminal Code (data from the Criminal Investigation Department, Public Prosecutor's Office), we cannot derive any general data on the number of abused and neglected children in Serbia in the specified period. This number is not final, because the number of prosecuted perpetrators of this criminal offense for the basic form of gross neglect (violence) against children is not officially available. Even using a comparative method, it is not possible to obtain more approximate data because individual/particular social welfare institutions do not have accessible electronic databases on the basis of which all active cases in the specified period could be found. In this way, the number of cases of violence against children is dictated by some other data sources, which are not covered by scientific methods, but often depend on cooperation with employees of Social Work Centres or media reports.

The criteria for the perception of violence against children are not uniform, which is an additional problem. Numerous stereotypes and prejudices are present, which further complicates the finding of data, but also the reporting of these criminal acts. One of the stereotypes is that early (underage) marriages (Krstinić, Počuča & Šarkić, 2024) among the Roma population are part of their culture and tradition, and not a distorted picture of reality and abuse (mainly) of girls by family members or other persons (Jovanović, 2022). The frequency of victimisation in neglect is not a verifiable category, because shelters often do not have complete data on the children who come to them. Regardless of the territory of the social welfare service, the dynamics and methods of work indicate that cases of child neglect are discovered only after receiving a report from close relatives or the school. It would not be correct to say that this practice is the result of employee disengagement, but rather that it often depends on the limited human resources employed in institutions.

In this way, we can say that the presented figures on the number of legally binding decisions are figures that are available, but not total figures. The general conclusion would not change with these numbers, but it would perhaps provide different data on how many children and of what age are at risk. The processed verdicts are the best indicator of the inability of researchers to present data on the vulnerability of children of certain ages due to the rules on anonymisation. Therefore, we cannot relate the age of the child in any way to the occurrence of physical, psychological abuse or neglect.

By reviewing the relevant literature and reviewed judgments, one gets the impression that the detection of violence against children ex officio is quite rare, without a complete strategy and established criteria. This applies not only to the police, but also to the Centres for Social Work and schools. However, the fact that the situation is not so bad in relation to child abuse and neglect in Serbia can be illustrated by the claim that measures of protection against domestic violence (Family Law (2005) and the Law on Misdemeanours, 2013) provide certain possibilities for effective protection. In order to determine the true state of affairs, it is necessary to analyse the current needs, possibilities of the proclaimed and realised level of protection of children as victims of violence – neglect and abuse.

In relation to the criminal legal reaction and the decisions made in the reviewed cases, as well as the statistics from the report of the Supreme Public Prosecutor's Office, we cannot take a more general position on what sanctions the courts imposed within the prescribed maximum and minimum. In fact, in the case of neglect and abuse of a minor under Article 193, paragraph 1 of the Criminal Code, we get the impression that the Public Prosecutor's Office is satisfied with the decisions made, because in most criminal cases it waived the right to appeal.

Based on the empirically unreliable research method in social welfare institutions (simple interview with employees), we can conclude that in practice, severe forms of child victimisation from abuse and neglect have not been registered. However, unregistered violence does not mean that it does not exist, but that there may not be a good enough mechanism for its detection. If we leave such an arbitrary conclusion aside in a scientific paper, its presentation is a warning that the problem of recording, recognition and processing has been mapped and needs to be solved. Issues of preventive efforts, failure to recognise violence or insufficiently harmonised legal regulations are some of the elements that remain as the author's realistic position. Only through long-term planning in the field of preventing child victimisation from abuse and neglect we will achieve a satisfactory goal, which is the protection of children and the creation of a healthy society. This goal can be achieved not through individual activities of entities responsible for preventing child abuse and neglect, but exclusively through institutional responses and a uniform system of protection. In this protection from victimisation, more effective preventive work and ongoing education of professionals should contribute to reducing the number of neglected and abused children to a minimum.

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ZLOSTAVLJANJE I ZANEMARIVANJE DECE – PREVENCIJA I KRIVIČNOPRAVNA REAKCIJA

APSTRAKT: Zlostavljanje i zanemarivanje dece predstavljaju pojavu koja je poslednjih nekoliko decenija u centru javnih i stručnih rasprava o zaštiti prava deteta. U uvodnom delu daje se pojmovno određenje zlostavljanja i zanemarivanja, ukazuje se na određivanje starosnih granica kod dece, kao i na efekte koje zlostavljanje i zanemarivanje imaju na decu. U drugom delu rada ukazuje se na različite mogućnosti utvrđivanja modaliteta zlostavljanja i zanemarivanja dece, uz standard grubog zanemarivanja. Preventivne aktivnosti jesu treći deo rada, gde se daju analiza, prednosti i nedostaci kućnog praćenja porodice deteta od (pre) rođenja. Krivičnopravna reakcija na zlostavljanje i zanemarivanje dece praćena je i istraživačkim delom, gde autor, kroz dostupne zvanične statističke podatke, vrši njihovu analizu i daje zaključke u vezi sa ukupnim brojem krivičnih dela zlostavljanja i zanemarivanja dece, daje predloge mogućeg poboljšanja u oblasti prevencije i osvrt na prikupljene presude i poteškoće u oceni nedovoljno validnih podataka za opštije zaključke. U zaključnom razmatranju daju se predlozi za unapređenje postojećeg stanja u zaštiti deteta od nasilja, posebno preventivnim merama, edukovanim profesionalcima i stvaranjem sveobuhvatnog sistema zaštite dece od viktimizacije.

Ključne reči: *zlostavljanje i zanemarivanje dece, preventivne mere, sistem zaštite.*

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LABOR LAW REGULATION OF MATERNITY PROTECTION IN SERBIA AND THE CRIMINAL – LAW TREATMENT OF VIOLATIONS OF RIGHTS ARISING FROM EMPLOYMENT AND SOCIAL INSURANCE

ABSTRACT: The rights to special protection of maternity, maternity leave, and leave from work for the purpose of childcare, as well as for the special care of a child or another person, are regulated by labor law provisions and are grounded in constitutional norms. The purpose of these provisions is reflected in the protection of the best interests not only of the mother, and not only of the child, but of the family as a whole. In addition to a theoretical analysis of the protection of women at work and in connection with work, as well as the right to work, this paper, through the application of a normative methodological approach, also presents the statutory standards relating to maternity protection, maternity leave, and leave from work for the purpose of childcare or special care of a child or another person. Furthermore, the paper addresses the fundamental issues concerning the criminal-law treatment of violations of rights arising from employment and social insurance rights, which are considered the basic incrimination within the entire chapter.

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Keywords: *maternity protection, protection of women at work and in connection with work, right to work, labor legislation, criminal legislation.*

1. Introduction

The protection of women at work and in connection with work is an area that may be viewed from several aspects. One such aspect is, among others, protection based on the particularly important role that women have in the biological reproduction of the population (pregnancy, childbirth, motherhood), which is crucial for the survival and genetic continuity of the species. In principle, if the protection of women in this context is considered more broadly, it may be observed that the treatment offered to women with regard to protection related to pregnancy, childbirth and, generally speaking, motherhood does not relate exclusively and solely to them, but also extends to the segment of the care and protection of children, and, therefore, to the treatment of both parents (including the child's father) in certain circumstances, and to the treatment of a single parent in specific situations. This essentially leads to the conclusion that the constitutional and labour-law treatment in matters of motherhood, pregnancy and childbirth generally concerns the protection of parenthood. It should also be noted that certain rights in this field may also be enjoyed by adoptive parents, foster parents or guardians of a child.

The provisions of Article 66 of the Constitution of the Republic of Serbia (2006) regulate the special protection of the family, the mother, the single parent and the child, foreseeing that "the family, the mother, the single parent and the child in the Republic of Serbia shall enjoy special protection, in accordance with the law. The mother shall be provided with special support and protection before and after childbirth. Special protection shall be afforded to children without parental care and to children with physical or mental disabilities." The provisions of Article 60, paragraph 5 further stipulate that "women, young people and persons with disabilities shall be guaranteed special protection at work and special working conditions, in accordance with the law."

Firstly, it is certainly necessary to mention the most important international acts that have established standards of special protection of maternity within national legal systems. The Universal Declaration of Human Rights (1948), in Article 25, paragraph 2, provides that "motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection." Convention No. 183 on Maternity Protection of 2000, which revised Convention No. 103 of the same title, provides in Article 2 that its provisions "apply to all employed women, including those in atypical forms of dependent work," while Articles 3 and 4 regulate issues related to health protection and maternity leave, foreseeing that "each member state shall, after the consultation with representative organizations of employers and workers, adopt appropriate measures to ensure that pregnant or breastfeeding women are not obligated to perform work which has been determined by the competent authority to be harmful to the health of the mother or the child, or where a significant risk to the health of the mother or the child has been assessed," and that based "on of a medical certificate or other appropriate certification, as determined by national law and practice, stating the presumed date of childbirth, a woman to whom this Convention applies shall be entitled to maternity leave of a duration of not less than 14 weeks" (Law on the Ratification of the International Labour Organization Convention no. 183 on Maternity Protection, 2010).

The Labour Law of the Republic of Serbia (2005), with its provisions, in addition to general protection, also regulates the areas of maternity protection, maternity leave and leave from work for child care, as well as leave from work for special care of a child or another person (see also: Đan & Vrbaški, 2019, p. 10-11). One of the objectives of the amendments to the Law was "to strengthen the position of women in the workplace and to establish a balance between family obligations and the professional duties of employed mothers" (Misailović, 2020, p. 239). The aspect of occupational safety and health was further supplemented by "extending maternity protection to an employed woman who is breastfeeding" (Ivošević & Ivošević, 2016, p. 223). This is particularly important issue, as "the labour-law position of an employed breastfeeding woman lies at the centre of the confrontation between the requirement to ensure special protection at work and the requirement to promote equality between women and men in the sphere of work" (Radovanović, 2016, p. 247).

2. Protection of women at work and in connection with work and the right to work in legal theory

In the law of the Republic of Serbia, "special labour-law protection of women has the following aspects: prohibition of work during pregnancy and later on, during breastfeeding, in jobs that are harmful to the health of the woman and the child; protection within the framework of the institute of working time; the right to maternity leave and leave from work for child care" (Jovanović, 2015, p. 1464). The legal regulation of special protection for women "has occupied the attention of legal scholars since women entered the labour market" (Rajić Ćalić, 2024, p. 133). In legal theory, it is often emphasized that women, in the process of emancipation, have come a long way and have faced various challenges, ranging from the "leaving the employment upon entering into marriage" (Lubarda, 2012, p. 128), through the requirement of the "husband's consent to establish an employment relationship" (Blanpain, 2012, p. 153), to full freedom in the choice of profession and in entering into employment relationships.

Legal theory also underlines the view that "the position of women in the field of work and employment in Serbia remains unfavorable" (Vilić & Beker, 2021, p. 5). The authors note that the "gender gap in the employment rate is constant, and the labour market is characterized by gender segregation by sectors and occupations" (Urdarević et al., 2019, p. 22). Inspire of the fact that "a long historical period elapsed from legal, *de jure* equality to actual political equality between men and women" (Žunić, 2017, p. 170), Sineau (2003) notes in this context that even today "the right to equal participation of women in various fields remains, for many women, merely a right in theory and in legal norms" (p. 12). Domestic literature "rightly points out that the double work engagement of women, which in addition to paid employment also includes unpaid work at home. In the household, represents a challenge not only for female workers, but also for employers, and underestimates the value that the work of women and mothers has for raising children" (Kovačević, 2018, p. 99). On the other hand, "gender inequality of women in the educational system and in the labour market is reinforced by traditionally rooted stereotypes about the role of women to devote most of their time to unpaid household work and child raising" (Misailović, 2020, p. 240). This is all the more true given that "the culture of capitalism underestimates the economic value of raising children, and often overestimates the social benefits of women's participation in the labour market" (Grgurev, 2014, p. 136; Pantović, 2017, p. 11).

Here we arrive at the definition of a key concept, namely the right to work, which "by its legal nature lies somewhere between a program 'based principle, a constitutional order addressed to the legislator, and a subjective right" (Radovanović, 2020, p. 88). Namely, the right to work is "one of the economic and social rights, that is, the rights enjoyed by the citizens of a state as members of a social community which are aimed at ensuring a minimum of living conditions worthy of a human being in material sense" (Stojanović, 2005, p. 446). The right to work is "an equal and unique right, under equal conditions guaranteed permanent employment by the social community for every citizen capable of work, in accordance with his or her professional and physical abilities, the employment freely chosen by the individual and representing the basic and main source of material means and other rights for a decent and secure life and for the development of the individual and his or her family" (Jovanović, 2003, p. 116).

Bearing in mind that the primary principle of human rights "rests on the assumption that all human beings are born free and equal in dignity and rights, and that rights and freedoms belong to everyone without any distinctions, including distinctions based on sex" (Drobnjak, Kočić Mitaček, Gajin & Resanović, 2008, p. 7), the principle of the prohibition of any form of discrimination has been accepted in domestic legislation as well, and is certainly based on the fundamental universal international document in this field – the United Nations Convention on the Elimination of All Forms of Discrimination against Women (1981), which "establishes the obligation of the states, parties to this Convention, to pursue, by all appropriate means, a policy of eliminating discrimination against women" (Drobnjak et al., 2008, p. 7). In the said Convention on the Elimination of All Forms of Discrimination against Women (1981), the term *discrimination* against women is defined as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of obstructing, or nullifying the recognition, enjoyment or exercise of human rights and fundamental freedoms by women in political, economic, social, cultural, civil or any other field, regardless of their marital status and on the basis of equality of women and men."

The prohibition of discrimination on the basis of sex in the sphere of work "must be viewed through the prism of special protection at work and special working conditions. Such protection and working conditions lead to different treatment of employees, but this is not considered discriminatory since it is justified by biological and physiological reasons and by the need to enable the exercise of the parental role by providing support for all roles that women (and men) have in a democratic society, without being marginalized in the sphere of work" (Radovanović, 2020, p. 95). Genuine equality for employees of both sexes "can be achieved only if special protection is truly aimed at providing support and assistance" (Radovanović, 2014, p. 231).

3. Legal standards for the protection of maternity, maternity leave and leave from work for child care, special care of a child or another person

Legal standards for the protection of maternity, maternity leave and leave from work for child care, special care of a child or another person are contained in the Labour Law (2005), which represents lex *generalis* in the field of labour. Special protection of women in labour law "is reflected in a woman's right to be exempt from performing certain tasks under specific conditions, as well as in the right not to get lay off during pregnancy, maternity leave and leave for child care, and to keep her job upon returning to work after the expiry of such leave" (Rajić Ćalić, 2019, p. 338).

Maternity protection is regulated by the provisions of Articles 89-93a, in such a way that an employee during pregnancy and an employee who is breastfeeding may not perform work which, according to the findings of the competent health authority, is harmful to her health, or the health of the child, in particular work that involves lifting heavy loads, or work involving harmful radiation, or exposure to extreme temperatures and vibrations. The employer is obligated to provide the employee with other suitable work, and if no such work is available, to send her to paid leave. Furthermore, an employee during pregnancy and an employee who is breastfeeding may not work overtime, or at night if such work would be harmful to her health, or the health of the child, based on the opinion of the competent health authority. An employee during pregnancy is entitled to paid leave during the working day for the purpose of undergoing health examinations related to pregnancy, as determined by the chosen physician in accordance with the law, and is obligated to duly notify the employer thereof. The Law also regulates the situation whereby one of the parents of a child up to three years of age may work overtime, or at night only with his or her written consent. Likewise, a single parent with a child up to seven years of age or a child with a severe disability may work overtime, or at night, only with his or her written consent. The employer may redistribute working hours for a female employee during pregnancy and for an employed parent with a child under three years of age, or a child with a more severe degree of psychophysical disability, only with the employee's written consent.

All of the aforementioned rights, in accordance with statutory provisions, also apply to adoptive parents, foster parents, and guardians of a child.

Finally, the employer is obligated to provide a female employee who returns to work before the child reaches one year of age, with the right to one or more daily breaks during the working day, 90 minutes in total, or with a reduction of daily working time by 90 minutes, in order to allow her to breastfeed her child, provided that the employee's daily working time amounts to six hours or more. The break or reduced working time is counted as working time, and compensation on this basis is paid in the amount of the basic salary, increased for years of service.

Maternity leave and leave from work for child care are regulated by Articles 94-95 of the Labour Law (2005). Namely, a female employee is entitled to leave from work due to pregnancy and childbirth (maternity leave), as well as leave from work for child care, in a total duration of 365 days. A female employee may commence maternity leave, on the basis of the findings of the competent health authority, no earlier than 45 days, and by rule 28 days, before the expected date of childbirth. Maternity leave lasts until three months from the date of childbirth. The Law also regulates the situation in which the father of the child may exercise this right in cases where the mother abandons the child, dies, or is for other justified reasons prevented from exercising this right (serving a prison sentence, serious illness, etc.). The father of the child is also entitled to this right when the mother is not employed.

Upon the expiry of maternity leave, a female employee is entitled to leave from work for child care until the expiry of 365 days from the date of commencement of maternity leave referred to in paragraph 2 of this Article. The father of the child may also exercise this right. During maternity leave and leave from work for child care, the female employee, or the father of the child, is entitled to salary compensation in accordance with the law.

A female employee is entitled to maternity leave and leave from work for child care for the third and each subsequent newborn child in a total duration of two years. The right to maternity leave and leave from work for child care in a total duration of two years also belongs to a female employee who gives birth to three or more children in her first childbirth, as well as a female employee who has given birth to one, two or three children and in a subsequent childbirth gives birth to two or more children. The father of the child may also exercise these rights. Finally, a female employee is entitled to maternity leave until three months from the date of childbirth if the child is stillborn, or dies before the expiry of maternity leave.

Leave from work for special care of a child or another person is regulated by Articles 96-100 of the Labour Law (2005). In accordance with these provisions, one of the parents of a child who requires special care due to a severe degree of psychophysical disability, except in cases provided for by health insurance regulations, is entitled, after the expiry of maternity leave and leave from work for child care, to be absent from work, or to work half of full-time working hours, for a maximum period until the child reaches five years of age. Likewise, a foster parent or guardian of a child under five years of age is entitled, for the purpose of child care, to be absent from work for eight consecutive months from the day the child is placed in a foster or guardianship family, and at the latest until the child reaches five years of age. If the placement in a foster or guardianship family occurred before the child reached three months of age, the foster parent, or guardian is entitled to be absent from work for the purpose of child care until the child reaches 11 months of age. These rights also belong to a person to whom a child has been referred for adjustment, prior to the establishment of adoption, in accordance with adoption regulations, and after the establishment of adoption – to one of the adoptive parents.

The Law also regulates the situation in which a parent or guardian, or a person caring for an individual with cerebral palsy, poliomyelitis, a form of plegia, or suffering from muscular dystrophy or other serious illnesses, may, on the basis of the opinion of the competent health authority, and at their own request, work part-time, but not for fewer than half of full-time working hours. The right to leave for special care of a child also belongs to one of the adoptive parents, foster parents or guardians of a child if, given the degree of psychophysical disability, the child requires special care. In addition, one of the parents, adoptive parents, foster parents or guardians is entitled to be absent from work until the child reaches three years of age.

