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CONTEMPORARY CHALLENGES IN THE ACHIEVEMENT AND PROTECTION OF HUMAN RIGHTS

Thematic conference proceedings

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FACULTY OF LAW

INSTITUTE OF CRIMINOLOGICAL AND SOCIOLOGICAL RESEARCH
Belgrade

INSTITUTE OF COMPARATIVE LAW
Belgrade

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“CONTEMPORARY CHALLENGES IN THE ACHIEVEMENT AND PROTECTION OF HUMAN RIGHTS”

University of Pristina
Kosovska Mitrovica
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CONTEMPORARY CHALLENGES IN THE ACHIEVEMENT AND PROTECTION OF HUMAN RIGHTS

Thematic Conference Proceedings

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Editor's Note

Dear colleagues and readers,

It is our distinct pleasure to present the Thematic Conference Proceedings from the 15th annual Conference organized by the Faculty of Law, University of Priština in Kosovska Mitrovica, this year under the theme *Contemporary Challenges in the Achievement and Protection of Human Rights*. As in recent years, the quality and scope of the conference have been significantly enriched through the dedicated collaboration with our esteemed co-organizers — the Institute of Comparative Law in Belgrade and the Institute for Criminological and Sociological Research in Belgrade. This year's conference holds special significance as it coincides with the 64th anniversary of the founding of our Faculty. For more than six decades, the Faculty of Law has served as a cornerstone of legal education and academic thought in the region, steadfastly upholding its mission and values in a complex and often challenging environment.

With 93 participants from a diverse range of countries — including the United States, Uruguay, Bulgaria, Greece, Austria, North Macedonia, Bosnia and Herzegovina, Montenegro, and Croatia — as well as various universities and institutions, this year's conference convened a wide spectrum of scholars and professionals to engage in meaningful discussions on pressing contemporary issues in the field of human rights. The international character of the event is underscored not only by the presence of participants from abroad, but also by the publication of this English-language volume, which features selected papers offering both global and regional perspectives on the protection of human rights. The contributions included in these proceedings reflect the diversity and complexity of today's human rights landscape — from the implications of artificial intelligence, to the protection of vulnerable groups, and the critical role of legal institutions in safeguarding fundamental freedoms.

We extend our sincere gratitude to all the authors whose work is presented in this volume, as well as to all conference participants whose engagement contributed to the event's success. Special appreciation is also owed to the members of the Publishing Council, the International Scientific Committee, the Editorial Board from the Republic of Serbia, the reviewers, and the Organizing Committee — whose dedicated efforts have sustained the quality and continuity of the conference throughout the years. We hope that this collection of papers will inspire further dialogue and academic inquiry, and serve as a valuable resource for scholars, practitioners, and students engaged in addressing the ongoing challenges and developments in the field of human rights.

On behalf of the Editorial Board,

Editor-in-chief,
Prof. Bojan Bojanić, Ph.D.

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EU ACCESSION NEGOTIATIONS OF SERBIA AS A FRAMEWORK FOR IMPROVING THE POSITION OF CHILD VICTIMS[1]

Summary

Although the Serbian juvenile justice system used to be among the pioneers to introduce the most progressive approaches to addressing the specific needs of juveniles in contact with law 20 years ago, it hasn't been continuously improved in line with the contemporary international standards in this field, especially when it comes to the position of child victims. The reforms already implemented in the justice system showed that the process of the accession negotiations to EU appears to be the most powerful pushing mechanism for the reform processes. Considering this, this paper analyses Chapter 23 requirements as the framework for further improvement of the position of child victims in the criminal justice system. It sheds light to recent achievements, the ongoing efforts, but also the remaining challenges, both from the perspective of the legislative reform, but also in terms of the capacities for efficient implementation of the legal provisions.

Key words: child victims, accession negotiations, EU, Chapter 23, juvenile justice.

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1. INTRODUCTION: ON THE EU ACCESSION NEGOTIATIONS OR HOW THE REFORM FRAMEWORK WAS BUILT

1.1. The process of screening and developing the Chapter 23 Action Plan

Republic of Serbia has opened the accession negotiations with European Union (hereinafter: EU) in 2016. Anyway, the process of aligning its' legal and institutional framework with EU acquis and the relevant international standards had started much earlier and became very intensive since 2013 after coming-in screening phase. The Screening of Serbian normative and institutional framework with relevant acquis within chapters 23 and 24 started by the end of 2013 with explanatory screening (presentation of the relevant acquis and EU standards to the Serbian institutions). This stage has served as starting point for assessment of an alignment level of the Serbian legislative and institutional framework with the acquis and EU standards, during the bilateral screening in December 2013. The screening process resulted in publishing the Screening report Serbia (Chapter 23 – Judiciary and Fundamental Rights, 2014) by the European Commission (hereinafter: EC) which addresses issues related to the position of victims. Chapter 23 (hereinafter: Ch. 23) deals with the victims' issues through the organization of judiciary as well as through the protection of fundamental rights, but it also comprehensively deals with the child rights. Recommendations provided in the Screening Report obliged Serbian authorities to draft, (in inclusive and transparent process that assumes inclusion of all relevant stakeholders and CSOs) but also to adopt and implement the detailed action plan to serve as a "reform road map" and starting point for adoption and implementation of dedicated strategic documents in various fields relevant for treatment of victims in general as well as those coming from vulnerable groups (Kolaković-Bojović, 2018, 171-183). The Action Plan for Chapter 23 (hereafter: AP Ch. 23) was adopted in April 2016 to address recommendations from the Screening Report.

1.2. Interim Benchmarks

The negotiations in Chapter 23 officially started in July 2016 by the adoption of the Common Negotiation Position for Chapter 23 (Council of the European Union, No. 10074/16, 05.07.2016.). In addition to the breakdown of the reform processes achieved to the moment of its adoption, the Negotiation Position also sets out the comprehensive list of the so called Interim Benchmarks (hereinafter: IBMs), namely the targets to be achieved in order to prove the reform progress made, before issuing the Interim Benchmark Assessment Report (hereinafter: IBAR) which should define the list of closing benchmarks for the finalization of the accession negotiations in Ch. 23.[2]

[2] For more information on the evolution of the methodology applicable to the accession negotiations in Ch. 23, see: Matić Bošković & Kolaković-Bojović (2022, 330-350).

In terms of the reform requirements relevant to the position of child victims, the Negotiation Position has brought, among other, two very important IBMs:

"Serbia steps up the respect of rights of the child, with particular attention for socially vulnerable children, children with disabilities and children as victims of crime. Serbia actively works on reducing institutionalisation to the benefit of increasing family care solutions. Serbia adopts and implements a Strategy and Action Plan for preventing and protecting children from all forms of violence. Serbia establishes a child friendly justice system, including through amending and implementing the Law on juveniles, improving the work of the Juvenile Justice Council, providing training on dealing with juvenile offenders, improving alternative sanctions for juveniles and measures to reintegrate juvenile offenders back into society" (IBM No. 42), and

"Serbia adopts a new Law on Legal Aid and establishes a well-resourced legal aid system. Serbia amends its legislation (including the Criminal Procedure Code, hereinafter: CPC*) so as to align it with the EU acquis on procedural rights and on victim's rights" (IBM No. 44).*

The process of fulfilling the requirements defined in such manner was governed by the AP Ch. 23 period until 2020 when this document was revised. The reporting on the reform achievements was also based on the (Revised) AP Ch. 23 and the monitoring mechanism established therein. However, in 2023 the EC decided to introduce a new reporting mechanism which should allow it to assess whether, and to what extent has Serbia already fulfilled the IBMs in Ch. 23, including those relevant to the position of child victims. The Negotiation Group for Chapter 23 received by mid-2023 the EC request to introduce reporting based on the assessment of the fulfilment of the requests under IBMs and based on such a request and using the templates developed by EC, the Negotiation Group had prepared and submitted the Initial Self-assessment Report by the end of 2023. Upon the analysis of the received information EC has responded to the Negotiation Group by mid-2024 providing it with the brief assessment as well as with a number of requests for each of IBMs. In addition to this the Negotiation Group submitted the updated Report by the end of 2024. The nature of the request varies to the great extent. Namely, while some of them refer to providing additional information or improving the quality of the report provided, some refer to improving reform processes, taking additional steps (short/term or long/term) or ensure continuity of the reform processes already initiated/started. Coupled with the fact that the APCh.23 has expired, this pluralism and the different nature of the request have created a sort of challenging situation as for the Ministry of Justice (hereinafter: MoJ) as an institution in charge of coordinating the Ch. 23 reform processes as for the institutions in charge of the reform implementation in terms of the need to classify the requests received and to identify the reform priorities to be implemented in the upcoming period.

1.3. The Growth Plan and the Reform Agenda

However, how highly rated this issue in Ch 23 reform process, it is visible from the fact that is has been recognised also as one of the indicators in the Reform Agenda (European Commission, Commission staff working document, Accompanying the document Commission Implementing

Decision approving the Reform Agendas and the multiannual work programme under the Reform and Growth Facility for the Western Balkans Brussels, SWD (2024) 241 final, 23.10.2024), adopted under the Growth Plan during the period of 2024 – 2027 adopted on 8 November 2023, where the five Western Balkans governments commit to socio-economic and fundamentals reforms they will undertake to spur growth and convergence with the EU. Based on this the Commission proceeded with signing loan and facility agreements with the beneficiaries.[3] Within this new context the efficiency of the reforms is not anymore just a matter of the proper protection of the child victims, but also the precondition to have the implementation of those reforms financially supported by the European Commission. Namely, the Growth Plan is supported by an increase of financial assistance through the new Reform and Growth Facility which entered into force on 25 May 2024. The Facility will complement the current financial assistance under the Instrument for Pre-accession Assistance (IPA III).[4]

In the Reform Agenda for Serbia, it has been provided that "it will also contribute to the reform of juvenile justice and to the protection of procedural rights of suspects, accused persons and victims" (Reform Agenda, 2024, 10).

By the adoption of the detailed Reform Agenda, Serbia has committed itself, among others:

- The amendments to the CPC planned by the Reform Agenda and address both challenges identified during the implementation of the Code, introduce important provisions of the EU acquis into the national legal framework, such as those laying down rules on the right of suspects or accused persons to be informed of their rights in criminal proceedings and the charges against them; rules relating to the right to interpretation and translation in criminal proceedings; and ensuring that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.
- To, based on the recommendations received from the European Commission and the work on amendments to the Criminal Code and the CPC, draft and adopt of a completely new Law on Juveniles, which will enable harmonisation with several laws that have been adapted in the meantime, with international and EU standards, in order to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.
- To amend to the Family Law which will include a ban on child marriage and more effective protection against domestic violence by introducing several new types of offences relating to children and persons with disabilities.
- To establish 20 services for supporting victims and witnesses of criminal offences in the Republic of Serbia, systematize support officers through a systematization act in each higher court, and make these services functional in 20 higher courts (Government of the Republic

[3] The full text of the Facility agreement between the European Union and the Republic of Serbia can be accessed here: http://www.parlament.gov.rs/upload/archive/files/cir/pdf/izvestaji/14_saziv/337-2784_24.pdf, (3.4.2025.).

[4] See more at: European Commission (Commission approves Reform Agendas of Albania, Kosovo, Montenegro, North Macedonia and Serbia, paving way for payments under the Reform and Growth Facility, 23.10.2024).

of Serbia, Growth Plan for the Western Balkans: Reform Agenda of the Republic of Serbia, 2024).

2. ONGOING EFFORTS AND THE REMAINING CHALLENGES WITH REGARDS THE IMPROVEMENT OF THE POSITION OF CHILD VICTIMS

As part of the implementation of the National Strategy on the Rights of Victims and Witnesses of Crime 2020-2025, accompanying Action Plan and IBM No. 44, comprehensive amendments to the CPC have been drafted to align Serbian legislation with relevant acquis.[5] The working group for drafting the amendments to the CPC have prepared the draft amendments in 2024 and MoJ have organised and conducted a comprehensive public debate on it. Although a number of the proposed amendments are tackling the position of child victims, they have been just rarely tackled by those taking part in the debate, despite their importance not only in the context of the CPC amendments, but also from the point of view of the future (multiple times postponed) development and the adoption of a new Law on Juvenile Offenders and the Criminal Law Protection of Juveniles (hereinafter: The La on Juveniles).

2.1. Draft amendments to the CPC

2.1.1. Definition of victim

Access to the essential right of victims to participate in criminal proceedings is directly preconditioned by how national legislation defines the notion of a victim. The CPC amendments, among others, expand the existing definition of a victim. In addition to the current CPC formulation (2021, Article 2, paragraph 11), which refers to an "injured party" as a person who's personal or property rights have been violated or threatened by a criminal act, the proposed amendments also include indirect victims. Specifically, the revised definition recognises a child as an indirect victim if the child, as a family member of a person whose death was directly caused by a criminal offense, has suffered harm as a result of that person's death. This definition reduces the discretion of authorities in determining victim status and ensures victims access to an expanded range of procedural rights, including the explicit right of child victims to be heard as witnesses. Furthermore, the new definition of a victim in the draft of the CPC (2024) is fully aligned with Directive 2012/29/EU (Article 2), with

[5] The main focus of the amendments when it comes to the right of crime victims was on the alignment with the following directives: Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA; Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA; Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA.

only a terminological distinction, as the term “injured party” is used instead of “victim” (Kolaković-Bojović, 2020a, 41-54).

This reform addresses previously identified gaps, particularly in cases involving children whose mothers were murder victims, where children were deprived of the injured party status, adequate legal aid and other protective measures (Ignjatović & Macanović, 2018). For successful implementation of these amendments, it is crucial to provide adequate training for judges, prosecutors and attorneys who act as legal representatives or proxies of victims, emphasising the expanded definition of victims and protective measures specific to child victims.

2.1.2. Victims and the status of especially sensitive witnesses in criminal proceedings

The recently proposed amendments to the CPC (Article 103) explicitly regulate the awarding of the status of an especially sensitive witness to be based on the individual assessment conducted with the support of the victim support services. However, a future effective implementation of such provisions requires clearly defined competent authorities responsible for conducting individual assessments of a victim prior to the court’s decision on awarding the status of an especially sensitive witness (e.g. what kind of victim support services can assist the courts). Moreover, planned exclusion of the defendant’s right to appeal such a decision would be justified, as awarding this status does not affect the procedural rights of the accused, but rather provides additional protection to vulnerable witnesses.

2.1.3. Presence of psychologist and/or a trusted person

In addition to already regulated role of the psychologist to accompany a child victim (2021, CPC, Article 104), recent amendments to the CPC (2024, Article 50, points 2 and 7) explicitly allow victims to be accompanied by a trusted person during procedural actions, if this does not conflict with the interests of the proceedings. However, the absence of explicit provisions for the presence of victim support professionals in hearings creates ambiguity.[6] Importantly, the role of a trusted person under Article 50 is passive and supportive, whereas professionals under Article 104 of the CPC, such as psychologists, pedagogues or other qualified experts, actively participate in proceedings by transmitting and moderating questions in a protective manner. Additionally, the Law on Juveniles (2005, Article 152) requires juvenile victims to be questioned with the assistance of psychologists, pedagogues or other professionals.

In practice of the Serbian courts, the real struggle is around the limited availability of psycho-social support professionals in the Serbian judicial system. Addressing this gap requires employing more specialists and formally defining the role of NGO representatives in criminal proceedings under the CPC (Serbia report submitted in accordance with Article 68, paragraph 1 of the Council of Europe

[6] For more on the establishing the victim support services in Serbia see: Kolaković-Bojović (2016, 355-366).

Convention on Prevention and Fighting Violence against Women and Domestic Violence, 2018, 81-82).

Finally, the lack of a centralised register of juvenile victims significantly undermines the capacity for systematic protection and effective victim support planning. Developing victim-centered databases, improving coordination and ensuring adequate protection mechanisms are essential, especially for juveniles involved in multiple proceedings.

2.1.4. Multiple interrogation and the forbidden or inappropriate interrogation techniques

EU legislation clearly emphasises that the number of interviews with child victims should be strictly limited and conducted only when absolutely necessary for the purposes of criminal investigations and proceedings, but it also calls for the limiting number of interviews in order to avoid the negative consequences of both. Together with the challenges in practice, this was the reason behind the legislator to address both in the draft amendments to CPC.

Namely, draft amendments to the CPC (2024, Article 50, point 15) align with this standard, explicitly providing those victims, including children, should be heard as witnesses without unnecessary delay, with the minimum number of interrogations and only when essential for conducting the proceedings. This provision reflects the Directive's aim of safeguarding child victims from secondary victimisation caused by unnecessary or repeated interrogations. A similar principle has been part of the Law on Juveniles (2005, Article 152), providing that the questioning of a minor victim of crime may be conducted a maximum of two times. Additional questioning is permitted only when necessary to achieve the purpose of criminal proceedings, and in such cases, the judge is required to take special care to protect the character and development of the minor.[7]

This repetition significantly increases the risk of re-traumatisation and secondary victimisation while negatively impacting the quality of testimony, the reliability of evidence and the ability to clarify the circumstances of the crime. Unfortunately, courts frequently disregard the fundamental causes of these changes, such as fear of intimidation, revenge or the passage of time. It is essential to identify such factors with greater attention and ensure the involvement of professionals to support the child victims throughout the legal process.

When it comes to forbidden and/or inappropriate interrogation techniques, the proposed amendments to the CPC (2024, Article 104) address previous criticisms by explicitly prohibiting leading questions or those based on unsubstantiated assumptions during the cross-examination of minors or especially sensitive witnesses. These amendments strengthen existing protections, including prohibitions on direct confrontation with the defendant, the allowance for remote testimony, the requirement that questions be posed through judicial authorities and the involvement of psychologists, social workers

[7] However, the monitoring of court practice on the position of juvenile victims of crime before the courts in the Republic of Serbia in 2020 (Kolaković-Bojović, 2022a) indicated that 34% of juvenile victims were questioned multiple times: 75% twice, 8% three times and 17% four or more times. The same monitoring revealed that 12.5% of victims changed their statements during re-examination, predominantly in cases involving Article 190 of the Criminal Code, although none were the aforementioned victims of serious crimes of sexual violence.

or other experts to ensure that witnesses are treated with special care to protect them from harmful consequences.

The Law on Juveniles (2005, Article 153) defines that if a juvenile witness is especially sensitive, due to the nature of the crime, its consequences or other circumstances, confrontation with the defendant is forbidden. However, under the current legal framework, which does not recognise all juveniles as particularly sensitive witnesses, confrontation with the accused remains possible. This legislative gap underscores the need for a revised Law on Juveniles with more precise and comprehensive provisions on interviewing juvenile victims.

2.2. Other challenges related to the position of child victims in criminal proceedings

In addition to challenges arising from the need to improve the relevant CPC provisions, the child victims in Serbia are struggling with a number of challenges in terms of the practices applied on them, even regarding the issues already properly governed by the relevant legislation:

2.2.1. Access to legal aid and representation

Ensuring access to legal aid or legal representation for especially sensitive victims, including child victims, is recognised in key international and regional human rights instruments and reflected in Serbia's normative framework. Accordingly, the CPC (2021, Article 103, paragraph 3) defines the conditions for granting a victim the status of an especially sensitive witness but does not automatically guarantee access to free legal aid or legal representation. Instead, it allows the prosecutor or the court to appoint a proxy "if deemed necessary for the purpose of protecting the interests of an especially vulnerable witness". However, the majority of child victims give their testimony without being granted the status of especially sensitive victims[8] and therefore rely on the protective measures provided under the Law on Juveniles (if underaged) or the Law on Free Legal Aid. In first case, as previously mentioned, the Law on Juveniles (2005, Article 154) mandates that a juvenile, as an injured party, must have legal representation from the first hearing of the accused. If the juvenile does not have a lawyer, the president of the court shall appoint one from the list of attorneys with specialised knowledge in child rights and juvenile criminal protection, with costs covered by the court budget. On the other hand, the Law on Free Legal Aid (2018, Article 4) recognises only a limited category of victims of criminal offenses, such as victims of domestic

[8] The findings from the monitoring of the position of juvenile victims in criminal proceedings in the Republic of Serbia in 2020 demonstrated that the formal status of an especially sensitive witness was granted to juvenile victims in only three out of 58 cases (involving a total of 70 victims). In two of these cases, the status was awarded by a prosecutor's decision, specifically in proceedings related to human trafficking (one injured party) and sexual intercourse with a child (two injured parties). One possible explanation for such a low share can be explained through the indirect awarding of the status through the application of the Law on Juveniles (2005, Articles 150-154). See: Kolaković-Bojović (2022a; 2022b, 55-77).

violence, human trafficking and victims of torture, inhuman or degrading treatment, without explicitly mentioning child victims.

In addition, concerns exist regarding the quality of legal representation, as many lawyers, despite their formal qualifications, lack the specialised knowledge required to effectively support child victims. To prevent secondary victimisation and to ensure that child victims' specific needs are adequately addressed, it is essential to develop sustainable training programmes aimed at improving the competencies of legal professionals involved in their representation.

2.2.2. Use of video link and the court infrastructure as mechanisms to protect especially vulnerable victims and witnesses

Directive 2012/29/EU (Article 23 (3)(a)) and Directive 2011/93/EU (Article 20) emphasise the importance of using AV communication technologies as effective mechanisms to protect child victims in giving their testimonies, particularly by preventing visual contact with offenders. Similarly, the CPC (2021, Article 104) and the Law on Juveniles (2005, Article 152, paragraph 3), provide that, considering the characteristics of the offense and the personality of the juvenile, the court may order the hearing of a juvenile via AV technology, without the presence of parties and other participants in the proceedings.

Research on Serbian court practices (Kolaković-Bojović, 2022a; Stevanović & Marković, 2024) indicates that judicial professionals demonstrate a willingness to use AV technology for interviewing especially sensitive victims. For instance, in a review of court practices involving juvenile victims in the Republic of Serbia in 2020, AV technology was successfully used in cases where victims were granted the status of especially sensitive victims. Nevertheless, despite such positive examples, the availability of adequate technical equipment and trained professionals remains limited. Courts without permanent AV facilities often depend on temporary assistive devices, borrow equipment from prosecutor's offices or implement alternative protective measures. (Stevanović & Marković, 2024, 165-182).

Currently, the system cannot benefit anymore from the mobile teams, the mobile teams of trained psychologists from public institutions who used to be operational some years ago conducting interviews with minors outside court premises, primarily in victims' homes. These teams, between March 2015 and September 2017, conducted 158 interviews with juvenile victims. However, the lack of standardised monitoring sheets during these interviews limited the collection of detailed victim and case data. Unfortunately, after the project expired without integration into institutional practice, this protective measure is no longer available (Kolaković-Bojović, 2018, 171-183).

Additional challenges arise from inadequate infrastructural conditions in court buildings, including limited spaces, overcrowding and inadequate separation between victims, witnesses and defendants. Moreover, the lack of suitable rooms for the Service for Assistance and Support to Victims and Witnesses contributes to potential confrontations that increase victim distress. To effectively address these challenges, it is essential to continue the process of acquiring AV rooms and equipment for courts and prosecutors' offices. This process should be complemented by

infrastructural adaptations that prioritise the specific needs of victims, along with comprehensive training programs aimed at enabling judicial professionals to fully utilise available protective mechanisms.

2.2.3. Protection of the victim's privacy and media coverage of trials

Despite the proper legal regime provided by the Constitution of the Republic of Serbia, (Article 32), which permit exceptions to public trials to protect the best interests of minors and the rules provided by the CPC (2021, Article 363-364), as well as the detailed rules of media legislation, but also the rulebooks governing the communication between the judiciary and media a privacy and the dignity of child victims is frequently jeopardized by improper practices in terms of the publicity of hearings and information leakage from the criminal proceedings, followed with the sensationalistic reporting of media, which contributes to the secondary victimisation, additional traumatisation and stigmatisations. Self-regulatory bodies do not establish competence over all media and do not duly monitor and punish practices that breaching the media legislation and the Code of Conduct for journalists. Addressing these challenges requires coordinated training for journalists, judges, prosecutors, police and lawyers on privacy protection and media ethics. It also demands the strengthening of self-regulatory media mechanisms to ensure accountability and the enhancement of internal disciplinary processes within the judiciary to effectively prevent harmful practices against victims (Kolaković-Bojović & Grujić, 2020, 239-269; Kolaković-Bojović, 2020b, 402-420).

2.2.4. Compensation claims and the protection of victims

Even the provisions of the currently applicable CPC (2021, Articles 252-260) that oblige courts and prosecutors to proactively collect evidence relevant for compensation claims, even before their formal submission, where the court are expected to decide on these claims within criminal proceedings unless it would significantly prolong proceedings, mostly complies with the relevant international standards, there is a still huge room for improvements. Namely, the courts almost always referring victims to submit compensation claims in additional, civil proceedings where they are deprived of the protective measures.[9] Therefore, the priority would be to foster application of the Guidelines for improving the case law regarding procedures for compensation of damage to victims of serious crimes in criminal proceedings adopted in 2019 by the Supreme Court. In parallel, to address these practical challenges, it is necessary for the Republic of Serbia to amend the Civil

[9] Empirical research of the treatment of juvenile victims in criminal proceedings in the Republic of Serbia conducted in 2020 (Kolaković-Bojović, 2022a) revealed significant shortcomings regarding compensation claims. Only 17% of juvenile victims submitted compensation claims, with merely 17% of those specifying their property claims, typically at the main trial stage. Consequently, only one out of 70 juvenile victims obtained compensation within criminal proceedings. The key reason for that is certainly the fact that only 17% of them pointed out and only two determined the request, which does not change the overall picture of the complete practical ineffectiveness of the mechanism prescribed by the CPC (2021, Articles 252-260).

Procedure Code in order to explicitly incorporate protective measures for particularly vulnerable victims, including child victims, in civil proceedings conducted upon their compensation claims based on the decision of the criminal court to refer them to litigation. Therefore, the main goal should be to ensure, through the proactive approach, that child victims are protected from the secondary victimisation through repeated testimonies in criminal and civil proceedings.

Additional practical difficulties for victims arise in situations where child victims are unable to obtain compensation due to offender's lack of assets or their inability to be prosecuted and/or punished for other reasons. Therefore, consistent with previously discussed international standards, it is essential to establish a state-funded compensation mechanism, while the state will further proceed with its efforts to reimburse itself from an offender, if possible, at the latter stage. An additional purpose of such funds is to ensure prompt material support for victims in situations of urgent need, even before to a final court decision is reached. This is particularly important for especially vulnerable victims, such as child victims, who may require immediate access to medical treatment or resources to repair various forms of damage.

3. EC ASSESSMENT OF THE CURRENT STATE OF PLAY AND THE WAYS FORWARD

3.1. EC assessment of the current state of play and the requests for improvements

Considering all the above-described challenges it is interesting to see how the European Commission perceives a way to overcome them. Namely, in the latest feedback on the Self-assessment Report submitted by Serbia in 2024, with regards the IBM 42 on the rights of a child, the EC urged Serbia to:

- Demonstrate implementation and monitoring of the strategy related to violence against children by timely publishing the annual reports on the action plan and providing a summary in English, at least on the achievement of the strategy's indicators.
- Adopt a new Law on juvenile offenders and protection of minors in criminal proceedings in line with the EU acquis and international standards.
- Address the recommendations (2017) of the UN Committee on the Rights of the Child.
- Amend the family law to explicitly prohibit corporal punishment of children in the family and to ban child marriage.
- Amend the Law against domestic violence to ensure that every child who is a witness or victim of domestic/partner violence is always included in the court's individual protection plan.

When it comes to the IBM 44, EC requested the following actions:

- Continue to demonstrate enforcement of the law on free legal aid and a "well-resourced legal aid system" (as required by the IBM).
- Continue to implement, without further delay, the National Strategy on the Rights of Victims and Witnesses of Crime and its action plan.

- As foreseen by the strategy, amend the legislation, including the Criminal Code and the Criminal Procedural Code, to align with the EU acquis on procedural rights and on victim's rights.

From the requests presented above it is obvious that the EC follows the progress made/needed in this field mostly from the procedural point of view (achieving the above-mentioned goals). However, this doesn't mean that the substantial content of the reforms will not be monitored/checked, but rather that the EC relies on the assessment of the UN Committee on the Rights of the Child and the Council of Europe treaty bodies (of course with the exception of the legislative reform where it monitors alignment level with the relevant EU acquis).

With this regard, it would be also of the great importance to ensure continuous monitoring and advocacy mechanisms at the national level, not just to foster the reforms and benefit from the EC financial support, but also that those reforms provide for the prompt, comprehensive and substantial improvement of the child victims position in Serbian justice system.

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ПРИСТУПНИ ПРЕГОВОРИ СРБИЈЕ СА ЕУ КАО ОКВИР ЗА УНАПРЕЂЕЊЕ ПОЛОЖАЈА ДЕЦЕ ЖРТАВА

Апстракт

Иако је систем малолетничког правосуђа Србије пре 20 година био међу пионирима у увођењу најпрогресивнијих приступа адресирању специфичних потреба малолетника у контакту са законом, некако је изгубио корак са савременим међународним стандардима у овој области, посебно када је реч о положају деце жртава. Реформе које су већ спроведене у правосудном систему показале су да је процес приступних преговора са ЕУ један од најефикаснијих покретача реформских процеса. Имајући то у виду, овај рад анализира захтеве поглавља 23 као оквира за даље унапређење положаја деце жртава у систему кривичног правосуђа. Он баца светло на недавна достигнућа, напоре који су у току, али и преостале изазове, како из перспективе законодавне реформе, тако и у погледу капацитета за ефикасну имплементацију законских одредби.

Кључне речи: деца жртве, приступни преговори, ЕУ, Поглавље 23, малолетничко правосуђе.

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PASSING AND CONTENT OF THE FIRST INSTANCE VERDICT – A COMPARATIVE LEGAL ANALYSIS BETWEEN BULGARIAN AND SERBIAN LAW

Summary

The paper examines the similarities and differences in the legislation of the Republic of Serbia and the Republic of Bulgaria regarding the issuance of the first instance verdict. It also addresses the types of judgments regulated in the legislation of both countries and their required content.

Key words: Judgment, criminal procedure, comparative legal analysis

1. INTRODUCTION

The regulation of criminal procedure relationships in the two neighboring countries – the Republic of Bulgaria and the Republic of Serbia – reveals both many similarities and significant differences. This paper aims to explore the common features and distinctions concerning the delivery and content of the first instance criminal judgment in the respective legislations. A comprehensive review of this topic is challenging, as the rendering of a verdict engages numerous institutions of both substantive and procedural law. For this reason, the analysis focuses on essential provisions without claiming to be exhaustive.