In addition to the aforementioned provisions of the Labour Law (2005), the Rulebook on detailed conditions, procedure and manner of exercising the right to leave from work, or to work half of full-time working hours for the purpose of special care of a child (2018) lays down the detailed conditions, procedure and manner of exercising the right to leave from work, or to work half of full-time working hours for the purpose of special care of a child, as well as the right to other benefits related to special care of a child; it also regulates the composition, jurisdiction and manner of operation of the commission that issues opinions on the degree of impairments in the psychophysical development and disability of a child and on the level of functionality of children with developmental disabilities and disabilities, as well as other issues of importance for the exercise of these rights. Furthermore, it is necessary to emphasize the importance of the provisions of the Law on financial support to families with children (2017), which regulates financial support to families with children, granted for the purposes of: improving conditions for meeting children's basic needs; balancing work and parenthood; providing special incentives and support to parents to achieve the desired number of children; and improving the material position of families with children, families with children with developmental disabilities and disabilities, and families with children without parental care.

4. Criminal-law treatment of violations of rights arising from employment and social insurance

Criminal offences against rights arising from employment are foreseen in Chapter Sixteen of the Criminal Code (2005), in Articles 163-169. The group object of criminal-law protection consists of certain rights of persons in an employment relationship. The criminal-law treatment of offences directed against rights arising from employment in Serbia includes laying down and regulation of a total of seven criminal offences. The offences in this group may be divided into: “criminal offences by which employees are obstructed or prevented from exercising their rights; criminal offences related to work that endanger the life and health of employees; and the criminal offence of abuse of right – the abuse of rights arising from social insurance” (Mrvić Petrović, 2019, p. 113). The offence of violation of rights arising from employment and social insurance under Article 163 falls into the first group of criminal offences.

Stojanović (2020) emphasizes that criminal law is “usually not closely linked to labour law, so in criminal offences against rights arising from employment the accessory nature of criminal law is clearly evident, in the sense that the rights protected by these criminal offences are not created by criminal law, either substantively or terminologically, which results in the blank nature of these criminal offences” (p. 556). As a rule, legal theory points out that criminal legislation is “the last mechanism we should to resort to only in exceptional situations when it is obvious that no other legal remedy can protect the worker and stop the violations of regulations, or rectify the damage caused” (Jovanović & Reljanović, 2023, p. 10).

The prescribing of the criminal offence of violation of rights arising from employment and social insurance “aims to protect, in a general manner, the system of employment relations as a whole” (Stevanović, 2021, p. 168). In accordance with this approach, this criminal offence is considered the basic incrimination in the entire chapter.

The Criminal Code (2005) regulates the criminal offence of violation of rights arising from employment and social insurance in Article 163 as follows: “Whoever knowingly fails to comply with the law or other regulations, collective agreements, or other general acts concerning rights arising from employment and special protection at work of youth, women and persons with disabilities, or rights arising from social insurance, and thereby deprives another persons of, or restricts a right to which they are entitled, shall be punished by a fine or imprisonment of up to two years.”

The object of criminal-law protection and the object of the act of the criminal offence are the rights that belong to the worker on the basis of work and the employment relationship, as well as rights arising from social insurance. The act of committing an offence consists of any form of conscious non-compliance with the law and other regulations. The very disposition of the offence is “divided into three segments: rights arising from employment; special protection of youth, women and persons with disabilities; and rights arising from social insurance" (Jovanović & Reljanović, 2023, p. 29). The blanket nature of the criminal offence "refers to the application of both labour-law and social-law statutory and by-law acts, as well as regulations of an autonomous nature (work regulations, collective agreements) that regulate rights arising from employment" (Stevanović, 2021, p. 169).

By the offender's act, "it is necessary that the consequence of the criminal offence is achieved, manifesting itself in the non-exercise or partial exercise of a certain right of employees" (Mrvić Petrović, 2019, p. 115). Accordingly, it may be concluded that the object of the criminal act are the workers' rights. The criminal offence may be committed exclusively knowingly and with intent, and with regard to who may be the offender, Mrvić Petrović (2019) states that "in practice, the offender will be by rule an official, or responsible person, who decides on the rights arising from an employment relationship, or a private employer" (p. 115). The offenders may also include "the officials of social insurance funds, as well as other institutions that directly or indirectly decide on the rights arising from social insurance" (Reljanović, 2024, p. 264). Starting from the thesis that the "employer is the dominant party in relation to the worker, particularly in the economic and organizational aspects, there is an indisputable tendency of the legislator to provide protection primarily to workers through this criminal provision. Nevertheless, since the performance of work is, in both legal and sociological-economic terms, a bilateral relationship, it is important to bear in mind that the rights arising from employment also include rights that, on that very basis, belong to the employer as well" (Stevanović, 2021, p. 171).

If statistical indicators relating to this criminal offence are examined, it can be noted that this offence is "by far the most prevalent in practice when it comes to criminal offences in the field of labour, accounting for approximately 85% of all filed criminal complaints, or about 82% of all accused persons, for the period 2012-2021. In the period 2013-2022, a total number of 238 persons were convicted for committing this criminal offence (including ancillary penalties), which also constitutes a convincing majority among criminal offences in the field of labour (for all other offences, a total number of 39 persons were convicted)" (Reljanović, 2024, p. 264). However, as Reljanović (2024) further points out, "such a situation does not indicate the efficiency of the judiciary, but rather the complete neglect of the prosecution of other criminal offences in this field. Furthermore, there is a number of criminal offences for which no one has been convicted for years, or for which an extremely small number of persons have been convicted, even though many of them have been clearly documented by the media, civil society organizations, legal clinics, as well as through the reports of the labour inspectors. For example, in the period 2016-2021 there was no a single judgment for the criminal offence under Article 166 – violation of the right to strike, although several cases are documented each year in which employers unlawfully restrict the right to strike. The same applies to the criminal offence under Article 169 – failure to undertake occupational safety measures, for which a total of three persons were convicted in the period 2012-2021 (no one in the period 2015-2020)" (p. 265).

5. Conclusion

The rights to special protection of maternity, maternity leave and leave from work for child care, as well as for special care of a child or another person, are regulated by the provisions of labour law and are grounded in constitutional provisions. The essence of the existence of these provisions lies in the protection of the best interests not only of the mother, and not only of the child, but of the family as a whole.

The Labour Law (2005), as well as the provisions of other laws and by-laws referred to in this paper, are aligned with the provisions of ratified international sources and provide protection of maternity, as well as the right of an employed woman to maternity leave and leave for child care, including special care of a child or another person. Through its provisions, the Law also protects the rights of the father of the child, the guardian, the foster parent and the adoptive parent in situations that are precisely defined in this field. The purpose of protecting an employed woman during pregnancy and after childbirth is, in fact, to contribute to the elimination of any discriminatory effects on the part of employers based on the reproductive role that women have in society. The protection of the mother, or the parent, and in certain situations the guardian, foster parent or adoptive parent, is essentially the protection of the family and children during the most vulnerable period of life, or during periods when care is most needed. From all of the above, it can be concluded that the essence of the right to maternity protection is, in fact, the protection of the best interests of the mother and the child, as well as of the family as a community that most fully and effectively cares for all of its members.

In addition to the theoretical analysis of the protection of women at work and in connection with work and the right to work, this paper, through the application of a normative methodological approach, also presents the statutory standards of protection of maternity, maternity leave and leave from work for child care, special care of a child or another person, as well as the basic issues related to the criminal-law treatment of violations of rights arising from employment and social insurance. Namely, although criminal legislation is considered *ultima ratio*, that is, a mechanism to be resorted to last among various available options, the prescribing of criminal offences in this area is certainly necessary in every national legal system. In the Criminal Code (2005), in the chapter entitled “Criminal offences against Rights rrising from employment,” a total of seven criminal offences are prescribed and regulated. The paper places special emphasis on the criminal offence under Article 163 – violation of rights arising from employment and social insurance, which is considered the basic incrimination within the entire chapter.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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

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RADNOPRAVNO UREĐENJE ZAŠTITE MATERINSTVA U SRBIJI I KRIVIČNOPRAVNI TRETMAN POVREDE PRAVA PO OSNOVU RADA I PRAVA IZ SOCIJALNOG OSIGURANJA

APSTRAKT: Prava na posebnu zaštitu materinstva, na porodiljsko odsustvo i odsustvo sa rada radi nege deteta, te radi posebne nege deteta ili druge osobe uređena su odredbama radnog prava, a utemeljena su u ustavnim odredbama. Suština postojanja ovih odredaba ogleda se u zaštiti najboljeg interesa ne samo majke, i ne samo deteta, već celokupne porodice. U radu su pored teorijske analize zaštite žene na radu i u vezi sa radom i prava na rad, primenom normativnog metodološkog pristupa, predstavljeni i zakonski standardi zaštite materinstva, porodiljskog odsustva i odsustva sa rada radi nege deteta, posebne nege deteta ili druge osobe, kao i osnovna pitanja u vezi sa krivičnopravnim tretmanom povrede prava po osnovu rada i prava iz socijalnog osiguranja, koja se smatraju osnovnom inkriminacijom u celom poglavlju.

Ključne reči*: zaštita materinstva, zaštita žene na radu i u vezi sa radom, pravo na rad, radno zakonodavstvo, krivično zakonodavstvo.*

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ROMAN LAW FOUNDATIONS OF THE MODERN INSTITUTION OF PERSONAL SERVITUDES

...modern European law sails under Justinian's flag. [1]

ABSTRACT: Although servitudes did not originally emerge in Roman law, but much earlier, Roman law laid the legal foundations for this institution, as well as for the majority of legal institutions that, through the influence of Roman legal history and tradition, were subsequently received into modern legal systems, including the contemporary legal system of the Republic of Serbia. Following the division of the Roman Empire, Serbia relied politically, culturally, religiously, and legally on its eastern part, the so-called Eastern Roman Empire, better known as the Byzantine Empire. Although medieval Serbian law was initially archaic and predominantly customary in nature, through the reception of institutions from Byzantine law, servitudes gradually found their place within the legal system of medieval Serbia. A major milestone in the reception of Roman law institutions was the enactment of the Serbian

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[1] Stanojević, O. (2003). *Rimsko pravo* [*Roman Law*]. Sarajevo: Pravni fakultet Univerziteta u Sarajevu. p. 95.

Civil Code of 1844, through which traditional Roman law institutions were implemented indirectly via the Austrian Civil Code. Contemporary Serbian law continues its course under the sails of Roman law and, as such, belongs to the family of continental European legal systems, whose origins, spirit, and tradition are rooted in the Roman state and legal heritage. In this manner, the Roman Empire, as the cradle of modern civilization, continues to live on today through its legal institutions. Roman law recognized two forms of servitudes: predial (land) servitudes and personal servitudes. By employing historical, analytical, and comparative methods, the co-authors aim to present the historical development and significance of the institution of personal servitudes from the period of Roman law to contemporary legislative solutions, with the purpose of emphasizing the universality of the Roman legal legacy.

Keywords: *servitudes, Roman law, Serbian Civil Code, legal history.*

1. On the universality and reception of Roman law

Much has been written in legal literature about the significance of Roman law and its influence on contemporary legal systems, thereby giving rise to the justified questions of the actual role and impact of Roman law on positive law, as well as whether it is at all well-founded to speak of the universality of Roman law. The answer to these questions is rather straightforward when one compares the institutions of civil law in ancient Rome with those existing today. One such institution is that of *servitudes*. The institution of servitudes, although one of the oldest, may be traced from the Law of the Twelve Tables to Justinian law, and possesses a 'universal character.' There is scarcely any institution of Roman law that has become such an integral part of modern legal systems (Stanković & Vladetić, 2018, p. 388). Roman law belongs to the treasury of antiquity and represents one of the greatest achievements of the ancient world, alongside Greek philosophy and art, not only because of its intrinsic value, but also due to its influence on the legal history of Europe and the world. However, it did not emerge from nowhere, just as Greek philosophy did not (Stanojević, 2003, p. 5). Latin legal terminology is universally accepted in contemporary legal scholarship, owing to the genius of Roman jurists who, in a concise and clear manner, through maxims and legal aphorisms, succeeded in explaining fundamental legal principles and concepts (Stefanović, 2025, p. 19). The analysis of the Roman legal heritage provides a unique opportunity to reconsider and reassess its role and significance, with the aim of once again emphasizing the importance of Roman law and highlighting the sophistication of a legal system whose institutions have endured for more than two millennia.

However, the reception of Roman law was neither rapid nor systematic. It proceeded gradually, in a partial and rather spontaneous manner, conditioned by the practical need for the legal regulation of social relations lying beyond the scope of customary law. The Germanic peoples who established states on the territory of the Western Roman Empire possessed their own customary law. Roman law, applied by the existing Romanized population, as well as the law codified in the compilations of Germanic rulers, remained in practice for a certain period of time; however, it was eventually displaced by Germanic customs and largely fell into oblivion. Owing to the civilizational development of these peoples, a need arose for a more developed legal system, and the rules of Roman law, which legal schools beginning with the glossators had rescued from oblivion, gradually began to be reapplied in practice. Those parts of Roman law which regulated newly emerging social relations not governed by customary law were particularly accepted (Malenica & Deretić, 2011, p. 127). The greatest significance in the reception of Roman law was attributed to Justinian's codification. Within the Corpus Iuris Civilis, the entire legal heritage of the classical Roman period was codified, thereby preserving, in its original form, the most important achievements of Roman juristic theory of that period (Zorić & Župljanić, 2019, p. 82). The establishment of a universal Roman Empire represented the perpetual aspiration of the Byzantines. Justinian's restoration gave the most magnificent expression to this aspiration. Consequently, it has always remained in the consciousness of the Byzantines as their most glorious memory (Ostrogorski, 1969, p. 88).

The reception of Roman law took place gradually and in distinct stages. As Obolensky observes: "The acceptance of Byzantine law in the countries of the Eastern European community may be viewed within the context of two broader historical phenomena: the spread of Byzantine civilization throughout these lands and the 'reception' of Roman law across medieval Europe as a whole. Byzantine law, regardless of the extent to which it was revised and interpreted throughout the history of the Empire, remained firmly grounded in Justinian's codification of Roman law. The same fundamental body of law that prevailed in Eastern Europe during the Middle Ages, and in certain regions even survived the fall of Constantinople, continued to exist in Italy, Spain, and Southern France during the so-called 'Dark Ages,' ultimately becoming, in the twelfth and thirteenth centuries, part of the common heritage of Western civilization" (Obolensky, 1996, p. 375). Subsequently, during the nineteenth century, the reception of Roman law proceeded through the great European civil codifications. The territories within the Austro-Hungarian Monarchy became acquainted with the institutions of Roman law primarily through the French Code Civil and the Austrian Civil Code, the latter of which served as a model for Jovan Hadžić in drafting the Serbian Civil Code. Due to the absence of adequate contemporary legislation governing the field of personal servitudes, the provisions of the Serbian Civil Code still constitute the primary legal source relied upon by courts in the Republic of Serbia. This creates room for broad judicial interpretation of archaic legal norms, the rendering of inconsistent judgments, and legal uncertainty.

Considering that Roman law constitutes the foundation of every democratic society, the reception of Roman law continues today through the process of harmonizing Serbian positive law with the law of the European Union. This represents a comprehensive, long-term, and legally binding process arising from the Stabilisation and Association Agreement. The process entails the gradual adaptation and harmonization of domestic legal regulations with the legal acquis and fundamental legal principles of the European Union (*acquis communautaire*), with the aim of ensuring compatibility and the proper application of legal norms, which constitutes a key prerequisite for membership in, and accession to, the democratic family of European states.

2. Roman law concept of personal servitudes

Gaius' tripartite division of law into persons, things, and actions (*Omne ius quo utimur vel ad personas pertinet, vel ad res, vel ad actiones*) (Gaius, 1982, p. 24), which was later adopted by Justinian in the Institutes, constitutes the foundation of legal systematics. This classification was subsequently received in the French (1804), Austrian (1811), Serbian (1844), and Swiss (1912) civil codes. Within the law relating to things, a special place is occupied by real rights over the property of another (*iura in re aliena*) (although a more precise term would be "rights in the property of another"). These are absolute rights, operating *erga omnes*. The essential distinction between these rights and ownership lies in the fact that ownership is based on one's own thing, whereas *iura in re aliena* confer only a portion of proprietary powers, exercised over another person's thing rather than one's own. In other words, the right-holder acquires only certain faculties of use over another's property, while the ius abutendi, understood as the right of disposal, remains with the owner. As real rights, personal servitudes are also enforceable against third parties (erga omnes), who are under a duty of abstention. However, in addition to their predominantly proprietary elements, these servitudes also contain certain obligations-based elements, making them a complex legal institution

(Medić, 2017, p. 604). Roman jurists classified iura in re aliena into servitudes (*servitutes*), pledge (*pignus*), superficies, and emphyteusis. Pledge differs from other real rights over the property of another in that it serves as a means of securing the creditor, whereas servitudes, superficies, and emphyteusis constitute rights of use over another's property (Stefanović, 2025, p. 190).

The origin of servitudes "owes itself" to the practical nature of the Romans and their ability to resolve legal problems as they arose in practice. In their efforts to resolve concrete cases, the Romans extensively drew upon Greek rhetoric, philosophy, and logic (Vuletić, 2015, p. 257). Servitudes are defined as civil real rights which restrict the owner's use of a thing (Milošević, 2005, p. 242), and as such emerged out of the need to regulate disputes arising between neighbours in ancient Rome. Initially, in Rome, immovable property was required to be separated by a physical space belonging to neither of the neighbouring owners. For urban immovables, this space was known as the *ambitus*. As time passed and Rome grew into a densely populated metropolis, such a system became unsustainable (Perelló, 2013, p. 607). In order to enable more rational use of urban land, the ambitus was replaced by a boundary demarcation between plots in the form of a wall, referred to as a "common wall" (*paries communis*), which was considered jointly owned by both neighbours, thereby giving rise to new legal rules governing such structures. These walls were often constructed with arches (paries fornicatus) designed to strengthen their structure, but also to allow passage between the two properties, i.e., land parcels. However, any unauthorised interference with another's property (*facere in alieno*) was prohibited. In order to perform any act on a neighbour's property, the establishment of a servitude was required, i.e., a legal entitlement granted in favour of a non-owner, whereby the holder of the servitude was allowed to have the thing "serve" him. It is from this idea that the term "servitude" originates, both in Serbian and in Latin: *servire* – to serve.

2.1. Predial (Real) Servitudes

The Roman concept of servitudes, as received and further developed in Justinianic law, encompassed two categories: predial (real) servitudes and personal servitudes. This is evident from the maxim of Marcian in the Digest: *Servitutes aut personarum sunt, ut usus et usus fructus, aut rerum, ut servitutes rusticorum praediorum et urbanorum* ("Servitudes are either of persons, such as use and usufruct, or of things, such as servitudes of rural and urban estates") (Stojčević & Romac, 1971, p. 458). "In Roman law, predial servitudes emerged first. With the emergence of private ownership, resulting from the division of previously collective property, the need for such servitudes arose" (Kočan, 2014, p. 247). The establishment of predial servitudes (*servitutes praediorum*) required the existence of two estates: the servient estate and the dominant estate. A predial servitude is established over one parcel of land, referred to as the servient estate (*praedium serviens*), in favour of the owner of another parcel, referred to as the dominant estate (*praedium dominans*). Roman law recognizes two types of predial servitudes: rural and urban servitudes. The criterion for this distinction lies in the character of the dominant estate: any agricultural land fell under rural servitudes, even if located within the boundaries of a city, whereas if buildings were erected on a parcel of land, the servitude was classified as urban, even if the land was situated in a rural area (Stefanović, 2025, p. 191). Stanojević systematically enumerates rural and urban servitudes: Rural servitudes arose earlier, some being already known at the time of the Law of the Twelve Tables: *iter* (the right of passage on foot over another's property), *via* (the right of passage with vehicles, a right of way), *actus* (the right to drive cattle), aquaeductus (the right to conduct water through another's property), and *aquaehaustus* (the right to draw water from another's source). Urban servitudes developed in connection with urbanization and the expansion of the city of Rome, facilitating the use of buildings and urban land. These include servitudes such as the right to support a building on a neighbour's wall, the right to extend a balcony over another's airspace, and the right to discharge rainwater into a neighbour's yard (Stanojević, 2003, p. 225).

2.2. Personal Servitudes

Personal servitudes are attached to the person and arise in order to secure a benefit for a specific individual in relation to another's property. As these are strictly personal rights, the Romans considered that personal servitudes could not be transferred either *inter vivos* or *mortis causa*. "Different forms of servitudes were subject to different modes of acquisition, the most common being testament, contract, and judicial decision" (Stefanović, 2019, p. 52). Personal servitudes constitute an institution comprising three real rights: usufruct (*ususfructus*), use (*usus*), and habitation (*habitatio*). They originated from the need to provide for wives after the husband's death and for female children after the father's death, who for a long historical period held an unequal inheritance position in relation to husbands and male descendants (Lazić, 2000, p. 1). Some authors also classify within personal servitudes the right to use another's slave or animal (*operae servorum vel animalium*), which grants the holder the right to make use of another's slave or animal. It is considered that the origins of personal servitudes lie in the desire of property owners to provide material security for close persons after their death, by granting them, through a legacy, a lifelong right to use property which is otherwise bequeathed in its entirety to the heirs by testament. As universal successors, they became owners of the estate, but subject to a burden which temporarily limited their ownership rights (Bujuklić, 2011, p. 265). It is noteworthy that in classical Roman law usufruct (*ususfructus*), use (*usus*), and habitation (*habitatio*) were regarded as separate rights rather than servitudes, with usufruct in particular excluding any ownership rights over the thing itself, being limited exclusively to the entitlement to collect its fruits.

3. Usufruct (*ususfructus*)

In Justinian's Institutes, usufruct (*ususfructus*) is defined as a personal servitude whereby the holder acquires the right to use and enjoy the fruits of another's property, without impairing its substance – *Usus fructus est ius alienis rebus utendi fruendi, salva rerum substantia* (Justinijanove Institucije 2.4, according to Stojčević & Romac, 1971, p. 510). This definition, although centuries old, remains highly relevant and applicable today. It was received through the Serbian Civil Code and its interpretation by Jovan Hadžić in Article 374 of the SCC: *He to whom the right of enjoyment of another's thing belongs may enjoy the thing without limitation, provided that its substance is not impaired* (Živković, 2014, p. 182). In contrast to the view presented in Justinian's Institutes, Gaius held that the usufructuary could not acquire ownership by usucaption, because he did not possess possession (detentio), but only the right of use and enjoyment (*ius utendi fruendi*) (Gaius, 1982, p. 113). We consider Gaius' definition to be more precise and more reflective of the nature of usufruct, since if a person, for example, uses a thing under usufruct and exploits it by extracting sand from a riverbank or quarrying stone, he is in substance affecting the very essence of the thing, which is prohibited under the Justinianic definition. For this reason, Gaius' definition appears more adequate, more general, and therefore of greater practical applicability.

Originally, usufruct could be established only in favour of a natural person; however, under Justinian law it was extended to legal persons as well, though for a duration not exceeding one hundred years. The usufructuary was entitled to the fruits of the thing (*fructus naturales and fructus civiles*), including the offspring of animals, but not the child of a female slave. In the case of slaves, everything acquired by the slave through the use of the usufructuary's property or through his own labour belonged to the usufructuary, whereas acquisitions obtained on any other basis belonged to the owner. Usufruct was a personal, non-transferable right (except through *in iure cessio*), although the exercise of usufruct could be transferred by lease, sale, or gift (Lazić, 2000, p. 26).

The bundle of rights held by the usufructuary consists of *usus* and *fructus*, i.e. *ius utendi* and *ius fruendi*. The usufructuary was entitled to use the thing in the ordinary manner and to collect its fruits. His obligations were numerous: he had to maintain the servient property and bear the necessary maintenance costs, to act with the diligence of a good head of household (*bonus pater familias*), not to alter the economic purpose of the thing through its use, and to undertake to return the thing upon termination of the usufruct "without impairing its substance" (*salva rerum substantia*). The owner retained the right of disposal (*ius abutendi, abusus*), however, since he exercised no factual control over the thing, what remained to him was merely "bare ownership" (*nuda proprietas*), i.e. the owner is left only with the power of full disposition – transfer of ownership, while all benefits derived from the thing belong to another subject (Slijepčević, 2022, p. 3). The object of usufruct may be both movable and immovable property. The essential requirement is that it must be a non-consumable thing, since upon termination of usufruct the holder must return the thing in its identical, unchanged condition. However, during the Principate this rule was modified. Usufruct could also be established over consumable things (*res consumptibiles*), in which case it was referred to as "improper usufruct" (*quasi ususfructus*), later termed by Pandectist scholarship as ususfructus *irregularis*. Unlike ordinary usufruct, where the usufructuary must return the same thing to the owner, in improper usufruct the holder is obliged, upon termination, to return things of the same kind, quality, and quantity. There is also an important distinction between the two forms: while "proper" usufruct has a proprietary (real right) character, "improper" usufruct constitutes an obligational legal relationship.

4. Right of Use (*Usus*)

A key characteristic of the Roman legal tradition is undoubtedly the evolution and transformation of legal institutions, driven by the demands of everyday life, the development of commercial relations, and the emergence of commodity-money relations. This development also extended to the right of use (*usus*). Initially, the holder of the right of use (*usuary, usuarius*) possessed an entitlement which Ulpian formulated in the following maxim: He who has been granted the right of use may use the thing, but has no right to collect its fruits (*Cui usus relictus est, uti potest, frui non potest*) (Ulpian, D. 7.8.2 according to Stojčević & Romac, 1971, p. 510). A dilemma that persists to this day troubled the classical jurists, and the first attempt to define the scope of this right is found in Labeo, a contemporary of Augustus. He examines a situation in which the right of use of a rural estate is granted and highlights two essential characteristics of the right: (1) that it cannot be equated with usufruct, since its scope is narrower; and (2) that it produces the effects of a personal servitude *erga omnes*. This is reflected both in its positive aspect, namely the exclusive right to use a wine and oil storage facility, and in its negative aspect, namely the right to exclude the owner from access to the estate (Stanojlović, 2023, p. 159). Although Labeo's definition more precisely clarifies the content of the right of use compared to Ulpian's view, it still does not fully determine the scope of the usuary's powers. As the right of use proved impractical, particularly in relation to objects that cannot be used without simultaneously taking their fruits (e.g., cows or olive groves), it was gradually extended to include the collection of fruits, but only to a minimal extent, namely as much as is "sufficient for one's own subsistence and that of one's family" (*quod ad victum sibi suisque sufficiat*), as stated by Ulpian in Book 17 of his *Libri ad Sabinum* (*The Roman Law Library – Ulpian, libro 17 ad Sabinum, 2025*).

5. Right of Habitation (*Habitatio*)

The right of habitation also constitutes a personal servitude recognized under Roman law, whereby the holder of the right (the habitant) acquires a real right to reside in and use another person's house (residential premises) for his own needs and those of his family members. Given that this is a real right rather than an obligational relationship, the right of habitation was most commonly established by legacy or donation. Habitatio, unlike other personal servitudes (*usus*-right of use, and *ususfructus*-usufruct), did not terminate upon *capitis deminutio*-loss of the holder's legal status, nor upon non *usus* – non-exercise of the right. Prior to Justinian, the legal nature of this servitude was disputed and was often equated with ownership. However, from Justinian onwards, it was treated as an independent real right over another's property, which could not be transferred to third parties (Kecman & Piljić, 2025, p. 212).

6. Conclusion

Personal servitudes constitute an important institute of property law that has existed for centuries and grants their holders the right to use another person's property as servient property, without the entitlement to affect or consume the substance of the encumbered thing. Roman law recognized three forms of personal servitudes: usufruct (*ususfructus*), use (*usus*), and the right of habitation (*habitatio*). The importance of adequate regulation of personal servitudes is evident from the very fact that they impose limitations on ownership and on the proprietary powers of the owner of the encumbered property. The usufructuary is entitled to usufruct, the user (*usuary*) is entitled to use the thing, while the holder of the right of habitation (*habitant*) is entitled to reside in the property. The owner of the encumbered thing is left with nothing but "bare ownership" (*nuda proprietas*). Each of the holders acquires specific real rights over the encumbered property. Thus, the usufructuary is entitled to full use of the servient thing and to collect its fruits. The use of the servient thing involves more limited powers compared to usufruct; accordingly, the usuary may use the thing within the scope of personal or family needs, and may hold possession or co-possession over it. The habitant also has the right to possession or co-possession of the servient property, which he may exercise exclusively through habitation, without any right to collect its fruits.

In modern law, among the three personal servitudes known to Roman law, usufruct has the greatest practical significance. However, adequate statutory regulation of this important institute was lacking in the post-war period. Consequently, the prevailing judicial practice, based on the Law on the Invalidity of Legal Provisions Enacted before 6 April 1941 and during the Enemy Occupation, is to apply the provisions of the Serbian Civil Code by analogy to all issues concerning usufruct. Such a solution has caused confusion in practice, as courts have rendered divergent and inconsistent judgments, which ultimately undermines legal certainty. It is our view that *de lege ferenda* it is necessary to improve the legal framework and comprehensively regulate all relevant issues concerning personal servitudes, given that these institutes had their place in legal systems two millennia ago, whereas this is not the case in contemporary positive Serbian law.

Conflict of Interest

The authors declare that they have no conflict of interest.

Author Contributions

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RIMSKI PRAVNI TEMELJI SAVREMENOG INSTITUTA LIČNIH SLUŽBENOSTI

APSTRAKT: Iako izvorno službenosti nisu nastale u rimskom pravu, već mnogo ranije, ono je postavilo pravne temelje, kako ovog tako i većine pravnih instituta, koji su na talasu rimske pravne istorije i tradicije recipirani u savremene pravne sisteme, uključujući i postojeći pravni sistem u Republici Srbiji. Nakon podele Rimskog carstva Srbija se politički, kulturološki, religijski i pravno oslanjala na istočni deo carstva, tzv. Romejsko carstvo, poznatije pod imenom Vizantija. Iako je u početku srednjovekovno srpsko pravo bilo arhaično, mahom običajno, recepcijom instituta iz vizantijskog prava, službenosti polako pronalaze svoje mesto u pravu srednjovekovne Srbije. Veliki značaj u recepciji instituta rimskog prava obeležilo je donošenje Srpskog građanskog zakonika 1844. godine, implementacijom tradicionalnih instituta rimskog prava, posrednim putem, preko Austrijskog građanskog zakonika. Savremeno srpsko pravo i danas plovi pod jedrima rimskog prava i, kao takvo, spada u porodicu evropskokontinentalnih prava, koje svoje poreklo, duh i tradiciju pronalazi u rimskom državnom i pravnom nasleđu. Na taj način, Rimsko carstvo, kao kolevka savremene civilizacije, kroz svoje pravne institute, živi i danas. Rimsko pravo je poznavalo dva oblika službenosti: stvarne (zemljišne) i lične. Cilj koautora jeste da upotrebom istorijskog, analitičkog i komparativnog metoda prikažu istorijski razvoj i značaj instituta ličnih službenosti od perioda rimskog prava do savremenih legislativnih rešenja, a sve u nameri da ukažu na univerzalnost rimske pravne zaostavštine.

Ključne reči*: službenosti, rimsko pravo, Srpski građanski zakonik, pravna istorija.*

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THE ETHICS OF FAMILY RELATIONS IN CONTEMPORARY SERBIA AND THE INFLUENCE OF THE SERBIAN ORTHODOX CHURCH

ABSTRACT: The contemporary family in Serbia is undergoing a complex process of transformation shaped by profound social, economic, and cultural changes. Processes of modernization, globalization, and secularization significantly affect traditional family roles and the ethical norms governing family relations. In this context, the Serbian Orthodox Church represents one of the key social actors seeking to preserve and transmit traditional moral values related to marriage, parenthood, and family solidarity. The subject of this paper is the analysis of the relationship between ethical norms, religious teachings, and the legal protection of the family in contemporary Serbia. The main research question is: To what extent and in what way does the Serbian Orthodox Church actually influence the ethics of family relations within the framework of a secular state governed by the rule of law? The specific contribution of the paper lies in its interdisciplinary approach, which connects ethics, sociology, religion, and family law, with

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the aim of demonstrating how the moral authority of the Church is exercised within the framework of the constitutional protection of the family and the value pluralism of contemporary society. The methodology is based on the analysis of relevant domestic and foreign literature, as well as on a critical examination of contemporary social processes in Serbia.

Keywords: *family, ethics, Serbian Orthodox Church, family law, contemporary society.*

1. Introductory

The family, as the basic unit of society, has always represented a central space for the formation of moral values, cultural patterns, and social identities. In Serbian society, the family holds particular significance as a bearer of tradition, national and religious identity, but also as a sphere in which the consequences of contemporary social changes are most clearly reflected. Contemporary processes of modernization, globalization, and secularization have led to significant transformations of family relations. Changes in the understanding of marriage, parenthood, and gender roles open new ethical dilemmas and raise the question of the sustainability of traditional moral patterns. The subject of this paper is the analysis of the relationship between ethical norms, religious teaching, and the legal protection of the family in contemporary Serbia. The main research question is: to what extent and in what way does the Serbian Orthodox Church today truly influence the ethics of family relations within the framework of a secular and rule-of-law state? The specific contribution of the paper lies in the interdisciplinary integration of ethics, sociology, religion, and family law, with the aim of demonstrating how the moral authority of the Church is exercised within the framework of constitutional protection of the family and the value pluralism of modern society.

2. The Family as a Social and Cultural Institution

The family represents one of the oldest and most stable social institutions, which, in different historical and cultural contexts, has played a key role in the reproduction of society, the socialization of individuals, and the transmission of moral and cultural values. In classical sociological theory, the family is defined as a primary group within which basic biological, emotional, and social functions are realized (Parsons, 1951; Goode, 1982). Parsons

(1951) emphasizes that the family has an irreplaceable function of primary socialization, within which the child adopts the fundamental norms, values, and patterns of behavior necessary for functioning in the wider society. This function of the family is particularly significant with regard to the formation of moral personality, since it is within the family environment that the first attitudes about good and evil, duty, responsibility, and solidarity are shaped. Goode (1982) stresses that the family is not merely a biological community, but a complex social institution that reflects the dominant values and norms of society. In this sense, changes in society inevitably affect the structure and functions of the family. Contemporary sociological analyses indicate that the family in modern societies is undergoing profound transformations, reflected in the flexibilization of family roles, the rise of individualism, and the relativization of traditional family norms (Beck & Beck-Gernsheim, 2002; Giddens, 1992).

In Serbian society, the family has an exceptionally strong cultural and symbolic significance. Antonić (2010) points out that the family in Serbia represents one of the key pillars of social solidarity and collective identity, especially in periods of historical crises and social upheavals. The traditional model of the family, based on patriarchal relations and a clear division of roles, long represented the dominant pattern in Serbian society. Today, the Serbian family is in a process of profound transition, in which traditional and modern patterns of behavior intertwine. On the one hand, there is still a strong attachment to family values, intergenerational solidarity, and respect for parental authority. On the other hand, contemporary processes of urbanization, migration, and economic insecurity lead to the weakening of traditional family structures. Krstinić, Počuča and Šarkić (2024) emphasizes that the contemporary Serbian family is increasingly abandoning strict patriarchal patterns, while at the same time retaining significant elements of traditional culture. This duality between tradition and modernity creates a specific value context within which contemporary family relations are shaped. It is precisely within this space that numerous ethical dilemmas arise, requiring new theoretical and normative reflection. From the perspective of cultural anthropology, the family is viewed as a fundamental mechanism for transmitting cultural patterns and symbolic meanings. In Serbian culture, the family has traditionally been associated with concepts of honor, reputation, and moral responsibility, which further underscores its role in preserving social order. Contemporary changes in the fields of education, employment, and gender relations have led to a redefinition of roles within the family. In modern society, the model of the partnership-based family, founded on the equality of spouses and shared responsibility for child-rearing, is increasingly affirmed. However, this model often comes into conflict with traditional ethical norms (Sančanin & Krstinić, 2023). The particular importance of the family is reflected in its role in preserving the moral and cultural continuity of society. Without a stable family it is not possible to ensure the long-term stability of the moral order, since the family represents the primary space for the formation of value orientations. In this sense, the analysis of the family as a social and cultural institution constitutes a necessary starting framework for understanding the ethics of family relations. It is precisely at this point that the connection between sociological, cultural, and ethical approaches is established, which will be further developed in the following chapters of the paper.