2. ISSUANCE OF THE FIRST INSTANCE JUDGMENT UNDER BULGARIAN AND SERBIAN CRIMINAL PROCEDURE LAW

The first significant difference observed in the issuance of a first instance verdict is that, according to Article 270, paragraph 2 of the Criminal Procedure Code (CPC) of the Republic of Serbia, only the members of the judicial panel and the court recorder may be present in the room where deliberation and voting take place. In contrast, under Bulgarian legislation, the court renders its decisions in a closed session attended only by judges and lay judges. The presence of the court clerk is strictly prohibited. If it is established that any other person, such as the court clerk or a reserve judge, was present during deliberation, the

act shall be annulled, and the case shall be remanded for a new trial by a different first instance court panel.

Another distinction is the explicitly regulated order of speeches and voting by the judicial panel in the Bulgarian CPC. According to Article 33, paragraph 3 of the Bulgarian CPC, lay judges speak and vote before the professional judges, and the presiding judge speaking and voting last. Article 33, paragraph 4 of the Bulgarian CPC simply states that "the court decides by a simple majority, with all members of the panel having an equal vote." In Serbian legislation, there are detailed rules on what happens when there is no majority on certain issues to be voted on. Additionally, Article 272, paragraph 3 of the Serbian CPC stipulates that a panel member who voted for the acquittal of the defendant or the rejection of the charges and remained in the minority is not obliged to vote on criminal sanctions. If they abstain, it is considered that they have accepted the most favorable position for the defendant. No such provision exists in Bulgarian legislation.

Another significant difference is the possibility under Bulgarian law for any member of the court panel to express a dissenting opinion, which must be reasoned. When the reporting judge holds a dissenting opinion, the reasoning is prepared by another panel member. Even if a panel member dissents, they must still sign the judgment. Signing the judgment does not imply absolute agreement with its content but signifies that all panel members participated in the deliberation and decision-making. The judgment consists of reasoning and operative parts. The reasoning can be drafted within a specified period after pronouncement. If the reasoning is postponed, the operative part—signed by all panel members—should state that the judgment was adopted with a dissenting opinion. The dissent must be submitted within 15 days, or up to 60 days in complex cases, and it is published with the reasoning. When both the operative part and reasoning are prepared simultaneously, the dissenting opinion must also be announced. When the reasoning is deferred, it is signed only by the reporting judge who drafted it, while the lay judges must sign the reasoning only if the judgment includes a dissenting opinion. The dissenting opinion is always published alongside the judgment's reasoning.

According to Article 273 of the Serbian CPC, only a judge from the Supreme Court[1] who, during the panel's session, remains in the minority on the issue of a legal issue may submit a dissenting opinion. The judge must orally declare their intent to submit a written dissenting opinion during the session and may request its publication alongside the decision. The judge must submit the written reasoning to the panel's president within 15 days of the decision. If the dissenting opinion is not submitted within this period as per Article 273(3) of the Serbian CPC, the decision is issued, and any subsequently submitted dissenting opinion is attached to the case file as an integral part thereof.

[1] According to the Law on the Organization of Courts (Official Gazette of the Republic of Serbia, No. 10/2023), the name "Supreme Court of Cassation" (Върховен касационен суд) has been replaced with "Supreme Court" (Върховен суд). The present article uses the updated designation.

Under Article 420, paragraph 2 of the Serbian CPC, “the court is not bound by the prosecutor’s proposals regarding the legal qualification of the offense.” Bulgarian legislation provides a different resolution to this issue. According to Article 287 of the Bulgarian CPC, the prosecutor raises a new charge when, during the trial, grounds emerge for a substantial change in the factual circumstances of the charge or for applying a law concerning a more serious offense. This means that new circumstances (i.e., evidence gathered during the trial) necessitate a significant alteration of the factual basis of the charge or the application of a law for a more severely punishable offense. “A law for a more serious offense” refers to comparing the two offenses (old and new) based on the type and severity of the punishment prescribed, not the punishment imposed by the court in the judgment. In other cases—i.e., those not involving a substantial change in the factual basis or the application of a law for a more serious offense—the prosecutor is not required to raise a new charge. These cases include applying a law for the same offense (i.e., the legal qualification remains identical, but the factual basis changes), an equivalent offense (where two different offenses carry the same type and severity of punishment), or a less serious offense without significant changes to the factual basis. Only in these instances can the court convict the defendant under such a qualification—same, equivalent, or less serious offense—without a substantial change to the charge. The indictment sets the factual and legal framework of the charge. The court cannot issue a guilty or not guilty verdict regarding factual circumstances not specified in the indictment, nor can it apply a legal qualification not indicated therein, except in the aforementioned cases: applying a law for the same, equivalent, or less serious offense without a substantial change in the factual basis.

Under Bulgarian law, if trial evidence reveals circumstances indicating new offenses committed by the same person or involving new individuals in the charge, the prosecutor cannot amend the charge during the trial. This is a significant difference from Article 410 of the Serbian CPC, which allows the court, based on the prosecutor’s indictment (which may be submitted orally), to extend the trial to cover a previously committed offense uncovered during the hearing or decide to address it in a separate proceeding. As noted, Bulgarian law requires a new criminal proceeding for any newly discovered offense during the trial.

Both Serbian and Bulgarian law prescribe that the judgment must be delivered in the name of the people. Likewise, both systems require the presiding judge to announce the judgment immediately after deliberation. Under Article 425, paragraph 1 of the Serbian CPC, the presiding judge pronounces the judgment immediately after its issuance by the court. Article 310, paragraph 1 of the Bulgarian CPC similarly requires the immediate pronouncement of the judgment by the presiding judge after it is signed by all panel members. However, Bulgarian law also mandates signing the judgment with a qualified electronic signature by all panel members and its entry into the unified court information system, reflecting the introduction of e-justice in the country. Article 427, paragraph 4 of

the Serbian CPC requires the original judgment to be signed by the panel president and the court recorder. In Bulgarian law, the court clerk signs only the protocol of the trial session, not the first instance judgment.

Another similarity is the requirement in both systems that the operative part of the judgment always be read in the presence of the public, even if publicity was restricted. Article 425, paragraph 6 of the Serbian CPC mandates that all present in the courtroom stand while the operative part is read. Such a provision existed in Bulgarian law under the 1897 Criminal Procedure Act, requiring all persons in the courtroom to stand when the judges entered and during the reading of the judgment. While no such rule currently exists in the Bulgarian CPC, the tradition of standing during the pronouncement persists.

3. TYPES OF FIRST INSTANCE JUDGMENTS UNDER THE LEGISLATION OF THE REPUBLIC OF BULGARIA AND THE REPUBLIC OF SERBIA

Unlike Bulgarian legislation, the Serbian CPC distinguishes three types of judgments: dismissal, acquittal, and conviction. The Bulgarian CPC only provides provisions for cases where the defendant is found guilty or not guilty, without explicitly categorizing judgment types.

The first scenario for issuing a dismissal judgment under Serbian law occurs when the prosecutor withdraws the charge from the start to the end of the trial or the victim abandons the request for prosecution. In Bulgaria, for public prosecution cases, a prosecutor’s statement that the proceedings should be terminated or that an acquittal should be rendered does not release the court of its duty to rule based on its inner conviction, meaning the court may still issue a judgment even if the prosecutor no longer supports the charge. In private prosecution cases (for example, criminal offenses concerning personal honor and dignity), where no prosecutor is involved and the victim acts as the primary accuser, withdrawing the complaint explicitly or implicitly is grounds for terminating the proceedings.

The second scenario for a dismissal judgment is when the defendant has already been finally convicted, acquitted, had the charge dismissed, or had proceedings terminated with a final court decision for the same offense. In Bulgarian legislation, this hypothesis is introduced as a ground for the termination of criminal proceedings, in which case the court issues a ruling rather than a judgment.

The final possibility for rendering a dismissive judgment under Article 422 of the Serbian Criminal Procedure Code arises when the defendant is exempted from criminal prosecution by an act of amnesty or pardon, or when prosecution cannot be initiated due to the expiration of the statute of limitations or another reason that permanently precludes criminal prosecution. Under the Bulgarian CPC, if the offense falls under an amnesty law or the statute of limitations has expired, the competent authority must acknowledge these consequences and terminate the proceedings with a ruling. However, this duty is not

absolute—given the defendant's right to "clear their name" and reputation, they may request the case to proceed despite grounds for termination (Article 24, paragraph 2 CPC). If such grounds (Article 24, paragraph 1, items 2 and 3 CPC) emerge during the trial and the defendant requests continuation, the court issues a judgment, which may be an acquittal or conviction, declaring the defendant not guilty or guilty.

Next, under the Serbian CPC, an acquittal is issued when it is established that the act is not a crime and no security measures are warranted, or when it is not proven that the defendant committed the charged offense. Similar grounds for an acquittal exist under Article 305 of the Bulgarian CPC—the court declares the defendant not guilty when it is not established that the act occurred, was committed by the defendant, or was committed with guilt, or when the act does not constitute a crime. Unlike the convicting judgment, which is rendered when the guilt of the defendant is proven beyond doubt and dispute, in the case of an acquittal before the Bulgarian court, three scenarios are possible – proven innocence, unproven guilt, and unproven innocence. This means the defendant must be acquitted if their innocence is categorically proven or if there is the slightest doubt about their guilt. The defendant must be acquitted even when the conclusion regarding innocence tends toward a presumption. In every case of doubt as to whether the act was committed, whether it was committed by the defendant, or whether it was committed by him with guilt, as well as when the court establishes that the act does not constitute a criminal offense, an acquittal shall be rendered. Accordingly, from the perspective of criminal procedure and the protection of the defendant's rights, there is no qualitative difference between an acquittal due to insufficient evidence and one based on unequivocally established innocence. Thus, Article 305, paragraph 7 of the Bulgarian CPC mandates that an acquittal must not contain expressions casting doubt on the acquitted person's innocence, ensuring their societal rehabilitation.

In line with the principle of uncovering objective truth, Bulgarian procedural law requires that a judgment not rest on assumptions (Article 303, paragraph 1 CPC). Before this understanding was codified, courts acquitted defendants due to doubts about their innocence. This possibility was eliminated, as the principle of objective truth demands that judgments be based on undoubtedly correct conclusions, not probabilities. This overcomes the maxim "In dubio pro reo" (presumption in favor of the accused), as it cannot align with the requirement to establish objective truth. When, after an objective, comprehensive, and complete clarification of the circumstances of the case, it is concluded that the accusation has not been proven in an indisputable manner, this means that the defendant is indisputably innocent, and not that some doubt remains as to his guilt.

Differences are also observed in the legislative approach to regulating the issue of the convicting judgment. In the Criminal Procedure Code of the Republic of Serbia – Article 424 CPC – the matters on which the court rules when rendering a convicting judgment are specified, whereas Article 303 of the Bulgarian Criminal Procedure Code states only when a convicting judgment is rendered, without explicitly setting out its

content. Article 303 states: “The judgment may not rest on assumptions. The court declares the defendant guilty when the charge is proven beyond doubt.” This was partly addressed in the discussion of acquittals. However, Article 301 of the Bulgarian CPC, which also applies to the content of acquittals, specifies the issues the court must resolve when issuing a conviction. Under Article 424 of the Serbian CPC, a conviction judgment will specify:

1. For which offense the defendant is found guilty, indicating the facts and circumstances that constitute the elements of the offense, as well as those upon which the application of the relevant provision of the criminal law depends;

2. The legal name of the offense and the applied legal provisions;

3. The punishment imposed or whether the defendant is exempted from punishment under penal law provisions;

4. Decisions on a suspended sentence, its revocation, or conditional release;

5. Decisions on a security measure, the confiscation of material benefits, or the confiscation of property acquired through the offense;

6. Decisions on civil claims;

7. Decision on the crediting of pre-trial detention or time already served;

8. Decisions on criminal procedure costs.

The following paragraphs of Article 424 of the Criminal Procedure Code discuss what the court may decide when imposing various types of punishments – imprisonment of up to one year, a fine, community service, deprivation of the right to operate a motor vehicle – as well as what must be indicated in the content of the judgment if a suspended sentence with protective supervision is imposed.

Under Article 301 of the Bulgarian CPC, the court addresses the following issues in every verdict, whether a conviction or acquittal:

1. Whether an act has been committed, whether it was committed by the defendant, and whether it was committed with guilt;

2. Whether the act constitutes a crime and its legal qualification;

3. Whether the defendant is subject to punishment, what punishment to impose, and, in cases under Articles 23–25 and 27 of the Penal Code (rules for multiple offenses), what aggregate punishment to impose;

4. Whether grounds exist for exemption from criminal liability under Article 61, paragraph 1 (exemption of minors from criminal liability) and Article 78a, paragraph 1 of the Penal Code (exemption from criminal liability with administrative punishment);

5. Whether the defendant should be released from serving the punishment, what the probationary period should be in the case of a suspended sentence (conditional execution of the punishment), and in the cases under Article 64, paragraph 1 of the Criminal Code (release of minors from serving a punishment of up to one year of imprisonment, where the execution has not been suspended) – what educational measure should be imposed;

6. The initial regime for serving an imprisonment sentence;

7. Who is tasked with the defendant's rehabilitative supervision in cases of a suspended sentence;

8. Whether conditions under Articles 68–69a (enforcement of the suspended sentence) and Article 70, paragraph 7 of the Penal Code (early release from serving the remaining sentence) exist, and what punishment the defendant must serve;

9. Whether conditions under Article 53 of the Penal Code (confiscation of property in favor of the state regardless of criminal liability) exist;

10. Whether to grant the civil claim and in what amount;

11. What to do with material evidence;

12. Who bears the case costs.

When the defendant is charged with multiple offenses or multiple persons are involved in one or more offenses, the court addresses these issues separately for each person and offense.

When the Bulgarian court has omitted to rule on the civil claim, it shall rule on it by means of an additional judgment within the time limit for appeal.

When addressing point 2, the court also determines whether the act constitutes an administrative violation.

When rendering an acquittal, the court, of course, shall not rule on the issues related to the punishment of the defendant – items 3, 5, 6, 7, and 8 – as well as on the issues regarding the release of the defendant from criminal liability – item 4. If the court considers that the act does not constitute a criminal offense, it cannot determine its legal qualification – item 2 of the above-listed. On the remaining issues, the court shall rule even when rendering an acquittal.

4. CONTENT OF THE FIRST INSTANCE JUDGMENT

The requirements for the judgment's content are outlined in Article 428 of the Serbian CPC and Article 305 of the Bulgarian CPC.

Article 428, paragraph 1 of the Serbian CPC explicitly states that the written judgment must fully correspond to the pronounced judgment, a requirement that applies to Bulgarian judgments but is not expressly stated in the CPC. In both legal systems, the judgment comprises three parts: an introduction, reasoning, and operative part.

According to paragraph 2 of Article 428 of the Serbian CPC, the introduction of the judgment shall contain: a statement that the judgment is rendered in the name of the people; the name of the court; the names and surnames of the presiding judge and the members of the judicial panel, as well as the court clerk; the name and surname of the defendant; the offense with which the defendant is charged and whether he was present at the court hearing; the date of the court hearing and whether it was public; the names and surnames of the prosecutor, the defense counsel, the legal representative, and the trustee who were

present at the court hearing; the date of the pronouncement of the judgment; as well as whether the judgment was rendered unanimously or by a majority vote.

In the Bulgarian Criminal Procedure Code, it is also explicitly stated that the judgment is issued in the name of the people, as mentioned above. Article 305, paragraph 2 of the Bulgarian Criminal Procedure Code also requires the indication of the court, the names of the members of the panel, the court clerk, and the prosecutor; the name of the defendant and the offense for which the charge has been brought. Whether the court hearing was public, whether the defendant was present during its conduct, as well as the names and surnames of the defense counsel, the trustee, the private prosecutor, and the civil claimant (persons who have suffered harm from the offense or injured legal entities), are not included in the judgment, but in the minutes of the court hearing in which the judgment was pronounced.

Both Bulgarian and Serbian law require that the date of issuance be included in the introductory part of the judgment. According to Article 428, paragraph 2 of the Serbian Criminal Procedure Code, it must also be indicated whether the judgment was rendered unanimously or by a majority vote. The Bulgarian Criminal Procedure Code contains no such requirement, but if the judgment was not rendered unanimously, this will be evident from the existence of a dissenting opinion by the member of the panel who disagrees with the majority on one or more issues of the judgment.

In the reasoning of the judgment, the Serbian court sets out its considerations regarding each point of the judgment. If the indictment is dismissed, the reasoning will be limited only to the reasons for the dismissal of the indictment (Article 422 CPC). In the reasoning of the judgment by which the defendant is either acquitted or found guilty, the court shall present the facts it has established in the criminal proceedings (Article 83 CPC) and the reasons for which it considers them proven or unproven, as well as why it has not granted certain requests by the parties, giving particular assessment to the credibility of contradictory evidence, the considerations that guided it in resolving legal issues, and in particular in determining whether the defendant committed the offense and in applying the relevant legal provisions to him.

If the defendant is acquitted, the reasoning of the judgment shall also indicate the reasons for the acquittal (Article 423 CPC). If the defendant is found guilty, the reasoning shall also indicate the facts that the court took into account in determining the punishment, the reasons for which it found it necessary to impose a more severe punishment than that provided by law, or to reduce the punishment, or to release the defendant from punishment, or to impose community service, deprivation of the right to operate a motor vehicle, a suspended sentence, a judicial warning, a security measure, confiscation of unlawfully acquired material benefit or property acquired through the offense, as well as the reasons for the revocation of conditional release.

In the Bulgarian Criminal Procedure Code, the content of the reasoning of the judgment is not listed in such detail, but the requirements are similar. The reasoning of the

Bulgarian judgment sets out the established facts, on the basis of which evidentiary materials they are established, and what the legal considerations are for the decision rendered. In case of contradictions in the evidentiary materials, the reasoning shall state why some of them are accepted and others are rejected. A separate paragraph 7 of Article 305 of the Criminal Procedure Code stipulates that an acquittal may not contain expressions that cast doubt on the innocence of the acquitted person. As already mentioned above, when rendering the first-instance judgment, the court decides on a specific set of issues provided in Article 301 of the Bulgarian Criminal Procedure Code. The reasoning of the judgment must include a ruling on these issues, which are very similar to those set out in Article 428 of the Serbian Criminal Procedure Code concerning the reasoning of the acquittal and the conviction.

According to Article 428 of the Criminal Procedure Code of the Republic of Serbia, the operative part of the judgment contains the personal data of the defendant (Article 85, paragraph 1 CPC) and the decision by which the indictment is dismissed, the defendant is acquitted, or is found guilty. If the indictment is dismissed or the defendant is acquitted, the operative part of the judgment contains a description of the act for which the defendant was charged, as well as a decision regarding the costs of the criminal proceedings and the civil claim, if one was filed. If the defendant is found guilty, the operative part of the judgment contains the necessary data referred to in Article 424 CPC, and in the case of a concurrence of offenses – the punishments determined for each separate offense, as well as the aggregate punishment imposed for all offenses in the concurrence.

According to the Bulgarian CPC, the operative part sets out the personal data of the defendant and states the court's decision on the issues listed in Article 301 CPC, which have already been discussed. In addition to the matters of costs and the civil claim, when rendering an acquittal, the Bulgarian court must also decide on the disposition of the physical evidence in the case and whether the conditions under Article 53 of the Criminal Code (confiscation of items regardless of criminal liability) are present.

The operative part of the judgment also indicates the court before which the judgment may be appealed and within what time limit. A similar obligation for the presiding judge to provide instructions regarding the right to appeal and the right to respond to the appeal is contained in Article 426, paragraph 1 of the Serbian CPC.

Article 305 of the Bulgarian CPC also provides for the content of the judgment in cases where the offender does not bear criminal liability due to amnesty, as well as in cases where criminal liability is extinguished due to the expiration of the statutory limitation period. As already mentioned above, the court shall render a judgment when these two grounds are revealed during the court hearing and the defendant requests that the proceedings continue.

Article 305, paragraph 4 of the Bulgarian CPC also provides for the content of the judgment when the defendant is a minor and has committed an offense that does not constitute significant public danger, due to infatuation or recklessness. The same provision

also sets out the content of the judgment in cases where there are grounds for releasing the defendant from criminal liability and imposing an administrative penalty (Article 78a of the Criminal Code).

Article 305, paragraph 5 CPC provides for the content of the judgment when the committed act is punishable under administrative procedure in the cases provided for in the Special Part of the Criminal Code, or when it constitutes an administrative offense provided for in a law or decree.

The Bulgarian CPC does not contain a provision similar to Article 429 of the Criminal Procedure Code of the Republic of Serbia, which provides for the absence of reasoning or partial reasoning of the judgment in explicitly listed hypotheses. However, when an agreement is concluded and the special rules of Chapter 29 of the Bulgarian CPC are applied, the court is not obliged to provide reasoning indicating the established facts, the evidentiary materials on which they are based, or the legal considerations for the decision rendered, nor to discuss contradictory evidentiary materials. But in this hypothesis, the Bulgarian court does not render a judgment, but rather an order by which it approves the agreement reached. If the court does not approve the agreement, it returns the case to the prosecutor.

The Bulgarian CPC provides that, on certain issues, the court may rule by means of an order, separate from the judgment. These are the issues related to the determination of an aggregate punishment in cases of multiple offenses; the application of Article 53 of the Criminal Code (confiscation of items regardless of criminal liability); the initial regime for serving the sentence of imprisonment; whether the conditions are met for enforcing a conditionally suspended sentence or conditional early release, and what punishment the defendant should serve in these cases. The court may also rule by means of an order on the issues concerning physical evidence and the costs of the proceedings.

Another provision that is absent from Bulgarian legislation is that of Article 431 of the Criminal Procedure Code of the Republic of Serbia, according to which errors in the judgment may be corrected – errors in names and numbers, as well as other obvious errors in writing and calculation, formal deficiencies, and discrepancies between the certified copy of the judgment and the original of the judgment, shall be corrected by a separate decision of the presiding judge, upon request by the parties or ex officio. If there is a discrepancy between the certified copy of the judgment and its original with regard to the data indicated in Article 424 CPC, the decision on correction shall be served on the persons referred to in Article 427, paragraphs 5 and 6 of the CPC. In this case, the time limit for appealing the judgment shall begin to run from the day on which this decision is served, and a separate appeal against it shall not be allowed.

The Bulgarian CPC provides for the possibility of interpretation of the judgment, as Article 414, paragraph 1 CPC allows the court that rendered the final judgment to rule on all difficulties and doubts related to its interpretation. These matters are examined in an open court hearing with the participation of the convicted person and the prosecutor.

Another similarity between the two legal systems is the possibility for the court to rule on the detention of the defendant after the pronouncement of the judgment. According to Bulgarian legislation – Article 309 CPC – after rendering the judgment, the court also rules on the measures of restraint applicable to the defendant (there are four types of measures of restraint – signature bond, bail, house arrest, and detention), as well as on the measure for securing the civil claim, the fine, and the confiscation.

5. CONCLUSION

Based on the foregoing, it can be concluded that, despite specific peculiarities in issuing the first instance judgment under the legislation of the Republic of Bulgaria and the Republic of Serbia, both countries demonstrate a commitment to a fair and transparent criminal process. Serbian legislation stands out for its detail and clarity in regulating judicial acts, which contributes to legal certainty and the protection of the parties' rights. These similarities and differences indicate that both countries can draw valuable experience from one another in further refining their criminal procedural systems.

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ИЗРИЦАЊЕ И САДРЖИНА ПРЕСУДЕ ПРВОСТЕПЕНОГ СУДА – УПОРЕДНОПРАВНА АНАЛИЗА ИЗМЕЂУ БУГАРСКОГ И СРПСКОГ ПРАВА

Апстракт

У раду се разматрају сличности и разлике у законодавствима Републике Србије и Републике Бугарске у погледу изрицања првостепене кривичне пресуде. Анализирано је и питање који су типови пресуда регулисани у законодавствима обе државе и какав треба да буде њихов садржај.

Кључне речи: пресуда, кривични поступак, упоредноправна анализа.

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THE POSITION OF WORKERS AND WORKING CONDITIONS THROUGHOUT THE INDUSTRIAL REVOLUTIONS

Summary

This paper analyzes the impact of the industrial revolutions on the world of work, expressed through urbanization as a process that arose due to the need to concentrate the workforce in urban areas and the formation of industrial centers. The focus is on the impact of the first, second and third industrial revolutions and its embodiment in the practices of Great Britain, the United States of America, as well as the countries of Western Europe. The creation of industrial capacities for mass production undoubtedly affected the position of workers in the work process. The development of technology, on the other hand, had an impact on the individual and collective rights of workers. This paper presents the working conditions of workers between the first and third industrial revolutions, as development projections and harbingers of the emergence of the fourth industrial revolution.

Key words: industrialization, working conditions, industrial relations, technological progress, labour relations.

1. INTRODUCTION

The manifestation of labor in the historical-transitional period between feudalism and capitalism was catalyzed by several factors. First, in Europe, a process of urbanization began, caused by industrialization. The process of urbanization in certain parts of Europe began around 1500 in Northern Italy, while by 1750, the process of urbanization was observed and present in England, Belgium, Northern Italy, Spain, as well as in the

Netherlands, during which the labor force and the population engaged in agricultural activities almost halved in this 250-year period (Malinowski & Sander-Faes, 2023). This trend, in turn, catalyzed the transition from feudalism to capitalist urbanization, aided by the trend of population growth in Europe, which, according to some analyses, the number of living people from 70 million in the 1500s grew to 130 million in the 1800s.[1]

The transition between feudalism and industrialization, as well as the transition between manuscript and printed culture in England in the 15th century, also affected the mode of production (Robertson & Uebel, 2004). In addition, we will consider the manifestation of labor within capitalism as a form of socio-economic organization, which is accompanied by a period of fluctuation in technological progress on the basis of which the contours of the industrial revolutions were embodied and developed.

2. THE FIRST INDUSTRIAL REVOLUTION

The First Industrial Revolution catalyzed the transition and shift from manual to machine-assisted work, that is, it changed the way of working in Europe. The First Industrial Revolution represents a historical turning point from agricultural-agrarian societies to machine-based, that is, industrial society. In other words, the First Industrial Revolution caused a demographic revolution, an agricultural-agrarian revolution, a commercial revolution, and a transportation revolution (Deane, 1979).

The main carrier of the process of the first industrial revolution is Great Britain. What characterized the British population before the beginning of the first industrial revolution was a high level of literacy compared to other societies in the pre-industrial period (Clark, 2014). Even in terms of energy technology and its application in the 1780s, it is noticeable that the decisions they made and the choices they made were based on a specific knowledge and skills base that was present in Great Britain (Jacob, 1997). Accordingly, the period of the first industrial revolution began in Great Britain between 1750 and 1760 and lasted between 1820 and 1840.

From the perspective of the creation of a new economic and social formation, this period saw technological development in several directions:

- The rise of the factory system of production, especially in the textile industry
- The development of the steam engine as the main driver and the development of the railway and the increased demand for coal
- The development of iron smelting which allowed coke to be substituted for coal and led to a huge increase in the production of iron and steel, which influenced the increase in the demand for coal and the development of town gas (Braun, 2010).

Consequently, the first industrial revolution influenced:[2]

[1] Ibid.
[2] Ibid.

- The rise of the industrial city
- The rise of the industrial workforce, and thus the working class or proletariat
- A huge expansion of the total consumption of manufactured goods

This period of the first industrial revolution had both negative and positive effects on the position of workers. On the one hand, the Ordinance of Labourers of 1349 and the Statute of Labourers of 1351 were applied, which legal act is considered the founder of English labor law. This Ordinance was adopted during a period of shortage of agricultural labor due to the extinction of 30-40% of the total population in Great Britain due to the existence of the Black Death of 1348-1350. The decree establishes and regulates several subject components, namely:

- All persons under 60 years of age must work
- Employers may not employ surplus workers
- Employers may not pay and workers may not receive wages higher than the pre-plague level
- Food must be reasonably priced without excess profit, while no one was allowed to give anything to able-bodied beggars "under the pretext of pity or charity".

However, on the other hand, this configuration, several centuries later, faced a new reality and a new challenge. That is, during the first industrial revolution, there are records that indicate that on the one hand the working week increased from 5 to 6 working days, or an additional 550 to 654 working hours in the period from 1760 to 1830, whereby, as Douglas Hay points out, industrialization created space for the increase and expansion of poorly paid child and female labor in both factories and rural industry, as well as low-paid agricultural and industrial employment for men (Hay, 2018).

On the positive side, the shortage of labor gave the working classes greater power of influence. Accordingly, due to the disparity and imbalance of power, the bargaining position of workers gradually increased, which led to a state of increasing workers' rights. As some authors point out, through the prism of the company founded by James Watt and Matthew Boulton, as employers they had a problem to meet the needs of a suitable workforce with an appropriate set of skills in the milling industry, because their millers were poached by other companies and foreigners offering higher wages and working conditions (Kelly, Mokyr & Grada, 2022). It is also stated that the inability of this employer to retain employees, or to hire new ones with the specific skills required to operate the most complex machine at the time, resulted in unreliable engines, long delays in delivery, and a complete absence of after-sales service from Boulton and Watt (Tann, 1970).

But at the same time, there are views that indicate that the period of industrialization also led to a certain degree of inequality in the societies of that time. The proponent of modern economics, Adam Smith, who lived and worked before the beginning and during the first industrial revolution, indirectly notes that technological progress should be concretized towards the overall wealth of nations, but at the same time points out that the inequality that developed during that period also occurred according to the nature of the

work engagement. The aforementioned inequality is also manifested in terms of the valuation and payment of labor. That is, the aforementioned inequality expressed in terms of wages for a certain work engagement is argued by Adam Smith to be due to several factors, namely:

- the wages of labor vary according to the ease or difficulty, the cleanliness or dirtiness, the honesty or dishonesty of the employment
- the wages of labor vary according to the ease and cheapness, or the difficulty and expense of learning the business - the wages of labor in different professions vary according to the permanence or inconstancy of the employment
- the wages of labor vary according to the little or great confidence that must be placed in the workers
- the wages of labor in different employments vary according to the probability or improbability of success in them (Smith, 1977)

Certainly, an additional characteristic that shaped the world of work within the framework of the first industrial revolution was the integration and exposure of women in the work process. Women and children were exposed to very intensive shifts and working hours during the day, from which reality their lives were unbalanced while work took a serious part of their time over the months and years. Although the treatment and exposure of children to work from a young age varied cyclically over the months and years, variable by a multitude of factors, it is considered that the first serious step towards introducing a kind of order for improving the working conditions of children was actually established through the adoption of the Factory Act a few years before the end of the first industrial revolution, more precisely in 1833 in Great Britain. Namely, this law introduced several improvements to the rights of children who were involved in the work process, namely:

- work of children younger than nine years is prohibited
- night work of children under 18 years is prohibited
- children aged 9-13 may not work more than nine hours a day
- children aged 13-18 may not work more than 12 hours a day
- employers must have a certificate of age for their child workers
- children may not be employed without a certificate from a surgeon about their strength and appearance (a kind of classifier for assessing work capacity)
- Certificates (for work capacity) should be prepared by a surgeon or doctor
- The right to attend school and two hours of daily schooling for children has been established
- Inspectorates have been introduced to check night work of children
- Meal times (breaks) have been established
- Allowing (absence from work due to the celebration of) holidays[3]

[3] UK Factories Act 1833, 3 & 4 Will. 4, c. 103.