3. The Ethical Framework of the Orthodox Understanding of the Family

Orthodox teaching views the family as a divinely established community that possesses not only a biological and social, but above all a spiritual and moral dimension. In Orthodox theology, marriage is understood as a sacrament—that is, a union blessed by divine grace—whose purpose is not merely the shared life of the spouses, but also their spiritual growth and mutual perfection. In this context, the family in the Orthodox tradition is often defined as a "little church," that is, as the primary community in which the Christian way of life is realized. Jerotić (2005) emphasizes that the family is the fundamental space in which the moral personality of the individual is formed and in which the basic Christian virtues—love, fidelity, self-sacrifice, and responsibility—are adopted. The personalist understanding of the person represents one of the central ethical foundations of Orthodox anthropology. According to this approach, the person is not understood as an isolated individual, but as a relational being whose identity is realized in communion with other persons (Zizioulas, 1985). In this sense, marriage and family represent a privileged space for the realization of personal relationships grounded in freedom and love. This personalist approach has far-reaching ethical consequences. Marriage is not understood as a mere legal contract, but as a communion of persons in which freedom is realized through responsibility toward the other. In Orthodox ethics, freedom is not arbitrariness, but the capacity for sacrifice and self-limitation in the name of community. The concept of fidelity holds particular importance in Orthodox ethics. Spousal fidelity does not represent merely a moral duty, but the expression of a deeper ontological bond established in marriage as a sacrament. Jerotić (2005) stresses that fidelity is the foundation of the stability of family relations and a prerequisite for the healthy moral development of children. Parenthood in the Orthodox tradition is understood as a special form of service and responsibility. Parents have the duty not only to provide material conditions for their children's lives, but also to raise them in the spirit of Christian values. According to certain authors, the canon law of the Orthodox Church always links parental rights with parental duties, thereby emphasizing the moral dimension of parenthood. From the standpoint of canon law, marriage represents an institution with clearly defined moral and normative consequences. Canonical norms establish strict conditions for the conclusion and dissolution of marriage, precisely with the aim of protecting the family as a moral community. Here, the connection between religious morality and the legal regulation of family relations becomes evident. This connection becomes particularly significant within the contemporary legal order of the Republic of Serbia. The Constitution of the Republic of Serbia (2006), in Article 66, explicitly provides that "the family, mother, single parent and child shall enjoy special protection of the State," thereby defining the family as a constitutionally protected value. The constitutional protection of the family represents a normative expression of the generally accepted moral position regarding the special importance of the family for society. The Family Law of the Republic of Serbia (2005) further elaborates this constitutional principle by regulating marriage, parental rights, relations between parents and children, and measures for the protection of the family. Ponjavić (2016) emphasizes that the Family Law is not merely a technical set of norms, but also a normative expression of a particular value system in which marriage and family are recognized as fundamental social institutions. In this sense, one may speak of a complex triangle: Orthodox ethics – moral values – state legal protection of the family. Law is never value-neutral, but always reflects a particular moral and cultural context. In the case of the family, that context in Serbia remains strongly marked by Orthodox tradition. However, contemporary processes of secularization and the pluralization of values have led to an increasing gap between traditional religious ethics and positive law. The task of the modern rule-of-law state is to find a balance between the constitutional protection of the family, individual freedom, and religious pluralism. It is precisely at this point that the key dilemmas of contemporary family ethics arise: how to preserve traditional moral values while at the same time respecting individual freedom and the diversity of modern family forms. These dilemmas constitute a necessary introduction to the analysis of the relationship between the Serbian Orthodox Church, the state, and the constitutional protection of the family.

4. Orthodox Church, the State and the Constitutional Protection of the Family

The Constitution of the Republic of Serbia (2006), in Article 66, establishes the special protection of the family as a fundamental social value. This protection represents a normative expression of moral consensus. The Family Law further elaborates this principle through the regulation of marriage, parental rights, and the protection of the child.

The principle of secularity limits the direct influence of the Church on legislation, but not its moral influence within public discourse.

5. Contemporary Challenges of the Family: Between Tradition and Modernity

The contemporary family in Serbia is facing numerous challenges arising from profound social, economic, and cultural changes. Processes of modernization, globalization, urbanization, and technological development significantly affect the structure of the family, the manner in which family roles are performed, and the stability of family relationships. These changes call traditional models of the family into question and require renewed ethical and legal reflection. One of the most pronounced challenges is the demographic crisis. For decades, Serbia has been confronted with declining birth rates, population aging, and a reduction in the number of family members. These developments have far-reaching consequences not only for the demographic structure of society, but also for its economic sustainability and social stability. In this context, the family increasingly finds itself under pressure from economic insecurity and social risks. A particular issue is the rise in the number of divorces and the instability of marital relationships. Contemporary sociological analyses indicate that divorce no longer represents a social taboo, but rather an acceptable strategy for resolving marital conflicts (Giddens, 1992; Beck & Beck-Gernsheim, 2002). The increase in divorce rates is one of the indicators of deeper value changes affecting the family as an institution. From the perspective of family law, these changes require a more flexible legal regulation of marital and family relations. Contemporary family law seeks to reconcile the protection of the family with the protection of the individual rights of spouses and children. Divorce, parental rights, and child protection are increasingly regulated in accordance with the principle of the best interests of the child, which represents one of the fundamental principles of the Family Law (2005). Another important challenge concerns changes in gender roles and relationships between spouses. Modern society increasingly affirms the equality of men and women, both in the sphere of work and within the family. Many authors point out that the traditional division-of-roles model—where the man is the provider of material support and the woman the primary caregiver—is gradually giving way to the partnership model of the family. However, this process often leads to new tensions and conflicts within the family. From an ethical standpoint, changes in gender roles raise numerous moral questions: issues of the fair distribution of family responsibilities, the reconciliation of professional and family life, and parental responsibility toward children. Contemporary ethics of family relations must respect the equality and autonomy of spouses, while at the same time preserving the principles of solidarity and mutual responsibility.

A particular challenge is the influence of mass media and digital technologies on family life. Modern communication technologies transform the way family relationships are realized, but at the same time may weaken direct communication and shared family time. Media culture increasingly shapes the value orientations of young people, often in contrast with traditional moral norms. In this context, the Serbian Orthodox Church adopts a critical stance toward processes that lead to the relativization of marriage and family values. Without a stable family, neither the moral nor the cultural identity of society can be preserved. The Church warns of the dangers of individualism and consumer culture, which undermine the foundations of family solidarity. Nevertheless, contemporary challenges require new models of dialogue between tradition and modernity. The ethics of family relations must develop in accordance with changes in the social context, but without abandoning the fundamental moral principles that constitute the foundation of family life. It is precisely in this space that the key tension of contemporary family ethics arises: how to reconcile the demands of freedom, equality, and autonomy with the need for stability, responsibility, and solidarity within the family. This complex set of challenges demonstrates that the contemporary family is undergoing a process of profound transformation in which ethical and legal issues are inseparably connected. The analysis of these challenges provides a necessary basis for understanding the scope and limitations of the ethical influence of the Serbian Orthodox Church, which will be the subject of the following chapter.

6. The Scope and Limitations of the Ethical Influence of the Serbian Orthodox Church

Although the Serbian Orthodox Church represents one of the most significant moral authorities in Serbian society, its ethical influence on contemporary family relations has clear scope, but also substantial limitations. These limitations arise both from the internal transformations of society and from the normative framework of the modern rule-of-law state. In conditions of value pluralism and secular organization, the moral authority of the Church can no longer function as a universally binding social norm, but rather primarily as a point of orientation within the sphere of public and private ethics. Sančanin and Krstinić (2023) emphasizes that the contemporary influence of the Church is not based on normative coercion, but on cultural authority and the strength of tradition. In this sense, the ethical influence of the Serbian Orthodox Church is realized primarily through educational, pastoral, and cultural activities, and far less through the direct shaping of legal norms. This model of influence corresponds to the principles of the modern secular state, yet at the same time limits the reach of religious ethics within the public sphere.

From the perspective of the sociology of religion, Berger (1999) points out that processes of secularization lead to the weakening of the institutional influence of religious communities, though not necessarily to the disappearance of religious values from social life. In the Serbian context, religion retains a strong cultural function, but its direct influence on individual behavior becomes increasingly selective. This selectivity means that individuals more frequently adopt certain elements of religious ethics while neglecting others or adapting them to their own life circumstances. The Law on Churches and Religious Communities (2006) provides the legal framework that constitutes one of the key limitations on the Church's ethical influence. The principle of secularity implies the separation of Church and State, preventing the adoption of a single religious morality as normatively binding for all citizens. The constitutional protection of the family must be value-inclusive and grounded in the principle of equality, regardless of individuals' religious beliefs.

Law and morality perform different functions in society. While morality strives toward an ideal, law must regulate real social relations, often through compromises between opposing values. In this sense, the ethical demands of Orthodoxy often exceed the possibilities of positive law, which must take into account the complexity of contemporary family forms and the diversity of lifestyles. A particular limitation of the ethical influence of the Serbian

Orthodox Church is reflected in generational differences. The younger generation increasingly adopts values of individualism, autonomy, and self-realization, which frequently come into tension with traditional religious norms (Beck & Beck-Gernsheim, 2002). In this context, the moral authority of the Church loses part of its binding force and becomes one among several possible ethical reference points. Nevertheless, the scope of the ethical influence of the Serbian Orthodox Church should not be underestimated. Religious values continue to play an important role in shaping the moral conscience of individuals, especially in the process of raising children. The family remains the principal medium for transmitting these values, which enables the Church to exercise an indirect yet long-term influence on the moral profile of society. The Church also plays a significant role in preserving cultural and identity continuity, particularly in conditions of globalization and cultural homogenization.

In this sense, the ethical influence of the Church is not limited to individual moral prescriptions, but encompasses a broader cultural framework within which the value orientations of society are shaped. It may be concluded that the ethical influence of the Serbian Orthodox Church in contemporary Serbia is realized within a space of constant tension between tradition and modernity, between morality and law, and between religious authority and the secular order. It is precisely within this space that the key dilemmas of contemporary family ethics arise, requiring further theoretical and normative consideration.

7. Conclusion

The ethics of family relations in contemporary Serbia represents a complex and multi-layered field in which traditional moral values, religious teaching, and the normative frameworks of the modern rule-of-law state intersect. In this context, the family appears as an institution in transition, exposed to strong social, economic, and cultural changes that call into question its stability, functions, and value foundations. The analysis has shown that the Serbian Orthodox Church continues to exert a significant ethical influence on the shaping of family values, particularly with regard to the understanding of marriage as a permanent union, parenthood as a moral duty, and family solidarity as a fundamental principle of social life. However, this influence can no longer be understood as direct normative action, but rather as a moral and cultural authority operating within the conditions of a secular and pluralistic society. The Constitution of the Republic of Serbia and the Family Law provide strong legal protection for the family as a fundamental social value, while at the same time establishing the principle of secularity and value pluralism. Within this framework, the ethical positions of the Serbian Orthodox Church may serve as an important point of orientation for believers and for the broader cultural context, but not as a binding model for all members of society. It is precisely in this relationship between morality and law that the key tension of contemporary family ethics arises. It is particularly important to recognize that contemporary challenges facing the family cannot be resolved exclusively by legal means, nor solely through moral appeals. The demographic crisis, rising divorce rates, changes in gender roles, and the influence of digital culture require an integrated approach that connects legal regulation, social policy, and ethical reflection. In this sense, dialogue between the state, the Church, and the academic community represents a necessary condition for preserving the family as a stable social institution. It may be concluded that the future of the family in Serbia depends on the ability to establish a productive balance between tradition and modernity, between moral ideals and legal standards, and between religious and secular values. For this reason, the ethics of family relations in contemporary Serbia remains one of the key fields in which not only the fate of the family is decided, but also the long-term moral, cultural, and legal identity of Serbian society.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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

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ETIKA PORODIČNIH ODNOSA U SAVREMENOJ SRBIJI I UTICAJ SRPSKE PRAVOSLAVNE CRKVE

APSTRAKT: Savremena porodica u Srbiji prolazi kroz složen proces transformacije, oblikovan dubokim društvenim, ekonomskim i kulturnim promenama. Procesi modernizacije, globalizacije i sekularizacije značajno utiču na tradicionalne porodične uloge i etičke norme koje uređuju porodične odnose. U tom kontekstu, Srpska pravoslavna crkva predstavlja jedan od ključnih društvenih aktera, koji nastoji da očuva i prenese tradicionalne moralne vrednosti vezane za brak, roditeljstvo i porodičnu solidarnost. Predmet ovog rada jeste analiza odnosa između etičkih normi, verskog učenja i pravne zaštite porodice u savremenoj Srbiji. Osnovno istraživačko pitanje glasi: U kojoj meri i na koji način Srpska pravoslavna crkva danas zaista utiče na etiku porodičnih odnosa u okviru sekularne i pravne države? Poseban doprinos rada ogleda se u interdisciplinarnom pristupu koji povezuje etiku, sociologiju, religiju i porodično pravo, sa ciljem da se pokaže na koji način se moralni autoritet Crkve ostvaruje u okviru ustavne zaštite porodice i vrednosnog pluralizma savremenog društva. Metod rada zasniva se na analizi relevantne domaće i strane literature, kao i na kritičkom sagledavanju savremenih društvenih procesa u Srbiji.

Ključne reči*: porodica, etika, Srpska pravoslavna crkva, porodično pravo, savremeno društvo.*

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"CATCH ME IF YOU CAN!" – LEGAL STATUS OF DIGITAL ASSETS IN BANKRUPTCY PROCEEDINGS IN THE REPUBLIC OF SERBIA

ABSTRACT: The very emergence of digital assets represents a revolutionary phenomenon in technology, economics, and law. Their regulation introduces into the legal system a new institute of property law, whereby digital assets, alongside things, rights, and legitimate expectations, become objects of property rights. Since digital assets represent a certain, although often fluctuating, asset value, and since the property of every person constitutes security for the settlement of creditors' claims, it is important to ensure adequate protection of creditors' rights and interests within the legal framework. This is particularly important in the context of collective settlement of creditors' claims in bankruptcy proceedings. In 2020, the Republic of Serbia adopted a law regulating digital assets, their subject matter, issuance, trading, and pledging. Holders of rights relating to digital assets may be both natural and legal persons. Bearing in mind that Serbian legislation recognizes bankruptcy proceedings only in relation to legal entities, attention will be focused on the digital assets of legal entities as subjects of bankruptcy proceedings. It is in the interest of their creditors to achieve successful settlement of claims against the

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debtor's assets. The authors of this paper analyze the reform of Serbian legislation in this high-tech field and point to possible shortcomings in the treatment of digital assets in bankruptcy proceedings and in the protection of creditors' claims. They also recommend further development of the regulatory framework governing digital assets, including the professional training of relevant judicial professions. This paper employs the normative method, comparative law method, and statistical method.

Keywords: *digital assets, bankruptcy proceedings, protection of creditors, settlement of claims, Republic of Serbia.*

1. Introduction

With the development of technology and the realization of people's desire for trade outside the strict framework of state regulation (Bayliss, 2020, p. 107), new values were created that represent the object of property, which as such can be exchanged on the market and with which debts can be settled. In this sense, digital assets represents a completely new category of property law. Initially, the legislative provisions were adopted mainly to prevent money laundering and financing of terrorism, as it was regulated in the EU (EU Directive 2015/849). The Serbian legislator regulated digital assets with a Law from 2020, making him one of the first in the world to do so. Since digital assets are most similar to the other property rights and may reach an extremely high value, it can use it both to secure claims and to settle creditors' claims through executive and bankruptcy proceedings. Ensuring safe access to the debtor's digital assets, their seizure in case of non-payment of claims, and then selling them at the moment of reaching the value, represent the biggest legal challenges for now. However, since digital assets do not have a tangible physical form, they can easily be stored abroad, the bankruptcy administrators may face with a special task to discover it, and then to start the procedure for its seizure. Since entry into force of the Law on Digital Assets in June 2021, the first assessment estimated that approximately 200.000 persons in Serbia own some type of digital assets (Politika, 2021). Some of the biggest cryptocurrency projects, such as Polygon, Celsius, Ethereum developer platform and Tenderly are based in Serbian capital of Belgrade and at least 92 million USD was raised by crypto startups in the region in 2021. Celsius Networks's is funding approximately 750 million USD and Polygon raised 450 million USD from Sequoia, SoftBank and Tiger Global (Majic, 2022). The objective of this paper is to answer the questions on legal nature of digital assets and their treatment once its business holder becomes insolvent. In the first part of this paper, the authors analyse the legal qualification of digital assets in the new legal framework. It is followed by the treatment of digital assets in bankruptcy estate and the position of secured creditors. Further, in the third part, the way in which bankruptcy administrator takes control over the debtor's digital assets will be will be discussed. Finally, once the assets are under control of bankruptcy administrator, it is important to give an insight in the realisation of digital assets and settlement of claims.

2. Legal qualification of digital assets in Serbia

The very nature of the digital assets imposes a need for specific legal definition and the way of their treatment (Bayliss, 2020, p. 107). This approach is also recommended by legal expert associations (CERIL, 2023). Any information on their very existence and control rely dominantly on cooperation with owners/holders. In some countries, digital assets are considered as a type of personal property (Inacio, 2018, p. 12–13), but in others they are not recognized as such (Lyadnova, Dorokhova & Whitney, 2018, p. 5). Starting from the Comments on the Tentative Agenda Decision Relating to the Holdings of Cryptocurrencies of the IFRS Foundation digital assets are defined as identifiable, non-monetary and without physical substance (IFRS Foundation, 2022). They are also characterized as authenticated by cryptography, based on a distributed transaction ledger, decentralized and ruled by consensus (OPUS, 2021, p. 3).

For the first time, Serbian legislation recognizes digital assets as a legal category. The Law regulates digital or virtual assets (serb. *digitalna imovina*) as digital records of value that can be exchanged and invested (Art. 2. Para. 1. p. 1, Law on Digital Assets, 2020). It also set rules their issuance, secondary trading and provision of services related to digital assets. Besides that, the legislator regulated the competences of the National Bank of Serbia and the Securities Commission considering digital assets. As an important novelty, the Law acknowledges digital assets as intangible, fungible and enforceable assets and the status of both secured and pledge creditors. This approach of the Serbian legislator is in line with the EU Directive no. 110/2009 on electronic money institutions (Nori & Girolametti, 2023, p. 423). Two main types of digital assets are prescribed. These are virtual currency (serb. *virtuelna valuta*) and digital token (serb. *digitalni token*). They may be used as instrument of payment, source of funding and initial offer as well as for secondary trading.

Consequently, digital assets may be used in the future as a security instrument for creditor claims.

On the one side, virtual currency is considered as a type of digital assets that has not been issued and whose value is not guaranteed by the central bank or other public authority (Art. 2. Para. 1. p. 2. Law on Digital Assets, 2020). That is why in Serbia the legislator still does not recognize them as a legal instrument of payment and they have no legal status of money or currency. This statement was confirmed by the National Bank of Serbia in 2022 (National Bank of Serbia, Statement on Digital Assets, 2022). However virtual currency may be accepted by natural or legal persons as an instrument of exchange and it can be bought, sold, exchanged, transmitted and stored electronically. Virtual currencies tend to be volatile, since they are short-term assets. They are often held for speculative purposes and can be used for exchange for goods and services (IFRS Foundation, 2022).

On the other side, Serbian legislation recognizes digital token as a type of digital assets that represent any intangible property right and that may represent one or more other property rights in digital form, including the right of the user of the digital token to be provided with certain services (Art. 2. Para. 1. p. 3. Law on Digital Assets, 2020). By this provision, Serbian legislation undoubtedly recognized and accepted the digital tokens' character of property right as any other personal property regulated by the law.

In its Explanatory Instruction Serbian Ministry of Finance states that digital assets may be acquired through participation in providing services of electronic validation of transactions related to the digital assets performed by digital asset miners and validators (Ministry of Finance of the Republic of Serbia, Explanatory Instruction, 2021). This provision is in line with the Law on Basics of Ownership and Proprietary Relations (1990) and Law on Business Companies (2011). However, since property rights are mostly regulated as certain number (Maydanyk, 2023, p. 14). This requires future ammendment of the provisions of the Law on Basics of Ownership and Proprietary Relations in order to include the digital assets as a proprietary right. Such a legislative action will surely follow the process of the harmonisation of the legislation with the EU regulations (Mihajlović, 2021, p. 598). Since the entry into force of the Law on Financial Securities (Art. 6. Para. 1. p. 2. Law on Financial Securities, 2018) and Law on Digital Assets (2020), the property on digital assets may also be acquired by a receiver of financial security and fiduciary creditor if their claims are not settled upon maturity (Đurić & Jovanović, 2023, pp. 9–10). However, their property rights are pending a suspensive condition.

In order to be identifiable, digital assets have to be detachable and created on the basis of contract or other legal rights transferable/non-transferable and detachable/non-detachable from entity or other rights. Serbian law regulates digital assets (serb. *digitalna imovina*) as the digital value record that can be digitally bought, sold, exchanged or transferred, and that can be used as a medium of exchange or for investment purposes (Art. 2. Para. 1. p. 1. Law on Digital Assets, 2020). This does not include digital currency records that are legal instruments of payment and other financial assets regulated by other laws. Following this definition, digital assets possess two important features of property, its value and its legal basis (*iustus titulus*), the same as prescribed for sale of goods in the Law on Contract and Torts (Art. 454. Law on Contracts and Torts). This implies that Law on Digital Assets recognizes digital assets the legal position of personal property. Similar solutions are prescribed in common law regulations (Remolina, Gurrea-Martínez & Liu, 2024, pp. 6–7).

As personal property, digital assets may also have the characteristics of a financial instrument. In this case, all operations on issuing, secondary trading of digital assets and providing related services have to be conducted in accordance with the Law on Capital Market (Art. 7. Para. 1. Law on Digital Assets, 2020). However even if digital assets have all the characteristics of a financial instrument, capital market regulation does not apply, if certain legally set conditions conditions are met (Art. 7. Para. 2. p. 3. Law on Digital Assets, 2020). As a financial instrument, digital assets may be subject of special financial security agreement and may be held as intangible assets or inventories. When digital assets as financial instruments are issued, a special document called "white paper" is published. In July 2021, the National Bank of Serbia adopted amendments and supplements to the Instructions for the Implementation of the Decision on the Conditions and Manner of Performing International Payment Transactions (National Bank of Serbia, Instructions for the Implementation of the Decision on the Conditions and Manner of Performing International Payment Transactions, 2021).

3. Digital assets as a part of the bankruptcy estate

Both owner and holder of the digital asset may be any person regardless of the business relationship established with the digital asset service provider or transactions made through that provider. Thus it might be a person who acquired digital assets by participating in computer transaction verification services in information systems related to certain digital assets. However, according to the Serbian Bankruptcy Law, only legal persons as owners or holders may be subjects of bankruptcy proceedings. The bankruptcy estate comprises all assets of the bankruptcy debtor both in Serbia and abroad on the day of opening of bankruptcy proceedings, as well as assets acquired by the bankruptcy debtor during the proceedings (Art. 101. Para. 1. Law on Bankruptcy, 2009). If the crypto assets are considered as debtor's estate, it may be recoverable under bankruptcy law and the bankruptcy administrator has a duty to gain control over those assets in order to increase the value of the bankruptcy estate (Nori & Girolametti, 2023, p. 428).

If assets of a bankruptcy debtor are located abroad, cross-border insolvency provisions of Serbian Law on Bankruptcy apply when such assets are subject to foreign proceedings. Digital assets legally represent a part of bankruptcy estate managed by bankruptcy administrator, whose role is to locate the assets, to apprehend and to sell them in order to provide the most favourable settlement of creditors' claims. In Russian legislation, there is a similar solution (Shishmareva & En'kova, 2024, p. 1084). If maintaining the bankruptcy debtor in business ensures such settlement, creditors may vote for its reorganisation instead of its liquidation. In some common law countries, judicial practice does not recognize a debt denominated in digital assets as a monetary debt capable of forming the subject matter of a statutory demand (Remolina, Gurrea-Martínez & Liu, 2024, p. 9).

Following the Comments of the IFRIC and provisions of the Law on Digital Assets, the Serbian Ministry of Finance issued the Explanatory Instruction, which recognizes digital assets as intangible assets and inventories (Ministry of Finance of the Republic of Serbia, Opinion, 2021). Since their nature is intangible, they have to be stored on secure digital location called wallet. This may be a software wallet, hardware wallet, hot wallet and cold wallet (OPUS, 2021, p. 6). Their digital storing allows the assets to be at disposition of its owner. The wallet may be located in software storage (such as cloud) and hardware storage (external). Digital assets are usually decentralized, until they become a whole by operation of the holder. Any registration by public or licensed private providers of services secures their flow control and protection (CERIL Statement, 2023). Usually, access to digital assets stored online is protected by a password available only to their owner. This is one of the significant privileges of digital assets in case of bankruptcy or enforcement proceedings, but it also makes them susceptible to hacker attacks (Udofia, 2022). Keeping digital assets on hardware storage makes it easier to protect them from hacking, but also easier to be apprehended by bankruptcy administrator or civil enforcement agents.

Serbian Law on Bankruptcy regulates only corporate bankruptcy and thus only a legal person, i.e. company, may be subject of bankruptcy proceedings (Art. 1. Para. 1, art. 14. and art. 55. Para. 5, Law on Bankruptcy, 2009). As for bankruptcy of natural persons and entrepreneurs, their creditors have to rely on civil enforcement proceedings. The objective of the proceedings is to ensure the most favorable collective settlement of bankruptcy creditors by achieving the highest possible value of the bankruptcy debtor or its assets. Comparative examples show that the digital assets may reach a high value, if it is seized properly and cashed accordingly (d'Avoine & Hamacher, 2022, p. 6). Company, as a legal person, may be the holder of digital assets provided that it respects certain restrictions. Namely, virtual currencies cannot be invested as a monetary investment in the capital of a company. However, they can be converted in cash and paid into a company as a cash investment. Digital tokens may be invested as a non-monetary investment in a company but cannot be related to the provision of services or the work performance. This restriction for digital tokens does not apply to a partnership and limited partnership (Art. 14. Para. 3. Law on Digital Assets, 2020). The list of digital tokens that may be invested is determined by the Securities Commission.

Since the ordinary bankruptcy creditor has an unsecured claim against the bankruptcy debtor, it is its interest that all assets of the bankruptcy debtor are overtaken by the bankruptcy administrator. If the insolvency debtor cooperates with bankruptcy administrator or bankruptcy administrator reaches out to apprehend the debtor's digital assets, the bankruptcy creditors may hope to receive the settlement. In the case of secured creditors, the claims are secured with security interest, statutory right of retention or the right to satisfy their claims from assets and rights that are registered in public registries. Therefore, they have the right of priority in settlement from the value of realised assets serving as security. According to the new legal provisions, digital assets may also be stipulated as security of claim by pledge or fiduciary agreement (Art. 98. and 121. Law on Digital Assets, 2020). The creditor, unless otherwise agreed, has the right to use and dispose of, including to alienate the digital assets that are the subject of the fiduciary agreement. A fiduciary debtor can also be a third party that provides security for someone else's debt (warrant). In the case where the owner of digital assets becomes insolvent, the claims of its creditor will be settled by receiving the property right on the transferred digital assets (Art. 122 Law on Digital Assets, 2020). On the contrary, if the fiduciary creditor becomes insolvent, the status of the owner of digital assets, i.e. the debtor, depends on the purpose of the fiduciary agreement. If the fiduciary on digital assets serves as security of claim, the owner has the status of the secured creditor in bankruptcy proceedings. However, if fiduciary is stipulated for other purposes, the owner of the digital assets has the status of excluding creditor. Finally, excluding creditors have the property right on certain assets in possession of the insolvency debtor and the right to request the assets to be excluded from the bankruptcy estate. If digital assets are the subject of their personal property, it relies only on the capacity of bankruptcy administrator to exclude the assets and to return them to their owner.

4. Seizure of the digital assets

Upon opening of the bankruptcy proceedings, the bankruptcy administrator takes possession over all assets included in the bankruptcy estate and administers them. Bankruptcy proceedings are conducted by the competent commercial court with jurisdiction over the area where the debtor has its registered seat. If debtor's seat is located outside of Serbia, the proceedings are conducted by the court with jurisdiction over the area where the debtor's center of main interest is located. A bankruptcy administrator appointed by the court plays the main role in the proceedings. Once bankruptcy administrator takes over the bankruptcy estate, it prepares the initial bankruptcy balance sheet with list and compares the debtor's assets and liabilities together with the report on economic and financial status of the bankruptcy debtor and an estimate of the possibilities for reorganisation (Art. 36. Para. 3. Law on Bankruptcy, 2009). On the basis of this report the insolvency creditors decide on bankruptcy or reorganisation of the bankruptcy debtor.

Beside the access to the official registers on digital assets, an effective performance of the bankruptcy administrator also requires cooperation with insolvency debtor. Usually, only the debtor has access to the assets. Depending on the manner of storing digital assets, they may be obtained by providing the password to the software wallet or by delivering the hardware wallet. The problem arises if the debtor refuses to provide access or keeps his digital assets hidden. Here a bankruptcy administrator faces an important challenge (Hill, Connelly & Vougdis, 2022, pp. 6–7). If their holder refuses to provide the access, he/she can only be responsible for the criminal act of damaging of creditors (Art. 233. Criminal Code, 2005). In any case, the operation of identifying and apprehending debtor's digital assets relies on capacities and experience of the bankruptcy administrator. This process requires a valuable time that might can be lost (Sarra, Madaus & Mevorach, 2023, p. 259).

Law on Digital Assets prescribes the general duty for all companies in Serbia in capacity of an enforcement debtor to cooperate with the competent authorities in enforcement proceedings and to provide all information necessary for enforcement settlements on digital assets, including the means by which digital assets are accessed (cryptographic keys) (Art. 14. Para. 6. Law on Digital Assets, 2020). Although this regulation does not mention bankruptcy proceedings, there is no reason not to apply it on bankruptcy debtor. The National Bank of Serbia keeps electronic records of data on holders of virtual currencies. All licensed providers of services related to virtual currencies have duty to submit to the National Bank of Serbia the information on legal entities and entrepreneurs who are users of virtual currencies. Holders of virtual currencies based in Serbia, both legal persons and entrepreneurs, who have not used licensed providers' services related to virtual currencies are required to submit reports to the National Bank of Serbia, and are responsible for the accuracy and completeness of these data. The National Bank of Serbia keeps electronic data records on holders of virtual currencies (Art. 85. Para. 4. Law on Digital Assets, 2020). Any information obtained while providing services related to digital assets and to their user, including user's identity, and on transactions with digital asset service provider must be kept as a business secret. The only exempted information is the one made publicly available (Art. 13. Para. 1-3. Law on Digital Assets, 2020).

During the bankruptcy proceedings, a challenge may be posed not only by the debtor but also by a third party. If in any stage of the proceedings such a party refuses to hand over the debtor's assets held without a legal basis or on the basis of a legal transaction the validity of which has ceased and the assets are a part of the debtor's bankruptcy property, the bankruptcy administrator is authorised to request the bankruptcy judge to urgently order and conduct compulsory enforcement (Art. 105. Para. 2. Law on Bankruptcy, 2009). Along with that, the bankruptcy judge may order compulsory measures against the third party to enable the enforcement. If any party fails to handover the objects that are a part of the bankruptcy estate or to comply with the court order, that party is held liable for the damage caused by such an action. An additional issue may emerge in case of "hacking" of the digital assets of the debtors estate by an unauthorized person (Sarra, Madaus & Mevorach, 2023, p. 263).

The bankruptcy administrator decides on the manner of their preserving or investing with the consent of the creditors' committee. Serbian Law on Bankruptcy stipulates actions of contesting debtor's legal transactions on behalf of the debtor and the creditors, if the bankruptcy estate would be increased by such contesting. Such transactions and other actions taken before the opening of the bankruptcy proceedings can interfere with equal settlement of bankruptcy creditors, damage the creditors or put some creditors in a more favorable position over the others (Art. 119-123. Law on Bankruptcy). However, the bankruptcy administrator again faces the risk of price change of digital assets from the moment of contesting to the moment of their return in insolvency estate (Droege & Marlière, 2019, p. 29). Here, the important question is if digital assets of bankruptcy debtor are registered by public or private licensed provider or if digital assets transactions such as purchase, sale, acceptance or transfer or exchange of digital assets for other digital assets are registered. Moreover, if a creditor has a claim secured by the pledge over the digital assets, its settlement is more certain to take place. Therefore, the status of the following types of creditors should be distinguished: bankruptcy (unsecured) creditors, secured creditors, pledge creditors, creditors receivers of the financial security (as special type of secured creditors) and excluding creditors.

The treatment of debtor's assets requires also a professionally experienced bankruptcy administrator. Besides regular duties, a bankruptcy administrator needs to identify debtor's digital assets and to find the way to apprehend and cash it within the time framework of the proceedings set by the law. Future actions of the Serbian legislator should take into consideration recommendations from the comparative practice. They relate to the strict regulation of the access to information, temporarily restraining asset disposition or transfers and recovery and realization of assets (Sarra, Madaus & Mevorach, 2023, p. 273).

5. Realisation of digital assets

It is in the debtor's interest and of its creditors to ensure the most favorable collective settlement by achieving the highest possible value for the assets. Moreover, if the value of the debtor's assets allows maintaining of business and better creditor settlement, the company may recover through the reorganisation proceedings (INSOL International, 2019). However, the legislation allows the creditors to be paid only in cash. The problem might arise because the conversion of digital assets into cash requires time during which their value may change. In Serbia, the legal form of an insolvent debtor is decisive with regard to the type of claim settlement and the legal office procedures to be conducted. If the owner of digital assets is a natural person or entrepreneur, only individual claim enforcement proceeding is applicable. When an insolvency ground is determined for a debtor legal person, all enforcements on its assets will be conducted in bankruptcy proceedings.

If successful in apprehending the digital assets of the bankruptcy debtor, the bankruptcy administrator strives to achieve the highest possible value to ensure the most favorable collective settlement of bankruptcy creditors. Any debt in digital assets needs to be converted to a monetary debt, in order to obtain a judgment on its liquidation (Remolina, Gurrea-Martínez & Liu, 2024, p. 14). If the majority of creditors vote for the liquidation of debtor, the bankruptcy judge issues the decision on compulsory liquidation. Upon that decision, the bankruptcy administrator conducts the sale of all assets, discrete units or individual assets of the insolvency debtor, including sale of the insolvency debtor as a legal entity (Art. 132. Para. 1, Law on Bankruptcy, 2009). If the bankruptcy administrator proposes the sale of all assets or discrete units of the insolvency debtor, or sale of the bankruptcy debtor as a legal entity, it is obliged to provide an assessment proving this manner of realization as more appropriate than selling individual assets of the insolvency debtor, made by an authorized expert (valuer). However, often the most delicate task for a bankruptcy administrator is the digital assets' significant price volatility that may affect both unsecured and secured creditors. A valuer is either a person licensed to perform the apposite estimation or a person who possesses the relevant knowledge and is registered on a list maintained by the competent authority for carrying out valuation or expertise. Bearing in mind all specificities of digital assets, such knowledge can be offered by licensed providers of services related to the digital assets. The bankruptcy administrator usually relies on their expertise. Given their status of providers of exchange and broker-dealer services, these service providers are expected to have the best insight in prices of all types of digital assets.

The valuation of digital assets is different for digital currency and digital token and depending on whether these are recorded as intangible assets or as inventories. On the one hand, the valuation of digital assets as intangible assets includes initial and subsequent valuation. Initial valuation involves measuring according to the purchase price. It includes the purchase price and directly attributable transaction costs. Two approaches can be used in the subsequent valuation of digital currencies: the cost model and the revaluation model (Ministry of Finance of the Republic of Serbia, Opinion, 2021). The cost model involves subsequent measurement at cost less depreciation and impairment losses. Due to their specific nature, digital currencies have virtually unlimited time of use. However, if such a limitation exists, depreciation should include the residual value. The revaluation model is only applicable when the fair value of digital currencies can be determined in an active market. If the quoted price does not exist on the market, it is necessary to apply the cost model. On the other hand, the valuation of digital currencies as inventories is performed by measuring at a lower value between the purchase value and the net realizable value, while increases in value over the initial purchase value are not recorded. The cost of inventories includes the purchase price, directly attributable taxes and the cost of acquiring inventories. Net realizable value is the estimated selling price in the ordinary course of business, less the estimated costs of completion and realization of sales. Each business entity that records digital currencies as inventories is required to estimate the net realizable value at each balance sheet date. With regard to digital tokens, they can generally be registered as a non-monetary assets or as a financial instrument – equity, debt, only not as cash. As such, digital tokens are initially and subsequently measured and accounted for as intangible assets or inventories.

Based on the valuation report, the bankruptcy administrator decides on suitable method of sale of digital assets in insolvency estate. However, the creditors' committee, secured creditor and pledge creditor are authorized to file an objection to the assessment, in which case the court, after conscientious and careful assessment, makes a conclusion to determine the suitability of the proposed method of sale and the appropriate part of the sale price on which secured (Art. 132. Para. 3, Law on Bankruptcy, 2009). The general rule on sale of assets or legal entity in bankruptcy proceedings prescribes public auction, public collection of offers and a direct agreement as sale methods. However, these sale methods are more suitable for sale of real estate or movables. For digital assets, sale on commodities market (Shawver, 2021, p. 2047) and securities market for financial instruments appears as more suitable, because they may reach a higher value due to a broad circle of the interested parties and setting the price. This is also in line with the digital transformation in stock exchange and banking business (Neogradi, Anđelković & Kaličanin, 2024, pp. 86–96). Depending on the type of digital assets, the sale may be organized on exchange platforms and over the counter or peer-to-peer sale. The moment of the sale of digital assets in bankruptcy proceedings is one of the most important both for bankruptcy administrator and bankruptcy creditors. Namely, while the Law on Bankruptcy regulates bankruptcy proceedings as urgent, the volatile nature of price change imposes the sale at the best price (Art. 8. Law on Bankruptcy, 2009). In case of drop-off in trading ("crypto winter" or "chilling") (Greifeld & Hajric, 2022), bankruptcy administrator may not comply with the first objective of proceedings – to ensure the most favorable collective settlement of bankruptcy creditors by achieving the highest possible value for the bankruptcy debtor or its assets. Therefore, the sale of debtor's digital assets also depends on capacities and experience of the bankruptcy administrator (De Macedo & Coelho, 2021, p. 17).

After the sale is conducted, the bankruptcy administrator notifies the insolvency judge and the creditors’ committee, and/or the secured and pledge creditors with the security interest, about the sale, its conditions and the price achieved. If the sold assets were not unencumbered by security interests, the money from the sale enters into the bankruptcy estate and will be distributed to the bankruptcy creditors. Expenses of bankruptcy proceedings are settled from the bankruptcy estate as a matter of priority. Upon settlement of these expenses, the costs of the bankruptcy estate are settled. Bankruptcy creditorsare classified into payment ranks, depending on their claims. Digital assets are treated in the same manner if the bankruptcy proceedings continue toward reorganisation of insolvent company. If such assets are not necessary for conducting any measures adopted in reorganisation plan and confirmed by bankruptcy judge, they are sold at the highest possible price in order to ensure the most favorable collective settlement of bankruptcy creditors.