A striking feature of this period was the introduction of machines into the work process. That is, forms of automation appeared in some industries, such as textiles, where certain work tasks that were traditionally performed manually were now performed by machine, as was the case with hand weavers. This was due to the fact that cloth made with the help of machines was made faster and easier compared to cloth made by hand. By pointing to the example of this industry, it was consequently approached to build large factories filled with machines for the production of various types of fabric, with the number of labor that had to be engaged in these factories also being significantly large. In terms of the first industrial revolution and its impact on the world of work at that time, we can conclude that:

- A process of urbanization occurred, i.e. migration from rural to urban areas
- Agricultural and agrarian work was reduced at the expense of industrial work in factories
- Specialized skills and professions were created for work in factories, which led to a division of labor
- Child labor was exploited
- Work was done between 12 and 16 hours a day for low wages
- There was exploitation of the labor force
- In factories, there were often unsafe working conditions that threatened the health of workers
- Monotony developed in the work process of workers who worked in factories and who had repetitive work tasks, compared to workers who worked in rural areas, i.e. on farms, where their work responsibilities were varied and mixed

3. THE SECOND INDUSTRIAL REVOLUTION

The main carriers of the second industrial revolution are considered to be Great Britain and the United States. Great Britain had the technological continuity of the first industrial revolution, while the United States managed to commercialize society and, since 1820, to position itself as the largest producer in the world. The second industrial revolution developed in the United States due to its technological and industrial progress at the end of the 19th and beginning of the 20th centuries. In terms of this industrial revolution, Nikola Tesla had a great scientific and technical contribution in this period, in terms of his creation and research, he directly had a catalytic influence on the industrial flow in this period with his invention and development in terms of the production, transmission and use of electricity and the introduction of alternating current, more precisely with the creation of the induction motor in 1887. After the introduction of electric motors, as Paul Turner notes, the use of electric motors expanded from about 5% of mechanical horsepower in American industrial production in 1899 to over 82% by 1929 (Turner, 2021).

The Second Industrial Revolution began in 1870 and ended in 1914 with the outbreak of World War I. David Landes (1969) points out that this cycle of the Industrial Revolution shifted the emphasis from consumption to investment due to the need for capital to build industrial plants. Other authors such as Galbraith (1998) point out that the social equality of a society depends on what is produced, i.e. "the line that divides our area of wealth from our area of poverty is roughly that which divides privately produced and marketed goods and services from publicly rendered services." Accordingly, from an economic perspective, Galbraith (1998) reasons that with regard to working hours "a reduction in the work week is an exceedingly plausible reaction to the declining marginal urgency of product. Over the span of man's history, although a phenomenal amount of education, persuasion, indoctrination and incantation has been devoted to the effort, ordinary people have never been fully persuaded that toil is as agreeable as its alternatives." Characteristic of the world of work during the second industrial revolution are several components.

First, the process of transformation from manual to machine work continued. Machines continued to become more sophisticated. This, in turn, meant that the trend of reducing agricultural and agrarian work engagements was decreasing at the expense of factory and industrial work. Consequently, there was a need to develop an adequate workforce that possesses professional skills, and in this period the vocational and technical education system was seen towards its concretization and provision through two channels:

- Developing a system in which vocational and technical education is predominantly carried out in the workplace
- Developing a system in which vocational and technical education is carried out in schools (İşler, 2021)

Urbanization continued to concentrate people in urban areas. This was a feature of both the United States and the United States. Second, it is not observed that during this period workers' rights in the United States and Europe improved drastically. On the contrary, trends in work organization that were not particularly favorable to workers continued. This, in turn, contributed to the development of labor union organization for the collective protection and defense of their rights. Industrialization, as in the case of the United States, involved the construction of capital facilities, such as highways, factories, and other facilities of strategic importance, on which workers worked in conditions of visible social inequality. In addition, the growth of specialized skills for specific jobs, as well as the search for a higher standard and compensation for the work performed, contributed to a significant number of the labor force in Europe emigrating to the United States, with the urbanization process further coming to the fore.

Third, there are known historical visible events that shaped the formation of unions in the search for better working conditions. In the case of the United States, this manifested itself through the prism of the Haymarket Riots (Green, 2007) and the Pullman Strike (Papke, 1999; Laughlin, 2006; Wish, 1939). In the early 20th century, the progressive

movement began as a stage in which the struggle for increasing women's rights and limiting the corporate power that employers reflected, both in terms of labor relations and in terms of socio-economic relations in the United States.

In the case of Great Britain, a series of laws were adopted to improve the position of women and children at work. The Education Acts and the Factory Acts are considered to be more significant. During this period, integrative efforts for the democratization and incorporation of the social strata of the working class were further strengthened in Great Britain. This period saw an active increase in the popularity of the Labour Party, which was considered a kind of workers' party at that time.

In terms of Western Europe, this period saw the economic growth of Germany and France, i.e. Western Europe was an active period of innovation and connectivity through the construction of railway networks. In parallel, there was an imperial race and ambition between European nations and also externally towards nations that were factored into multiple continents where they colonized, regarding which power would establish or maintain supremacy. Of course, in terms of the various processes that developed in the aforementioned period, from the perspective of socialist movements in Europe, it should be pointed out that during this period the First International Congress of Workers was held in Paris in 1889 and the Second International as a movement of socialist parties and trade unions representing the largest workers' organizations in Europe. This movement existed from 1889 to 1916, when due to complex military-social sentiments and operations in Europe it disintegrated.

Due to the serious technological advances and lifestyle changes due to the development of industry during this period, for many the Second Industrial Revolution is seen and considered as a harbinger of the First World War in terms of restructuring geopolitical and geo-economics influence primarily in Europe, but also in the world.

4. THE THIRD INDUSTRIAL REVOLUTION

The Third Industrial Revolution, consequently, goes a step further in terms of the technological achievements of the Second Industrial Revolution. There are different views from which moment it is considered to have begun due to the Second World War. In general, the conclusion is that the full industrial-revolutionary potential of technology opens up in the relatively peaceful but cold polarized geopolitical social order after the end of the Second World War. This is important because the world of work after the end of this war manifested itself in two different geo-economic environments: the manifestation of labor in capitalist environments, as well as the manifestation of labor in socialist-communist environments. Of course, in the different environments, the position of the worker at the local and regional level was unconsolidated, i.e. there were differentiations in the treatment of workers in the two aforementioned blocks. In the capitalist bloc, as was the case in the societies of the United States, Great Britain and Western Europe, work engagement had a

kind of flexibility in terms of the interoperability of workers to change job positions but also to transit from one labor market to another. This momentum led to the continuation of the process of emigration of labor from different parts and continents of the planet to these societies, whose professional emigration of the labor force was most pronounced in the United States of America. On the other hand, socialist-communist societies directed the labor potential of workers in a centrally planned economic system. This meant that private ownership of industrial capacities was extremely low or non-existent, with capital producers of goods being state-owned. In these societies of the socialist-communist bloc, class differences were much more moderate and not as pronounced as in the capitalist bloc.

From the perspective of technological development during this period, a characteristic moment is the technological race and competitiveness of these two blocs. There was mutual technological competitiveness in every field, from the arms race and sending astronauts beyond Earth's orbit, to the use of technology to innovate production capacities.

The third industrial revolution sets the contours of process automation, mechatronization of machines used in the production process, the development of computers composed of advanced hardware and software components, i.e. contributed to the development and evolution of the use of technology for work. Computer potential was further strengthened, processes of numerical data processing in digital format began, and the contours of the Internet and its use in a civilian context were set. These technological processes transformed work processes, making a step towards the transition from machine to machine-informational transformation of jobs. Furthermore, the use of mobile telephony also became an integral part of work processes during the transition and transition from the 19th to the 20th century. In this regard, technology used in the workplace is defined by certain authors as "any tool developed from scientific knowledge that is used to perform work. Technology is constantly shaping the nature of work as we seek ways to complete tasks more efficiently and effectively" (White, Behrend & Siderits, 2020). In this regard, through the prism of the flexibilization of the capitalist world of work in the United States during the third industrial revolution, the work ethic of workers has also changed, i.e. the focus has shifted towards teamwork, as a characteristic of adaptability to circumstances in which cooperation and soft skills take hold (Sennett, 1998).

Towards the end of the first decade and the beginning of the second decade of the 21st century, professional networks developed in a civilian context to connect workers and employers in a digital environment, whereby the supply and demand for labor could also manifest in a digital, or virtual, environment.

5. CONCLUSION

Visible from the progression of the first, second and third industrial revolutions, we can conclude that there is a certain continuity in the development of technology, which

reorganizes social relations, and thus reorganizes working conditions across different time perspectives. It should be pointed out that the improvement of working conditions of workers, no matter how bad they were before any attempts at regulation were made, actually begins as a parallel process of the industrialization of American, British, as well as segments of European society, i.e. Western Europe.

Consequently, it should also be pointed out that the aforementioned three industrial revolutions develop the space for the manifestation of better starting positions for the protection of employee rights and the protection of mechanisms for channeling processes for the improvement of working conditions of workers within the framework of the fourth industrial revolution, taking into account that at the beginning of the first industrial revolution, due to the continuity of the development of labor law, the aforementioned mechanisms were practically non-existent.

Finally, this paper points to the significant modalities and conditions that workers went through, faced with processes of urbanization and factory work, in often substandard working conditions, with exploited and inconsiderate working hours, where workers spent more time in factories than with their families. Of course, it is evident from the indicated developments in the feeling of dignified treatment for work, throughout the course of the industrial revolutions contributed to the establishment of a more acceptable equilibrium for the position of workers within the framework of the employment relationship.

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ПОЛОЖАЈ РАДНИКА И УСЛОВИ РАДА ТОКОМ ИНДУСТРИЈСКИХ РЕВОЛУЦИЈА

Апстракт

У овом раду анализира се утицај индустријских револуција на свет рада, изражен кроз урбанизацију као процес који је настао услед потребе концентрације радне снаге у урбаним срединама и формирања индустријских центара. Фокус је на утицају прве, друге и треће индустријске револуције и њиховом оличењу у пракси Велике Британије, САД и земаља Западне Европе. Стварање индустријских капацитета за масовну производњу несумњиво је утицало на положај радника у процесу рада. С друге стране, развој технологије је утицао на индивидуална и колективна права радника. У раду су приказани услови рада радника између прве и треће индустријске револуције, као развојне пројекције и претече настанка четврте индустријске револуције.

Кључне речи: индустријализација, услови рада, индустријски односи, технолошки напредак, радни односи.

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FREEDOM OF SPEECH AS THE BASIS OF A DEMOCRATIC ORDER[1]

Summary

The paper analyzes the concept and importance of freedom of speech, as one of the basic prerequisites for the existence of democracy and a democratic order. Freedom of speech is a universal human right that guarantees every individual the opportunity to express opinions, ideas and attitudes freely, without fear of sanctions, pressure or censorship. Freedom of thought is almost inextricably linked to freedom of speech. Together, these two fundamental freedoms, as John Stuart Mill claimed, mark the entire scope of human freedom. The authors will examine the connection between democracy and freedom of speech through research, first in a historical context, but also through an examination of existing forms of guarantee, of exercising and protecting freedom of speech in modern democratic societies. Of essential importance is also the analysis of the possibility of restricting freedom of speech, especially in the domain where there is tension between freedom of speech and its antipode, hate speech. Finally, it is worth looking at the challenges that arise as a real threat to the exercise and protection of freedom of speech in the so-called era of the Internet and social networks.

Keywords: human rights, freedom of speech, freedom of opinion, democracy, hate speech.

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1. INTRODUCTION

On the historical path of "conquering freedom", almost the greatest human accomplishment was to speak freely about freedom. The age of freedom does not begin with free-thinking individuals; it begins with the brave who freed the imprisoned thoughts about freedom. That is why today, in defense of freedom of speech, we act with the same fervor as when we defend the right to life. Because even the right to "biological" life loses its meaning without freedom of thought and speech, which are the essential foundation of *"the right to a civil and dignified life in a democratic society."*

Freedom of speech[2] or expression is an external manifestation of an individual's inviolable "inner space", that is, their personal thoughts, convictions and beliefs, and therefore it must be protected as part of a broader concept: the inviolability of human dignity and personal autonomy (Gunatilleke 2021, 93). The importance of freedom of speech is also recognized in its being a necessary condition for the realization not only of other human rights such as freedom of religion and freedom of association, but also of democracy itself, as a form of political order.

Meiklejohn emphasizes that freedom of speech is more than an individual human right, and that it does not stem from natural rights, but from the pure practical political need of a democratic society to be self-governing (Meiklejohn 1948, 26). While respecting the theoretical approach of the aforementioned author, we must nevertheless emphasize that from a theoretical and legal perspective, freedom of speech is today primarily a fundamental human right, whose source is the corpus of natural (moral) rights. Freedom of speech is, therefore, an element of the moral order. However, on the other hand, this does not mean that it is not also a necessary prerequisite for the existence and functioning of a democratic order, because without freedom of speech, democracy, just like thought, would be imprisoned.

Today, the guarantee and respect for freedom of speech is seen as a matter of the democratic maturity of a society. However, we cannot help but reflect on the emergence of regressive reflexes, which always surprise us when those views appear in public with which the majority do not agree. Given that freedom of speech also protects such "unpopular" statements, the legal system, no matter how democratically founded, will tremble due to the normative tension that arises in the relationship between the freedom of speech of one person and the rights and freedoms of another or other individuals. This is precisely why the issue of restricting freedom of speech is a very important segment in the domain of human rights.

[2] In everyday speech, freedom of speech and freedom of expression are often used as synonyms, although there are views that freedom of expression is a broader concept, and freedom of speech is its narrow segment.

Restrictions on freedom inevitably lead us to encroach on the sensitive domain of human dignity, and this issue must therefore be approached very cautiously. The sword of Damocles, which constantly hangs over our heads, symbolizes the danger that state authorities could abuse their powers to restrict freedom of speech in some situations. It is precisely in this narrow space between the necessity of protecting the interests of the state and the rights of others on the one hand, and freedom of speech on the other, that the key question of this paper arises: "To what extent and under what conditions is it possible to limit freedom of speech without violating its role of a *"guardian"* of democracy and the dignity of the individual?". This paper will attempt to shed light on this complex relationship, finding a balance between protecting freedom of speech and defining its limitations.

2. ON THE CONQUEST OF FREEDOM

Historically, it is very difficult to determine the origin of freedom of speech because, truth be told, free human expression began precisely at the moment when the fear of external coercion disappeared. The conquest of freedom is, therefore, nothing other than liberation from fear, for a man who is led by fear is not the master of his own mind. (Spinoza 1665, 21).

The power over the mind and words comes with the fall of tyranny. Only when the "despotic monologue" ceased were people able to freely express their thoughts and beliefs. Although periods of freedom were generally short-lived, it was during these periods that rhetoric – the art of public speaking – was conceived. Thus, Aristotle, in his Rhetoric, testifies that Corax of Syracuse was one of the first rhetoricians to successfully collect and systematize many of the techniques of this discipline (Aristotel 1926, book 1.). After the fall of tyranny, citizens were able to address the authorities themselves and represent their interests, but it was still essential to learn the skills of oratory, to which Corax made an immeasurable contribution.

The period of ancient Greek democracy gave rise to two important concepts that help us better understand the historical genesis of freedom of speech and its connection to democracy. The first concept is called parresia (Greek: *παρρησία*), and it means honest, free, or open speech. Parresia represents free expression without fear of consequences, and therefore it was one of the essential elements for the functioning of Athenian democracy. The second concept is called isegoria (Greek: *ἰσηγορία*), and it represented the equal right of citizens to speak before the assembly or court. These two concepts somewhat justify Michael John's position that freedom of speech arises as a consequence of the practical political need of a democratic society, but we should not forget that it is only elevated to the pedestal of democratic values as an individual human right.

The Middle Ages will be remembered as a period in which freedom of speech was in the hands of clerical centers of power. Therefore, one could only speak about topics that

did not constitute heresy for the church or treason for the government. Heresy, as a reminder, was punishable by death. In ancient times, Socrates paid the price for freedom of speech by drinking hemlock poison, while in the Middle Ages, for advocating the theory of the heliocentric model of the universe, the Inquisition would try Copernicus and Galileo for heresy, and G. Bruno would be sentenced to death in 1600. Censorship by the Roman Catholic Church became more pronounced during the Reformation. Books that were then considered heretical and unsuitable for the faith and morality of society were placed on the list of prohibited books and writings. The so-called *Insex expurgatorius*[3] became the main means of censorship of new, but unacceptable to the church, scientific and philosophical ideas. The invention of the printing press would reduce the real scope of censorship in church circles, but the moral authority of the church would continue to be a decisive factor in the realm of restrictions on freedom of speech. For this reason, Erasmus of Rotterdam would present his criticism of social and church structures by inverting appearances, hiding truth and wisdom in the guise of madness *(Praise of Folly).*

The modern social and ideological transformation began with the rise of the Enlightenment, as well as the development of new philosophical understandings of freedom. The works of philosophers such as John Locke and J. J. Rousseau led to the idea that each individual in society is responsible for his or her own freedom, as well as for the freedom of the entire social community. That is why, first in 1775, the American Revolution, and shortly thereafter in 1789, the French Revolution, symbolized the beginning of the true struggle for freedom. The world level of development of the state and law undoubtedly owes much to the two great revolutions that marked the birth of the new, modern state. They were actually struck by foundations and established basic principles on which today's state-legal orders function. (Simić, Đorđević, Matić, 2015, 46)

Thus, in the course of human development, a time has come when it is no longer considered necessary for rulers to have unlimited power, which is in itself contrary to the common good. It seemed to the people that it would be much better if the various powers of the state were entrusted to plenipotentiaries or deputies of the whole nation, who could be replaced. The people thought that this was the only way to ensure that the state power could never be used to their detriment (Stuart Mill 1859, 6).

However, the conquest of freedom and the rise of democracy did not mean the end of the struggle of the defenders of freedom against force. Force has always been and will be a tool in the hands of power, while according to John Stuart Mill, the most significant feature of history is precisely the struggle of *"freedom against force."* Hence it is clear that freedom must constantly be defended against force, because a government that fears criticism of free thought will not hesitate to suppress free thought by force. The guardians of

[3] Index librorum prohibitorum, 1559. Houghton Library, Harvard University, 1980, https://books.google.rs/books/about/Index_librorum_prohibitorum_1559.html?id=27M8nwEACAAJ&redir_esc=y

freedom must therefore once again curb government and its power in order to defend the won freedom to speak and think.

Thomas Jefferson, the author of the American Declaration of Independence, would therefore, in a letter to his friend, John Tilghman, highlight perhaps one of the most important messages of support for freedom of speech and the press: *"If it were up to me to decide whether we would have a Government without newspapers, or newspapers without a Government, I would not hesitate for a moment to choose the latter."* And Thomas Erskine, Attorney General of the Prince of Wales, rising to defend Tom Paine, will make one of the truest statements about freedom of speech: *"Let men freely communicate and express their thoughts, and their anger will scatter like fire, which only spreads over the surface; their argument will seem like gunpowder scattered, it ignites, but the explosion is neither loud nor dangerous. If you hold them under pressure, it is then an underground fire that burns invisibly, until it erupts, like an earthquake or a volcano." (Keane 1991, 1-5).*

3. FREEDOM OF SPEECH AND ITS LIMITATIONS

Freedom of speech is an individual human right that guarantees every individual the opportunity to freely express their thoughts, views and beliefs, without fear of sanctions, censorship or persecution. This right includes not only the freedom to express and disseminate one's own opinion, but also the freedom to receive, that is, listen to and consider the opinions, views and beliefs of others.

Many authors state that freedom of speech is actually "double-conceived" (both as a right and as a freedom). As a right, it refers to the ability of each individual to exchange information, opinions, ideas, beliefs and convictions as they wish, and with whomever they wish. As a freedom, it refers to the obligation to refrain from imposing limits on the various forms and contents of expression, and most often on the principle of prohibiting state authorities from setting limits by law (*or in some other way*) to which freedom of expression could go (Vučić, 2022,17).

By enabling every individual to freely express their views and beliefs, as well as to become acquainted with the views and opinions of others, pluralism of ideas is established and a critical attitude towards society, politics and authorities is encouraged. Freedom of expression also ensures the protection of the views of minority social groups and affirms social dialogue as a way of overcoming conflicts in the community. It is clear that without the guarantee and protection of freedom of speech, there is no active participation of citizens in decision-making, and thus no democratic order. Precisely for this reason, this freedom is protected by many international legal instruments, both as a fundamental human right and as a democratic value.

The First Amendment to the US Constitution of 1791, freedom of speech was conceived as an absolute human right that almost does not know the possibility of establishing restrictions. Congress shall make no law abridging the freedom of speech, or of

the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances[4]. Only speech which is harmful, such as libel and sedition, is punishable. Speech which incites violence is thus outside the protection of the right to freedom of expression, especially in situations where there is a real danger of conflict escalation (Paunović, Krivokapić, Krstić, 2018, 203).

Internationally, the first document in which freedom of speech finds its footing is the Universal Declaration of Human Rights adopted in 1948 at the United Nations General Assembly in Paris. Article 19 of the Universal Declaration of Human Rights states that everyone has the right to freedom of opinion and expression; this includes the right not to be harassed because of their opinions, and the right to seek, receive and impart information and ideas through any media and regardless of frontiers[5]. The text of the Universal Declaration does not recognize any provisions on limitations on the right to freedom of speech, and the first normative formulation of this type is found only in the text of the International Covenant on Civil and Political Rights.

The provision of Article 19, paragraph 3, of the ICCPR[6] stipulates that freedom of speech may be subject to certain restrictions which must be expressly provided for by law. The reasons for which restrictions on freedom may be imposed are also listed, namely: respect for the rights or reputation of other individuals or the protection of national security, public order, health and morals. Leaving the possibility of restricting freedom of speech in certain situations is a suitable solution that is intended to protect both the interests of the state and the interests of other members of the community. However, when determining the form and model for imposing restrictions, one should be very careful, because on the other hand, one must not open up space for the abuse of this right by the state.

In this context, the most precise solutions are contained in the text of the European Convention on Human Rights. The provision of Article 10 of the ECHR states that the exercise of these freedoms carries with it duties and responsibilities, and freedom of speech may be subject to formalities, conditions, restrictions and penalties. In order for an exception to the rule to apply, three cumulative conditions must be met. The first implies that any restriction must be provided for solely and exclusively by law. The second condition concerns the aim of the restriction, which must relate to the protection of one of several prescribed interests and values. The ECHR[7] includes among the interests and values mentioned: national security, territorial integrity, public safety, prevention of disorder or

[4] Constitution of the United States, First Amendment: https://constitution.congress.gov/constitution/amendment-1/

[5] United Nations. 1948. Universal Declaration of Human Rights. [online] Paris: United Nations General Assembly. "Article 19"

[6] United Nations. 1966. International Covenant on Civil and Political Rights. [online] New York: United Nations General Assembly. "Article 19"

[7] Council of Europe. 1950. European Convention on Human Rights. [online] Rome: Council of Europe.

crime, protection of health or morals, protection of the reputation or rights of others, preventing the disclosure of information received in confidence, as well as preserving the authority and impartiality of the judiciary. The third condition implies that the established restriction must be necessary in a democratic society, that is, the measure restricting speech must be realistically justified and the least harmful. Bearing in mind that life will impose many situations The European Court has taken the view that in every borderline case, the freedom of the individual must prevail over the state's appeal to an overriding interest (cited by Simović, Stanković and Petrov, 2018, 182. according to: Macovei, 32).

Since the factuality and unpredictability of real life cannot always be brought under the umbrella of a legal norm, The ECtHR has often had the opportunity to formulate new positions, standards and interpretations in its judgments in the field of application of Article 10 of the ECHR. One of the most significant judgments in the rich case-law of the ECtHR is *the Handyside v. UK* judgment. For the first time, the European Court had the opportunity to indicate the scope of protection of freedom of speech, stating that this protection does not apply only to those statements with which the majority in society agrees, but also refers to the expression of ideas that may be shocking or disturbing to the majority of members of the community.

Some of the most interesting judgments of the ECHR concern the issue of the protection of freedom of expression in those situations where that freedom is restricted in order to protect morals in society. The Court has already noted in this context that it would not be possible to establish a common understanding of morality among "European countries" and that states therefore have a very wide margin of appreciation when determining what is "necessary" to protect morality. However, it should be noted that the powers of states in this area must not be abused, which is why measures have been taken to restrict freedom of speech, subject to the control of the ECHR.

Of course, expression that by its very nature causes such public outrage that it violates the moral understanding of a society is subject to restrictions, as the case of *Muller and Others v. Switzerland* shows. In the aforementioned case, the Swiss court seized three works of art, but also imposed a fine on both the author and the organizers of the disputed exhibition, since the exhibited artistic images depicted scenes such as sodomy, bestiality, masturbation and homosexuality. The ECtHR stated in this case that the specific measures taken by the state could not be considered a violation of Article 10 of the ECHR. The decisive fact was that the exhibited images were offensive in relation to the sexual decency of ordinary sensibilities, and that they emphasized sexuality in some of its crudest forms (more in: Simović, Stanković and Petrov, 2018, 183).

One of the greatest challenges for the ECHR in the future will certainly be the domain of freedom of speech, but also protection against hate speech on social networks. The development of the Internet and social networks is directing a significant part of social communication into the digital space. The digital world is becoming the future of fast and free communication between people, as well as a paradise for those individuals who insult

and belittle others under false names. Protection against hate speech on social networks is difficult to achieve, while, on the other hand, increasingly frequent examples of incitement to violence, racial, religious and other hatred and intolerance.

One of the characteristic cases in this regard is Sanchez v. France from 2021. In the aforementioned case, a French court convicted politician Julian Sanchez because he failed to promptly remove third-party comments from his Facebook profile, who incited hatred and intolerance towards members of the Muslim religion. The ECHR, acting on the representation of J. Sánchez, concluded that in this case there had been no violation of freedom of expression under Article 10 of the Convention, because a politician as a public figure has a significantly greater responsibility to monitor the content on his or her profiles, and thus prevent the spread of hate speech.

The above example, as well as numerous other examples such as the case of *Delfi AS v. Estonia* from 2015, indicate that the standards of the ECtHR for assessing a violation of Article 10 of the ECHR are becoming increasingly strict and thorough. On the other hand, this could be expected, given that the tension between freedom of expression and hate speech is starting to grow with the development of social networks. Hate speech is becoming increasingly prevalent in political contexts, making it difficult to distinguish between politically unpopular but inoffensive content and content that is offensive and harmful and should therefore be restricted.

4. HATE SPEECH

Starting from the understanding that freedom of speech should be protected within the concept of the inviolability of human dignity and personal autonomy, the question arose whether expression that is aimed at violating human dignity and personal autonomy could also enjoy protection. The answer is, of course, negative.

Hate speech is a kind of antithesis to freedom of speech and undermines the assumption of free expression as an absolute value. It is defined in legal literature as speech that aims to humiliate, intimidate, and incite violence and activities full of prejudice against a specific group, based on faith, ethnic origin, national origin, religion, sexual orientation, or disability. (Paunović, Krivokapić, Krstić, 2018, 202).

The expression of views and ideas that incite intolerance and hatred towards certain individuals or groups in society not only does not fall under the protection of freedom of expression, but also represents a specific discriminatory offense. The fact that the boundary of freedom of speech is violated by hate speech is also confirmed by the ECHR in several of its judgments. In the case of *Affaire Erbakan v. Turkey*, the Court stressed that tolerance and respect for the dignity of all human beings are the foundation of a democratic and pluralistic society. It follows that in democratic societies the issue of sanctioning, and even preventively preventing, various forms of expression that spread, incite, promote and justify intolerance and hatred based on intolerance can be considered necessary.

The frequency of hate speech, especially in political discourse, came to the fore after the migrant crisis in Europe in mid-2015. At that time, anti-migrant attitudes of political actors began to penetrate social reality, often bordering on hate speech or directly entering its field. As the migrant crisis provoked strong reactions from the entire "European" society, it was difficult and sensitive to find adequate solutions that could prevent or sanction hate speech against migrants. It should be recalled here that the ECtHR had previously, in the 2009 case of *Féret v. Belgium*, emphasized that anti-migrant rhetoric, especially when it calls for the deportation of entire population groups, is an example of hate speech not protected by Article 10 of the Convention, even when it comes from politicians in the context of an election campaign. Free political speech is essential for the realization of democracy, but when it grossly infringes on the dignity of others, its connection with democracy is severed.

We conclude that the case of sanctioning hate speech is not a mere restriction of freedom, but rather its protection from abuse. We are also referred to this obligation by the provision of Article 17 of the ECHR, which stipulates the obligation to prevent the exercise of the rights under the Convention to the detriment of the rights and interests of others. Therefore, the subtle boundary between freedom of speech and hate speech is perhaps perhaps one of the key issues of contemporary legal theory and practice. It is necessary for the legal order to determine this boundary much more precisely in the future, perhaps by formulating special regulations on the prevention of hate speech. In this regard, a significant contribution will be provided by the practice of the ECHR, from which we currently take over the largest number of standards for maintaining the balance between freedom and responsibility.

5. CONCLUSION

Freedom of speech (expression) is certainly one of the most significant achievements of all legal thought, but also the most complex issue in the field of human and minority rights and freedoms. Its essence is reflected not only in the freedom of an individual to express his ideas, attitudes, opinions and beliefs, but also in the right of other individuals in society to hear different views. This certainly includes those views that are unpopular or provocative, but not those that violate public order and morality, security, the rights and interests of other citizens.

The democratic capacity of a community is embodied in its ability to protect freedom of expression, even when that expression may be socially debatable. This also requires constantly maintaining a balance between the protection of individual freedoms and the general interest. The area of freedom of speech is only at first glance borderless. The line beyond which legal protection ceases must be redrawn, taking into account not only the circumstances of specific disputes, but also the many novelties that penetrate the social environment every day. Only in this way is it possible to find solutions in cases of conflicts

that increasingly arise between the rights and interests of different members of the community.

The free exchange of ideas, the public confrontation of different views and the active participation of citizens in social life are essential prerequisites for the existence and functioning of a democratic society. Without the possibility of an individual's voice being heard, even when in the minority, there is neither true public debate nor the legitimacy of democratic institutions. The true democratic maturity of a society is therefore reflected in the fact that, by guaranteeing freedom of speech, it will demonstrate a willingness not only to tolerate criticism, but also a willingness to accept it as a necessary corrective.