6. Conclusion

Although a relatively new legal institute, digital assets undoubtedly became a part of the personal property in Serbian civil law. By its nature intangible, but fungible, digital assets require specific manner of storing in electronic wallets on software storage accessible by keyword or on hardware storage. One of the main features providing the digital assets with legal qualification of a property right is their value. According to the assessments, the value of digital assets in the world reaches dozens billions of USD. That is the reason why such assets may and have to be the pledge for settlement of claims towards their owners. By regulating digital assets, acquiring, sale and other transactions relating to digital assets, Serbian legislator also set the legal framework for protection of creditors. As any type of personal property, digital assets may be apprehended from their owners along with other assets and sold in bankruptcy proceedings. For the time being, bankruptcy proceedings in Serbia can only be carried out against legal persons. Therefore, creditors of natural persons and entrepreneurs have to rely on civil enforcement proceedings. The purpose of sale of assets in bankruptcy proceedings is the settlement of creditors’ claims by achieving the most favourable value of debtor’s assets. However, the value of digital assets often faces the important risk of significant changes in price. Bearing this in mind, treatment of digital assets in bankruptcy proceedings requires the appointment of a professionally educated and experienced bankruptcy administrator. First challenge that the bankruptcy administrator faces is to determine the existence of digital property in the bankruptcy estate with or without the cooperation of the bankruptcy debtor. For this purpose, the bankruptcy administrator may request information from the National Bank of Serbia, public bodies and licensed providers of services related to digital assets. The situation is slightly different if the pledge or fiduciary agreement stipulated by the owner has digital assets as security. In that case, their apprehension is not an obstacle, but achieving their favourable price. Once the digital assets are found and apprehended, they have to be cashed accordingly in a due time framework. Before the sale, the value of digital assets has to be carefully assessed. Establishing the valuation report also requires an experienced expert. Even then, the period between the apprehension and the sale of digital assets remains the most delicate part of bankruptcy proceedings. Hence, this is the second important challenge for bankruptcy administrator. It also imposes a new approach to the sale methods regulation in bankruptcy proceedings. The bankruptcy administrator has a difficult decision to make between respecting the time framework and the principle of urgency of proceedings on the one hand and the moment of selling of the digital assets at the best price on the other. However, the decision on debtor's destiny relies on creditors, who may decide about the future of the insolvency debtor by voting for its liquidation or its reorganisation. In both cases, the financial aspect of its assets remains the most decisive factor. If digital and other assets secure sustainable business, insolvency debtor has his second chance in the reorganisation proceedings. The new regulation on digital assets in Serbia represents only the initial framework that requires further development by adopting by-laws and other regulation. In particular, regulation on professional education of judges, bankruptcy administrators and licensed providers of services related to digital assets and licensed valuation experts should be adopted and implemented. Judicial practice on digital assets is yet to be expected.

Conflict of Interest
The authors declare no conflict of interest.

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„UHVATI ME AKO MOŽEŠ!" – PRAVNI POLOŽAJ DIGITALNE IMOVINE U STEČAJNOM POSTUPKU U REPUBLICI SRBIJI

APSTRAKT: Sama pojava digitalne imovine predstavlja revolucionarni fenomen u tehnologiji, privredi i pravu. Njenim uređenjem, u zakonodavstvo uvodi se nov institut stvarnog prava, kojim ona, pored stvari, prava i realnih očekivanja, postaje predmet imovine. Budući da predstavlja određenu, mada često promenljivu vrednost imovine, a imovina svakog lica predstavlja zalogu za namirenje potraživanja svojih poverilaca, važno je obezbediti adekvatnu zaštitu prava i interesa poverilaca u okviru zakona. Ovo je posebno važno kada je u pitanju kolektivno namirenje potraživanja poverilaca u stečajnom postupku. Godine 2020. Republika Srbija usvojila je zakon kojim se uređuje digitalna imovina, njen predmet, izdavanje, promet i zaloga. Subjekti prava na digitalnoj imovini mogu biti i fizička i pravna lica. Imajući u vidu da srpsko zakonodavstvo poznaje samo stečaj pravnih lica, pažnja će biti posvećena digitalnoj imovini pravnih lica kao subjektima stečajnog postupka. Upravo je u interesu njihovih poverilaca da uspešno namire svoja potraživanja na imovini dužnika. Autori ovog rada analiziraju reformu srpskog zakonodavstva u ovoj visokotehnološkoj temi i ukazuju na moguće slabosti tretmana digitalne imovine u stečajnim postupcima i zaštiti potraživanja poverilaca. Takođe, preporučuju dalji razvoj regulative o digitalnoj imovini, uključujući stručno obrazovanje relevantnih pravosudnih profesija. U ovom radu korišćeni su normativni metod, metod uporednog prava i statistički metod.

Ključne reči: *digitalna imovina, stečajni postupak, zaštita poverilaca, namirenje potraživanja, Republika Srbija*.

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THE IMPACT OF GLOBALIZATION AND DIGITALIZATION ON THE OPERATIONS OF SMALL AND MEDIUM-SIZED ENTERPRISES – ECONOMIC CHALLENGES AND LEGAL REGULATION

ABSTRACT: The subject of this research is an analysis of the impact of globalization on the operations of modern enterprises, with particular emphasis on small and medium-sized enterprises (SMEs) striving for internationalization, with the aim of providing a comprehensive and systematic overview of the influence of globalization on the transformation of corporate competitiveness in the context of digitalization and the expansion of digital platforms. The paper identifies critical transition points towards proactive business models, accompanied by a detailed analysis of the associated risks and the regulatory frameworks necessary for overcoming them. The research indicates that, under conditions of intensified global competition, companies must continuously innovate and employ modern information and communication technologies in order to achieve a sustainable competitive advantage through overcoming

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geographical barriers and efficient resource management. The paper also provides an overview of the legal regulations in the European Union and the Republic of Serbia that are relevant to the development of the modern SME sector, particularly in light of the impact of digitalization on the operations of economic entities. The research results highlight the importance of timely alignment of SME operations with innovative market trends, which are closely followed by national legal regulations harmonized with the regulatory framework at the level of the European Union.

Keywords: *globalization, SMEs, digital platforms, economic entities, EU regulation, national legal framework.*

1. Introduction

Globalization, as a phenomenon of the modern era, exerts powerful economic, social, political, and cultural processes and influences worldwide (Petrović, 2021). Mutual interconnectedness and interdependence enable the integration of markets, technologies, and cultures, bringing numerous challenges for individuals, enterprises, and states. The effects of globalization are manifested through market expansion, technological innovations, the establishment of global supply chains, intense competition, and various risks and challenges (Novaković, 2021; Mengisteab, 2008).

Understanding the impact of globalization on business operations and enterprise development, especially for SMEs, is of essential importance for making strategic decisions in a globalized world. Given the complexity of this phenomenon, the research focuses on analyzing the fundamental dimensions of globalization and their impact on the SME sector aiming for global expansion. Adapting to diverse business conditions and national laws (Joffe, 2021) is simultaneously the greatest challenge; thus, for SMEs, globalization is not merely an opportunity to sell products in other markets, but a chance for expansion and improvement (Iqbal & Khan, 2023; Nirmala et al., 2024) and a strategic imperative that requires deep organizational transformation (Bahtijarević-Šiber, Sikavica & Pološki Vokić, 2008). In these conditions, organizational culture becomes a mechanism through which enterprises succeed in overcoming challenges, while understanding globalization enables a company to adopt a proactive business approach—to align, improve, and connect its own identity with the regulatory requirements of supranational entities. Competitiveness in the era of globalization and digital transformation (Ebert & Duarte, 2016) is no longer determined solely by technological equipment or capital, but by an enterprise's ability to perform the necessary institutional alignment and transition (Megawati et al., 2025). Carbajal Piña, Acur & Cetindamar (2024) emphasize the importance of developing a sustainable culture capable of continuously adopting new technologies, processes, and infrastructure that will enable the management of corporate development and digital innovations. It can be said that economic trends and legal regulations are primary at the macro level, while at the micro level, economic entities must possess the resilience and readiness to survive across various national jurisdictions.

The subject of this research is the analysis of the impact of globalization on the operations of modern enterprises, with a special focus on the SME sector striving for internationalization. The goal is to provide a comprehensive and systematic insight into how global processes affect competitiveness and transform enterprises in the conditions of digital business, digital transformation, and digital platforms. The research emphasizes the need to identify opportunities and risks in the transition to a proactive business model, the role of digital platforms, as well as the identification of key risks and regulations for overcoming them.

The paper is structured in a way that enables an understanding of the complexity of the topic, starting from the theoretical framework that defines the basic concepts of globalization, internationalization, and their impact on enterprise operations. The second part of the paper is dedicated to the analysis of global supply chains and logistical challenges (Jovanović & Vasiljević, 2008), as well as regulatory, legal, currency, and economic challenges and the role of digital platforms in the internationalization of SMEs. In the final chapters of the paper, an overview is provided of the legal regulations in the European Union and Serbia that are significant for the development of the modern SME sector, specifically considering the impact of digitalization on the operations of economic entities. The research results indicate the importance of timely alignment of SME operations with innovative trends present in the market, which are closely followed by national legal regulations harmonized with the regulatory framework at the European Union level.

2. The Impact of Globalization on Business Operations

Global connectivity of countries, peoples, and cultures ensures the flow of information, capital, people, goods, and services, and influences the economy, politics, society, and culture. By expanding business activities into international markets, access to new consumers is enabled, market potential is expanded, revenue sources are diversified, and dependence on a single market is reduced, which positively affects business stability. In global conditions, the interaction and integration between people, organizations, and governments (James i Steger, 2014) is particularly significant for companies that have enterprises in different countries of the world, operate outside their home country, or collaborate with foreign companies. The effect of globalization on business operations is broad, opening challenges and new opportunities for enterprises. Connected societies emerge, consisting of the parent company (mother company, dominant society, controlling society) and subsidiary companies (daughter companies, subordinate societies, controlled societies) (Ćirić, 2008, p. 123). Enterprises are enabled to direct themselves beyond national borders, namely toward the most profitable, competitive, and perspective markets and achieve a competitive advantage. Faced with stronger competition, enterprises must constantly innovate, adapt products and services, and efficiently manage their resources and operations. The development of new technologies, especially in the field of communications and transport, facilitates the creation of global networks and markets and enables the placement of parts of the enterprise in the most favorable business locations. Due to virtual connections, these locations become easily accessible in a very short time, regardless of distance (Bedeković & Golub, 2011). Globalization is to a large extent connected with the development of new technologies, especially in the areas of communications and transport. Progress in these areas enabled a faster and easier flow of information, people, goods, and services across the world. Modern ICT enables the efficient exchange of information via the internet, mobile phones, e-mail, video conferences, and social networks, whereby distance is reduced and communication in real-time is enabled regardless of geographical differences. Transport technology has enabled faster and more efficient transport of people and goods across the world, reducing costs and transport time. Thereby global trade is facilitated and faster and cheaper delivery of products to international markets is enabled.

Intensive internationalization is the next phase of the global expansion of enterprises and encompasses the economy, transfer of technologies, knowledge, and cultural values. The process, in which business activities, products, and services are integrated into international markets, requires the adaptation of business models, strategies, and operations, the establishment of partnerships with foreign entities, the opening of branches, or the adaptation of the offer to local cultural and consumer needs (Johanson & Vahlne, 2015). The Uppsala model emphasizes that internationalization takes place through the interaction between the development of market knowledge and incremental investments, which is key for intensive expansion (Johanson & Vahlne, 2015, 2017).

In the context of globalization, sustainable development, as a framework for responsible business, gains importance. As Lončar (2019) states, sustainable development implies satisfying the needs of present generations without compromising the possibility of future ones to satisfy theirs, through balancing economic, social, and ecological dimensions (Ghimire, 2023). Ecological aspects of business emphasize the sustainable use of resources, reduction of greenhouse gas emissions, preservation of biodiversity, and promotion of renewable energy sources like solar and wind energy. The economic aspect ensures growth without exhausting resources, supporting innovations and green technologies that create long-term profitability. The social aspect promotes equality, access to education, healthcare, and fair working conditions, with respect for cultural differences in global markets (Purvis, Mao & Robinson, 2019).

Along with positive aspects, such as increased trade, better conditions for economic growth, and the spread of culture, globalization also brings numerous challenges. This includes inequalities in access to resources, cultural and economic adaptations, as well as potential threats to domestic industries and traditions. Globalization can also lead to the strengthening of global problems, such as climate change, migrations, and international conflicts.

McLuhan & Powers (1989) and Bedeković and Golub (2011) introduce the term “global village”, in which due to globalization the way of life, habits, tradition, and customs have changed. Cultural patterns influence the behavior of employees and business partners (Bahtijarević-Šiber, Sikavica & Pološki Vokić, 2008). The traditional way of conducting business, in a global enterprise, is no longer sufficient; namely, understanding local customs, norms, and business practices becomes key to success. The “global village” is changing and requires the adaptation of the enterprise leadership style, new strategic decisions, knowledge and appreciation of diversity, and the ability to adapt (Logue, 2023; Ralón, 2017). Enterprises must adapt their marketing strategies, products, and business approaches to the specificities and expectations of consumers in different countries. According to Andrijanić (2020), international relations are not only economic but also include cultural, political, and social aspects. Specific circumstances in countries shape business, so different resources, differences in understandings, interests, and customs can influence the way of negotiating, contracting, and agreeing on the international scene. Management must know and understand how cultural differences influence and shape business relations (Certo & Certo, 2008).

Global expansion changes national identity into intercultural. Communication among partners from different countries requires efficient management, which implies performing managerial functions (planning, organizing, leading, human resource management, and control) with the indispensable understanding of the specificities of the environment (Bahtijarević-Šiber, Sikavica & Pološki Vokić, 2008).

Enterprises on the global scene use global supply chains and in that way reduce production costs and access favorable resources, but they require efficient management. Enterprises face numerous legal, economic, political, and social challenges (logistics management, communication with partners in different time zones, different languages, natural disasters, political instability, economic crisis, etc.). The success of international business of an enterprise must be viewed through the prism of macroeconomic aggregates (for example, inflation, exchange rate fluctuations) or infrastructural problems (shortages of means of work and objects of work, insufficiently qualified workforce, lack of transport capacities, etc.). As Jovanović and Vasiljević (2008) point out, "changes in today's business environment are caused by globalization, increasingly strict demands of end customers, tendencies toward reducing the product life cycle, dependence of companies on business partners, as well as the focusing of companies on core competencies" (p. 252). Economic entities focus their entire activity on the end customer and/or service user, avoiding unnecessary exhaustion and waste of energy. The authors suggest four factors of key importance for global supply chains, namely: long delivery times, extended and unreliable transport time, consolidation and groupage options, the model of multiple transport of goods and cost options. In order to prevent troubles, the risks and specificities of global supply chains must be considered and respected (Anđelković, Barac & Milovanović, 2014). Since goods travel thousands of kilometers, and transport and delivery time is an important factor, enterprises must consider the ways of shipping goods. Enterprises can independently organize logistical activities or opt for hiring specialized intermediaries (freight forwarders, door-to-door transport providers, etc.). In developed market economies, logistical services are coordinated and managed, namely the entire supply chain is managed by specialized international enterprises (Bendeković, Vuletić & Gotovac, 2013; Pavlić Skender & Grčić Fabić, 2013).

3. Regulatory, Currency, and Economic Challenges of Economic Entities in the International Market

Companies operating in international markets face significant risk from currency fluctuations, as changes in foreign exchange rates can dramatically affect import/export costs, revenues in local currencies, and overall profitability (Tiwary, 2019). Furthermore, economic crises, hyperinflation, recessions, or geopolitical shocks in individual countries destabilize operations, leading global companies to develop and utilize sophisticated protection strategies, including hedging contracts and similar instruments. By connecting economy, politics, and culture, social balance is affected, resulting in consequences such as disproportionate demographic growth in underdeveloped regions, increased economic instability, deregulation of social sectors, strengthening of regional integrations, and the growing gap between the rich and the poor. However, the international flow of goods, services, and capital reduces the significance of national economies in favor of multinational networks (Heimberger, 2020). Due to altered micro and macro business conditions, enterprises are faced with serious threats, such as supply chain disruptions or regulatory barriers. In global business conditions, standards for product competitiveness, innovativeness, and service quality incorporate Environmental, Social, and Governance (ESG) criteria and digital platforms. Therefore, global positioning is not a choice, but an obligation—i.e., a strategic imperative that requires adaptability (Bahtijarević-Šiber, Sikavica & Pološki Vokić, 2008). To optimize business processes, globalization encourages enterprises to adopt technological innovations and digitalization, thereby facilitating global communication and cooperation among partners (Gobble, 2018). On the other hand, the impact of business activities on the environment, society, and human rights must be considered, so Corporate Social Responsibility (CSR) gains importance. Consumers, investors, and other stakeholders increasingly expect companies to demonstrate responsibility and transparency in their business practices.

Operating in multiple countries implies alignment with different national legislations and regulations, which often requires specialized legal support, multidisciplinary teams, and continuous monitoring of changes. Countries have specific laws regarding taxes (e.g., avoidance of double taxation through bilateral agreements), labor rights (working hours, minimum wage, worker protection), consumer protection, the environment (emissions, waste), and intellectual property, where non-compliance can jeopardize the business, lead to fines, lawsuits, and similar issues. Nugiantari (2025) identifies risks in cross-border contracts, ranging from the inconsistency of legal systems to challenges related to regulatory compliance. The author emphasizes that companies can achieve sustainable growth by identifying legal risks, ensuring compliance, and optimizing profits, alongside the creation of a framework for legal risk assessment.

4. The Role of Digital Platforms in the Internationalization of SMEs and the Legal Regulation of the European Union and Serbia

Access to global markets through digital platforms represents a key opportunity for entrepreneurs, startups, and SMEs to expand their business with minimal investment and administrative burden.

Traditional sales required significant investment and gradual market conquest. The evolution of digital platforms in the modern economic context is conditioned by an understanding of the basic structure and user behavior. Petsas et al. (2013) pointed out the advantages of the digital market (such as the App Store or Google Play) in creating market dominance and challenged traditional business models. In a global, digital world, due to the mass use of the internet and applications, small and medium-sized enterprises have changed their way of selling; namely, product accessibility has been improved. Products have become available anywhere in the world, without the need for large retail facilities, warehouses, or expensive advertisements. Thus, today traditional sales models are supplemented or replaced by the platform sales model. Selling has become faster and more modern, and enterprises more competitive with large companies.

The role of digital platforms is primarily infrastructural; namely, they provide SMEs with support, logistical and technological solutions, cost modification, and reduction of initial capital. Simultaneously, digital platforms shorten the time necessary to conquer foreign markets and establish trust with global buyers. Despite the limited resources of enterprises, platforms enable economies of scale and equal competition with multinational corporations (Lund & Tyson, 2018). The efficiency of internationalization directly depends on the choice of an adequate digital channel. Global leaders are available, such as Alibaba, Amazon, or eBay (Baker El-Ebiary, et al., 2021; Qureshi & Yadav, 2020), but also regional ecosystems such as Allegro (Poland), Kaufland (Germany/CEE), eMAG (Romania/Balkans), Trendyol (Turkey), and Pepita (Hungary). Finally, platforms are not just sales channels but are integrated business infrastructures for SMEs with high functionality.

Digital platforms represent a unique operating system that implies modern technical architecture and stable servers, secure financial payment systems, and often includes a complete logistical network of storage and delivery. In addition to the mentioned operating system factors, digital platforms include sophisticated marketing algorithms. They enable the analysis of market trends and consumer preferences, the identification and connection of an enterprise's offer with potential consumers, whereby the process of sales, billing, and distribution takes place within a single system. SMEs receive infrastructural support through integrated logistics models (Fulfillment) and very often platforms take on the risk of distribution and storage, reducing operational risks. In fact, digital platforms function as a space for empirical validation of business strategies, testing new products, and pricing models.

However, SME business operations and the effects of digitalization depend on the development of broadband internet, accessible cloud services, and harmonized data management regimes (Nikoletos et al., 2024). Support and investment in complementary capacities are necessary, such as data analytics, cyber risk management, and cross-border e-logistics (Mirzaye & Mohiuddin, 2025; Lund & Tyson, 2018). The design of digital markets must be comprehensive; namely, it must simultaneously address technological stability, economic feasibility, and regulatory compliance (Shirzad & Bell, 2013).

As platforms grew, it became necessary to classify their business models. Täuscher & Laudien (2018) identified six key types of platforms. The authors analyze their impact on competition and regulation and emphasize that the EU is currently building its laws on this classification. By doing so, it seeks to ensure fair play within digital ecosystems where large players often set their own rules (Rondić, 2025). Shree, Singh, Paul, Hao and Xu (2021) indicate that platform adoption is not just a technical issue but depends on the broader environment, so digital markets in the EU must be not only efficient but also socially responsible (Cano et al., 2022). Azcoitia & Laoutaris (2022) and Abbas et al. (2021) deal with issues related to data markets (Data Marketplaces) and emphasize the importance of governance and socio-economic dimensions of data exchange. Tkachuk, Ilie, Tutschku and Robert (2021) dealt with the issue of trust in these complex systems and highlight the role of blockchain and distributed ledger technologies (DLT) as mechanisms that can revolutionize business models, making them more transparent and resistant to manipulation.

The EU is making significant efforts to change the legal environment in which online platforms operate through the adoption of a regulatory framework in the form of the Digital Markets Act (2022) and the Digital Services Act (2022), with the aim of strengthening user rights and increasing transparency in platform operations. The goal is actually to ensure at the European Union level, through the Digital Markets Act (2022), a "competitive and fair digital sector that enables the growth of innovative digital companies and the protection of user safety on the internet through: clear obligations and prohibitions for large internet platforms, better services and fairer prices for consumers, fostering innovation and a fairer environment concerning internet platforms for tech start-ups, providing business users the opportunity to offer consumers more choice, and prohibiting unfair practices on large internet platforms." The Digital Services Act (2022) ensured a "safer internet environment for consumers and companies in the European Union with a set of rules for: more efficient protection of consumers and their fundamental rights, defining clear responsibilities for internet platforms and social networks, addressing illegal content and products, hate speech, and disinformation, achieving greater transparency with better reporting and oversight, as well as fostering innovation, growth, and competitiveness in the internal market of the European Union." Both Regulations create a unique legal framework that reduces barriers to cross-border business and protects consumer rights. For SMEs, this means greater legal certainty and easier access to EU markets. In addition to the two mentioned Regulations, whose goal is user safety and fair market competition on the internet, the European Union adopted the Artificial Intelligence Act (2024), the goal of which is "establishing a harmonized internal market for artificial intelligence in the EU, fostering the adoption of this technology and creating an environment conducive to innovation and investment."

Some developing countries provide their citizens with various incentives for inclusion in this global digital labor market, as they thus retain talent in their country while simultaneously ensuring the inflow of foreign funds.

Regarding the legal regulation in Serbia that is significant for the development of the modern SME sector, a tendency of active alignment of the current legal framework with European Union standards and regulations can be observed, aimed at harmonizing the business operations of economic entities with modern market trends and digital business needs. The set of basic laws regulating the mentioned field certainly includes the Law on Protection of Competition (2009), which "regulates the protection of competition on the market of the Republic of Serbia, with the aim of economic progress and the welfare of society, and especially the benefit of consumers, as well as the establishment, status, organization, and powers of the Commission for Protection of Competition" (Article 1). Provisions of the Law on Protection of Competition (2009) "apply to all market participants, so they also play a key role in the context of the operation of digital food delivery platforms"

(Žunić Marić, Đukanović & Obradović, 2024, p. 26). Laws that should also be highlighted are the Law on Personal Data Protection (2018), with which "Serbian legislation is largely aligned with European Union regulations relating to the protection of privacy and personal data, taking into account the increasing importance and flow of personal data during the operations of information service providers" (Žunić Marić, Đukanović & Obradović, 2024, p. 25), the Law on Trade (2019), which "first defined and identified the difference between an electronic platform, electronic shop, and so-called dropshipping" (Žunić Marić, Đukanović & Obradović, 2024, p. 26), the Law on Electronic Commerce (2009), whose amendments and additions from 2019 introduced additional obligations for information society service providers, the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business (2017), which "regulates the electronic document, electronic identification, and trust services in electronic business" (Article 1), as well as the Law on Digital Assets (2020), which regulates the following issues: the issuance of digital assets and secondary trading of digital assets in the Republic of Serbia, the provision of services related to digital assets, pledge and fiduciary rights on digital assets, the jurisdiction of the Securities Commission and the National Bank of Serbia." It should certainly be emphasized that the "legal status of companies and other forms of organization, and especially their establishment, management, status changes, changes in legal form, termination, and other issues of importance for their status, as well as the legal status of entrepreneurs" is regulated by the provisions of the Law on Companies (2011, Article 1).

5. Conclusion

Globalization and digitalization represent interconnected processes that change the conditions for modern business, and for the growth and development of small and medium-sized enterprises. Research indicates that globalization affects market expansion and revenue diversification, while technological innovations and business operations through digital platforms enable the SME sector to expand territorially with small initial investments. The research results indicate that global and regional digital platforms are not just sales channels, but a complex business infrastructure that was previously available only to multinational companies. Numerous pieces of information about the market and consumers become available to enterprises, which, in cooperation with digital tools, reduces operational risks.

Sustainable competitive advantage in modern business conditions in the "global village" is no longer determined only by capital, but by the enterprise's ability to align institutionally. Modern consumers and investors demand adaptation to local cultural patterns, norms, and business practices, and the implementation of ESG criteria and principles of social responsibility is increasingly important. A special challenge of modern global SME business, in conditions of intensive digitalization and transformation, is the complex regulatory framework. Results indicate that successful operation in the international market requires timely compliance with European Union regulations, primarily through the Digital Markets Act (DMA) and the Digital Services Act (DSA), which emphasize the importance of fair market competition and user protection. For economic entities in Serbia, this process is facilitated by the active aspiration of national legislation to harmonize laws, such as the Law on Personal Data Protection and the Law on Electronic Commerce, with the EU acquis.

Finally, it can be concluded that globalization and digital transformation are not just external pressures, but strategic imperatives that imply deep institutional transformation. Utilizing the advantages of digital platforms and respecting supranational legal norms contributes to establishing a balance between local specificities and global trends and becomes a key factor for the survival and profitability of SMEs in the modern world.

Conflict of Interest

The authors declare no conflict of interest.

Author Contributions

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UTICAJ GLOBALIZACIJE I DIGITALIZACIJE NA POSLOVANJE MALIH I SREDNJIH PREDUZEĆA – EKONOMSKI IZAZOVI I PRAVNA REGULATIVA

APSTRAKT: Predmet istraživanja jeste analiza uticaja globalizacije na poslovanje savremenih preduzeća, sa posebnim fokusom na sektor malih i srednjih preduzeća (MSP), koja teže internacionalizaciji, sa ciljem da se pruži sveobuhvatan i sistematičan prikaz uticaja globalizacije na transformaciju konkurentnosti preduzeća u svetlu digitalizacije i ekspanzije digitalnih platformi. Kroz rad se identifikuju kritične tačke prelaska na proaktivne modele poslovanja, uz detaljnu analizu pratećih rizika i regulatornih okvira neophodnih za njihovo prevazilaženje. Rad ukazuje na to da preduzeća u uslovima pojačane globalne konkurencije moraju kontinuirano inovirati i koristiti savremenu informaciono-komunikacionu tehnologiju kako bi, prevazilaženjem geografskih barijera i efikasnim upravljanjem resursima, ostvarila održivu konkurentsku prednost. U radu se čini osvrt na pravnu regulativu u Evropskoj uniji i u Srbiji, koja je od značaja za razvoj modernog MSP sektora, imajući u vidu upravo uticaj digitalizacije na poslovanje privrednih subjekata. Rezultati istraživanja ukazuju na značaj pravovremene usklađenosti poslovanja MSP sa inovativnim trendovima prisutnim na tržištu, koje u korak prati nacionalna pravna regulativa usklađena sa regulatornim okvirom na nivou Evropske unije.

Ključne reči: *globalizacija, MSP, digitalne platforme, privredni subjekti, EU regulativa, nacionalni zakonski okvir.*

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LEGAL FRAMEWORK AND STANDARDS OF GOOD PHARMACY PRACTICE IN PHARMACEUTICAL WASTE MANAGEMENT

ABSTRACT: Recognizing the importance of proper pharmaceutical waste management is of utmost significance from several different perspectives. Pharmaceutical waste may pose a potential problem for all types of healthcare institutions. It is not limited to expired medicines, but also includes various types of packaging containing traces of toxic substances, protective equipment, instruments used in the administration or preparation of medicines, as well as veterinary medicinal products. Naturally, different types of pharmaceutical waste carry different types of risks. It can be said that many chemical substances primarily used in healthcare may become a risk to human health and may adversely affect the environment if handled improperly. Following the conceptual definition of medical and pharmaceutical waste and an overview of their characteristics, the paper analyzes the legal framework governing the treatment of pharmaceutical waste in Serbia and also provides an overview of the standards of good pharmacy practice in pharmaceutical waste management.

Keywords*: pharmaceutical waste, medical waste, pharmacy practice, legal framework in the Republic of Serbia.*

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1. Introduction

Recognizing the significance of proper pharmaceutical waste management, along with the legal and factual regulation of the methods and procedures of pharmaceutical waste management is extrremely important, considering various aspects. As it is increasingly being emphasized in theory, "unsystematic and inadequate waste management represents one of the biggest issues of environmental policy in Serbia". This condition is principally consequential of a lack of a definite attitude of society towards waste, insufficient understanding as to the relevance of waste management and failure to recognize the positive effects of the process" (Belgrade Open School, 2011, p.2).

For the most part, "there is no process which, in addition to producing the desired product or service, does not also generate certain by-products which, if not properly managed, ultimately become waste" (Đukić, 2018, p.157) having manifold adverse effects on a number of processes in society. With regard to the dynamics of waste generation in a broader sense, authors emphasize that "the situation in Serbia, as in many countries in transition, is extremely difficult to assess due to the lack of data on quantitative and qualitative waste analysis, more precisely on waste categorization" (Šerović, Madžgalj & Jelić, 2019, p. 129). It has been estimated that "2.5 million tons of waste is generated in Serbia, and various types of waste are often disposed of together with municipal solid waste in landfills" (Urošević, Pejčić & Đorđević, 2012, p. 160).

As Young (2012) mainatins, a particularly significant challenge, pertaining also to the field of environmental protection in Serbia is "the low level of waste management. High costs, irrational organization, poor quality of service and insufficient concern for the environment, are the result of the dismal state in waste management organization" (p.169). Many authors hold this opinion noting that "waste management definitely reflects significantly on the state of the environment" (Počuča & Matijašević, 2022, p. 416). In this context, Bukumirić, Alivojvodić, Stamenović and Đarmati (2017), state that the "environmental impact of waste is adverse in numerous respects, the underlying causes in the Republica Serbia being: insufficient and unequal municipal coverage by public utility services, the inadequate regulation and overcapacity of ladfills, as well as the low level of public awareness regarding proper waste management practices and environmental protection in general" (p. 87; Matijašević Obradović, Kovačević & Gradinac, 2018, p. 936). Given that harmful environmental impact has, from the outset, most often been associated with the "generation, inadequate direction and final disposal of waste" (Matijašević Obradović & Milojević, 2018, p. 2), over time the waste management process in Serbia has become "reconciled with the principles of environmental protection" (Jovanović, 2016, p. 34), as prescribed by article 9 of the Environmental Protection Act (2004). Analyzing aspects of waste management planning, Josimović, Ilić and Filipović (2009) state that "proper waste management requires professional expertise in the field and a multidisciplinary approach" (p. 1).

Authors highlight that "many chemical substances and medicines used in healthcare facilities constitute hazardous waste" (Motiekaityte & Venckus, 2016, p. 26). Article 5, paragraph 1, point 10 of the Waste Management Act (2025), stipulates that "pharmaceutical waste includes all medicines, medicinal products and raw materials including their primary packaging as well as all the equipment used for their preparation and application. In this respect, pharmaceutical waste may be classified as: non-hazardous pharmaceutical waste – which does not pose a risk to human health or the environment and is treated in accordance with the procedure prescribed for hazardous pharmaceutical waste, and hazardous pharmaceutical waste – which includes waste generated from medicinal products containing heavy metals and disinfectants, medicines of known and unknown composition and medicines of indeterminate composition, and cytotoxic and cytostatic waste". Pharmaceutical waste also encompasses "instruments used in the preparation or administration of medicines" (Ministry of Health, 2013, p. 6). Pharmaceutical waste is a category of medical waste which is in principle defined as "heterogeneous mixture of waste, 10–25% of which constitutes hazardous waste posing risks to human health and the environment" (Ministry of Health, 2008, p. 10).

The issue of the legislative treatment of medical and pharmaceutical waste management has, in recent years, become a highly relevant topic in both legal theory and practice. Accordingly, following a conceptual determination of medical and pharmaceutical waste, in addition to an overview of their characteristics, this paper analyes the legal framework governing this matter under the positive law of Serbia, with a view to offering *de lege ferenda* considerations. Furthermore, to that end, the author of the paper, deems it important to review the standards of good pharmacy practice in pharmaceutical waste management as established by the Pharmaceutical Chamber of Serbia.

2. Conceptual definitions and characteristics of medical and pharmaceutical waste

There are various definitions of medical waste, "however, each definition is essentially characterized by the fact that the waste is generated within healthcare facilities, and it is associated with the performance of medical procedures: diagnosis, treatment or research activities. Within healthcare facilities, all medical waste generated is heterogenous in nature: hazardous medical waste and inert municipal waste" (Simeunović, 2021, p. 825). Živković, Milošević, Vranjanac, Vasović and Stević (2018) cite the definition of the World Health Organization according to which medical waste is defined as waste "generated in the course of the diagnosis, treatment, or immunization of humans or animals" (p. 103). According to article 5, paragraph 1, point 18 of the Waste Management Act (2025), "medical waste is defined as waste generated from facilities providing healthcare to humans or animals and/or from other sites providing healthcare or other services (including diagnostic activities, experimental work, laboratories, cleaning, maintenance and disinfection of premises and equipment), encompassing both hazardous and non-hazardous medical waste, namely: non-hazardous medical waste which is not contaminated with hazardous or other substances, and which, by its composition, is similar to municipal waste (biodegradable, etc), hazardous medical waste which requires special handling, that is, which has one or more hazardous characteristics rendering it hazardous waste, including: pathological waste, sharps, waste contaminated by blood and bodily fluids, infectious and potentially infectious waste, and other hazardous medical waste (chemical waste, waste with a high content of heavy metals)". Article 2 of the Rulebook of the Medical Waste Management (2010) classifies pharmaceutical waste as hazardous medical waste requiring special handling, and consisting of "all medicines, including primary packaging (primary packaging being defined under Article 5 of the Packaging and Packaging Waste Act (2009) as the smallest packaging unit in which a product is sold to the end consumer) as well as all equipment used for the administration of such products, held by a legal or natural person engaged in healthcare activities", which have become unusable due to expiration date, non-compliance with prescribed quality standards, contaminated packaging, spillage, scattering, preparation without subsequent use, return by end users or other reasons preventing their use. Such waste may be classified as: potentially hazardous pharmaceutical waste (waste posing a risk if improperly managed and requiring procedures for hazardous waste management) and hazardous pharmaceutical waste (waste originating from medicines and disinfectants containing heavy metals, as well as medicines of indeterminate composition, which due to their composition require special treatment procedures)". The Medicines and Medical Devices Agency of Serbia, in the Guidelines on the Recall of Medicines (2021), states that quality defects rendering a medicine pharmaceutical waste "may be divided into three classes: Class 1: Quality defect posing a life-threatening or serious health risk to the patient (e.g. wrong medication strength, etc.); Class 2: Quality defect that may compromise patient's health or result in treatment interruption, but does not fall within Class 1 (incorrect labeling or instruction, etc.); Class 3: Quality defect that is unlikely to seriously compromise patient's health. Class 1 recall is performed immediately, without delay, within 24 hours, class 2 recall within 48 hours, and class 3 recall within 5 days". Article 25 of the Medicines and Medical Devices Act (2010) prescribes that, in order to obtain market authorization, a medicine "must undergo pharmaceutical (pharmaceutical, chemical, biological), pharmaceutical and toxicological, and clinical testing".

The International Committee of the Red Cross in its Guidelines on medical waste management (International Committee of the Red Cross, 2011) states that as much as "75% to 90% of hospital waste is comparable to household or municipal waste and does not pose any particular hazard" (p. 12). Nevertheless, a decade later, the Organization for Economic Cooperation and Development (OECD) in its 2022 report notes that pollution from pharmaceutical products may occur when residues are excreted following consumption (as also noted by Straub (2016), or when unused or expired medicines are improperly disposed of. Household medicines may become waste for a number of reasons. Non-compliance with the regulations, early recovery, or prescription and purchasing errors may result in medicines remaining unused or expiring in households (see also Nikolić, Nikolić, Milošević & Milošević Georgiev, 2024, pp. 835–836). Estimates of the proportion of household medicines that become waste, range from 3% to as high as 50%" (p. 8). It is also important to consider veterinary medicines, which enter the environment through various, largely uncontrolled pathways (Shukla, et. al., 2017). Given that pharmaceutical waste can be solid, semi-solid or liquid, "solid (e.g. tablets, capsules, powders) and semi-solid (e.g. ointments, creams) pharmaceutical products can generally be tretaed by incineration, encapsulation and engineered landfilling, while wastewater treatment plants are recommended for liquid pharmaceutical waste" (Sapkota & Periathamby, 2023, p. 86).