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СЛОБОДА ГОВОРА КАО ОСНОВ ДЕМОКРАТСКОГ ПОРЕТКА

Апстракт

У раду се анализира појам и значај слободе говора, као један од основних предуслова постојања демократије и демократског поретка. Слобода говора представља универзално људско право којим се сваком појединцу гарантује могућност да слободно изражава мишљења, идеје и ставове, без страха од наступања санкције, притиска или цензуре. У готово неодвојивој вези са слободом говора налази се слобода мисли. Заједно, ове две темељне слободе, како је то тврдио и Џон Стјуарт Мил, обележавају читав делокруг човечанске слободе. Аутори ће кроз истраживање испитивати повезаност демократије и слободе говора, најпре у историјском контексту, али и кроз проматрање постојећих облика гаранције, остваривања и заштите слободе говора у савременим демократским друштвима. Од суштинског значаја је и анализа могућности ограничења слободе говора, нарочито у домену где постоји тензија између слободе говора и њеног антипода, говора мржње. Напослетку се ваља осврнути и на изазове који се јављају као реална претња за остваривање и заштиту слободе говора у тзв. ери интернета и друштвених мрежа.

Кључне речи: људска права, слобода говора, слобода мишљења, демократија, говор мржње.

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BODILY REMAINS DONATION CONTRACT FOR EDUCATIONAL PURPOSES IN THE REPUBLIC OF SERBIA – *DE LEGE FERENDA* ANALYSIS OF ITS LEGAL NATURE[1]

Summary

Because of rapid development of digital technologies, teaching methods and materials in anatomy courses have evolved notably in latest years. However, cadaver dissection, while countless moral and legal dilemmas about this procedure were never truly resolved, was and still is supreme teaching approach.

If we accept the necessity of using cadavers in education, a particularly controversial issue in this field is the one of adequate legal basis for the valid donation of one's own body for educational purposes. Namely, in the Republic of Serbia, imperative norms stipulate that one's own body can only be transferred through a testament, for which, by the way, strict form and content are mandated.

We argue that this type of testamentary disposal is unnecessarily limited by form and content, and that a will is, in fact, not an adequate medium for the "anatomical gift". Therefore, in this paper, relying on analytical and synthetic methods, case studies, and the normative method, we explore the possibility of using contracts as a legal basis. Specifically, the paper presents the results of a theoretical-empirical research of the legal nature and content of contracts for the donating of one's own body for educational purposes, as well as the possibilities and overall necessity of introducing such contracts into future legal texts.

Key words: Anatomical gift, Cadaver dissections, Body donation, Contract, Testament.

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1. INTRODUCTION

Amount of theoretical knowledge that they acquired is main indicator of how effective the training of future medical professionals is. However, their full competence requires, not just a thorough understanding of human anatomy and physiological processes, but also continual development of both general and specialized practical skills. Experience of working with cadaveric material, regardless of ethical scrutiny, was and still is crucial for acquiring and improving anatomical knowledge and functional skills.

Teaching methods and tools used in medical education have evolved in response to social, ethical, and economic factors (Estai & Bunt, 2016, 1-2). Innovations in digital technology, which are a major driver of progress, brought cadaverless dissection as a viable option (Wasmuth *et al*., 2019, 248). Yet, deep understanding of anatomical relations, both structural and functional, is essential for safe future medical practice (Wasmuth *et al*., 2019, 247-248). Being so, the use of cadaver dissection as a teaching method remains essential for achieving a comprehensive understanding of human anatomy as a cornerstone of medical curriculum (Estai & Bunt, 2016, 1)

There is a saying that cadavers are future doctors “first patients” (Aneja *et al*., 2013, 2589), but also their “silent mentors”. And truly, advantages of working on cadaveric material are almost impossible to quantify (Bharambe *et al*., 2023, 1; Estai & Bunt, 2016, 2). Despite the proficiency of modern teaching tools in replicating body structure (Shevelev & Shevelev, 2023, 1365), the preference for cadaver dissection among anatomists and students is strong and stems from the fact that this method allows students to identify structures and gain tactile experience with tissue texture (Aneja *et al*., 2013, 2585; Wasmuth *et al*., 2019, 252). Also, there is psychological and sociological component of working on cadavers. Namely, students learn more than anatomy and practical skills – they build healthy amount of depersonalization and detachment necessary to become objective physician (Aneja *et al*., 2013, 2589).

Through the ages, donor-based surgical simulation has notably enhanced medical procedures and their outcomes (Zdilla & Balta, 2022, 1). There is even high degree of consensus about the necessity of cadavers for the education of future healthcare workers.

However, the question is how medical institutions, in the Republic of Serbia specifically, acquire bodies on which teaching will be conducted. Current legislation promotes acquiring bodies of deceased individuals without known relatives as acceptable. But, according to the recommendation of the "International Federation of Associations of Anatomists," the only ethical method of obtaining cadavers is purposeful and voluntary donation (Bharambe *et al*., 2023, 3; Hutchinson *et al*., 2020, 513; Zdilla, Balta, 2022, 2).

It is important to distinguish between two forms of donation, donation of one's own remains and donation of other persons remains. In this paper, as well as in the preceding one, we focused on the first form of donation. More specifically, in this paper, we first

present arguments in favor of the view that testament, which by law is the only permissible act for the donation of one's own remains after death[2], is not an adequate legal basis. Then, based on the presented arguments, we consider the possibility of using contracts as a legal basis for the donation of one's own body. Relying on analytical and synthetic methods, as well as case studies and normative methods, the paper presents the results of research on legal nature and partially on the content of this contract.

2. TESTAMENT AS (IN)ADEQUATE LEGAL BASIS

Voluntary *mortis causa* body donation is probably most profound and humane gift for following generations. Each medical procedure on brain-dead individuals, thus every single body donation, is priceless for understanding the human body, training of healthcare professionals, and improving treatments that can save lives (Sperling, 2008, 8). Thus, anatomical gift signifies a determined mind, and a pious soul dedicated to help humanity by aiding medical science (Aneja *et al*., 2013, 2586).

There is a high degree of public scrutiny towards anatomical dissection (Hutchinson *et al*., 2020, 513). Nonetheless, even in environment filled with ethical scrutiny, the demand for cadavers remain strong and rising (Aneja *et al*., 2013, 2586). To be precise, to ensure adequate quality in the teaching process, it is necessary to provide at least one cadaver for every ten students (Bharambe *et al*., 2023, 3; Hutchinson *et al*., 2020, 514).

Legal system of Republic of Serbia allows for three different methods of obtaining cadavers by medical institutions – one based on conditional legal authorization for body acquisition[3] and two based on declaration of will[4]. Acquiring cadavers based on the will of the "donor" comes in form of another person's body donation and in form of one's own body donation.

Donation of another person's body for educational purposes is an especially complex issue, far more complex than donating own body, but our attention was drawn to the latter form. Specifically, we focused on the donation of one's own body, not due to the numerous legal, ethical, sociological, or cultural uncertainties it raises. With full respect for the highly altruistic nature of this act, we have deliberately set these aside and shifted our focus on how it is realized, particularly on legal basis of this donation – testament.

In the Republic of Serbia contract is not recognized as legal basis for inheritance. Thus, since current Law on Inheritance consists mainly of dispositive legal provisions, testamentary provisions are superior to most of them, which makes a testament primary legal basis for inheritance.

[2] Law on Health Care, *"Official Gazette RS"*, no. 25/19, art. 210, p. 1 and 2.
[3] Law on Health Care, art. 210, p. 1, i. 2.
[4] Law on Health Care, art. 210, p. 1, i. 1 and 3.

Testament, as a legal act, is strictly defined by legislator. According to this definition a testament is a unilateral, personal, revocable at any time, declaration made by a capable person, in legally prescribed form, regarding the allocation of their estate upon death[5]. It is a formal legal transaction, which is made in a form given by law, according to a prescribed procedure (Milović, 2020, 82). As a follow up to this definition, legislator asserts that estate from previous provision is a collection of rights (and duties) suitable for inheritance that belonged to the testator at the time of death[6].

We encounter illogicalities at the very first step when we speak about use of testament as medium and legal basis for donation of one's own body for educational purposes. Inheritance law seen in the objective sense regulates inheritance as a derivative method of acquiring property and other material rights that are suitable and free to be inherited. In other words, it is exclusively focused on the material relations that the deceased was involved in at the time of death and their fate after death (Svorcan, 2009, 9-10).

Human body, during life nor after death, cannot be perceived as property, not even in most abstract sense of the word. Being so, human body nor its remains cannot be the subject of either universal or singular succession. Also, the right to dispose of one's own body is not material in nature, thus it doesn't meet primary and the most important criteria to be donated *ex testamentum* as defined by law. Rights over the body by nature are personal and non-material, consequently not suitable for testamentary dispositions which are, we can't emphasize this enough, strictly reserved for transfer of material rights, and not even all of them. Nonmaterial rights are without exception extinguished with the death of a person who was their holder during lifetime. In other words, the Law on Health Care's provision that a body donation statement can only be valid if part of a testament contradicts the fundamental legal nature of testamentary dispositions.

However, although we firmly stand on the position that a testament cannot be validly used for this type of disposal, this strict position can be softened. Arguments can be made that there are no obstacles for having a clause about body donation included in a testament. First, autonomy of the donor should be respected, also the immense social importance of this type of donation requires for it not to be hindered by formalities. We agree with this, but it is necessary to make some clarifications.

It is true that there are no obstacles for body donation statement to made through a testament. However, even when it is nominally included in a testament, this statement does not acquire testamentary character through the form in which it is presented. A statement about the donation of one's own body, when communicated in a testament, can be interpreted in several different ways – as a wish, recommendation, or even authorization –

[5] Law on Inheritance RS, *"Official Gazette RS"*, no. 46/95, 101/2003 – CC RS decision and 6/2015, art. 78 in relation to art. 1, p. 1.
[6] Law on Inheritance RS, art. 1, p. 2.

but its legal nature is not determined by the nature of the act in which it is contained, but by the donor's intent[7].

As per the explicit command of the legislator, testamentary provisions should be interpreted according to the testator's intention, so it is very important to emphasize the following. The donor's intention is not to make a disposition of the estate, nor is it possible, since the donor's body after death, as we have seen, cannot be considered part of the estate. The donor's intention is also not, and cannot be, to use this statement to nominate their heirs. This is because the institution to which the body is donated does not acquire any inheritance rights. The institution is neither a universal nor a singular successor – it only acquires a very exclusive, somewhat special, and very narrowly defined right to perform a certain type of procedure on the body, of an educational, and partly experimental nature. In this sense, although it may seem anachronistic today, it is entirely justified in this case to refer to the teachings of Roman jurists, but also to the relatively newer provisions of the Serbian Civil Code of 1844, which very correctly observed and insisted on the differences between testamentary dispositions in the narrower sense and codicils. A provision about the donation of one's own body, when included in a will, would in fact be more akin to a codicil in its nature.

However, while a testament may be used as a document for donating one's body, it is important to acknowledge that such a disposition is not inherently testamentary in nature. The manner in which the legislator has regulated this issue invites at least two serious critiques. In fact, these two observations motivated us to explore the possibility of using an alternative instrument that might be more appropriate and better aligned with the spirit of donation, while also addressing the growing demand for cadavers.

The first critique concerns the form, while the second pertains to the content of the testament, specifically the very strict and, in our opinion, wholly unnecessary requirements imposed by the legislator. Namely, the legislator mandates, under the threat of nullity, that a testament containing a provision for the donation of one's body for educational purposes after death must be in written form and notarized by the competent authority[8]. If we accept that body donation can be executed via a testament, we honestly see no reason for insisting on such a stringent form.

It is easy to recognize that the legislator's intent was motivated by the significance of this type of donation and the desire to prevent any abuse of this act. However, while the

[7] This is important to emphasize because it opens up space for resolving the dilemma of whether an institution can issue a negative inheritance statement and reject to receive remains, especially since this right is denied to the Republic due to the need to protect general interests.
On subjects who are denied to make negative inheritance statement and negative statement itself in detail, Milović, 2018, 149-150.

[8] Law on Health Care, art. 210, p. 2.
The question remains whether the testament drafted by competent authority, that is notary, from another country should be accepted because, in general, this testament would not be accepted in the Republic of Serbia (Milović, 2020, 84)

legislator correctly recognized the importance of body donation, the response was improper. The significance of this type of donation requires oversight even through the form of the act, but not to the extent that it deters potential donors or invalidates donations made in good faith. Given the chronic shortage of cadavers, this approach is fundamentally flawed. Specifically, we argue that any testament recognized by the legal system of the Republic of Serbia, including even oral testaments, should be effectively used for body donation. Therefore, the legal text should be revised to ease the strict requirements.

In this context, as previously stated, it is clear that the legislator's intention was also to prevent potential abuses of body donation. However, it should be noted that under the current regulations and measures, neither the donor during their lifetime nor their heirs or close family members after the donor's death receive any privileges due to the donation. It is certainly debatable whether incentive measures would be beneficial in facilitating access to new cadavers, but body donation remains a purely altruistic act. As such, the act of donation could not be abused by either the donor, their heirs, or family members, as there is no objective to be achieved through abusive behavior. Additionally, this act, perhaps theoretically, could be abused by the medical institution entrusted with the body for further use. But series of very detailed legal and professional regulations prevents any such possibility. Moreover, given that the body is entrusted to medical educational institutions known for their high ethical standards and meticulousness, there is no reason for inherent distrust.

The insistence on specific content elements of the testament seems even more illogical. Specifically, we refer to the mandatory appointment of an executor of the testament[9]. The role of the executor is generally to ensure that the testator's last wishes are carried out as intended[10]. However, if the testator has not specified particular tasks for the executor, their duties are limited to managing the estate[11]. When it comes to body donation for educational purposes, first, the body is not part of the estate, and it is unclear how the executor would manage this donation, especially since the procedure for handling a cadaver, from body reception to the burial of remains, is regulated in detail by health protection regulations of imperative nature. In other words, the executor would have little to no room to intervene. Moreover, since neither legal nor testamentary heirs have any material interests, and especially since there are no third-party interests that could possibly be harmed by donation, there is truly no reason to insist on appointing an executor. The executor, while potentially having a role in body donation, should be an option rather than a requirement.

[9] Law on Health Care, art. 210, p. 2.
[10] Law on Inheritance, art. 173, p. 1.
[11] Law on Inheritance, art. 173, p. 1.

3. CONTRACT AS LEGAL BASIS FOR OWN BODY DONATION AND ITS LEGAL NATURE

Only property can be disposed of by testament. In fact, not even the entire property, but only the parts that are eligible and freely inheritable. Since neither the human body nor its remains are considered a person's property in any way, the question arises, which act manifesting the will *mortis causa* can serve as an adequate legal basis for donating a body for educational purposes? We believe that a contract is a far more appropriate instrument for this purpose.

There are numerous uncertainties regarding the contract that could be used for body donation, and resolving these uncertainties determines its legal nature. Since it is not possible to address all of them within the scope of this work, we will focus on the most important issues. The first question is whether this contract falls under public or private law. Depending on the answer, different clusters of questions must be considered. The uncertainties in this regard stem from the nature of the interests that the contract aims to satisfy.

In the previous section, we discussed the immense social importance of cadaver dissection. It is an indisputable fact that training on a cadaver is essential for reinforcing theoretical knowledge and developing the practical skills of future healthcare professionals. Their readiness to work with patients is of primary interest to society as a whole and directly contributes to the realization of the constitutionally guaranteed right to health. Therefore, it can be argued that the body donation contract falls under public law.

However, despite the fact that it primarily contributes to the promotion and realization of public interests, it would be incorrect to classify this contract as one of public law. For a contract to fall under public law, one of the parties in the contractual relationship must hold a legally dominant and hierarchically superior position. The institution to which the body is donated does not meet this criterion. It does not act as a bearer of public authority in this relationship, nor does it hold any superiority over the donor. In other words, in this context, both parties – the donor and the receiving institution – are formally and legally equal, making this a private law contract, or more precisely, a civil law contract. Let us now clarify this further.

First and foremost, this contract is not explicitly recognized and named in current legislation of Republic of Serbia. We firmly believe that *de lege ferenda* it should be regulated as a separate legal instrument. Until a new legislative initiative is introduced, it is valuable to analyze its legal nature in the context of the contract's purpose and the general provisions of existing contract law.

From the perspective of the mutual rights and obligations of the contracting parties, the body donation contract can be characterized as mutually binding. There are several reasons for this, but two are particularly significant. First, upon concluding this contract, both parties assume a set of obligations. However, what truly makes it mutually binding is

that the obligations of one party simultaneously serve as the legal basis for the obligations of the other. They are logically and functionally interconnected.

However, we believe that this contract does not fall under the category of true mutually binding, or synallagmatic, contracts. The obligations to which the parties commit themselves do not have the character of counter-performance, nor do they operate according to the *do ut des* system. Therefore, it would be incorrect to state, for example, that a medical institution commits to performing a dissection of a cadaver in exchange for the donor's donation of the body. Similarly, it would be equally incorrect to say that the donor decides to donate the body in order to have a dissection performed on him as a counter-performance, because the donor does not provide the body for his own benefit.

At first glance, it may seem logical to consider the contract for the donation of one's body for educational purposes as onerous in nature, given its mutually binding character. Indeed, it could be characterized as onerous, and this possibility could be included in future regulations. Furthermore, such an approach would align with the principles and norms of the modern capitalist social order. However, while we do not oppose this idea and acknowledge that it could contribute to a greater influx of necessary cadaveric material, we are more inclined to believe that this contract should maintain a charitable character. This is because any provision of compensation would be incompatible with the humane nature of this act. For this reason, we emphasize the concept of donation in its name. We firmly believe that it would not be morally permissible to trade in one's own body or its remains. While we respect the arguments of those who hold an opposing view, the more natural approach is to encourage the donation of body remains through various types of incentives for the donor or their family members, such as reduced treatment costs or co-payments, free public transportation, extended annual leave, and so on.

Positive contract law in the Republic of Serbia is based on two interrelated principles, the principle of consensuality and the informality of the contract. Accordingly, the contract we propose should be regulated as both consensual and informal. Regarding consensuality, there are no significant doubts. The category of real contracts is considered outdated in modern law. A body donation contract is formed when the consent of the parties is obtained. The handover of any "thing" – in this case, the remains of the body – would not be considered the act that creates the contract, but rather its implementation. However, it may seem unusual that we believe this contract should be regulated as informal.

The fact remains that this is a contract with very significant consequences, and the potential for abuse seems to increase accordingly. Therefore, it might appear that a strict form of contract is the only means to protect the contracting parties – primarily the donor – both from impulsiveness and haste, as well as from potential abuse. However, we firmly maintain the position that this contract should be exempt from any formal requirements for its creation and validity. There are several reasons for this. First, imposing formal requirements would likely deter many potential donors. Second, this contract must be regulated in a way that allows the donor to terminate it at any time during their lifetime –

thus, informality is essential for this goal to be achieved. Third, while the possibility of abuse does exist, the risk is minimized if the contract retains its charitable nature. This is especially true considering that the remains are entrusted to institutions and employees whose work is strictly governed by professional and ethical regulations of an imperative nature, and who are presumed to operate with a high level of ethics. Therefore, we believe that this contract can be validly formed in any permissible manner; however, if it were regulated as formal, the form would need to be probationary, not constitutive.

It is evident that we support the autonomy of the will and contractual freedom in this area. Indeed, we believe these principles are essential for promoting the donation of remains as a cultural phenomenon, which, in turn, is a prerequisite for ensuring a sufficient number of cadavers for optimal training. However, we do not believe that autonomy can or should be absolute, i.e., unlimited. Its limitation is necessary, for instance, to ensure the absolute transparency of the relationship established by this contract. In this regard, we believe that this contract should not, under any circumstances, be concluded as either aleatory or abstract.

In addition to everything discussed in the previous sections, to fully understand its legal nature, it is important to emphasize that this contract belongs to the category of complex contracts. Complex contracts, by their classical definition, are agreements that contain elements of two or more different types of contracts. The contract for the donation of one's body is exactly that. The research conducted previously unequivocally shows that this contract includes elements of a gift contract, a *comodatum* contract, a service contract, and a mandate agreement. However, the contract under investigation is clearly distinguished from the aforementioned contracts in terms of its purpose and scope, which makes it fully individualized and not merely a simple conglomerate of elements.

1) The gift contract in the Republic of Serbia is not explicitly named. In legal theory, there are occasional disagreements about its definition, but it is most commonly defined as a contract in which one party transfers, or undertakes to transfer, to another party, without compensation, the right of ownership of a certain thing or some other right. Therefore, the main characteristic of a gift contract is that it serves to transfer individual rights or even the entire property without the expectation of a counter-prestation. It is based on the idea of "intentional and conscious disproportion" (Lalić & Rančić, 2021,118), and the nature of the cause is not motivated by either the reciprocity of the prestation’s or their equivalence (Čuvardić, 2013,4).

The contract by which a body is entrusted to a medical educational institution, being charitable in nature, shares many common characteristics with a gift contract. Every gift is testament of persons altruism and their need to think of others (Cvetković, 2015, 1). So, logically, body donation contract includes certain elements of a gift as part of its structure. To be precise, the contract for the donation of one’s own body most closely resembles the modality known as a gift with a mandate (*donatio sub modo*). This modality limits the

possibility of using the gift, as the gift must be used in a precisely specified way (Morait, 1997, 292), and the gift itself is reduced to a purposeful one.

Indeed, the mandate is an essential element of the contract by which the body would be donated for educational purposes. By granting certain rights and powers, the donor limits the use of their remains with the mandate. In other words, the recipient – in this case, a medical institution – can use the donated remains only for the purpose of forming a cadaver and conducting teaching. The consequence of this is that the heirs, just as in the case of a classic donation with a mandate, have the right to terminate the contract if the recipient does not act in accordance with the mandate and seek compensation for any damage caused as a result.

2) As a complex contract, the contract for the donation of bodily remains for educational purposes also contains elements of another contract not named in the law of the Republic of Serbia, *comodatum* (or so-called gracious loan). In this contract, one party agrees to hand over a certain "thing" for free use to the other party, who agrees to return it after the expiration of the contractually specified period or upon the fulfillment of certain conditions (Kovačević-Kuštrimović, 1988, 79). In both contracts, one party transfers a certain "thing" to the other and authorizes its use without expecting compensation. At first glance, the only difference is that in *comodatum*, the thing is expected to be returned in kind. It is returned to its owner or handed over to a third party upon the owner's authorization.

In a contract for the donation of remains, there is, in principle, no duty to return the body. The institution to which the body is transferred has a legal obligation to bury it at its own expense, respecting the reasonable wishes of the deceased and in accordance with local customs[12]. However, we believe that this norm is dispositive in nature. Namely, a donation contract may provide for the obligation to return the remains once the cadaver's potential has been fully utilized, if the family members wish to perform the funeral ceremony themselves.

3) The contract by which one donates their own bodily remains contains elements of a service contract. A service contract is a legal agreement in which one party agrees to perform a specific task, whether physical or intellectual, for the other party[13]. It may seem unusual that we consider a body donation contract to contain elements of a service contract, given that a typical service contract always involves compensation for performing the task.

Let's set aside for a moment the possibility that a contract for the donation of one's own remains could be regulated in a way that includes compensation, as well as the arguments supporting that position. A service contract is the only named contract that allows a person to hire the physical and intellectual capacities of another for the purpose of performing a precisely defined job or task of a factual nature. In the absence of a named contract that specifically regulates the donation of bodies for educational purposes, certain

[12] Law on Health Care, art. 215.
[13] Law on Obligations RS, art. 600.

norms governing service contracts can be applied analogously to the body donation contract, as it also involves the performance of a specific factual task. In this case, we refer to provisions related to the receipt of remains, strict requirements for professional conduct, the implied professional standards for performing dissection, liability for damage caused to the donor by the person performing the task, and entrusting the remains and dissection to third parties. These provisions are particularly important in the context of handling remains after the use of a cadaver, when the institution remains obligated to carry out burial procedures.

4) The mandate agreement is also partially part of the complex body donation contract for educational purposes. By accepting a mandate agreement, one person is authorized and simultaneously obliged to undertake certain tasks on behalf of another person as their direct or indirect representative[14]. Performing dissection and training medical students is done not on behalf of the donor but for the benefit of society as a whole. In this context, the provisions of a mandate agreement would hardly be applicable. However, unless otherwise agreed, the institution to which the body is entrusted is obligated to arrange for the burial of the remains once the work on the cadaver is completed. In this regard, the healthcare institution performs tasks related to the burial of the remains not only for the benefit of but also for the account of the donor. While the effects of representation have mortis causa implications, this does not alter the true legal nature of such an agreement – it remains a mandate contract, with all the legal consequences that arise from this classification.

4. CONCLUSIONS

Number of social, historical, religious, but also economic reasons, makes people in the Republic of Serbia question all aspects of body donation for educational purposes. General public, also, typically, lacks knowledge regarding legal and procedural aspects of donation and dissection (Aneja *et al*., 2013, 2589). Finally, even people who appreciate body donation for educational purposes are generally hesitant towards donating their own bodies (Aneja *et al*., 2013, 2590).

Thus, to meet growing demands for cadaveric materials, promotion of functional national body donation programs is crucial. Additionally, success of these programs depends primarily upon the ability of health care professionals in motivating society at large (Aneja *et al*., 2013, 2586). Still, this idea encounters numerous obstacles depending on the region and cultural context (Zdilla & Balta, 2022, 2-8). As consequence, despite all efforts, even the most developed countries face a chronic shortage of cadaveric material.

In the Republic of Serbia, there is no national program of this kind, nor is there even a minimum of enthusiasm for its development[15]. On top of that, although there is a broad

[14] Law on Obligations RS, art. 749.

[15] Republic of Serbia, interestingly enough, takes duty of implementing the promotion of voluntary donation of human organs, in order to inform the public and raise social awareness about the importance of donating human organs after death, and in that context is obligated to create Republic

legislative framework that offers triple possibility for obtaining cadavers, one of the options – testament, is not formally correct and therefore not usable. As this results in a reduced inflow of cadaveric material, in this paper we addressed an alternative to the existing legal solution.

Testament, as we said, is not an adequate legal basis for achieving the effects of a donation, but we believe that body donation can and should be carried out by a simple, unformal and unilateral declaration of the donor's will. However, it is not possible to present all the convincing arguments to support this standpoint in a paper of this type and scope, so this very question will be the subject of consideration in the following paper.

On the other hand, although not ideal, we believe that a contract is a far more suitable instrument for body donation than testament. Therefore, in this paper we have reflected on the legal nature and, in part, content of this contract. The conclusion is that in order to achieve its social purpose, it is necessary for this contract with *mortis causa* effect to be bilaterally binding, charitable, consensual, commutative, informal, named, and, as a rule, impersonal. It is a complex contract that contains elements of a gift, bailment, service and mandate agreement.

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УГОВОР О ДОНАЦИЈИ СОПСТВЕНИХ ОСТАТАКА У ЕДУКАТИВНЕ СВРХЕ У РЕПУБЛИЦИ СРБИЈИ – *DE LEGE FERENDA* АНАЛИЗА ЊЕГОВЕ ПРАВНЕ ПРИРОДЕ

Апстракт

Због убрзаног развоја, пре свега дигиталне технологије, методи и материјали за извођење наставе на часовима анатомије значајно су унапређени претходних година. Ипак, дисекција кадавера, без обзира на то што бројне етичке и правне дилеме везане за овај поступак никада нису до краја разрешене, била је и остаје супериоран метод извођења практичне наставе.

Уколико прихватимо идеју о потреби употребе кадавера у настави, а оставимо по страни макар на тренутак поменуте дилеме, као нарочито спорно у овој области издваја се питање ваљаног правног основа за донирање сопственог тела у едукативне сврхе. Наиме, у правном поретку Републике Србије императивним нормама је прописано да се сопствено тело може уступити установи само тестаментом, а за који су, узгред, постављени строги захтеви и у погледу форме и у погледу садржине.

Ми чврсто стојимо на становишту да су ограничења и у погледу форме и у погледу садржине непотребно постављена. Штавише, сматрамо да тестамент нипошто није адекватан медијум за „анатомски поклон“. Стога, у овом раду, с ослонцем на технике аналитичког и синтетичког метода, студије случаја и нормативни метод, истражујемо идеју о уговору као правном основу за ово уступање. Прецизније, у раду су презентовани резултати теоријско-емпиријског истраживања о правној природи и садржини уговора о донацији сопственог тела у едукативне сврхе, као и могућности и уопште потреби увођења овог правног института у правни поредак Републике Србије.

Кључне речи: анатомски поклон, дисекција кадавера, донација тела, уговор, тестамент.

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THE LEGAL EFFECT OF THE REGISTRATION OF REAL ESTATE RIGHTS IN THE MACEDONIAN LEGAL SYSTEM

Summary

The paper examines the legal effects of the new system for the registration of real estate established in the Macedonian legal system by the Real Estate Cadaster Act of 2008, and the Real Estate Cadaster Act of 2013. One of the principal goals of these laws was the creation of a modern digital real estate cadaster that would enable easy access to data about real estate and rights over real estate that are correct and up to date. By creating a digital system for collecting, processing and distributing data about real estate and rights over real estate the legislator expected to increase legal certainty in the real estate trade. By looking at the system for registration of real estate rights both from legislative and practical aspects the paper aims to demonstrate to which extent the set purpose has been met. The paper also highlights the system’s deficiencies and explores potential avenues for further development.

Key words: real estate, rights *in rem*, cadaster, property, land law.

1. INTRODUCTION

One of the most significant challenges in the real estate trade is providing legal certainty for real estate owners and the holders of other property rights (servitudes, mortgages, real burdens and long-term leases). Providing legal certainty requires creating a system for real estate registration that is efficient and transparent in collecting data about real estate and rights over real estate while adhering to strict regulations regarding how the data is collected, processed, and distributed. Such a system must be secured from breaches and unlawful intervention in the registered data and it also needs to be accessible to all interested parties. In other words, the system for real estate registration needs to be established to ensure lawful, accurate, and public registration of real estate and rights over it.

In the Macedonian legal system, legal certainty and security in the real estate trade were severely compromised due to the lack of regulation or conflicting regulations. Before 2008 the registration of real estate and rights over real estate was regulated by the Survey, Cadaster and Registration of Rights Over Real Estate Act of 1986. This law was passed before the Republic of North Macedonia declared its independence in 1991 and orientated towards a free market-based economy. Needless to say, this law, like many others, wasn't very adapted to the free market requirements regarding the real estate trade.

The Survey, Cadaster and Registration of Rights Over Real Estate Act of 1986 regulated a cadastral system for real estate registration. The system was to incorporate both the data about real estate and rights over real estate. However, for that system to be fully functional it required a state-wide survey to be conducted to collect data for each land parcel. Despite all the efforts to conduct the state-wide survey, by 2005, there was less than 50% coverage, meaning that more than half of the land parcels remained without proper registration in the Real Estate Cadaster (Cenova Mitrevska, Mukanov, 2022, 10). An additional problem was the dual registration of rights over real estate. Some rights were registered in separate registers, not in the Real Estate Cadaster. Such was the case with mortgages, registered in so-called intabulation books kept by the courts. Since the courts, and not the Office for Geodetic Work, kept the ingabulation books, the mortgages weren't being registered in the Real Estate Cadaster. This made the data about rights encumbering real estate in the Real Estate Cadaster incomplete. At the time, people could not rely solely on data from the Real Estate Cadaster to obtain complete information about a specific real estate. Other registers, such as the intabulation books had to be checked as well.