The World Health Organization, in its 2004 report, indicated that "nearly five million people lose their lives each year due to exposure to certain environmental chemicals and that the actual figures are even higher in practice given the cumulative effects of chemical substances on human body" (Ristić, et. al., p. 188), while Živković et al. (2018) emphasize that the risk of "health and environmental hazards posed by hazardous agents originating from medical waste in the environment should by no means be underestimated considering that approximately 15% of medical waste is hazardous while the remaining 85 % of waste is non-hazardous" (p. 106). Jovanović and Živković (2010) report that nearly two decades ago, the population of Serbia was annually exposed to "the generation of between 4,500 and 5,000 tons of infectious healthcare waste, of which one-fifth originated from outpatient healthcare services, two-thirds from hospital care, and approximately 5% from microbiological medical laboratories" (p. 44).

3. Analysis of the legal framework governing the management of pharmaceutical waste in Serbia

As previously noted in the paper, under the Rulebook of Medical Waste Management (2010), pharmaceutical waste classified as hazardous medical waste is hazardous medical waste requiring special handling. The basic principles of medical waste management include: "establishing a waste segregation process, whereby waste is separated according to different methods of processing and disposal and directed into distinct "streams"; reducing the generation and overall quantity of medical waste; managing waste in a manner that does not compromise human health or the environment; organizing treatment and disposal of waste in the most appropriate way within these waste streams; preparing or remediating unregulated temporary or permanent storage facilities; maintaining records and documentation of medical waste management activities; monitoring key indicators related to segregation, disposal, and treatment; planning activities related to medical waste management; implementing corrective measures in annual planning; training personnel in the procedures of segregation, labeling, packaging, disposal, and treatment of medical waste; motivating staff to manage medical waste effectively; raising awareness regarding medical waste management; and fostering multidisciplinary cooperation to establish a regulated medical waste management system both at the healthcare facility level and within the administrative district" (Ministry of Health, 2008, p. 11).

The Rulebook on the Method and Procedure for Pharmaceutical Waste Management (2019) establishes the procedures and responsibilities for the handling of pharmaceutical waste. Article 3 defines "pharmaceutical waste management as a set of measures encompassing collection, segregation, packaging, labeling, storage, transport, and treatment of waste with the aim of its final safe disposal in a manner that protects human and animal health as well as the environment. Pharmaceutical waste management must be conducted in accordance with the general principles of waste management prescribed by law. Pharmacies operating as healthcare institutions, veterinary organizations, and privately-owned pharmacies are required to conclude a contract with an entity responsible for collection, transport, treatment, storage, reuse, disposal, or export of pharmaceutical waste in compliance with applicable legislation governing waste management. Article 4 further stipulates that "pharmaceutical waste shall be collected at the point of generation and segregated into hazardous and non-hazardous pharmaceutical waste, or into different categories of hazardous pharmaceutical waste, and shall be temporarily stored in appropriate packaging adapted to its properties, quantity, and method of temporary storage, transport, and treatment. At the point of generation of pharmaceutical waste, uncontaminated secondary packaging shall be separated from the primary packaging of the medicinal product in order to reduce waste quantities and enable more efficient packaging and transport for further treatment. Hazardous pharmaceutical waste shall be classified according to its origin, characteristics, and composition rendering it hazardous. Cytotoxic and cytostatic waste shall be collected separately from other categories of pharmaceutical waste at the point of generation, in a manner preventing direct contact with personnel handling the waste; repackaging thereof in temporary storage facilities or during delivery shall not be permitted". Pharmacies established as healthcare institutions, pharmacies operating as private practices, as well as veterinary organizations, shall take over pharmaceutical waste generated by citizens (Article 5). Article 6 prescribes that "pharmaceutical waste shall be packaged at the point of generation in special packaging provided and installed by the operator with whom the waste producer has concluded a contract, except for pharmaceutical waste generated by citizens. Segregated pharmaceutical waste at the point of generation shall be packaged in the following manner: 1) pharmaceutical waste – in red bags and containers; 2) cytotoxic and cytostatic waste – in purple bags and containers. Liquid waste shall be packaged in leak-proof containers preventing spillage and securely sealed. Spilled and contaminated medicinal products, as well as packaging containing residues of medicinal products from facilities where pharmaceutical waste is generated, shall, prior to storage, be packaged in appropriate containers at the point of generation. The packaging of pharmaceutical waste generated by medicinal product manufacturers and wholesale distributors is regulated by Article 7. Namely, "pharmaceutical waste generated at the premises of medicinal product manufacturers and entities engaged in the wholesale distribution of medicinal products and medical devices shall, at the point of generation, be segregated as follows: 1) non-hazardous pharmaceutical waste; 2) hazardous pharmaceutical waste; 3) hazardous pharmaceutical waste – cytostatics; 4) hazardous pharmaceutical waste – medicinal products for which the Medicines and Medical Devices Agency of Serbia has granted a marketing authorization and which contain psychoactive controlled substances; 5) hazardous pharmaceutical waste – medicinal products for which the Medicines and Medical Devices Agency of Serbia has granted a marketing authorization and which contain Category I precursors.

In addition to the aforementioned provisions, the Rulebook on the Method and Procedure for Pharmaceutical Waste Management (2019) also regulates issues relating to the labeling, storage, and transport of pharmaceutical waste, while Article 12 stipulates that "the treatment of pharmaceutical waste shall be carried out by the producer of pharmaceutical waste independently or through an operator with whom a contract has been concluded, in accordance with the conditions set out in the permit issued by the competent authority, and in compliance with the law governing waste management and other specific regulations. Pharmaceutical waste containing live microorganisms shall be treated by sterilization using pressurized steam in an autoclave to achieve a safe level of sterility, in accordance with specific regulations and professional standards. Hazardous pharmaceutical waste shall be treated by incineration or co-incineration, as well as by appropriate physico-chemical processes (neutralization, solidification, adsorption, distillation, etc.) aimed at reducing the hazardous characteristics of the waste, in accordance with best available technologies. Non-hazardous pharmaceutical waste shall be treated by composting, anaerobic digestion, fermentation, or other approved methods in accordance with best available technologies. Cytostatic and cytotoxic waste shall be treated by incineration in facilities holding a permit for the treatment of hazardous waste in accordance with the law governing waste management. Waste originating from medicinal products containing psychoactive controlled substances and precursors shall be treated by incineration, in compliance with the regulations governing psychoactive controlled substances and precursors, the regulations governing medicinal products, as well as the regulations governing waste management. The treatment of pharmaceutical waste by incineration and co-incineration shall be carried out in facilities designated for that purpose, provided that emissions of pollutants into air, water, and soil do not exceed the prescribed limit values, in accordance with special legislation.

It should also be noted that, pursuant to the provisions of Annex 11 to the Rulebook on Waste Categories, Testing and Classification (2010), pharmaceutical waste generated in the provision of healthcare to humans and animals "is designated by the following index numbers: 18 01 08* for waste medicinal products intended for human use, and 18 02 07* for waste medicinal products arising from the treatment of animals, where such products belong to the groups of cytotoxic and cytostatic medicines; and 18 01 09 and 18 02 08 for other categories of medicinal products originating from human and veterinary healthcare respectively".

4. Standards of good pharmacy practice for pharmaceutical waste management

Good pharmacy practice is defined as "a system of standards and guidelines enabling the provision of pharmaceutical services of appropriate quality to each user, with the aim of ensuring optimal, evidence-based pharmaceutical healthcare" (Pharmaceutical Chamber of Serbia, 2021, p. 2). Good pharmacy practice is founded upon four fundamental principles: patient welfare, the optimal use of medicines through the promotion of rational and cost-effective prescribing and dispensing, effective communication, and multidisciplinary cooperation in the provision of pharmaceutical services.

Pharmaceutical waste management within a pharmacy is defined as "a set of measures encompassing the collection, segregation, packaging, labeling, and transport of pharmaceutical waste between organizational units of the same healthcare institution, as well as the temporary storage of pharmaceutical waste generated within the pharmacy and waste taken over from citizens, and its handover to an authorized operator" (Standards and Guidelines of Good Pharmacy Practice for Pharmaceutical Waste Management, 2021). The Standards of Good Pharmacy Practice for Pharmaceutical Waste Management, together with their accompanying guidelines, which provide further elaboration of the requirements set out in the standards and offer examples of good practice in meeting those requirements, are fully aligned with the Rulebook on the Method and Procedure for Pharmaceutical Waste Management (2019) and the Waste Management Act (2025).

The said Standards and Guidelines of Good Pharmacy Practice for Pharmaceutical Waste Management (2021) "require that pharmacies or healthcare institutions with integrated pharmacies adopt a Waste Management

Plan in accordance with waste management legislation, establish written procedures for handling pharmaceutical waste, and designate a responsible officer". It further stipulates that "during waste segregation, special attention is given to medicines containing psychoactive controlled substances, cytostatics, and other hazardous chemicals which contain hazardous substances in accordance with the law." Containers and bags used for the disposal and packaging of pharmaceutical waste must be suitable for their specific purpose (shape, volume, color, material, safety), in compliance with the law. Pharmaceutical waste must be stored temporarily in a designated, separate area in a manner that ensures safety and prevents harm to human health and the environment in compliance with the regulations. Labeling and documentation of pharmaceutical waste must comply with relevant legislation. Transport of pharmaceutical waste between organizational units of the same healthcare facility may be conducted using the facility's vehicle; a transport permit is not required if the quantity of waste transported is less than ten kilograms. Pharmaceutical waste must be transferred to an authorized operator under a contract ensuring regular collection. Authorized operators must hold the appropriate permits for waste management activities, issued by the ministry responsible for environmental protection. Proper records must be maintained regarding the amounts of generated pharmaceutical waste (daily waste record) and its transfer to the authorized operator (waste movement document, including hazardous waste documentation). Based on these records, an annual waste report is prepared and submitted to the Environmental Protection Agency in accordance with relevant legislation".

The Standards and Guidelines of Good Pharmacy Practice for Pharmaceutical Waste Management (2021) also stipulate that "both public and privately-operated pharmacies are required to accept pharmaceutical waste from citizens and ensure its transfer to an authorized operator. Management of pharmaceutical waste collected from the public must be conducted in full compliance with applicable waste management regulations".

5. Conclusion

Pharmaceutical waste may constitute a potential challenge for all types of healthcare institutions, including pharmacies, hospitals, clinics, and others. It is not limited solely to expired medicinal products. Rather, pharmaceutical waste also encompasses various forms of packaging, liquid and solid substances containing traces of toxic compounds, protective equipment, instruments used in the preparation or administration of medicinal products, as well as veterinary medicines. Certainly, different categories of pharmaceutical waste entail different types and levels of risk. It may therefore be concluded that numerous chemical substances primarily used in healthcare may pose risks to human health and adversely affect the environment if improperly handled, as may substances classified as pharmaceutical waste.

The statutory provisions that directly or indirectly regulate the treatment of medical waste and the method and procedure for pharmaceutical waste management and which are analyzed in this paper, include the Waste Management Act, the Packaging and Packaging Waste Act, the Medicines and Medical Devices Act, and the Environmental Protection Act, while the relevant secondary legislation examined herein comprises the Rulebook on Medical Waste Management, the Rulebook on the Method and Procedure for Pharmaceutical Waste Management, and the Rulebook on Waste Categories, Testing and Classification. The paper also addressed the Standards and Guidelines of Good Pharmacy Practice for Pharmaceutical Waste Management. Some of the conclusions drawn from the doctrinal and normative analysis of the field relating to the elements of the pharmaceutical waste management methods and procedures reflect the viewpoint according to which pharmaceutical waste, at least to a certain extent, is classified as hazardous waste, and must be treated accordingly: also, pharmaceutical waste includes primary packaging, and all instruments and equipment used in the production and/or administration of pharmaceutical products; moreover, pharmacies are obliged to accept unusable medicinal products from citizens free of charge and to maintain records of all quantities of pharmaceutical waste; furthermore, pharmaceutical waste must be stored in premises separate from those used for storing usable pharmaceutical products; finally, pharmacies, or healthcare institutions within which pharmacies operate, are required to adopt a Waste Management Plan and to designate a person responsible for waste management within the pharmacy.

It may ultimately be concluded that, in recent years, the legislative framework governing the treatment and management of medical and pharmaceutical waste has been significantly improved. Certain objectives underlying the amendments to existing statutory and secondary legislation have included the establishment of a safe system for the management of medical and pharmaceutical waste, accompanied by enhanced occupational safety for employees, as well as improved protection of healthcare service users. Additional objectives warranting emphasis include the ongoing effort to reduce the quantities of medical and pharmaceutical waste and the continuous commitment to preserving a healthy environment. Future *de lege* *ferenda* developments should continue the process of harmonization with the European Union regulations in the field of waste management, particularly in light of the directives adopted within the framework of the Circular Economy Package, which entered into force in June 2018, replacing several existing instruments in the area of waste management and introducing new recycling targets for municipal and packaging waste.

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PRAVNA REGULATIVA I STANDARDI DOBRE APOTEKARSKE PRAKSE ZA UPRAVLJANJE FARMACEUTSKIM OTPADOM

APSTRAKT: Shvatanje značaja pravilnog upravljanja farmaceutskim otpadom od izuzetnog je značaja, i to sa više različitih aspekata. Farmaceutski otpad može predstavljati potencijalan problem za sve vrste zdravstvenih ustanova. Nije ograničen samo na lekove kojima je istekao rok trajanja, već obuhvata i različitu ambalažu koja sadrži tragove toksičnih supstanci, zaštitnu opremu, instrumente koji su korišćeni u primeni ili u pripremi lekova, kao i veterinarske lekove. Naravno, različite vrste farmaceutskog otpada nose različite vrste rizika. Može se reći da mnoge hemijske supstance koje se primarno koriste u zdravstvenoj zaštiti mogu postati rizične po zdravlje ljudi i mogu narušiti zdravu životnu sredinu ukoliko se njima neadekvatno rukuje. U radu je nakon pojmovnog određenja medicinskog i farmaceutskog otpada, kao i njihovih karakteristika, analizirana pravna regulativa kojom se uređuje tretman farmaceutskog otpada u Srbiji, a učinjen je i osvrt na standarde dobre apotekarske prakse za upravljanje farmaceutskim otpadom.

Keywords: *farmaceutski otpad, medicinski otpad, apotekarska praksa, pravna regulativa u Republici Srbiji.*

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

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

RULES FOR IN-TEXT CITATIONS

When citing a source written by a single author:

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

Example:

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

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

Example:

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

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

Example:

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

When citing a source written by two authors:

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

Examples:

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

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

When citing a source written by 3-5 authors:

For the first-time citation, list all authors:

Example:

(Cvijanović, Matijašević Obradović, & Škorić, 2017)

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

Example:

(Cvijanović et al., 2017)

When citing a source written by 6 or more authors:

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

Example:

(Savić et al., 2010)

When citing a text authored by an organization:

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

Example:

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

Subsequent citations: (SASA, 2014)

When citing texts by authors with the same surname:

Use the authors' initials to avoid confusion.

Example:

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

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

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

Example:

(Dragojlović, 2018a)

(Dragojlović, 2018b)

When citing two or more texts in one citation:

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

Example:

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

When citing a newspaper article with a specified author:

Example:

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

In the reference list, format this reference as follows:

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

When citing a newspaper article without a specified author:

Example:

As published in *Politika* (2012)

In the reference list, format this reference as follows:

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

When citing personal correspondence:

Example:

According to Nikolić (2020),

In the reference list, format this reference as follows:

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

When citing a text in press:

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

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

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

Example in text:

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

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

Note:

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

Example for reference in a footnote:

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

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

When citing laws and other regulations:

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

Example:

(Criminal Procedure Code, 2011)

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

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

Example:

(Criminal Code of the Republic of Serbia, 1977)

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

Example:

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

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

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

Example:

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

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

Example:

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

Important Note:

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

* The title of the cited source in the Serbian version of the manuscript (Cyrillic script) should not be translated into English.

Example:

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

References Section:

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

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

Example of referencing with a DOI number:

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

Example of referencing with a URL:

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

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

References

1. Agencija za privredne registre. *Privredna društva* [*Companies*]. Downloaded 2020, January 10 from https://www.apr.gov.rs/o-agenciji.1902.html
2. California Secretary of State. Downloaded 2020, December 15 from https://www.sos.ca.gov/business-programs/
3. Dukić-Mijatović, M. (2011). Korporativno upravljanje i kompanijsko pravo Republike Srbije [Corporate Governance and Companies Business Law of the Republic of Serbia]. *Pravo – teorija i praksa*, *28*(1-3), pp. 15–22
4. Dragojlović, J., & Bingulac, N. (2019). *Penologija između teorije i prakse* [*Penology between theory and practice*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu
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7. Jesover, F., & Kirkpatrick, G. (2005). The Revised OECD Principles of Corporate Governance and their Relevance to Non-OECD Countries. Corporate Governance: An International Review, *13* (2), pp. 127–136. DOI: 10.1111/j.14678683.2005.00412.x
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practice of application of special procedures and measures for secret data collection in the Republic of Serbia]. In: Petrović, P. (ured.), *Posebne mere tajnog prikupljanja podataka: između zakona i sudske prakse* [*Special measures for secret data collection: between law and case law*] (pp. 5–33). Beograd: Beogradski centar za bezbednosnu politiku. Downloaded 2021, January 15 from https://bezbednost.org/wpcontent/uploads/2020/06/posebne_mere_tajnog_prikupljanja_podataka_-_vodic_.pdf

9. Počuča M., & Matijašević Obradović, J. (2018). The Importance of Evidence Collection in Procedures for Criminal Acts in the Field of Economic Crime in Serbia. In: Meško, G., et al. (eds.), *Criminal Justice and Security in Central and Eastern Europe: From Common Sense to Evidence-based Policy-making* (pp. 671–681). Maribor: Faculty of Criminal Justice and Security and University of Maribor Press. DOI: 10.18690/978-961-286-174-2
10. Regulation (EU) No. 1052/2013 establishing the European Border Surveillance System (Eurosur), OJ L 295 of 6/11/2013
11. Škorić, S. (2016). *Uticaj poslovnog imena privrednog društva na njegovo poslovanje – doktorska disertacija* [*The influence of the business name of the company on its business – doctoral thesis*]. Novi Sad: Pravni fakultet za privredu i pravosuđe u Novom Sadu.
12. Škulić, M. (2007). *Krivično procesno pravo* [*Criminal Procedural Law*]. Beograd: Pravni fakultet Univerziteta u Beogradu; JP Službeni glasnik
13. Uredba o ekološkoj mreži Vlade Republike Srbije [The Ecological Network Decree of the Government of the Republic of Serbia]. *Službeni glasnik RS*, br. 102/10
14. Veljković, N. (2017). *Indikatori održivog razvoja: Srbija i svet* [*Sustainable development indicators: Serbia and the world*]. Downloaded 2017, October 22 from http://indicator.sepa.gov.rs/o-indikatori
15. Zakonik o krivičnom postupku [Criminal Procedure Code]. *Službeni glasnik RS*, br. 72/11, 101/11, 121/12, 32/2013, 45/13, 55/14 i 35/19

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