The lack of a state-wide survey and the dual registration of rights over real estate decreased the system's efficiency. Still, the most serious problem was the reliability of the registered data on real estate and the rights over real estate. The system wasn't regularly updated, so it didn't reflect changes in ownership, encumbrances, division of land parcels, construction etc. This was due to a lack of regulation that will oblige the officials and interested parties to register all changes. As a result, much of the data became factually

incorrect over time. All this obstructed the real estate trade causing many disputes concerning real estate ownership and other rights over it. It also had an overall negative impact on the economy, foreign and domestic investments, urban planning and development and other areas. This made the reform of the Real Estate Cadaster urgent and necessary. The reform began with drafting new regulations on real estate registration that introduced many novelties in the cadastral system.

2. THE LEGISLATIVE REFORMS OF THE SYSTEM FOR THE REGISTRATION OF REAL ESTATE OF 2008

The process of introducing crucial reforms to the system for registration of real estate began with the Real Estate Cadaster Act of 2008 and continued with the Real Estate Cadaster Act of 2013. Each of these laws played an important role in modernizing the system for the registration of real estate and improving its efficiency.

As it was stated, the process of modernization began with the Real Estate Cadaster Act of 2008 (RECA-2008). One of the most important novelties that this law introduced was the creation of the so-called Geodetic Cadastral Information System (GCIS) (Art. 29, RECA-2008). The GCIS system was created as a digital database that holds information about real estate (spatial and descriptive data), geodetic works, real estate surveys, maps, etc. (Jonuzi, Durduran, 2022,708) GCIS system also collected data about illegal structures and temporary structures found on land parcels throughout the land. Since GCIS was created as a digital database, collecting, processing and distributing the information it contained was made very accessible to all interested parties. The information became available not just in writing, but also in digital form. Technical and legal measures were implemented so that the data contained in GCIS could be distributed through a global electronic network connected to the local electronic network run by the Agency for Real Estate Cadaster (RECA-2008, art. 35). By connecting to the electronic network interested parties were able to directly access the data in GCIS and use it in their work (Dimova, 2012, 6). Among the first users of the electronic connection to the GCIS were businesses providing geodetic services and notary publics. The next intended step was for government institutions and the courts to gain access to the GCIS system and use the system's data for their work. However, this goal was not fully accomplished due to the technical and organizational deficiencies within the government institutions and the court system.

Real Estate Cadaster Act of 2008 also addressed the issue of incomplete and outdated data on real estate and rights over real estate in the existing cadastral records. For the purpose of collecting new and updating old records about real estate the Real Estate Cadaster Act of 2008 called for the systematic establishment of the Real Estate Cadaster as part of the GCIS. The systematic establishment of the Real Estate Cadaster was conducted with systematic registration of rights over real estate, individual registration of rights over real estate, registration of unregistered rights over real estate after the systematic

establishment of the Real Estate Cadaster and conversion of data (RECA-2008, art. 138). The systematic registration of rights over real estate was a state-funded operation that was conducted gradually over a period of four years. It officially ended in December 2012 when the Agency for Real Estate Cadaster declared the establishment of the Real Estate Cadaster to be finalized (Живковска, et. al., 2013, 9). Conversion of data was used as a method for the establishment of the Real Estate Cadaster in rural unpopulated areas. The conversion was carried out by incorporating data from land registers into the Real Estate Cadaster, based on a decision rendered by the Director of the Agency for Real Estate Cadaster. Each decision was published in the Official Gazette of the Republic of Macedonia (RECA-2008, art. 160). Individual registration of rights over real estate and the registration of rights after the establishment of the Real Estate Cadaster was conducted upon request of interested parties (RECA-2008, art. 155, art. 159).

During the process of the establishment of the Real Estate Cadaster, data was also collected about illegally built structures and temporary structures found on land parcels. The collected data was entered into separate registers one for illegal structures, and the other for temporary structures. These registers were part of the GCIS but they were not part of the Real Estate Cadaster (RECA-2008, art. 29). This was done so that these structures are not confused with the legally built structures on the land parcels that were registered in the Real Estate Cadaster. Later, this data was used to create policies regarding the legal treatment of illegal structures.

The Real Estate Cadaster Act of 2008 also regulated three forms of registration of rights over real estate: inscription, pre-registration and notation. All three forms of registration were attributed different functions and effects which will be elaborated further in this text.

3. THE LEGISLATIVE REFORMS OF THE SYSTEM FOR THE REGISTRATION OF REAL ESTATE OF 2013

After the systematic establishment of the Real Estate Cadaster in 2012 the legislator was faced with the dilemma of how to proceed with further reforms and development of the system for the registration of real estate in North Macedonia. The Real Estate Cadaster of 2008 has reached most of the proposed reform goals, creating the GCIS and the systematic establishment of the Real Estate Cadaster being the two most important ones. However, the Real Estate Cadaster Act of 2008 lacked the proper regulation for the next step in the reform process, and that was the systematic establishment of a Cadaster of Infrastructure. It was debated whether the legal base for the establishment of a Cadaster of Infrastructure should be created by amending the existing Real Estate Cadaster Act of 2008 or by passing a new law. The legislator opted for the latter and a new law was passed – the Real Estate Cadaster Act of 2013.

Undoubtedly the most significant novelty introduced by the Real Estate Cadaster Act of 2013 (RECA-2013) was the legal base for the establishment of the Cadaster of Infrastructure as a part of the Real Estate Cadaster. Up to this point, infrastructure was not treated as a separate type of real estate. According to the Ownership and Other Real Rights Act of 2001(OORRA), infrastructure was considered to be an integral part of the land or the building it was built on or incorporated into (art. 12, s. 4). However, the Real Estate Cadaster Act of 2013 defined infrastructure as a separate type of real estate – infrastructural objects. The category of infrastructural objects includes transportation infrastructure (land, water or air transport), underground or surface installations and electronic communication networks and devices with all of their adjoining installations (RECA-2013, art. 2, s.1/8). By defining infrastructure as a separate type of real estate the Real Estate Cadaster Act of 2013 not only enabled the establishment of the Cadaster of Infrastructure but also enabled the legal separation of the infrastructure from the land it is built on. As a result, nowadays infrastructure can be owned, traded or encumbered independently of the land it is built on. This is very beneficial for investors looking to invest in infrastructure construction, as they are not obligated to acquire large portions of land needed for such infrastructure to be built. Unlike the systematic establishment of the Real Estate Cadaster which was mostly funded by the State, the establishment of the Cadaster of Infrastructure is at the expense of the owners of the infrastructure. According to the Real Estate Cadaster Act of 2013 owners of infrastructure were obligated to apply for registration of their rights over infrastructure within 5 years of the day the law came into force.

Another important novelty of the real estate Cadaster is the Registry of the Value of Real Estate and Rent Prices. The driving idea behind the creation of this Registry was the collection of data about the value of each real estate dependent on its location, nature, qualities, age and other indicators. Determining the value of real estate involved conducting a process of mass estimation of the value of all the real estate registered in the Real Estate Cadaster under criteria and formulas determined by the Real Estate Cadaster Act of 2013 (Живковска, et. al., 2013, 12). Since the basis for the estimation of the value of the real estate is objective criteria determined by law and other legal acts, the expectation is that the registered value reflects the approximate and realistic value of each real estate. The information in the Registry regarding the value of real estate and rent prices was intended to be used primarily for fiscal and taxation purposes (RECRP, 2011, 11). However, it could also be used for information purposes regarding the estimated value of real estate. Notably, there were some negative reactions regarding the use of the information in the Registry. It was argued that its use might interfere with the real estate market and the formation of sale prices. However, in practice, the effect of this information had a minuscule impact on the market value of the real estate. On the real estate market supply and demand remain to be the principal determining factors of prices. Nowadays the information is used for statistical analysis aimed at following trends of increase or decrease of the value of real estate and rent prices as well.

The Real Estate Cadaster Act of 2013 also introduced the Graphic Registry for Construction Land. This Registry enables interested parties to obtain information about the degree of overlap between a land parcel and a construction parcel drawn in the zoning plans. Estimating the overlap between the land parcel and the construction parcel is very important for construction and development purposes. What this Registry has shown is that in many situations the drawn construction parcels do not overlap with the land parcels which was a major obstacle to obtaining building permits and a source of disputes between neighbouring landowners.

Another novelty emerging from the Real Estate Cadaster Act of 2013 is the Graphic Registry for Streets and House Numbers. The Registry establishes a unified system for street identification within cities. It does not rely on street names and therefore is not affected by changes in street names.

All the novelties that the Real Estate Cadaster Act of 2013 introduced in the system for registration of real estate and rights over real estate had a significant impact on the modernization of real estate registration in the Macedonian legal system. As a result of these efforts, nowadays there is an efficient system for real estate registration that provides data about real estate relatively quickly. The operation of the system is based on several principles prescribed by the Real Estate Cadaster Act of 2013 which will be elaborated next.

4. PRINCIPLES FOR REGISTRATION OF RIGHTS OVER REAL ESTATE IN THE REAL ESTATE CADASTER

The registration of rights over real estate in the Real Estate Cadaster is governed by several key principles: a) the principle of mandatory registration, b) the principle of constitutive registration, c) the principle of publicity, d) the principle of accuracy and faith in the registered data, e) the principle of lawfulness, f) the principle of priority, g) the principle of specificity and h) the principle of autonomy in the registration of data. These principles were set forth in order to ensure that all data entered in the Real Estate Cadaster will be entered correctly lawfully and securely. The principles govern the everyday work of the employees within the Agency for Real Estate Cadaster and affect how rights over real estate are acquired, exercised and protected. Each of the set principles has a separate function and relevance regarding the registration of rights and entering other data regarding real estate.

a) The principle of mandatory registration is placed to ensure that every right or other data about real estate will be entered into the Real Estate Cadaster when the Real Estate Cadaster Act or other subjects-specific laws mandate registration of certain rights or other data regarding real estate (RECA-2013, art. 142). Another function of the principle of mandatory registration is to ensure that government institutions, municipalities, notary publics, lawyers, enforcers and other public services will use the data from the Real Estate Cadaster exclusively in their work. This will prevent the drafting of decisions and other

legal acts (contracts, wills) with incorrect and/or unreliable data about real estate and rights over real estate.

b) The principle of constitutive registration is set forth to ensure that property rights over real estate will be unconditionally acquired at the moment of their registration in the Real Estate Cadaster (RECA-2013, art. 143). The same applies to the termination of property rights over real estate. As it is stated, property rights over real estate are considered to be terminated when they are deleted from the Real Estate Cadaster. This principle played a crucial role in solving decades-long problems regarding the acquisition of property rights over real estate. In the past, there were many disputes among potential owners or other property rights holders who competed to acquire the same right over a particular real estate. The Ownership and Other Real Rights Act of 2001 contributed to the problem of collision of rights over real estate because it prescribed different moments of acquisition of ownership or other property rights over real estate. As it is stated in the Ownership and Other Real Rights Act, real estate ownership acquired based on a legal act such as a contract or a will is considered as acquired at the moment when the transfer of ownership is registered in the Real Estate Cadaster (OORRA, art. 148, s.1). Real estate ownership acquired by a court decision or a decision delivered by an authorized government body is considered to be fully acquired once that decision becomes final, while the registration of the transfer of ownership is provisional (OORRA, art. 154, s.2). The problem emerges when the owner who acquired ownership over a real estate based on an agreement is confronted with the owner who acquired the same right of ownership over the real estate based on a court decision or a decision rendered by an authorized government body. Since the two rights collide a dispute occurs between the two potential owners that needs to be resolved before the courts who determine which of the potential owners will become an actual owner of the real estate. Similarly, these types of disputes occur with other property rights over real estate such as servitudes and mortgages. Once the Real Estate Cadaster Act of 2013 proclaimed that all property rights over real estate are acquired at the moment of their registration in the Real Estate Cadaster the number of these types of disputes decreased. The main cause for the reduction of disputes was due to the fact that people started to rely on the data already registered in the Real Estate Cadaster. By relying only upon the data in the Real Estate Cadaster people avoided entering into legal relations with persons who didn't have their rights registered in the Real Estate Cadaster. The mandatory registration also forced people who acquired rights over real estate based on court decisions or decisions rendered by an authorized government body to send these final decisions to the Agency for Real Estate Cadaster so that their acquired rights could be registered in the Real Estate Cadaster. The principle of constitutive registration also plays a crucial role in maintaining accurate and up-to-date data about rights over real estate particularly property rights over real estate.

c) The principle of publicity affords free public access to the data contained in the Real Estate Cadaster and in the GCIS as well (RECA-2013, art. 144). This principle guarantees that every person will be granted access to all data on real estate and rights over

real estate without the need to prove the existence of some legitimate interest in obtaining such data. It needs to be noted that the publicity principle does not apply to personal data protected under the Data Protection Act of 2020. Some data is specially reserved for public authorities like complete data about the real property belonging to a particular person. This type of information is not publicly available because it is considered to be sensitive and it might hurt the person's interests if it is made publicly available. The principle of publicity is not only beneficial for third parties who like to gather information about particular real estate and rights over that real estate. It is also beneficial for people whose rights are registered in the Real Estate Cadaster. The registration guarantees the existence of those rights and their *erga omnes* effect (Живковска, 2005, 32; Групче, 1983, 24).

d) The principle of accuracy and faith in the registered data is based on the assumption that all data in the Real Estate Cadaster is accurate (RECA-2013, art. 145). Since all data in the real estate canister is presumed to be accurate no person who acted in good faith could face negative consequences for trusting the data even if is later confirmed the data was incomplete or inaccurate. In this case, the negative consequences of entering inaccurate or incomplete data fall on the Agency for Real Estate Cadaster. This means that the Agency should be held responsible for indemnifying the person who suffered damages from the data being incomplete or inaccurate. For example, if a mortgage was erroneously deleted from the Real Estate Cadaster at the time when a person has acquired ownership over the encumbered real estate, then this person is not obligated to accept the encumbrance. This is because he or she acted in good faith and trusted the data in the Real Estate Cadaster where no mortgage was evident. The mortgage creditor, on the other hand, has the right to be indemnified for the loss of his right over the real estate by the Agency because the loss of the right is due to a faulty data entry by the Agency.

e) The principle of legality guarantees that all data in the Real Estate Cadaster will be entered lawfully and under conditions determined by the governing laws (RECA-2013, art. 146). This principle is mainly directed towards the employees of the Agency for Real Estate Cadaster who are authorized to enter data about real estate and rights over real estate. All data entered into the Real Estate Cadaster needs to be derived from an appropriate legal base such as a contract, a will, court decisions, a decision of another government body or other legal acts. Employees are responsible for the lawfulness of the data entry and can be held liable for any data entry that was not based on a legal act or was entered contrary to the legal act.

f) The principle of priority obliges employees to enter data in the Real Estate Cadaster by the order of priority determined by the moment of applying for registration of right or other data about real estate (RACA-2013, art. 147). Respecting the temporal priority is very important, especially in the issue of acquiring rights over real estate. The priority principle prevents a previously filed application for registration of rights from being set aside in favour of a later-filed application.

g) The principle of specificity requires that the data on the real estate and the rights over real estate in the legal act correspond with the data already entered in the Real Estate Cadaster (RECA-2013, art. 148). If the data from the legal act does not correspond with the data entered into the Real Estate Cadaster, then no new data entry can be made until the inconsistencies are removed.

h) The principle of autonomy refers to the employees of the Agency for Real Estate Cadaster who are authorized to enter data into the Real Estate Cadaster (RECA-2013, art. 149). According to this principle, employees are autonomous in their decision whether they will enter a particular data into the Real Estate Cadaster. This is intended to prevent any unauthorized influences over the employee's work. They only need to abide by the governing laws when registering data about real estate and rights over real estate.

5. TYPES OF REGISTRATION OF RIGHTS AND OTHER DATA ON REAL ESTATE

There are three types of registration of rights and other data on real estate: inscription, pre-registration and notation (RECA-2013, art. 169). The three types of registration were defined primarily by the Real Estate Cadaster Act of 2008 and they were reaffirmed by the Real Estate Cadaster Act of 2013. Each of the three types of registration of rights on real estate has a different legal meaning and effect.

a) Inscription is a type of registration of property rights over real estate (RECA-2013, art. 170). Subject to inscription is the right of ownership and the other property rights (real rights) over real estate such as servitudes, mortgage, real burden and the right to a long-term lease. The inscription is defined as full, definite and unconditional registration of the acquired property rights over real estate. This means that according to the Real Estate Cadaster Act of 2013, once the property right is inscribed in the Real Estate Cadaster, that right is considered to be fully acquired.

b) Pre-registration is a type of conditional inscription of the right of ownership over real estate (RECA-2013, art. 171). The pre-registration provides priority to the potential owner for inscription of his or her ownership right once all the legal conditions for inscription are met. Pre-registration precedes inscription when acquiring ownership goes through several stages for the transfer of ownership to be completed. For example, when a sales contract has been concluded, the contract not only needs to be notarized by a notary public, but it also needs to be filed before municipal authorities to calculate the tax for real estate trade. This process can sometimes last for weeks. This is why potential owners who go through this phase of transfer of ownership prefer to apply for pre-registration of their right of ownership in order to ensure that no other person registers ownership or other property rights over the real estate during this process of ownership transfer. However, the priority that the pre-registration provides is not indefinite. According to the Real Estate Cadaster Act of 2013, pre-registration has legal effect up to six months from the date of pre-registration. If the potential owner completes the process of ownership transfer during these

six months, then he or she is granted a priority to inscribe his or her right of ownership in the Real Estate Cadaster. The date of inscription will be the same as the date of the pre-registration. If the potential owner fails to complete the ownership transfer within six months then the pre-registration has no legal effect and other persons may register ownership and other rights over the real estate in question. In legal practice, there are dilemmas about whether the priority granted by the pre-registration has an *erga omnes* effect. Regarding this issue, public enforcers claim that the priority granted to the potential owner with pre-registration should not have legal effect in the enforcement proceedings initiated against the registered owner of the real estate. It is our opinion that there is no basis for such interpretations of the provisions in the Real Estate Cadaster Act of 2013 regarding the legal effect of pre-registration. The priority that pre-registration grants to the potential owner has an *erga omnes* effect, meaning that nobody, not even public officials, can circumvent its legal effect. With this in mind, there is no legal impediment to the enforcement warrant being pre-registered as well. In case the potential owner fails to complete the ownership transfer within six months of the pre-registration, the enforcement warrant can be executed.

The pre-registration which is a conditional inscription of the right of ownership in legal practice is often confused with another form of pre-registration - the pre-registration of rights over structures under construction (RECA-2013, art. 172). The pre-registration of rights over structures under construction involves entering data about the structure under construction, the building permit, the investor, the mortgage lenders and the future buyers of the structure under construction. All of this data is entered into a special pre-registration sheet that is separate from the land title certificate where acquired property rights over real estate are inscribed. The pre-registration sheet was introduced, for the first time, by the Real Estate Cadaster Act of 2008. The reason was the need for publicity in the trade with structures under construction. This legal solution followed after multiple real estate trade scams committed by investors. Investors were involved in a fraudulent trade of structures under construction by concluding multiple sales contracts with different buyers for the sale of the same structure. Building units under construction were sold to multiple buyers during the construction process. As a result, most potential buyers did not acquire ownership of what they were buying during the construction process. The pre-registration sheet played a crucial role in preventing these fraudulent practices. However, it needs to be pointed out that there are limits to the extent that the pre-registration sheet can protect future buyers of structures under construction from being defrauded. In effect, the pre-registration sheet protects future buyers from being defrauded by multiple sales of the same structure. However, it does not guarantee that they will have their rights registered into a land title certificate. Such a guarantee doesn't exist because the pre-registration sheet holds no guarantee that the investor will complete the construction process resulting in registration of the structure in a land title certificate. Needless to say, if the structure is not completed and it is not registered in a land title certificate, then ownership and other property rights over

such a structure cannot be registered in the land title certificate either. Having this in mind, we can conclude that the pre-registration sheet guarantees future buyers and mortgage lenders priority in registering their rights in a land title certificate under the condition that the structure under construction is registered in the land title certificate as well.

d) Notation is a type of registration of rights and data relevant to a particular real estate (RECA-2013, art. 173). Several rights are subject to notation and those are: leases, concession contracts, lifetime alimony contracts, gift contracts in case of death, lend-use contracts and the contractual pre-emption right. It's important to underline that the notation of these rights doesn't have a constitutive effect. Subject to notation is also other data about the real estate, such as temporary measures, personal information about the holders of property rights, fiduciary transfer of ownership and other relevant data. The type of notations that can be entered into the land title certificate is strictly determined by law, which means that notation can be entered in the land title certificate only if the Real Estate Cadaster Act of 2013 or other subject-specific law allows for a particular type of notation to be entered. The limit on the type of notations that can be entered into the land title certificate was placed to prevent cluttering the land title certificate with different types of notations, that before 2008, were entered at the will of interested parties.

The different types of registration of rights and other data exist to ensure legal certainty in the real estate trade. The inscription guarantees that the registered right of ownership and other property rights over real estate are lawfully acquired and belong to the persons registered in the land title certificate as holders of those rights. To that effect, any person who enters into real estate trade with a person or persons registered as owners or other property rights holders is guaranteed to obtain such rights in the form and extent they were registered in the land title certificate. Pre-registration is a type of registration that guarantees potential owners priority in the inscription of ownership rights if they complete the ownership transfer within six months of the pre-registration. The pre-registration sheet, on the other hand, guarantees buyers and mortgage lenders of structures under construction priority in registering their rights in the land title certificate, after the structure under construction has been entered into it. Notations offer valuable information about rights and facts relevant to the real estate trade.

However, as we have previously stated, the system isn't perfect and some deficiencies need to be addressed. One significant deficiency is the lack of efficient instruments for controlling and correcting mistakes made during the entering of data and/or rights over real estate.

According to the Real Estate Cadaster Act of 2013 mistakes made during the process of data registration or rights over real estate can be corrected via an administrative procedure for removal of errors (Art. 209). The errors that can be removed in such proceedings are errors regarding the size, nature and other data about the real estate, as well as errors in the name and other personal data about the owner or holders of other rights over real estate. These so-called “technical errors” can be removed by employees of the Agency

for Real Estate Cadaster if no changes are made in the land title certificate after the erroneous entry. Corrections are made without the need to inform the owner or other holders of property rights over real estate. The more significant errors, such as registering the wrong person as the owner of a real estate or deleting other property rights and relevant data about the real estate by mistake are corrected upon a request of the affected party or by employees in their official capacity with the consent of the affected parties. In such cases, the affected party gives written consent notarized by a notary public. If a request for correction is filed or consent is given, then the data in the land title certificate may be corrected. The Agency issues confirmation for the correction of the mistake. On occasion when the affected party refuses to give consent for the correction of the error, the error cannot be corrected. However, the fact that an error is made is noted in the land title certificate. The notation makes the existence of the error public for all third parties even though no corrections are made within the records. This is a very debatable legal solution because it inadvertently affects owners and holders of other rights over the real estate. The question that emerges here is whether it is justifiable to make a notation for an existing error without addressing the problem at hand which is the fact that an error has been made that affects the rights of the owners and other property rights holders. It is our opinion that these provisions of the Real Estate Cadaster Act of 2013 need to be amended. Any amendments must address the question of liability for erroneous entries in the Real Estate Cadaster and proper indemnification of the affected parties. Since making errors while entering data in the Real Estate Cadaster threatens its very function which is providing legal certainty and security in the real estate trade measures need to be taken that will lower the risk of mistakes. Among the measures that need to be taken are those that ensure double verification of the accuracy of each data entry before it is made public and distributed. The digital system for data entry needs to be upgraded and prompt so it can identify obvious technical errors immediately and alert the employee entering such data about the mistake. By strengthening control over data entered by employees and upgrading the digital system we believe that the possibility of erroneous entries in the Real Estate Cadaster would be decreased. On the other hand, if such errors do occur, we consider that they need to be removed in the interest of the accuracy of the Real Estate Cadaster. When such errors affect registered rights over a real estate and cause damages there needs to be a clear and precise regulation on liability and how the affected parties will be indemnified.

6. CONCLUSION

The Real Estate Cadaster Act of 2008 and the Real Estate Cadaster Act of 2013 have introduced significant reforms to the system for real estate registration. Both laws have had a role in modernizing the system and improving its efficiency. As a result, legal certainty and security in the real estate trade were increased.

The Real Estate Cadaster Act of 2008 regulated the creation of the so-called Geodetic Cadastral Information System (GCIS). It also addressed the issue of incomplete and outdated data on real estate and rights over real estate by prescribing systematic establishment of the Real Estate Cadaster as part of the GCIS. During the process of the establishment of the Real Estate Cadaster, data was collected about illegally built structures and temporary structures found on land parcels. Later, this data was used to create policies regarding the legal treatment of illegal structures.

The Real Estate Cadaster Act of 2013 regulated the establishment of the Cadaster of Infrastructure as a part of the Real Estate Cadaster. Other novelties include the establishment of the Registry for the Value of Real Estate and Rent Prices, the Graphic Registry for Construction Land and the Graphic Registry for Streets and House Numbers.

Registration of rights over real estate in the Real Estate Cadaster is governed by several key principles: a) the principle of mandatory registration, b) the principle of constitutive registration, c) the principle of publicity, d) the principle of accuracy and faith in the registered data, e) the principle of lawfulness, f) the principle of priority, g) the principle of specificity and h) the principle of autonomy in the registration of data. These principles were set forth in order to ensure that all data entered in the Real Estate Cadaster will be entered correctly lawfully and securely.

There are three types of registration of rights and other data on real estate: inscription, pre-registration and notation, each with a specific legal meaning and effect. Inscription guarantees that the registered right of ownership and other property rights over real estate are lawfully acquired and belong to the persons registered in the land title certificate as holders of those rights. Pre-registration is a type of registration that guarantees potential owners priority in the inscription of ownership rights if they complete the ownership transfer within six months of the pre-registration. The pre-registration sheet guarantees buyers and mortgage lenders of structures under construction priority in registering their rights in the land title certificate once the structure has been entered into it. Notations offer valuable information about rights and facts relevant to the real estate trade.

Analysis has shown that the system isn't perfect and some deficiencies need to be addressed. One significant deficiency is the lack of efficient instruments for controlling and correcting mistakes made during the entering of data and/or rights over real estate.

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ПРАВНИ ЕФЕКАТ РЕГИСТРАЦИЈЕ ПРАВА НА НЕКРЕТНИНЕ У МАКЕДОНСКОМ ПРАВНОМ СИСТЕМУ

Апстракт

У раду се разматрају правни ефекти новог система за регистрацију непокретности успостављеног у македонском правном систему Законом о катастру непокретности из 2008. године и Законом катастру непокретности из 2013. године. Један од главних циљева ових закона био је стварање модерног дигиталног катастра некретнина који би омогућио лак приступ подацима о некретнинама и правима над некретнинама који су тачни и ажурни. Стварањем дигиталног система за прикупљање, обраду и дистрибуцију података о некретнинама и правима над некретнинама законодавац је очекивао да ће повећати правну сигурност у трговини некретнинама. Гледајући систем за регистрацију права на некретнине, како са законодавног тако и са практичног аспекта, рад има за циљ да покаже у којој мери је испуњена постављена сврха. У раду се такође наглашавају недостаци система и остражују потенцијални путеви за даљи развој.

Кључне речи: некретнине, стварна права, катастар, имовина, земљишно право.

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ARTIFICIAL INTELLIGENCE AS A CAUSE OF DISCRIMINATION IN INSURANCE LAW[2]

Summary

Using AI in the form of a self-learning algorithm that can solve recurring problems based on available data, may lead to a development of a systemic deviation between the modeling and reality. Given deviation may result in bias in the decision-making process. This paper aims to highlight the phenomenon of AI-caused bias in insurance industry since insurers will rely on AI greatly. Since the bias has the potential to cause discrimination and unequal treatment of policyholders, the authors examine national legislation regarding the prohibition of discrimination in order to determine to what extent these regulations should apply to bias in insurance and what potential sanctions exist for such behavior. Additional issue to this matter is the question of liability for the AI-caused damage which required going beyond the national legislation and searching for the answers in newly adopted European legislation.

Key words: insurance, bias, discrimination, artificial intelligence, liability.

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1. INTRODUCTION

Artificial intelligence (AI)[3] can significantly contribute to the efficiency in all fields based on the processing and use of large amounts of data. Greatest advantages of AI compared to humans are the greater level of objectivity of their decisions due to the lack of emotions and feelings, and better performance in activities requiring accuracy, repeatability, and the processing of massive amounts of data quickly (Rejmaniak, 2021, 25).

An insurance industry is no exception, as insurers increasingly rely on AI technology. On one hand, insurers believe that by using new technologies, they can process vast amounts of data in a short time and create a more accurate profile of their clients and the risks they bring. On the other hand, policyholders see this new approach as an opportunity to receive insurance policies tailored to their specific needs. Personalized insurance products that match the personal circumstances of policyholders are becoming growingly sought because they convey the message that they represent a meaningful investment of money to cover risks with a high probability of occurring for that specific policyholder.

This does not however imply that these systems will always do the duties assigned to them in a manner that is deemed suitable from a societal standpoint. On daily basis evidence appear proving that AI can also be a subject to bias, which can lead to discrimination of individuals or entire groups (Rodrigues, 2020, 3). The use of AI by insurers to make decisions based on data collected with its help carries the risk of bias, systemic errors in predictions, and consequently, discrimination against policyholders and insurance users. Specifically, if an insurer uses AI in the form of a self-learning algorithm that can solve recurring problems based on available data, AI may develop a systemic deviation between the modeling and reality, resulting in bias in the decision-making process.

The importance of this issue is also recognized in the Strategy for the Development of AI for the period 2025-2030 of the Republic of Serbia. Among five specific aims of the Strategy, one is dedicated to ethical and safe deployment of AI and it addresses AI-based discrimination (Strategy for the Development of Artificial Intelligence in the Republic of Serbia, 2025, 6, 10, 14).

[3] The High-Level Expert Group on Artificial Intelligence – as “software (and possibly also hardware) systems designed by humans that, given a complex goal, act in the physical or digital dimension by perceiving their environment through data acquisition, interpreting the collected structured or unstructured data, reasoning on the knowledge or processing the information, derived from this data and deciding the best action(s) to take to achieve the given goal. AI systems can either use symbolic rules or learn a numeric model, and they can also adapt their behavior by analyzing how the environment is affected by their previous actions”. For more see High-Level Expert Group on Artificial Intelligence, 2019, 3.

2. AI IN INSURANCE INDUSTRY

The main feature of AI that distinguishes it from other algorithms is its ability to learn. External empirical data are utilized to develop and revise rules for the enhanced management of analogous data in the future, and to articulate these rules in a clear, symbolic format (Michie, 1991, 562). Firstly, these data are used for training and afterwards for testing the AI models.[4] In this way, they can contribute to solving very complex problems and apply the learned knowledge to very large datasets (Martins, 2019, 6). Before machine learning methods become applicable in practice, the factors relevant to the specific application case must be determined. Existing features are examined, and, assuming a reasonable probability of error, it is considered whether the features contribute to the improvement of the algorithm during the learning process. If this is the case, they are further used to train the AI.

The possibilities of AI systems for insurance industry are enormous because they enable analyzing both previously and newly collected data from different sources and not just those submitted by the policyholder (shopping habits, social media, taken selfies, etc.) Consequently, two AI related trends are to be recognized in insurance sector. The first trend is data-intensive underwriting,[5] in which insurers experiment with AI to analyze risks and determine insurance premiums. When used for underwriting, new attributes for risk indication can be recognized by AI, which further leads to more precise price ranging of insurance products.[6] The second trend is behavior-based insurance, in which insurers increasingly monitor the behavior of individual customers (van Bekkum & Borgesius & Heskes, 2024, 2, Henkel & Heck & Göretz, 2018, 33–36). Insurers follow how the policyholder acts in real time and adapt the premiums accordingly.[7] The idea of individualized insurance is attractive for policyholders and it can be expected to gain great popularity in the future. Even though these insurance schemes base on the same principles as the traditional ones, insurers are more focused on the individuals and their behavior and not on the groups with similar characteristics. Apart from that, these schemes are more prevention oriented because they "award" policyholders that, for example, exercise more or drive in a more precautious manner.

[4] Training data is used to calibrate, adjust the algorithm, or establish the model, while testing data is used to evaluate the learned AI model.

[5] The Geneva Association, the global association of insurance companies, describes underwriting as "a core process of insurance that involves assessing and pricing risks presented by applicants seeking insurance coverage". https://www.genevaassociation.org/publication/digital-technologies/promoting-responsible-artifical-intelligence-insurance, last accessed 8.4.2025.

[6] This is already the case in Great Britain and Netherlands (van Bekkum, Borgesius, Heskes, 2024, 7).

[7] These insurances are called telematics insurances and they are of special importance for health insurance and automobile liability insurance.

2.1. Bias and AI

However, despite all the advantages, using AI systems comes with certain challenges that can affect the outcome of the final decisions made this way. Finding optimal data requires a constant balancing act between the complexity of the model and its accuracy. The same idea lies at the core of the insurance industry—the idea of finding a balance between large amounts of data and accurately predicting future events.

If too few significant influencing variables are used for training the AI, it leads to the situation where not all relevant factors are represented, and the error rate is relatively high (Underfitting). Additionally, the consequence of using too much data can result in the AI's acquired knowledge not being transferable to other datasets, causing an increase in the probability of error (Overfitting) (Hastie & Tibshirani & Friedman, 2019, 219). These systematic errors of AI are called AI bias. The term bias is therefore used to describe the systematic deviation between the model and reality (Hastie & Tibshirani & Friedman, 2019, 219). In the field of AI, bias represents a significant problem because it can strongly influence algorithmic behavior and lead to individuals or groups experiencing unequal, unfair, or even discriminatory outcomes in AI decision-making[8] because "the digital poorhouse, in short, does not treat like cases alike."(Eubanks, 2018, 146–147).

Machine learning and deep learning, as forms of AI, are entirely dependent on external data (inputs), which implies that bias and unequal treatment can stem from the quality of the training data, which can be influenced by various factors or as Eubanks states "…bias is introduced through programming choices, data selection, and performance metrics." (2018, 146–147). Let us just name few factors leading to a possible bias. Firstly, human decisions may add bias into the system since the humans are the ones that choose the training data (Avramović & Jovanov, 2023, 169). Another difficulty is the unpredictable nature of AI impacts during its existence (Mihajlović & Ćorić, 2024, 10). Training data have to include certain historical data in order to fulfill the request of great amount of data as a solid training base.[9] These can be burdened by bias, leading further to AI bias.[10] One may

[8] For example, Amazon used an algorithm to evaluate resumes and job applications, which highly ranked male candidates with certain names and those who engaged in specific sports as hobbies, https://qz.com/1427621/companies-are-on-the-hook-if-their-hiring-algorithms-are-biased, last accessed 2.4.2025. For other forms of discrimination caused by the usage of AI see Mihajlović & Ćorić, 2024, 16. Also Knežević Bojović *et al*., 2013, 125.

[9] This has also been recognized in the Strategy for the Development of AI for the period 2025-2030 of the Republic of Serbia. "Historic" data, gender/sex unbalanced data, or a lack of inclusivity of all important data sources are namely defined as causes of discrimination.

[10] The algorithm trained primarily with historical data can easily lead to bias and further inequalities due to a fact that the historical data do not reflect reality accurately. For example, women historically speaking were facing reduced employment opportunities, which is not the case anymore. If the AI model is however trained on these data, it can conclude that women nowadays are less profitable than men. (Lattimore *et al*., 2020, 33–36)

not exclude the scenario according to which the AI is fed by discriminatory data from beginning, which already happened with some of Microsoft bots (Neff & Nagy, 2016, 4920– 4922). Also, some data are easier to access and analyze, which made social networks to have an important effect on perception of certain societal issues (Ntoutsi *et al*., 2020, 3). The mentioned potential causes of bias further spill over into a large number of cases, as AI continues to learn from this data without ever questioning the decision-making patterns it uses. This is particularly critical if it is established that AI is making unauthorized distinctions between policyholders, potential buyers, or third parties, which constitutes a violation of anti-discrimination laws or leads to unequal treatment of policyholders that, at first glance, may not appear to violate legal regulations.[11]

Despite the belief that discrimination can easily traced when algorithm, it is not completely the case due to the lack of transparency on the used data and training methods (Heinrichs, 2022, 143, 150–153). Due to the self-development of algorithms, the behavior of AI can be unexpected and inexplicable, even to engineers. The lack of visibility into AI's operation arises from the complexity of algorithm structures, such as artificial neural networks, and reliance on geometric relationships in phenomena that humans sometimes cannot perceive (Bathaee, 2018, 901). The inability to understand the decision-making process of AI or predict its outputs is referred to as the "black box" problem (Pasquale, 2015, 3–14).

2.2. Unequal and discriminatory effects in insurance industry

Despite contractual freedom being a governing principle of insurance contract law (Petrović Tomić & Glintić, 2024, 226–230), non-discrimination rules set certain limitations to it. When it comes to discrimination and unequal treatment in insurance sector, only gender and ethnicity are defined as protected characteristics at the EU level.[12] If an insurer

[11] Danger of AI caused bias has already been recognized by international legislator and in order to protect individuals` rights when using AI systems, ethical and legal frameworks are being developed, such as White Paper on Artificial Intelligence, the Ethics Guidelines for Trustworthy AI and a European Parliament Resolution on a Framework of the Ethical Aspects of Artificial Intelligence, robotics and related technologies. In this document various possible dangers of bias have been recognized, which requires organized political reaction. Just some of the measure for the elimination of unequal treatment of AI proposed by the European Parliament are the national supervisory authorities, further investment in research, innovations and knowledge transfer. At the European level, the Ethical Guidelines for the Use of Artificial Intelligence by the High-Level Expert Group on Artificial Intelligence of the European Commission emphasize that learning systems should be nondiscriminatory. Some companies have already recognized this and have taken appropriate voluntary commitments or established dedicated ethical advisory boards. The Council of Europe's Committee of Ministers adopted the Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law on 17 May 2024.

[12] Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Directive 2000/43/EC); Directive 2004/113/EC of 13

differentiates between groups based on a legally protected characteristics, such as ethnicity or gender, discrimination occurs.[13] Discrimination can be direct and indirect and in insurance sector a former one is a more possible one. It is barely imaginable that insurers would use forbidden characteristics (gender and ethnicity) explicitly. Insurers can develop practice that seems non-discriminatory at first sight, but as a result leads to discrimination. According to the non-discrimination directives, insurers can objectively justify indirect discrimination if they have "a legitimate aim and [if] the means of achieving that aim are appropriate and necessary" (Directive 2000/43/EC, 2000, art. 2(2)(b)). Proving that differentiation is appropriate and necessary and that it doesn't cause disproportionate disadvantages for protected groups in one case is not an easy task.

When based on other characteristics that are not protected by legal sources, differentiation by insurers is not illegal. This however doesn't mean that these differentiations are not to be considered unfair, even though characteristics are not legally protected. Forbidden characteristics can be easily removed from the data used in machine learning processes. The problem, however, is that many characteristics can serve as substitutes for others—proxy characteristics (Harcourt, 2010). This is done through proxy variables (such as place of residence, financial situation, ZIP codes, etc.), from which conclusions can be drawn about the original discriminatory variable. In this regard, a particular challenge lies in determining whether a non-discriminatory input will lead to a discriminatory outcome. In insurance, proxy discrimination is very possible, which is why the mentioned issues represent a particular challenge. *McWright v. Alexander* decision (771 F. Supp. 256 (1991)), which defines proxy discrimination, also emphasizes some of the mentioned issues: "Proxy discrimination is a form of discrimination against individuals. It occurs when an insurer issues a policy that treats individuals differently based on seemingly neutral criteria that are closely associated with a discriminatory criterion. For example, discrimination against

December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Directive 2004/113/EC). It is important to emphasize that some of the member states extended the scope of non-discrimination rules to insurance sector. See European Commission. Directorate General for Justice and Consumers. And European network of legal experts in gender equality and nondiscrimination. A Comparative Analysis of Non-Discrimination Law in Europe 2022: The 27 EU Member States, Albania, Iceland, Liechtenstein, Montenegro, North Macedonia, Norway, Serbia, Turkey and the United Kingdom Compared, https://data.europa.eu/doi/10.2838/428042, last accessed 5.4.2025.

[13] European Union legislation also recognizes age; disability; gender; religion or belief; racial or ethnic origin; sexual orientation as protected characteristics. Religion or belief, disability, age or sexual orientation: Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. Racial or ethnic origin: Council Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin, 2000 OJ L 180/22. Gender: Council Directive 2004/113/EC Implementing the principle of Equal Treatment between Men and Women in the Access to and Supply of Goods and Services, 2004 OJ L 373/37. Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the Principle of Equal Opportunities and Equal Treatment of Men and Women in Matters of Employment and Occupation (Recast), 2006 OJ L 204/23.

individuals with gray hair is seen as a substitute for age discrimination because the "correlation" between age and gray hair is sufficiently close." Additionally, the question arises whether this form of discrimination must be carried out with the insurer's intent, or if it is enough that it occurs as an unintentional and unconscious action. This disparity in definitions creates significant differences in the impact on actuarial work. If intent is required, the question of how to prove intent becomes relevant. It is clear that if there is indisputable evidence showing that the insurer knowingly used a variable as a substitute for race, it would meet the standard for proxy discrimination. However, without clear evidence, it would be difficult to conclude intent. If intent is not necessary to define proxy discrimination, the focus shifts more toward whether there is a disproportionate impact of variables that are merely predictive because of their relationship with a protected class.

European Court of Human Rights has answered this question regarding indirect discrimination: "[A] difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group. Such a situation may amount to "indirect discrimination", which does not necessarily require a discriminatory intent."[14] When it comes to AI, it is highly possible that AI systems can unintentionally lead to indirect discrimination. For that reason, legislators have to be more focused on the practice and its effects than on the intention of the discriminator.

3. NATIONAL LEGISLATION

Given that bias can lead to a prohibited discrimination and to an unequal treatment of policyholders or insurance users, it is necessary to analyze national regulations regarding the prohibition of discrimination to determine to what extent these regulations could be applied to bias in insurance and what potential sanctions exist for such behavior.

3.1. The Law on Prohibition of Discrimination

In the Republic of Serbia discrimination is prohibited by the Constitution as the highest legal act, which explicitly states that all discrimination, direct or indirect, is prohibited on any grounds, especially on the basis of race, gender, national origin, social background, birth, religion, political or other beliefs, property status, culture, language, age, and mental or physical disability (Constitution of the Republic of Serbia, 2006, art. 21). In addition to the Constitution, there are numerous other individual regulations that insufficiently and superficially address specific measures taken to prevent discrimination in certain areas or towards specific vulnerable groups. This has inspired the adoption of the

[14] ECtHR, Biao v. Denmark (Grand Chamber), No. 38590/10, 24 May 2016, para. 103.

Law on Prohibition of Discrimination, which regulates the general prohibition of discrimination (art. 1, 4, 5, 6, 17, 23).

The mentioned regulations are often referenced in the opinions of the Ombudsman for Equality Protection, with an explicit explanation that direct discrimination occurs when an individual or a group of people, due to their personal characteristic, are placed in a less favorable position compared to an individual or group in the same or similar situation who do not possess that personal characteristic.[15]

In the event that a civil lawsuit is initiated, if the plaintiff makes it likely that the defendant has committed an act of direct discrimination, the burden of proof that the act did not result in a violation of the principle of equality, i.e., the principle of equal rights and obligations, lies with the defendant (Law on Prohibition of Discrimination, 2021, art. 45). It means that if, during the formation of an insurance offer or the calculation of premiums or insurance payout requests, the insurer used AI that employed legally prohibited characteristics in performing these tasks, the insurer will face a very difficult task. Can they even prove the absence of a causal connection between the prohibited characteristic and the resulting discrimination? Deep neural networks, along with the lack of understanding of how artificial intelligence learns and operates, will significantly complicate the insurer's attempts to prove the absence of discriminatory behavior (Kolleck & Orwat, 2020, 40).

In the case of indirect discrimination under Article 7 of the Law on Prohibition of Discrimination, the insurer would have to prove that the differential treatment of a particular individual or group, compared to others in the same or similar situation, based on seemingly neutral provisions, criteria, or practices, is objectively justified by a legitimate goal (Kuzminac, 2024, 20). Therefore, the insurer would have to prove that the AI carried out justified discrimination for objective reasons, which also leads to facing the same challenges in a legal sense that accompanies insurer`s attempt to deny direct discrimination. All these legal provisions indicate that the insurer probably will not be able to avoid responsibility by claiming that they did not understand how AI functions or that they did not intend to engage in discriminatory behavior by using AI.

By initiating legal proceedings, the insured party can seek compensation for material and non-material damages, a ban on further discriminatory actions, a prohibition on the repetition of discriminatory actions, a determination that the defendant acted discriminatorily toward the plaintiff or others, and the removal of the consequences of discriminatory actions (Law on Prohibition of Discrimination, 2021, art. 41–43).

Compensation of the damage caused through discrimination[16] will be of a special interest from the legal standpoint. Discussions regarding liability for damage arising from

[15] 743-21 A complaint of discrimination in the provision of services based on the personal characteristic of age.

[16] Fora n example, an AI system may, after processing a large volume of data, learn that male customers are more likely to accept higher insurance premiums than female customers, and

the operation of AI are still ongoing at both national and supranational levels. In terms of liability, the first question that arises is: who is the addressee of the prohibition against discrimination, and consequently, who can be held liable? Is the AI system itself prohibited from discriminating? Or does the prohibition apply to the insurer who employs the AI? Given that the concept of electronic personhood has not yet been adopted or applied, it is evident that AI lacks legal subjectivity and thus cannot be considered a direct addressee of anti-discrimination norms (Martini, 2019, 290). Also, a high degree of autonomy in AI systems eventually renders it impossible to maintain full control over their behavior, which evolves according to self-modifying rules that the insurer cannot fully foresee.

Under general civil law rules, in cases of tortious liability, fault is the primary basis for responsibility.[17] A particular challenge arises from the fact that, in the context of machine learning, machines cease to function merely as instruments of human decision-making and begin to act as autonomous decision-makers. This shift adversely affects the establishment of causal links and the attribution of fault, thereby altering the traditional paradigm of liability. Establishing causality becomes more complex in situations where access to relevant information is restricted or where users lack the technical expertise to identify the root causes of the AI system's actions. Furthermore, proving fault becomes increasingly difficult given the unpredictability of harmful outcomes generated by AI systems. The determination of legal duties for manufacturers, owners, or users to supervise or enhance the functioning of such systems would lead to the development of a standard of due care.

At the European level, there are variations in the allocation of the burden of proof and the required standard of evidence (Karner & Koch & Geistfeld, 2021, 10–11) These differences result in an unbalanced position for injured parties, depending on the jurisdiction in which the damage occurred. There is a prevailing view that the burden of liability for the damage caused by AI should be transferred to the manufacturer (Arsenijević, 2023, 144). However, it is also emphasized that users remain part of the chain of responsible parties when their actions contribute to the AI system's harmful behavior toward another party (e.g., through the installation of new software, physical interference with hardware, or assigning specific tasks to the AI system) (Arsenijević, 2023, fn. 42). Accordingly, all accountability should ultimately fall on the insurer, who voluntarily chose to utilize AI in their operations.[18] The decision, for instance, to offer male policyholders a more favorable

subsequently begin to systematically offer insurance products to men at higher prices, despite identical risk profiles.

[17] In our legislation tort liability is regulated in art. 154, para. 1 of the Law on Contract and Torts.

[18] A distinct issue is the matter of the insurer's contractual liability in cases where the use of AI results in a breach of contractual obligations toward the insured. In such cases, the rules concerning the debtor's duty to perform their contractual obligations in good faith come into effect. A debtor may be released from contractual liability if they can prove that they were unable to fulfill the obligation or that the delay in performance was due to circumstances arising after the conclusion of the contract which they could not have prevented, removed, or avoided (Law on Contract and Torts,

insurance product constitutes a declaration of intent and a conscious action on the part of the insurer. At this point in technological development, it remains impossible to attribute such intent or conduct to an AI system, as AI lacks legal will and the capacity for self-expression.[19] What introduces uncertainty into this equation is the insurer's lack of knowledge regarding the internal workings and decision-making processes of the AI system. Nonetheless, it is the insurer who ultimately decides to offer the calculated premiums and to engage in legal transactions. Therefore, it can be concluded that it is the insurer who is responsible for discriminatory practices.

Currently, there is no such thing as bias-free AI, and insurers must be fully aware of this reality. They must recognize that, in any given case, an AI system may rely on prohibited characteristics, potentially resulting in discriminatory outcomes (Spindler, 2015, 767–768). The question then becomes: to what extent can an insurer avoid discrimination? Through available AI governance methods, it may be possible to limit bias, but not to eliminate it entirely (Pohlmann *et al*., 2022, 142, 153). In this regard, insurers have an obligation to implement measures that reflect the current state of the art. Failure to do so may be considered negligent.

Since no existing measures can completely prevent discrimination by self-learning AI systems, such occurrences cannot be fully avoided. The only absolute safeguard would be the complete avoidance of AI usage. This would imply that any insurer who uses AI is, by default, acting negligently and thus bears the obligation to compensate for resulting harm. Although this position may appear contrary to the spirit of innovation, the risks associated with AI cannot be regarded as socially acceptable risks that the insured must bear—even in circumstances where they are subject to discrimination.

3.2. Law on Prevention and Diagnosis of Genetic Diseases, genetically conditioned anomalies, and rare diseases

The Law on Prevention and Diagnosis of Genetic Diseases, genetically conditioned anomalies, and rare diseases, genetically conditioned anomalies, and rare diseases stipulates a prohibition on discrimination and placing individuals at a disadvantage due to their genetic characteristics, the genetic traits of a genetically related person, or due to the act of

2020, art. 263). This implies that only force majeure excuses a debtor from non-performance of a contractual obligation. From the perspective of the national legislator, a debtor cannot be exempted from liability merely by proving the absence of fault. Some interpretations even hold that such liability constitutes strict (objective) liability, as force majeure and the absence of fault are treated as functionally equivalent. Karanikić Mirić, 2019, 46).

[19] In legal theory, some scholars have proposed that an insurer could be held liable for the decisions made by an AI system on the basis of vicarious liability, treating the AI as an agent. However, this position is untenable due to the absence of legal subjectivity on the part of AI (Pohlamnn *et al.,* 2022, fn. 41).

undertaking or not undertaking genetic testing (art. 9). This provision is relevant in the context of various forms of life insurance because certain aspects of this contract could be affected by results of genetic information (Glintić, 2023, 557–559).

Given that the Law on Prevention and Diagnosis of Genetic Diseases, genetically conditioned anomalies, and rare diseases (art. 38) refers to the analogous application of provisions from the Health Insurance Law it is essential to consider the provisions of this law as well. These provisions ensure that genetic information and testing results are not misused in a way that would lead to discrimination in insurance practices, particularly in life insurance. The Health Insurance Law stipulates a prohibition on insurers requesting genetic data or results of genetic tests for hereditary diseases from individuals who express a clear intention to enter into a voluntary health insurance contract with that insurer, as well as from their relatives, regardless of the line and degree of kinship (Health Insurance Law, 2023, art. 173). In the context of AI usage by insurers, this prohibition primarily means that it must be ensured that AI does not have access to genetic information whose use is legally prohibited, as only preventive actions can ensure compliance with legal bans.

Numerous limitations regarding the use of personal data are also to be found in the Personal Data Protection Act, which aims, among other objectives, to protect such data from discrimination in specific situations. Article 39 of the Personal Data Protection Act, which essentially prohibits automated decision-making based on certain categories of personal data, should also be interpreted as a safeguard against discrimination.[20] To the extent that automated decisions may exceptionally be made on the basis of consent—regarding the aforementioned categories of data—or on the grounds of the legitimate interest of the data subject to protect their rights, specific conditions must be met. The individual whose data are being processed must be informed about the existence and nature of the automated decision-making process. These obligations apply equally to insurance agents and brokers. It is though questionable when a decision is based solely on automated processing and when not. When a human makes a final decision on the basis of a recommendation of an AI system, is it a decision based solely on automated processing or not?

Moreover, the transparency obligations outlined in Article 5(1) of the Personal Data Protection Act ensure that the criteria used for automated decision-making, as well as the very fact that such decisions are being made, are presented transparently to the data subject.

Where consent is required for data processing pursuant to Article 15 of the Personal Data Protection Act, the insurance policyholder must be informed of the purposes of data processing in a manner that enables them to provide informed and effective consent. With self-learning AI systems, however, it may be difficult—or even impossible—to inform the data subject of the purposes of data processing in a way that would allow for meaningful consent. The AI system may need to make autonomous decisions regarding the purposes of processing, such that the specific purposes become apparent only during the course of the

[20] This rule is called Kafka rule.

data processing itself (von Walter, 2019, 21, 23). Limiting AI's capabilities in order to enable effective consent may, paradoxically, introduce bias, as it could result in the use of a non-representative data set (von Walter, 2019, 21, 23).

Furthermore, insurers are required to conduct a data protection impact assessment (DPIA) prior to deploying AI as a new technology, in cases where the data processing is likely to result in a high risk to the rights and freedoms of natural persons (Personal Data Protection Act, 2018, Art. 54(5)).

4. AI ACT PROVISIONS

The problem of AI caused discrimination and possible unequal treatment is not just in the domain of theory, but represents a practical problem with severe consequences. For that reason, European legislator has dedicated some of the provision of newly adopted AI Act to protection of final users of AI. It can certainly be stated that AI Act is partly devoted to prevention of discrimination (Spindler, 2021, 361–362), especially through the establishment of transparency rules, which in turn facilitates the detection of unjustified unequal treatment. According to the definition provided in the AI Act, an AI system refers to software developed using one or more specific techniques, capable of generating outputs such as content, predictions, recommendations, or decisions for a defined set of objectives established by humans, thereby influencing the environments with which they interact (AI Act, art. 3, para.1). When insurers employ algorithms in their interactions with clients, they define specific objectives such as contract formation, risk assessment, or loss evaluation. Particularly noteworthy is art. 50 of the AI Act, which pertains to transparency and establishes the obligation to inform natural persons that they are interacting with an AI system, with the aim of preventing deception (AI Act, recital 70). The underlying idea is that this obligation does not apply solely to natural persons acting on their own behalf, but also to those acting on behalf of or for the account of another party. Consequently, the transparency provisions of the regulation will apply to insurers regardless of whether they are interacting with private individuals or corporate entities. They will be required to inform their negotiating or contractual counterparts that they are utilizing artificial intelligence systems (AI Act, art. 50).[21] In the context of the usage of AI in insurance sector, when systems of biometric identification from art. 3(35) of the AI Acta are used,[22] this information has to be explicitly stated.

Since the core of the AI Act is the regulation of high-risk AI systems (Ćeranić Perišić, 2025, 158), AI Act has also defined a set of requirements for these systems,

[21] More details on the matter can be found in Spindler, 2021, 361, 368.

[22] Biometric identification means the automated recognition of physical, physiological, behavioral, or psychological human features for the purpose of establishing the identity of a natural person by comparing biometric data of that individual to biometric data of individuals stored in a database (AI Act, art. 3 (35)).

including risk management, data governance, technical documentation, recordkeeping, instructions for use, human oversight, etc.[23] These rules are applicable to insurance products when biometric categorization systems are used for the biometric identification of natural persons remotely, either in real time or retrospectively (AI Act, 2024, art. 6(2) in conjunction with Annex III). This could be the case, for example, with 'pay-as-you-live' insurance, where a life insurance company might monitor whether the policyholder smokes since Annex III of the AI Act recognizes as high-risk systems those AI systems tended to be used for risk assessment and pricing in relation to natural persons in the case of life and health insurance. In those case deployers of high-risk AI systems have to carry out a fundamental rights impact assessment prior to putting it into use, including the identification of specific risks of harm likely to have an impact on the fundamental rights of those persons or groups (AI Act, 2024, recital 96).

What is an additional value of AI Act is that this legal act provides uniform rules concerning evidence disclosure in relation to high-risk AI systems and the burden of proof. National courts are authorized, in damage compensation proceedings, to request that providers or users of high-risk AI systems (as defendants) disclose information regarding the specific characteristics of the systems they develop or operate. If the defendant refuses to comply with such a request, a rebuttable presumption arises that they have breached their duty of care and are therefore liable for the damage. Accordingly, liability is grounded in the unlawfulness of the defendant's conduct (Arsenijević, 2023, 152). Liability thus extends to providers of AI systems (i.e., manufacturers and owners) as well as to users (AI Act, art. 3). The procedural position of the injured party is facilitated by the rules on the rebuttable presumption of a causal link between the (in)action of the liable party and the resulting harmful outcome of the AI system or its failure to act (Arsenijević, 2023, fn. 76). The defendant may rebut this presumption by demonstrating that the claimant had reasonable access to sufficient evidence and expertise to establish the casual link.

[23] The AI Act qualifies as high-risk some AI systems that have a significant harmful impact on health, safety, fundamental rights, the environment, democracy and the rule of law (AI Act, 2024, art. 6).

5. CONCLUSION

High-tech tools have a built-in and patina of objectivity that often leads us to believe that their decisions are less discriminatory than those made by humans. The main issue with the wider usage of AI tools is that it can however accentuate current prejudices and create new categories and criteria, perhaps leading to new sorts of biases. For that reason and at least at this phase of development of AI tools human engagement still remains essential. It appears that the AI system's restrictions, paired with a grasp of the context (a human domain), will allow us to maximize AI capabilities. AI systems' biases do not decrease societal disparities on their own, but they can be a formidable tool in the hands of humans because they can be amplified due to combination of social and technological context. Users must be aware of the fact that AI system don't provide assurance and that they often have to act as the final decision-makers. Excessive belief in the impartiality and infallibility of AI systems may result in unequal treatment of persons in similar situations. This could be due to system or data bias, and for that reason the person who interprets the system's output plays the most important role. When it comes to an insurance industry, it is clear that the great responsibility lies on insurance companies that use AI tools.

Taking into account legal provisions of Serbian Insurance Law, it is clear that insurance companies are required to ensure the existence and functioning of an effective governance system, which includes, among other components, risk management (Insurance Law, 2021, Art. 147). This central requirement imposed on insurers can logically be extended to encompass the use of artificial intelligence by insurance companies. The precise implications of governance in the context of AI use will likely be clarified through future case law and guidance issued by the National Bank of Serbia (NBS).

Insurers will be required to ensure the legality of AI systems and to safeguard their security (Pohlmann *et al*., 2022, fn. 105). Within this obligation, a key component will be the prevention of AI bias and adherence to anti-discrimination norms, which will require the engagement of both and European legislator since there is a legal gap on the matter.

A crucial question concerns who bears the primary responsibility for possessing the necessary knowledge and experience in the field of AI within the insurance company. Under the current legal framework, this responsibility will most likely rest with members of the management board, who are required to have appropriate professional qualifications (Insurance Law, Art. 62; Solvency II, Art. 273(3)), even though expertise in AI is not explicitly mentioned. Nonetheless, both theoretical and practical IT knowledge is expected from the individual responsible for leading the insurer's IT department.

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ВЕШТАЧКА ИНТЕЛИГЕНЦИЈА КАО УЗРОК ДИСКРИМИНАЦИЈЕ У ПРАВУ ОСИГУРАЊА

Апстракт

Коришћење вештачке интелигенције (ВИ) у облику алгоритма за самоучење који је способан да реши понављајуће проблеме на основу доступних података, може довести до развоја системске девијације између моделирања и стварности. Дато одступање може довести до пристрасности у процесу доношења одлука. Овај рад има за циљ да представи феномен пристрасности изазване употребом ВИ у делатности осигурања у којој се осигуравачи у великој мери ослањају на ВИ. Будући да пристрасност има потенцијал да изазове дискриминацију и неједнак третман осигураника, аутори испитују национално законодавство у вези са забраном дискриминације како би утврдили у којој мери ови прописи треба да се примењују на пристрасност у осигурању и које потенцијалне санкције постоје за такво понашање. Додатно питање је питање одговорности за штету коју је ВИ проузроковала, што је захтевало анализу изван оквира националног законодавства и тражење одговора у новоусвојеном европском законодавству.

Кључне речи: осигурање, пристрасност, дискриминација, вештачка интелигенција, одговорност.

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SYSTEMATIC VIOLATION OF FUNDAMENTAL HUMAN RIGHTS IN OCCUPIED CYPRUS BY TURKEY

Summary

Since Turkey's invasion of Cyprus in 1974, hundreds of thousands of individuals of both Greek and Turkish origin have been systematically deprived of their fundamental rights, causing severe harm to the island as a whole and posing a significant risk to international stability in one of the world's most geopolitically sensitive regions. The Turkish Army, as the occupying force, has been responsible for multiple and egregious violations of fundamental human rights, including forced mass displacements, deportations, expulsions, destruction of public and private property, looting of cultural and religious heritage, and extrajudicial executions of both soldiers and civilians in concentration camps. This paper analyzes these violations within the framework of international law, particularly through the lens of the European Convention on Human Rights and other relevant legal instruments. It further examines how these violations have been addressed in resolutions adopted by key international bodies, including the UN Security Council, the UN General Assembly, the Human Rights Commission, the Subcommittee on Prevention of Discrimination and Protection of Minorities, and the Committee on the Elimination of Minorities.

Key Words: Human Rights, Occupied Cyprus, Cyprus and Turkey.

„Λήθη γὰρ ἐπιστήμης ἔξοδος, μελέτη δὲ πάλιν καινὴν ἐμποιοῦσα ἀντὶ τῆς ἀπιούσης μνήμην σῴζει τὴν ἐπιστήμην, ὥστε τὴν αὐτὴν δοκεῖν εἶναι“.

“For oblivion is nothing but the escape of knowledge, while study causes a new memory in place of the fleeting knowledge and thus saves knowledge, so that it appears to be the same”.

Plato , Symposium

1. HISTORICAL CONTEXT

Due to its strategic geographical location, Cyprus has historically served as a crossroads for numerous cultures and civilizations. Greek settlement on the island dates back to the Mycenaean era. In the 16th century, the island was conquered by the Ottomans, marking the end of Venetian rule. Despite centuries of Ottoman governance, the majority of the island's population retained their Greek identity, while a smaller portion converted to Islam. At the end of the 19th century, Cyprus came under British sovereignty through a treaty, as the Ottoman Empire sought to counter Russian influence. This transition was later solidified with the outbreak of World War I and formally confirmed by the Treaty of Lausanne. Cyprus remained a British Crown Colony until it was granted independence in 1960.

Meanwhile, since the mid-1950s, the Greek Cypriot resistance organization E.O.K.A.[1] was active on the island in order to throw off the British rule and achieve the long-awaited union with motherland Greece.

Flag of the Republic of Cyprus

After negotiations in London and Zurich, with the participation of the three guarantor powers (Great Britain, Greece, and Turkey) and representatives of both communities (Greek Cypriots and Turkish Cypriots), Great Britain granted independence to

[1] National Organization of Cypriot Fighters

Cyprus under a set of conditions. Among these, it retained two sovereign military bases (Dhekelia and Akrotiri). Additionally, both union with Greece and the partition of the island were explicitly prohibited, aiming to deter both sides from pursuing such objectives. The guarantor powers were also bound by the agreement to refrain from aggressive actions against any targets on the island. Following independence, Cyprus became a member of the United Nations and other international and European organizations.

A written Constitution was established for the newly formed Republic, recognizing equality between the two communities. However, the Turkish Cypriot community was granted disproportionately extensive rights in relation to its population size. This imbalance led to intra-community conflicts, escalating tensions on the island. In response, the United Nations Security Council adopted Resolution 186 (1964), leading to the deployment of the United Nations Peacekeeping Force in Cyprus (UNFICYP)[2] with the primary objective of restoring order.

In August 1964, Turkey carried out aerial bombardments on Cypriot targets in Tylliria, amid threats of a full-scale invasion. This act was unequivocally condemned by United Nations Security Council Resolution 193 (1964) (Lulić & Muhvić, pp. 65–74).

2. THE TURKISH INVASION

The 1974 coup and the subsequent Turkish invasion of Cyprus represent the most significant events in the island's history since its independence. Despite their undeniably tragic consequences, these events became a catalyst for political stabilization and economic reconstruction, ultimately shaping what became known as the "Cyprus Miracle." The final stage of this transformation culminated in Cyprus's accession to the European Union.

The coup d'état orchestrated by the military junta in Athens, Greece, began at approximately 08:00 on the morning of July 15, 1974, catching then-President Archbishop Makarios by surprise. The coup was largely successful, despite fierce resistance at key locations, including the Presidential Palace, the Archbishopric, and the Cyprus Broadcasting Corporation (RIK), where members of the Police Tactical Reserve were stationed. By the end of the day, the coup had effectively taken control of the capital, Nicosia.

Despite the heavy assault on the Presidential Palace, which was met with determined resistance, President Makarios managed to escape and briefly took refuge within the city before fleeing to Paphos. There, he

[2] UNFICYP : United Nations Peacekeeping Force in Cyprus

broadcast a radio message via Radio Paphos, reassuring the Cypriot people that he was alive. With the support of the British government, he later left Cyprus via the British Sovereign Bases, traveling first to Malta, then to London, and ultimately to New York, where he addressed the United Nations General Assembly.

These rapid developments drew intense interest from Turkey, which had long viewed Cyprus as a strategic objective. The coup provided a pretext for the long-planned invasion and occupation. While condemning both the coup and the Sampson regime, Turkey simultaneously approached Britain for a coordinated response as two of the island's guarantor powers. On July 17, 1974, bilateral talks were held in London, involving both Prime Ministers Wilson and Ecevit and their respective foreign ministers, to discuss potential actions regarding Cyprus.

The illegal Turkish invasion commenced in the early hours of July 20, 1974, with airstrikes by the Turkish Air Force, the reinforcement of the Turkish Cypriot enclave of Nicosia-Agirda with airborne units, and the unopposed landing of Turkish troops at Five Mile Beach, west of Kyrenia.

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Meanwhile, these turbulent events drew heightened interest from Turkey, which had long viewed Cyprus as a strategic objective. The crisis provided a pretext for the long-planned invasion and occupation. While publicly denouncing both the coup and the Sampson regime, Turkey simultaneously sought British cooperation for a coordinated response as two of the island's guarantor powers. On July 17, 1974, high-level bilateral talks were held in London, attended by Prime Ministers Wilson and Ecevit, along with their respective foreign ministers, to deliberate on possible actions regarding Cyprus.

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Map of Cyprus divided after the Turkish invasion

On 30 July 1974, the Foreign Ministers of the three guarantor powers (Callaghan, Mavros, and Güneş) signed the Geneva Declaration, which outlined provisions for the cessation of hostilities, the creation of a security zone between the areas controlled by the opposing forces, the evacuation of Turkish enclaves held by the National Guard, and the exchange of prisoners. The declaration also stipulated their intention to reconvene on 8 August 1974 to discuss the new constitutional framework of Cyprus in the aftermath of the invasion.

Negotiations resumed in Geneva on 8 August 1974, with the participation of Greek and Cypriot delegations, under the presidency of the United Kingdom, represented by Callaghan. However, these talks ultimately collapsed when, on 14 August, Turkey, which had already deployed substantial military assets to Cyprus, initiated hostilities on the eastern front of the island. Meanwhile, in Greece, the military junta had fallen, with the formation of a government under Konstantinos Karamanlis, which made the provision of military aid from Greece to Cyprus increasingly unlikely.

The second phase of the invasion confronted a weakened Cypriot National Guard against a much stronger Turkish army, supported by its Air Force, and the outcome was preordained. After breaking through the Cypriot defensive lines, the Turkish forces advanced into the Mesaoria plain with little resistance. Two days later, a general ceasefire came into effect along the lines where the Turkish forces had halted after capturing several strategic targets (Kazamias, pp. 2-5).

3. TURKEY'S VIOLATION OF INTERNATIONAL HUMAN RIGHTS LAW

The events that occurred in Cyprus during the summer of 1974, along with the resulting humanitarian issues due to the Turkish invasion, were of such a magnitude that they could not be effectively addressed by the state mechanisms of a country that was under-functioning. This was despite the significant assistance provided by international organizations such as the United Nations (U.N.) and the Red Cross (Fiakas, p. 45).

Turkey flagrantly violated not only the fundamental principles of international law as codified in the Genocide Convention, but also the Charter of the United Nations, U.N. resolutions, the International Covenants on Human Rights, the 1949 Geneva Conventions relative to the Treatment of Military and Civilian Persons in Time of War, and the Hague Regulations (Zacharia, 1996). Turkey justified these actions by invoking Article 4 of the Treaty of Guarantee for the island, claiming that this treaty granted it the right to invade and protect the Turkish Cypriot population (Lulić, Muhvić, p. 75).

The reaction of the international community was swift. On the same day as the invasion, the U.N. Security Council unanimously adopted Resolution 353/1974, which called on all states to respect the sovereignty, independence, and territorial integrity of Cyprus. The resolution demanded an immediate ceasefire and the end of foreign military intervention, and called for the Turkish army to withdraw from the island completely, permitting only military personnel present under international agreements to remain.

This resolution further urged the parties involved to implement General Assembly Resolution 3212 on the "Cyprus Question" as soon as possible. Among other things, this resolution "calls upon all states to respect the sovereignty, independence, territorial integrity, and commitment of the Republic of Cyprus," and "urges the rapid withdrawal of all foreign armed forces and foreign military forces and personnel from the Republic of Cyprus, as well as the cessation of all foreign interference in its domestic affairs."

Subsequent resolutions, including Resolutions 354, 355, 357, 358, and 359, reiterated the demand for a cessation of hostilities. The resolutions also highlighted the need for refugees to return to their homes in safety. Despite these U.N. Security Council and General Assembly resolutions, Turkey failed to comply (Lulić, Muhvić, p. 76).

In this context, it must be noted that the states that illegally supplied Turkey with weapons used in the 1974 invasion are undoubtedly complicit in the ongoing occupation of Cyprus, as they have kept over 200,000 refugees away from their homes and enabled their companies to plunder Greek property. These states bear responsibility not only under international law but also under their domestic law.

The first Report of the European Commission on Human Rights was based on data gathered until 18 May 1976, covering both Turkish invasions from 20 July to 16 August 1974 as well as the period that followed, 21 months after the cessation of hostilities. The report highlighted the undeniable forcible displacement of the Greek Cypriot population from the northern to the southern part of the island (Zacharia, 1996).

As a result of the Turkish invasion, the tragic humanitarian issue of missing persons also emerged. Approximately 1,474 people, including military personnel, civilians, and children, were either captured by the invading Turkish forces during July and August 1974 or disappeared long after the hostilities had ended in areas under Turkish control (mfa.gov.cy, 2016).

4. TURKEY'S VIOLATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights (E.C.H.R.) has served as one of the most effective and secure mechanisms for establishing Turkey's multiple violations of international human rights law (Zacharias, 1996).

The European Court of Human Rights (E.Ct.H.R.) is a prominent international human rights protection body. The principles enshrined in the Convention and its Protocols form the core democratic values of the European continent. The Republic of Cyprus, having ratified the E.C.H.R., has incorporated it into its national legal system, thereby influencing all branches of law (Kostopoulou, p.5).

From the outset, Cyprus invoked the jurisdiction of the European Commission of Human Rights in September 1974, July 1975, and September 1977. This Commission, functioning as an impartial international judicial body, after a comprehensive review of all the evidence, found Turkey guilty of committing serious human rights violations in Cyprus from 1974 onward (Zacharias, 1996).

The E.Ct.H.R. has been, to a great extent, the court to which both the Republic of Cyprus and Cypriot citizens have resorted. The first significant milestone was the decision issued by the Court in the Loizidou v. Turkey case [Loizidou v. Turkey [1996] ECHR, 15318/89, 18-12-1996], in which multiple offenses, including the violation of the right to property, were recognized. The legacy of Loizidou was further reinforced by the decision in the interstate case Cyprus v. Turkey in 2001, as well as in a number of subsequent individual applications, where the Court repeatedly referenced Turkey's internationally unlawful actions (Gürel, Özersay, p. 9).

In its decision Cyprus v. Turkey [2001] ECHR, 25781/1994, 20-5-2001 of 10 May 2001, the E.Ct.H.R., in the fourth interstate application of Cyprus against Turkey, aligned its reasoning with the general views presented by the Cypriot side. The Court concluded that the applicants owned properties in the northern part of Cyprus, which were illegally and violently deprived from them. It further ruled that there was no reason to differentiate these cases from Loizidou v. Turkey. Therefore, based on this rationale, the Court held that there was a violation of Article 1 of the First Protocol (right to property) in these cases. This outcome underscores the significance of the Loizidou case for the future of Cypriot applications (Geldis, pp. 69-70).

At the same time, addressing the issue of the human rights violations of the missing persons and their families, the Court ruled that Turkey had committed continuous violations of Articles 2, 3, and 5 of the E.C.H.R. These articles concern the right to life, liberty, and security, as well as the prohibition of inhuman or degrading treatment. Specifically, the Court found that Turkey had failed to conduct an effective investigation into the fate of the missing Greek Cypriots and that its inaction amounted to grossly inhumane treatment (mfa.gov.cy, 2016).

Finally, on 12 May 2014, the E.Ct.H.R. issued another judgment condemning Turkey [Appeal No. 25781/1994], related to the 1,456 missing and trapped Greek Cypriots of Karpasia. The Court awarded €30,000,000 in non-pecuniary damages to the surviving relatives of the missing persons and €60,000,000 for non-pecuniary damages to the trapped residents of the Karpasia Peninsula. These compensations were intended to address the moral damage suffered by the trapped and missing persons, rather than the value of their property or the loss of its use (Geldis, p. 71).

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СИСТЕМСКО КРШЕЊЕ ОСНОВНИХ ЉУДСКИХ ПРАВА НА ОКУПИРАНОМ КИПРУ ОД СТРАНЕ ТУРАКА

Апстракт

Од инвазије Турске на Кипар 1974. године, стотине хиљада људи, како грчког тако и турског порекла, лишено је основних права, што је нанело озбиљну штету целом острву, уз ризик од нарушавања међународног поретка на једној од најосетљивијих локација на свету. Мноштво вишеструких и флагрантних кршења основних људских права, као што су насилна масовна расељавања, депортације, протеривање, уништавање јавне и приватне имовине, пљачка културног и верског наслеђа, погубљења војника и цивила у концентрационим логорима, систематски је вршила турска војска. Овај рад истражује како се ова кршења решавају из перспективе Међународне и Европске конвенције о људским правима како се спроводе и изражавају у различитим резолуцијама које су усвојиле међународне организације као што су Савет безбједности УН, Генерална скупштина УН, Комисија за људска права, Поткомитет за превенцију дискриминације и заштиту мањина и Комитет за истребљење мањина.

Кључне речи: људска права, окупирани Кипар, Кипар и Турска.

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ECONOMIC ASSUMPTIONS OF HUMAN RIGHTS PROTECTION – AN INSTITUTIONAL ANALYSIS

Summary

The economic assumptions of human rights protection represent a key research area that examines how economic factors influence the realization and protection of human rights. Understanding this relationship is essential for designing policies that ensure not only a legal but also a material foundation for respecting human rights. This paper explores the economic assumptions that support human rights protection, analyzed from the theoretical perspective of institutional economics. It examines various institutional (political and economic) factors that impact the effectiveness of human rights protection, such as institutional structure, political and economic strategies, and the role of state and non-governmental organizations in creating appropriate legal and economic frameworks. Through a review of theoretical and empirical approaches, this paper investigates how economic development, resource redistribution, market dynamics, and economic policies affect the implementation of human rights. Additionally, it considers the relationship between institutional capacities and the ability of states to effectively protect the rights of their citizens. The findings indicate that an adequate institutional infrastructure, combined with well-aligned economic policy measures, serves as a crucial foundation for the long-term protection of human rights. This paper contributes to the understanding of the interdependence of economic and institutional factors in achieving human rights goals.

Key words: human rights economics, institutional analysis, economic growth, institutional economics, political and economic institutions.

1. INTRODUCTION

The protection of human rights represents one of the key challenges of modern societies and requires a multidisciplinary approach to ensure their effective implementation. Traditionally, human rights have been examined within the fields of legal and political

sciences, but a growing body of research highlights the significance of economic factors in shaping institutional capacities for their protection. Economic stability, institutional efficiency, and appropriate resource redistribution policies play a crucial role in establishing a sustainable human rights system.

From the perspective of institutional economics, human rights cannot be viewed in isolation from the economic structures and policies that influence their implementation. The institutional framework, including rules, norms, and organizations, plays a decisive role in ensuring the economic conditions necessary for the realization and protection of fundamental human rights. Issues such as the role of the state in market regulation, the importance of non-governmental organizations, and mechanisms for ensuring economic security become central to analyzing this relationship.

This paper focuses on analyzing the economic assumptions of human rights protection through the lens of institutional economics. Through theoretical and empirical analysis, it examines key institutional factors that enable the effective protection of citizens' rights, including the impact of economic development, resource redistribution, and institutional structures on human rights protection. The goal of this paper is to provide a deeper understanding of the interrelation between economic and institutional factors and their importance in achieving the long-term protection of human rights.

2. THEORETICAL FRAMEWORK AND LITERATURE REVIEW

Given that human rights are contextually and legally inseparable from institutions, the theoretical framework for analyzing the economic determinants of their protection is undoubtedly institutional economics. Research within institutional economics primarily focuses on the influence of formal and informal institutions, particularly on how these institutions shape economic interactions and socio-economic development. The fundamental assumption is that institutions cannot be seen, felt, touched, or even measured; they are creations of the human mind (North, 1990, 107). They provide the fundamental structure through which people have historically created order and attempted to reduce uncertainty in everyday life. Hence, the history of a society (or a nation) is, in essence, a story of the gradual evolution of institutions that connect the past, present, and future, where the historical economic performance of a nation can only be understood as a sequence in its overall institutional development (North, 1990, 118).

A closer examination of the impact of institutions on the daily lives of individuals and society as a whole, leads to a further analysis of their relationship with human rights, which are closely linked to the functioning of political and economic institutions, particularly those responsible for their protection and implementation (Acemoglu & Robinson, 2012). How does this work in practice? If political institutions operate in such a way that all political power is concentrated in the hands of an individual or a small group, it becomes difficult to maintain economic institutions that provide equal opportunities for the

rest of the population. Political institutions determine the distribution of *de jure* political power, which in turn influences the selection of economic institutions. This framework introduces the concept of institutional hierarchy, where political institutions affect the equilibrium of economic institutions, which then influence (or rather, determine) economic outcomes. Good economic institutions are those that ensure the protection and security of property rights[1] and provide relatively equal access to economic resources for a broad segment of society. Conversely, societies in which only a small fraction of the population has well-protected property rights lack strong economic institutions (Acemoglu *et al.*, 2005, 391–395).

The state, therefore, emerges as a field of action for political and economic institutions. More precisely, a key aspect of this analysis is the role of the state in creating the legal and economic framework that enables human rights protection. The role of the state, through institutions, can be simplified as follows: people act and live in a world of institutions. Their opportunities and prospects largely depend on which institutions exist and how they function. Speaking about human rights and freedoms, Sen argues that institutions not only contribute to human rights and freedoms but that their role can be assessed through their contribution to human rights protection (and consequently, to freedom). Thus, viewing economic development as freedom provides a framework for systematically evaluating the role of institutions. While some authors may focus on specific institutions (such as markets, democratic systems, media, or public distribution systems), Sen emphasizes the need to view them together to understand what they can or cannot achieve in combination with other institutions. Only through this integrated perspective can the role of institutions be reasonably analyzed and evaluated (Sen, 1999, 142).

From the standpoint of an efficient economic system, where effective human rights protection is a fundamental component, the goal of every state is not only to correct market mechanisms but primarily to create conditions for their efficient functioning. In this endeavor, the state adopts and implements appropriate antitrust, anti-monopoly, and anti-cartel legislation aimed at ensuring more efficient market operations, fostering competition,

[1] Here, it is worth adding an interesting observation that supports the significance (primarily economic, and consequently status-related, for each individual) of clearly defined property rights. The legal absence (or nonexistence) of such rights can be used to explain why citizens in developing countries and former communist states are unable to enter into profitable contracts with foreigners, obtain loans, insurance, etc. This is because they lack property that they could lose. Since they have no property to lose, only their immediate family and neighbors take them seriously as contractual parties. People who have nothing to lose remain “trapped in the grubby basement of the pre-capitalist world”. On the other hand, citizens in developed countries can contract virtually anything that is reasonable, but the entry price is commitment (obligation), which is better understood when backed by collateral—whether in the form of a mortgage, a lien, or any other type of security that protects the other contractual party (De Soto, 2000, 55).

eliminating monopolistic practices, supporting a competitive environment, and preventing the formation of monopolistic structures. In this regard, the role of the modern state fundamentally boils down to ensuring efficiency, correcting unjust income distribution, and promoting economic growth and stability (Leković, 2010, 154–160). Accordingly, government policies, regulations, and the judicial system play a crucial role in ensuring economic security and equal opportunities for all citizens. The government plays a positive role in stimulating economic development and should not be limited merely to enabling markets to function efficiently. Using public policy terminology, Rodrik states that "…many $100 bills are left lying on the sidewalk. The role of economists is to point them out, while the role of political leaders is to devise agreements that will allow them to be picked up" (Rodrik, 2007, 4). Naturally, this simplification highlights that the role of the state is far more complex and, therefore, more significant—it should not be reduced merely to correcting market failures (e.g., information spillovers and coordination failures). It entails more than securing property rights; proactive public strategies are needed to stimulate growth and maintain productive economic (and consequently, social) dynamics over time.

One must also acknowledge the increasingly prominent role of non-governmental organizations and international institutions, which is becoming more significant in the context of globalization and the interdependence of economic systems based on the logic of international cooperation. Where there are shared interests among countries, cooperation emerges as a form of "self-interested" response to potential mutual discrepancies. This relationship between "self-interest", on one hand, and cooperation, on the other, should not be viewed solely through the lens of realism—where cooperation is merely a function of hegemony—nor idealism, which suggests that cooperation is primarily based on self-sacrifice (Keohane, 1984). Regarding international (especially economic) institutions, their role should be to help countries make informed decisions while being fully aware of the consequences and risks involved. This reflects the essence of freedom, which fundamentally represents the right to choose and, more importantly, the responsibility that comes with that choice (Stiglitz, 2002, 88).

Empirical research indicates a strong correlation between economic development and human rights protection. Countries with more developed institutional capacities tend to perform better in protecting the fundamental rights of their citizens (Glaeser et al., 2004). Moreover, some studies suggest that economic crises and political instability can weaken institutional mechanisms for rights protection, further underscoring the importance of economic policies in this context (Przeworski et al., 2000).

The literature review highlights the need for further research on the role of institutions in human rights protection, particularly in the context of economic policy and globalization. The relationship between economic factors and human rights remains a complex and dynamic issue that requires an interdisciplinary approach.

3. INSTITUTIONAL INFRASTRUCTURE AND HUMAN RIGHTS

The protection of human rights depends on many factors, but particular importance is rightfully attributed to institutional infrastructure. Generally speaking, state institutions, international organizations, and non-governmental organizations (NGOs) play a central role in ensuring, protecting, and promoting human rights.

The state has the primary duty and responsibility to protect the human rights of its population. State institutions, including the legislative, executive, and judicial branches, form the foundation for implementing and overseeing human rights[2]. For instance, under international treaties such as the International Covenant on Civil and Political Rights (ICCPR), states are required to enact laws that protect human rights and integrate these norms into their national legal systems. Moreover, states must provide effective mechanisms for human rights protection, such as courts, police forces, and specialized human rights institutions. The legal framework, consisting of constitutions, laws, and regulations, enables governments to engage in human rights protection. State institutions, such as ministries of justice, human rights, and social protection, are responsible for formulating and implementing policies that guarantee human rights and ensuring access to justice for citizens whose rights have been violated.

However, even in developed democracies, challenges remain regarding institutional infrastructure and human rights. The existence of legal norms does not necessarily guarantee their implementation, compliance, or enforcement. This does not automatically mean that human rights are genuinely protected in practice. Such challenges are particularly evident in cases of corruption, institutional inefficiency, or the inability of institutions to enforce laws (Tmušić, 2023). Nonetheless, legislative institutions play an indispensable role in ensuring the legal protection of human rights, while judicial bodies are responsible for ensuring fairness in judicial proceedings. Courts, particularly constitutional courts, increasingly appear as key mechanisms for protecting individuals whose rights are at risk.

Beyond the national level of human rights protection, the supranational (international) level is equally significant. International bodies such as the United Nations (UN)[3], the Council of Europe, and specialized international organizations dedicated to human rights protection play a crucial role. Mechanisms and institutions, along with accompanying international legal norms, enable monitoring of human rights conditions worldwide and provide a platform for states to act responsibly regarding human rights. Organizations such as the UN Human Rights Committee and the European Court of Human

[2] Let us recall that the fundamental mechanisms for the protection of human rights are defined by the Universal Declaration of Human Rights (1947).

[3] The United Nations has defined a broad range of internationally accepted rights, including civil, cultural, economic, political and social rights. It has also established mechanisms to promote and protect these rights and to assist states in carrying out their responsibilities (UN, 2025).

Rights (ECHR) offer legal mechanisms for individuals facing injustices in their own countries.

The United Nations, through specialized agencies like the Office of the High Commissioner for Human Rights (OHCHR), facilitates targeted initiatives and provides technical assistance and training for state institutions to enhance human rights protection. Additionally, the UN directs global attention to human rights violations, offering mechanisms for reporting and sanctioning states that fail to meet their international human rights obligations. In the case of European countries, the Council of Europe, through key mechanisms such as the European Court of Human Rights, plays a significant role in reviewing human rights violations. The European Court issues rulings that can influence (or even compel) states to amend their legislation or practices to ensure better human rights protection. Moreover, it can disseminate its decisions across the European region in the form of guidelines for improved human rights protection (UN, 2025; ECHR, 2025).

This discussion would be incomplete without mentioning international organizations such as the World Bank, the European Bank for Reconstruction and Development (EBRD), and the International Monetary Fund (IMF)[4], which also serve as significant international actors in promoting human rights, particularly in the context of economic rights. Their policies and assistance frequently encompass not only macroeconomic parameters but also social and living standards in developing countries.

A crucial link between the national and supranational levels of human rights protection is the role of non-governmental organizations (NGOs), whose importance becomes especially evident in countries with weak state institutions or high levels of repression. In such cases, NGOs often emerge as the “first line of defense” in human rights protection, particularly in monitoring and reporting violations, assisting victims, and mediating between citizens and the state. In most cases, NGOs focus on raising awareness about human rights, educating citizens on their rights and ways to seek protection, and providing free legal aid and other forms of support. At first glance, the influence of NGOs might seem limited, but it is essential to emphasize that their activities can (and sometimes do) shape legislation and advocate for improved human rights protections at all levels. For instance, some of the most well-known international NGOs, such as Amnesty International and Human Rights Watch, are recognized for their commitment to fighting human rights violations and strengthening the international legal framework for human rights protection. They primarily achieve this through reports, research, and campaigns that draw international attention to human rights violations, as well as through direct action in regions where human rights are under threat (AI, 2025; HRW, 2025). Through these activities, NGOs often play a crucial role in exposing human rights violations in countries where protection is compromised.

[4] At the same time, taking into account the “other side” of the World Bank and IMF’s actions, which Stiglitz (2002) argued using examples from certain countries.

These three levels of institutional infrastructure—state institutions, international bodies, and non-governmental organizations—are indispensable for ensuring and protecting human rights. Effective and accountable institutions ensure that human rights are not merely legally recognized but also genuinely upheld in everyday life. However, this is only possible through their coordinated efforts, intentions, and mechanisms.

4. ECONOMIC FACTORS OF EFFECTIVE HUMAN RIGHTS

The economic situation in a country directly influences (or can even determine) the state's capacity to protect and promote human rights. High levels of poverty and inequality can weaken human rights protection mechanisms, while economic stability enables more effective implementation of legal and social policies. Understanding the economic prerequisites for human rights protection is crucial for creating policies that ensure not only legal but also material (economic) foundations for respecting human rights. Developed countries generally have better conditions for protecting human rights because they possess strong institutions and the resources necessary to implement human rights protection policies, while poorer countries face challenges in implementing basic economic and social rights. In this regard, we should particularly emphasize the level of economic development, market mechanisms (their diversity and efficiency), as well as resource redistribution (methods and mechanisms), as economic factors that directly affect the realization and respect for human rights.

The level of a country's economic development is often seen as a foundation for the realization of human rights. Numerous empirical studies (Barro & Lee, 1994; Barro, 1996; Arsić, 2021; Arsić et al., 2011) have shown and proven that countries with higher levels of economic development usually have more resources to invest in social programs, education, healthcare, and infrastructure, which directly contributes to improving the quality of life for citizens and enabling them to enjoy their rights. Thus, countries with a stable economy can more effectively ensure the right to work, adequate housing conditions, and access to healthcare. On the other hand, economic development, in itself, is not a guarantee for respecting human rights. There are examples of countries with high growth rates (high levels of GDP *per capita*) that face severe human rights violations. Therefore, it is crucial for economic growth to be accompanied by a fair distribution of resources and a strong institutional framework that protects the rights of all citizens.

Market mechanisms, such as supply and demand, competition, and free pricing, are basic elements of market economic systems (or, for better understanding, capitalist economies). These can have both positive and negative impacts on human rights. On the one hand, free markets can stimulate economic growth, innovation, and efficiency, which can lead to improved living standards and the realization of economic and social rights (Barro, 1995; Milošević et al., 2018). On the other hand, excessive market liberalization without adequate regulation can lead to increased inequality, labor exploitation, and the

endangerment of social rights. For example, in the context of neoliberal policies, reducing state intervention and deregulating labor markets can result in insecure working conditions, low wages, and limited access to social protection, which directly threatens workers' rights. Such trends have been observed in various countries over recent decades, where the focus on market reforms has often overlooked the social dimension of development (Dobrašinović et al., 2014; Brenkert, 2016).

Resource redistribution through various measures and fiscal policy instruments, such as taxation and public spending, is a key mechanism (and one of the most important and responsible roles of the government in modern economic systems) for reducing social and economic inequalities and ensuring equal opportunities for all citizens (Tmušić, 2011a). In this regard, fair redistribution certainly contributes to improving the right to education, health, housing, and social security. Countries that implement progressive tax policies and invest in public services often achieve better results in the protection and promotion of human rights. For example, Scandinavian countries are known for high taxes that finance extensive social programs, resulting in low poverty levels accompanied by high standards in human rights protection (Kleven, 2014; Kuhnle, Hort, 2004; Sorić, Claveria, 2023). In contrast, the lack of adequate redistribution can lead to increased inequality and the marginalization of certain social groups. In countries with low levels of taxation and limited public spending, higher poverty rates and limited access to basic services can be observed, negatively impacting the realization and protection of human rights (Berg et al., 2018; Doumbia, Kinda, 2019).

Based on the above, we conclude that economic factors, such as the level of economic development, the efficiency of market mechanisms—but primarily, their institutional organization, as well as resource redistribution—have a significant impact on human rights. However, while economic growth can provide the necessary resources for improving the quality of life, the efficiency of human rights realization and protection is undoubtedly dependent on the fair distribution of these resources and adequate market regulation to ensure the protection of all citizens' rights. States, therefore, have a responsibility to create policies that balance economic objectives with the obligation to respect and promote human rights, ensuring that economic development primarily serves as a means to achieve a dignified life for all citizens in the state.

5. ECONOMIC CAPACITIES AND INSTITUTIONAL EFFICIENCY: THE CONNECTION BETWEEN ECONOMIC POLICY AND HUMAN RIGHTS

The operationalization of economic factors, briefly outlined in the previous section, is implemented in each country through economic policy. Economic policy represents a set of goals that a state aims to achieve, as well as the measures, mechanisms, and instruments through which those goals will be realized. In this context, the interconnection between economic policy and human rights becomes apparent, as economic decisions, instruments,

and state strategies have a direct impact on the realization of basic human rights. Therefore, the economy does not only affect citizens' standard of living but also their opportunities to realize rights such as the right to health, education, work, and social security. This section will focus on the role of economic policy, primarily as an instrument for the protection of human rights, with an emphasis on the connection between economic capacities, institutional efficiency, and human rights. We will also present some indicative examples – case studies of countries with different institutional and economic approaches to this issue.

As an instrument for the protection of human rights, economic policy becomes a significant factor, especially considering that a properly designed, i.e., realistically conceived economic policy can contribute to reducing poverty, ensuring equal opportunities for all citizens, and providing adequate public services by the state (Tmušić, 2011b). In this context, some fundamental human rights, such as the right to education, the right to health, the right to work, and social security, can be improved if economic policy is used to reduce inequality and ensure the fundamental economic framework for the protection of human rights. More precisely, the protection of human rights cannot be fully achieved solely (and exclusively) through laws and institutional mechanisms (although this is certainly one of the primary conditions). Protection of human rights also requires active economic policy that provides the resources necessary for the realization of those rights. For example, fiscal policy that includes progressive taxation and the allocation of resources toward key social services, such as health care, education, and social protection, directly affects the quality of life of citizens, enabling them to exercise their human rights (Duncan, Peter, 2012; Griffith, 2004). As such, if economic policy is based on proper distribution of wealth and resources, it has the potential to reduce economic and social inequalities and contribute to improving the living conditions of vulnerable groups such as poor populations, minorities, and other marginalized segments of society (UNDP, 2003; Barrientos, 2010).

Economic policy cannot be viewed separately from the institutions that implement it. Institutions – both at the national and international levels – play a fundamental role in implementing economic policy and protecting human rights. Effective institutions, capable of implementing efficient policies, form the basis for the realization of human rights (Easterly et al., 2006). On the other hand, when it comes to institutions, it is necessary to be cautious and analyze their impact on economic policy within a broader political, economic, and social context. One of the characteristics of quality institutions is their durability. They must be more enduring than the policies they implement. Of course, institutions should not be viewed as unchangeable, as they are themselves subject to changes. Institutional changes are one of the evolutionary characteristics of any society and a feature of institutions themselves, and their quality is evaluated, primarily, through (new) institutions that arise from these changes. However, institutions are not "all-powerful". They are often exposed to strong particular political goals and interests and, in these situations, can be misused. Therefore, there is a delicate nature to institutions, which is, at the very least, dual: on one hand, they form the basis of everyday social, political, and economic activities, representing

the foundation of society, while, on the other hand, they are quite vulnerable to particular political influences. This second nature of political and economic institutions is particularly visible during political cycles (Jakšić, Praščević, 2011). In the context of this analysis, particularly with regard to the protection of human rights, the question arises: where does the strength of institutions lie? What is the foundation of their social significance? One answer could be that institutions must be able to suppress these particular (political and economic) interests by making them external. More precisely, institutions must take precedence over the policies they implement, i.e., to put it figuratively, they must be "the factory of public policies", not their product. They must be above the policies that should be generated within their precisely defined framework, according to predefined and well-defined rules. This applies to every segment of social (political and economic) life. For example, when talking about economic institutions, their strength is primarily reflected in their recognition of the real economic capacities of the state, which include resources such as monetary and fiscal power and stability, access to international markets, etc., rather than the interests of capital from those operating within the precisely defined rules of existing economic institutions. In these circumstances, the quality of education and health care directly affect their ability (the ability of institutions) to ensure the protection of human rights.

The connection between economic capacities, the quality of institutions, and the protection of human rights can be clearly seen in economically developed countries, which usually have more developed institutions and, therefore, can provide quality public services and better and more efficient protection of human rights. For example, countries that record a high level of GDP *per capita* often have efficient social protection, education, and health systems, which together allow their citizens to enjoy their basic human rights (ul Mustafa et al., 2022; Dhrifi et al., 2021). On the other hand, countries with weak economic capacities face challenges in providing basic services to their citizens, often leading to violations of human rights. In such countries, citizens are affected by poverty, corruption, and weak institutions, and human rights are often not realized in practice, even though laws guarantee them (Batley et al., 2013; Trebilcock, Prado, 2011).

To support the previously made claims, we will present a few of the most indicative examples. Scandinavian countries serve as an example of nations where economic policy has been successfully used as an instrument to protect human rights. These countries are known for their high standards in the field of human rights, as well as for their developed instruments and mechanisms through which their population is provided with comprehensive access to health care, education, social protection, and labor rights (Viljevac, 2020; Miličić, Bežovan, 1997). Sweden is particularly known for its "social contract", whereby the state takes responsibility for the well-being of its citizens through a comprehensive system of social services. Legislative institutions that guarantee the rights of women, minorities, and vulnerable groups, as well as policies promoting equality in the labor market, ensure high standards of human rights (Blyth, 2001; Bucken-Knapp, 2009).

These countries also have efficient legal institutions that enable citizens to fight for their rights in court. In these countries, economic policy relies on (and generates) high taxes that enable significant investments in public services such as education, health care, and housing, thereby reducing economic inequality and ensuring equal access to basic human rights for all citizens.

On the other hand, Brazil represents an indicative example of a country that faces numerous challenges in terms of realizing human rights due to a high level of economic inequality. While Brazil is an economically developed country, there is a significant gap between the rich and the poor, and the existing institutional infrastructure is often insufficient to address this problem. Although laws exist that guarantee human rights, the existing institutions are not strong enough or effective enough to ensure equal rights for all. The reason lies in their vulnerability and susceptibility to corrupt influence, the weakness of the legal system, and the aforementioned economic and social inequalities. As a result, many social groups, especially the poor, minorities, and peasants, have limited access to basic human rights such as the right to education, health, and work. Although economic growth in recent decades has enabled progress, high poverty and inequality remain significant challenges for this country (Pinheiro, 1998).

In addition to Brazil, India – the most populous democracy in the world – serves as an example of a country with a complex institutional and economic approach to this issue. While significant economic growth has been recorded in India in recent decades, the economic benefits have not been evenly distributed. Poverty, caste-based discrimination, and gender inequality represent significant barriers to the realization of human rights. In this context, the Indian government has undertaken a number of measures to reduce poverty and increase access to education and healthcare, but institutional efficiency and capacity to implement these policies still vary. Moreover, many marginalized groups, such as the aforementioned lower caste groups, continue to face serious human rights violations. The economic policy promoting growth in India often does not consider the needs of these vulnerable groups, leading to further deepening inequality and non-compliance with basic human rights (Witherall, 2017).

Based on the above, we conclude that economic policy and human rights are closely interconnected, and that efficient institutions capable of implementing these policies are of crucial importance for the realization and protection of human rights. Countries with a high level of institutional efficiency and a well-conceived, independent economic policy that takes into account the criteria of social justice and human rights protection ensure better living conditions and greater equality among their citizens. On the other hand, countries with weak economic capacities and weak institutions face numerous challenges in implementing and protecting the human rights of their citizens. The briefly presented examples clearly show that economic policy is a key tool for achieving human rights, but only if it is connected to efficient institutional mechanisms and a careful and responsible approach from its bearers and actors, taking into account the needs of all citizens.

6. CONCLUSION

The analysis of the field of human rights protection requires a multidisciplinary approach, with particular emphasis on the importance of economic factors that play a key role in shaping institutional capacities for their implementation and protection. Relying on the theoretical postulates of institutional economics allows for an understanding of the ways and mechanisms through which economic structures affect human rights, with a special focus on stable institutions, effective economic policies, and equal access to resources. Additionally, institutional economics emphasizes the importance of political and economic institutions in safeguarding human rights. If political institutions allow for a monopoly of power, this may undermine economic institutions and suppress the positive effects they generate. Therefore, it is clear that the state plays a prominent role in creating the legal and economic framework that enables the protection of human rights through market regulation, the development of competition, and economic policies.

On the other hand, the economic situation in a country, particularly the level of economic development, the efficiency and diversity of market mechanisms, as well as the method of resource redistribution (poverty and inequality), when facing poor economic results, can weaken protective mechanisms. Meanwhile, economic stability enables better implementation of legal, economic, and social policies. In short, economically developed countries have greater investments in social programs, education, and healthcare, which improves the quality of life for their citizens. However, it should not be forgotten that high economic growth, in and of itself, does not automatically guarantee the protection of human rights, as it also requires a fair distribution of resources. In this context, efficient market mechanisms, such as competition and free price formation, can positively influence economic growth and living standards. Of course, caution should be exercised when making such assessments, as uncontrolled market liberalization can increase inequality and jeopardize workers' social rights. Therefore, directed resource redistribution, primarily through tax policies and public spending mechanisms, is key to reducing social inequalities and ensuring equal opportunities for all citizens.

The analysis above leads to the conclusion that economic policy and human rights are closely connected, as economic decisions directly impact the fundamental rights of citizens, including the right to health, education, work, and social security. This further implies that there is no effective economic policy without effective institutions, which are crucial for its implementation, all in the aim of reducing inequality and improving living standards. The application of economic policy as an instrument for the protection of human rights is most evident through investments in public services, as well as progressive taxation. In some examples, it can be seen that countries with developed institutions and stable economic capacities, such as the Scandinavian countries, provide a high level of human rights protection, while, on the other hand, countries with weak institutions, such as

Brazil and India, face economic inequalities and difficulties in enforcing laws that guarantee human rights.

It can be concluded that economic growth, by itself, is not enough to achieve human rights—there must also be a fair distribution of wealth, as well as responsible state regulation to ensure that all citizens have access to basic rights and a dignified life. In this regard, economic policy can be a powerful tool for the advancement of human rights, but only if supported by effective institutional mechanisms and a just approach that takes into account the needs of all citizens.

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ЕКОНОМСКЕ ПРЕТПОСТАВКЕ ЗАШТИТЕ ЉУДСКИХ ПРАВА – ИНСТИТУЦИОНАЛНА АНАЛИЗА

Апстракт

Економске претпоставке заштите људских права представљају кључну истраживачку област која проучава како економски фактори утичу на остваривање и заштиту људских права. Разумевање овог односа је од суштинског значаја за обликовање политика које обезбеђују не само правну, већ и материјалну основу за поштовање људских права. Овај рад истражује економске претпоставке које подржавају заштиту људских права, анализиране из теоријске перспективе институционалне економије. Разматра различите институционалне (политичке и економске) факторе који утичу на ефикасност заштите људских права, као што су институционална структура, политичке и економске стратегије, као и улога државе и невладиних организација у стварању одговарајућих правних и економских оквира. Кроз преглед теоријских и емпиријских приступа, рад истражује како економски развој, редистрибуција ресурса, тржишна динамика и економске политике утичу на имплементацију људских права. Такође, разматра однос између институционалних капацитета и способности држава да ефикасно штите права својих грађана. Резултати указују на то да адекватна институционална инфраструктура, у комбинацији са добро усаглашеним економским политикама, представља кључну основу за дугорочну заштиту људских права. Овај рад доприноси разумевању међузависности економских и институционалних фактора у постизању циљева људских права.

Кључне речи: економија људских права, институционална анализа, економски раст, институционална економија, политичке и економске институције.

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INDEPENDENCE AND AUTONOMY OF THE WORK OF OMBUDSMANS AS GUARANTEE OF THEIR INTEGRITY

Summary

Although we are in the 21st century, recognizing and defining human rights, as well as their protection, are still ongoing processes. Debate whether it is better to be liberal or traditional state is also alive, since traditional approach automatically implies a weaker recognition of human rights, often unequal relations between men and women, valuing people according to their property status or origin, which is all unthinkable in a liberal democratic society that rests on completely different premises. But even there the question remains - how many human rights are enough and whether there is a "sufficient amount" of human rights at all, enough to establish peace in society and meet everyone's needs and dreams.

That is why the institution of protector of citizens' rights(or else- Ombudsman) is important. Since its establishment in the early 19th century in Sweden, the institution of Ombudsman-Protector of the citizens' rights has gone through different stages of development in different countries. It exists for more than two centuries, but there are still a lot of prejudices about the way ombudsman works and what exactly works ,what are the limits of its acting, and also, what true power this institution has.

In this paper the author will deal with two crucial principles of ombudsman's work-independence and autonomy, since it seems that those principles are the hardest to explain and also to achieve in practise. The significance of this is greater having in mind that Republic of Serbia is one of the few countries in the world that has ombudsmans at all three levels of government - republican, provincial and local, where there is no and should never be a hierarchical connection between these institutions. Every ombudsman work on specific territorial level, controlling the work of executive bodies and other state institutions on that specific territorial level.

Key words: ombudsman, independence, autonomy, integrity.

1. INTRODUCTORY REMARKS

Man is a social being. He has always aspired to life in the community, where he will be able to receive adequate protection in the event of danger, help and support in achieving his aspirations, and a true understanding of his inner being. The assertion known since ancient times that only rare animals can live alone because they are so strong and capable that they are enough for themselves, or gods because they are so supernaturally powerful that they do not need anyone else, is still present in the consciousness of modern man. In dire times, when great crises and wars claim countless victims, when the economies of states collapse and some states even cease to exist permanently, the need for the protection of the individual is more and more pronounced.

A state does not exist without a territory, the population that lives in that territory, and government as a way of subjugating people to a system. That subjugation, depriving people of their complete freedom, simultaneously gave them, paradoxically, comfort and much-desired protection. Quid pro quo, or ceasing to exist. Because of its basic mission - keeping people in submission (Vukadinović, Avramović, 2014) and managing people in a way that suits the state, the government is mostly seen as a factor in the separation of people, who once formed a single tribe. The separation here means making two sides- those who rule and became the voice of the state itself, and those who were ruled over. This separation became so great that over time it crystallized the need for a mediator - a person or persons who will bring these warring parties to the same table, draw their attention to the fact that only through joint work and efforts can they live in peace and well-being, and that both sides make mistakes equally.

Since the early 19th century, when idea of Ombudsman , as King's trustee in Sweden was born, that role of mediator, with capability and knowledge to bring the disputing parties, authorities on one side and citizens on the other side to the negotiating table and point out to them their failures as well as ways to improve mutual relations and regarding the protection of citizens' rights, belonged to the Ombudsman. At first taken as the one on the side of government, slowly it evolved to being more on the side of citizens, when they felt deprived, threatened or wanted to get some encouragement. That is why the Ombudsman is somewhere called as people's advocate, although he is not representing really the citizens. The Ombudsman is appointed there to defend and preserves the principles on which modern democratic society rests, namely the integrity of work, the purposefulness of work and the efficiency of the work of state bodies and to be a reminder to everyone that those principles should be adhered to unconditionally. Some say that the Ombudsman is there to *" help protect ordinary people from the government… any other acitivity such as enhancing the quality of government, is subordinate to its primary task—to be the Defender of the People"*.(Oosting,1998).

The main activity of ombudsman is identifying problems in functioning of system on the state, regional or local level of authority- on which territorial level they are

constituted and to help citizens who had or would have difficulties in exercising one's rights or fulfilling one's obligations due to inadequate, bad or illegal work of those competent authorities. The ombudsman's work does not end with a mere finding of bad work by administrative bodies at a certain territorial level of government organization, but continues with the assurance of bodies or institutions that their work should look different, be legal and meaningful[1].

It should be borne in mind that there are also people who work in state bodies and institutions, who make mistakes due to ignorance, lack of desire to progress in their work, but also due to personal convictions. Those personal beliefs, as patterns of behavior most likely inherited from the family but also taken over from the environment, are often the basis of discrimination, or any other exclusion or impossibility for someone to realize his right. In such situations, the ombudsman, as a lawyer but also as a good expert on interpersonal relations, must draw attention to the wrongness of such a belief and correct the same for all future actions of that person who will act within the framework of a state body, in the name and at the expense of the state. If this correction does not occur, citizens will consider that the state is actually discriminating, restricting and punishing them for no reason, and they will not see that it is actually just the uncorrected act of an individual who drowned in the crowd similar actions. The ombudsman uses its powers and more often personal authority[2] to control the work of executive bodies when, through their potentially illegal or inefficient work, have jeopardized the realization of someone's right or have completely violated the same right

The Republic of Serbia is one of the few countries in the world that has ombudsmans at all three levels of government - republican, provincial and local, where there is no and should never be a hierarchical connection between these institutions. Every ombudsman work on specific territorial level, controlling the work of executive bodiesand other state institutions on that specific territorial level. Rarely their jurisdiction in interwining; in that cases they act sinchronized, especially when conducting activities regarding National Mechanism of Prevention of Torture and other Violence in closed institutiones such as prisons, hospitals, nursing homes etc (case of interwining jurisdictions of republican and provincial Ombudsman), or when investigating peer violence in schools (case of interwining jurisdictions of provincial and local ombudsmans).

There are two offices – in Kragujevac and Niš, which, based on an agreement on inter-municipal cooperation, have expanded their territorial jurisdiction to several municipalities in their immediate vicinity. About 20 municipalities have offices of local ombudsman on the territory of only one municipality.

[1]It is usual that Ombudsman in this case gives an Opinion or Recommendation on further actions, which are not obligatory, but have crucial impact on actions of the competent authority. This important notion will be also further discussed in the paper.

[22] That personal authority comes out , mostly, from the Ombudsman's previuos work engagement, and also from independence and autonomy of Ombudsman's work on this position.

2. HOW INDEPENDANCE AND AUTONOMY OF WORK OF THE OMBUDSMAN IS GAINED

"Central responsibility of every ombudsman—to foster good governance in the interests of the general public. Good governance means a government that unconditionally respects the rules of the national and international legal order, especially in the realm of human rights, and that strives to fulfil its responsibilities properly in the service of the general public, free from corruption."(Oosting,1998) In order to perform his[3] job adequately and with quality, the ombudsman must have independence and autonomy in his work, ie. his work should not be subject to any pressure or political influence of any kind. This is followed by the trust that citizens gain in relation to the ombudsman and his work. ***This means that citizens must feel free to turn to the ombudsman, without fear or other negative emotions, with full confidence that the ombudsman will listen to them, pledge that the threat or violation of their rights will be stopped and that the perpetrator, regardless of which state body it is, will be adequately punished for it***. The essence is indeed in preserving the principles of good administration and the transparency of the administration's work (Ђорић, Кнежевић, 2025,86). Without that, modern democratic society loses its relevance and weight, mistrust in the state and institutions prevails, and potentially a significant link with the state is lost as well.

Independence of the ombudsman is highly valued by the Venice Commision in its numerous acts and recommendations, given to national legislatures around the Europe. That led to establishing *Principles on the Protection and Promotion of the Ombudsman Institution ("The Venice Principles"*), adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019).[4] The role of ombudsmans in promotion and protection of human rights is also recognized in *Resolution A/RES/75/186 on "The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law"*, adopted by the United Nations General Assembly in 2020[5].international recognition of the importance of role of the ombudsmans is the first guarantee of protecting ombudsmans , to act in accordance with their powers, free from any fear of pressure of a political or other nature.

Independence and autonomy of the ombudsman, as theorists and ombudsmans themselves see it, has several aspects. The first aspect is certainly the independence of the

[3] Although we are addressing to ombudsman as he/his/him, we are also aknowledging women around the world who held this position. This masculine abbreviation is used to simplify writing and to avoid constant repetition of he/she in the paper.

[4] More about it: https://www.coe.int/en/web/venice-commission/-/CDL-AD(2019)005-e, 12.04.2025. On ground of these principles, the Venice Commision developed numerous recommendations for improving the position of the ombudsman, primarily to ensure his independence and autonomy in his work, that can be seen on : https://www.venice.coe.int/WebForms/pages/?p=02_Ombudsmen&lang=EN, 12.04.2025.

[5] Avaialble on: https://docs.un.org/en/A/RES/75/186, 12.04.2025.

institution's work, which is ensured through various mechanisms of protection of the institution from political and other influences. The second important aspect is the independence of the person performing the function of ombudsman, which most often results from the flawless personal and professional integrity and expertise of that person.

The first aspect is ensured by ***solid national, possibly constitutional grounding***, and also on regional or local level, where ombudsmans exist on those territorial levels. As stated before, in Republic of Serbia there are ombudsmans on all three territorial levels- republic(national), provincial(regional) and local levels(the level of muncipalities).[6]

The Republic Ombudsman has the largest scope of work: it supervises the work of national executive bodies and other republic institutiones throughout the territory of the Republic of Serbia (except The National Assembley, the republic Goverment, the President of the state and judicial bodies, such as prosecutors and courts), as well as other bodies on different territorial levels when they are acting upon the national laws. Republic Ombudsman is also responsible for implementing two important national mechanisms - for the prevention of torture, in accordance with the Law on the Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the mechanism for monitoring the implementation of the Convention on the Rights of Persons with Disabilities, in accordance with the Law on the Ratification of the Convention on the Rights of Persons with Disabilities (Art. 2 of The Law on Protector if Citizens). Republic Ombudsman also performs the duties of a national rapporteur in the field of human trafficking, and is particularly concerned with the protection, promotion and advancement of children's rights*(* also Art. 2 of abovementioned law), and has a lot of various situations where must cooperate with other state authorities (such as courts, prosecutors' offices) or other independent institutions (commissioners for the protection of personal data, for the fight against corruption or for the respect of equality).

The Provincial Ombudsman has a more precisely defined jurisdiction than the Republican Ombudsman. Article 3 of the Provincial Assembly Decision on the Provincial Ombudsman provides that the Ombudsman shall protect the rights of citizens and supervise the work of provincial administrative bodies, public enterprises and institutions that exercise administrative and public powers and whose founder is the Autonomous Province of

[6] Sources: Law on the Protector of Citizens, "Official Gazette of the Republic of Serbia", No. 105 of November 8, 2021, Provincial Assembly Decision on the Provincial Protector of Citizens - Ombudsman, "Official Gazette of the Republic of Serbia", No. 37/2014, Law on Local Self-Government, "Official Gazette of the Republic of Serbia", No. 129 of December 29, 2007, 83 of August 5, 2014 - other law, 101 of December 16, 2016 - other law, 47 of June 20, 2018, 111 of November 25, 2021 - other law. The other country that has ombudsmans on all the territorial level is- China, who are working through the network of offices of National Public Complaints and Proposals Administration(which is Chinese Ombudsman's office), and works directly under the State Council of China(Chinese Govermnent). More about it, on official website: https://www.gjxfj.gov.cn/gjxfj/index.htm, 12.04.2025.

Vojvodine. The same article clearly states in paragraphs 2 and 3 that the Provincial Ombudsman shall protect the rights of citizens, especially from violations committed by illegal, inexpedient and ineffective actions of public authorities, whether provincial administrative bodies when implementing provincial regulations, or city and municipal administrative bodies when performing tasks entrusted to them by the AP Vojvodina. So, the protection of citizens' rights and the control of the work of administrative bodies are brought into a direct connection, i.e. the rights of citizens are protected through the control of the work of administrative bodies, which is better defined than in the case of defining jurisdiction of Republican Ombudsman.

Jurisdiction of the Provincial Ombudsman is extended with Art.17 of the same Decision, which states the possibility for the Ombudsman *"to continuously supervise and monitor the implementation of international treaties, standards and regulations in the field of human rights and, based on the collected information, and also may propose measures to improve the situation in the field of protection and promotion of human rights"*. This extensions means that the Provincial Ombudsman may control the work of other bodies and institutiones although on local level, if the principles of human rights are threatened in some way. Regarding the territorial level of his jurisdiction, the Provincial Ombudsman proprotionally has more to do than it is initially given to him .

Finally, ***local ombudsmans*** protect the rights of citizens and control the work of city and municipal administrations and public services founded by the municipality .The establishment of local ombudsmans is regulated in Article 97 of the Law on Local Self-Government.[7] It is constituted as an option that local self-government may use, but does not have to- that is why the most of the local self/government do not have this institution (only 27 out od 170 local self-governments in republic of Serbia).[8]

So, we can conclude that legal framework as the first condition for the establishment of the ombudsman institution and its jurisdiction is pretty solid,covering all kinds of issues important for work of ombudsman, especially on republican and provincial level.

But inside the legal framework is possible "catch" that may enhance or minimize ombudsman's independence-it is the way of electing this independent official. ***On all three territorial levels, ombudsmans in Republic of Serbia are elected through parliament on***

[7] Official Gazette of the Republic of Serbia, 129/2007-41, 83/2014-22 (other law), 101/2016-9 (other law), 47/2018-3, 111/2021-3 (other law).

[8] It is important to emphasize that local ombudsmans, especially in smaller communities, are extremely important - even more recognizable to ordinary citizens, and more respected due to the element of belonging to the locality in which they perform their work. They are neighboroughs, and easily gain confidence of citizens, so generally increase the visibility and importance of the ombudsman in general. The need for their existence has in recent years articulated a unanimous call for the republican legislator to pass a special law on local ombudsmans or just to amend a provision in existing national frame, thus making them a mandatory part of the control and advisory apparatus in every municipality in the Republic of Serbia.

that territorial level. Their independency is guaranteed through this way of selection, because parliaments are constituted from people's representatives, so, indirectly ombudsmans are elected from the people, for the people to help them cope with all challenges that they may go through while exercising their rights. ***On republican and local levels , for the person of ombudsman must vote at least the absolute majority of deputies in the parliament; for the provincial ombudsman must vote more deputies- at least two-thirds of deputies.***

Bearing in mind that deputies in parliaments are representatives of the people, and that they most often belong to certain political parties or groups, such majorities were established to ensure the widest possible acceptance of the personality of the ombudsman. Especially in the case of the election of the provincial ombudsman, achieving a two-thirds majority, with possible dispersion votes that belong to different political parties and groups, may seem quite difficult. Therefore, election in this case is quite objectivized and ***requires the achievement of wider social (and political) acceptance of the personality for this function.*** Depending on the aspect from which this situation is viewed, it can be both good and bad for achieving the independence and autonomy of the ombudsman's work.

In some countries the ombudsmans are appointed by governments[9] or by presidents of the countries. For example in Russia, the Ombudsman for Children is appointed directly by the president of the country[10], which, in a way, regarding ways of electing those state bodies and officials, ***means indirectly inclusion of the people (citizens) in the election of ombudsmans.*** Specific way of election Ombudsman is in Taiwan: the President nominates 29 people of the so called Control Yuan, and all must be confirmed by Legislative Yuan. ***So the highest executive body, elected directly by the people and also representatives of the people gathered in the parliament are the guarantors of citizens' involvement in the selection of this control body.***[11]

"In any case, the ombudsman's independence should also mean that he is at liberty to address the general public and to make his presence felt in society without his actions being subject to approval of any kind"(Oosting,1998). On the ground of this statement, we find very important mechanism in our national legal framework that guarantees the independence of ombudsman's work. ***All ombudsmans submit an annual report on their***

[9] The government derives from the support of the parliamentary majority, so also indirectly ombudsmans may be regarded as the people's choice.

[10] The last Presidential Commisioner for Childrens' Rights was appointed in 2021 : *Путин назначил Марию Львову-Белову уполномоченным по правам ребенка*, available on : https://tass.ru/obschestvo/12781201, 01.03.2025.

[11]Constitution of the Republic of China (Taiwan) , Chapter IX is about the forming of Control Yuan and its jurisdictions, , more on : https://law.moj.gov.tw/ENG/LawClass/LawParaDeatil.aspx?pcode=A0000001&bp=9., 01.05.2024. The official website of Control Yuan : https://www.cy.gov.tw/en/, 01.05.2024.

work to the parliament that elected them.[12] The mechanism we are talking about is ***that the report is only considered, so there is no vote on the report.*** During the monitoring process, ***deputies can ask the ombudsman questions and comment on the report, to which the ombudsman is not obliged to answer, neither at the session where the report is discussed nor later.***

Also it is important to mention that ***ombudsmans have possibility to recommend the dismissal of the official who ignored their recommendation to eliminate the unevenness of the work or to improve the efficiency and expediency of the work.***[13] It is about establishing a kind of "checks and balances" system; the ombudsman can express his recommendation or opinion on the improvement of the work of the administrative body, whose work he controlled, which is not binding. But again, if the ombudsman judges that the non-compliance with that recommendation resulted in a further violation of some human right, he may, at his discretion, recommend the dismissal of that official or manager of an institution who did not accept his recommendation or opinion. It is clear that the basis for accepting the ombudsman's recommendation or opinion is the authority and integrity of the institution itself and then of the person holding that position; and the simultaneous threat of punishment that the ombudsman can implement, which embarrasses the "disobedient" official of the public authority more than if some other punishment were applied to him. This is also one important guarantee of the independence and autonomy of the work of ombudsman.

Also, the last but not the least guarantee of ombudsman's independence and autonomy of work is ***the authorization to initiate an examination or control procedure against an authority or institution not only on the basis of citizen's counter-complaints, but also on its own initiative.***[14] This means that on the basis of articles in the media, personal statements and other sources of information, without exclusively formally submitting a complaint, they can initiate the process of checking someone's work. At the same time, on their own initiative, they can initiate investigations into certain social phenomena concerning the culture of human rights and the application of human rights in general, which can result in a further proposal for the adoption of a new or renaming of an existing regulation at the territorial level where the ombudsman himself is. The reason for initiating the procedure is always a suspicion of a violation in the work of a competent authority in executive branch , that threatens the realization of a human right or in any other way undermines the

[12] Art.39 of The Law on Protector of Citizens; Art. 21 Decision on The Provincial Protector of Citizens-Ombudsman. In both acts it is mentioned that Ombudsman may participate in the discussion regading his annual report, but he is not obligated.

[13] Art.23 of The Law on Protector of Citizens; Art.20 Decision on The Provincial Protector of Citizens-Ombudsman. Similar provision can be found in decision on constituting offices of local ombudsmans, on the level of the municipality.

[14] Art. 27. The Law on Protector of Citizens; Art. 31 Decision on The Provincial Protector of Citizens-Ombudsman. The amount of procedures initiated on this matter can vary on social and other circumstances.

confidence of citizens in the strength and objectivity of the work of the competent authorities.

3. CONCLUDING REMARKS

Thru this short overview we proved that there are, in our national legal system, certain guarantees of independence and autonomy of work of ombudsman. How much are those guarantees exersised in practise can be seen throuout the ombudsmans' annual reports. As it is known to public, non of ombudsmans didn't recommend dismissal of official who did not act according to the recommendation or opinion of the ombudsman. This could be understood in two ways/ that there is no need to resort to this strongest sanction that ombudsmen have because the authority and integrity of the institution was sufficient to comply with all recommendations and opinions. On the other hand, the suspicion can always arise that due to covert influence from some side, no ombudsman initiated such a procedure.

As for other guarantees of the ombudsman's independence and autonomy of action, their implementation can be monitored through annual reports that are quite detailed.[15]

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НЕЗАВИСНОСТ И АУТОНОМИЈА РАДА ОМБУДСМАНА КАО ГАРАНЦИЈА ЊИХОВОГ ИНТЕГРИТЕТА

Апстракт

Иако смо у 21. веку, препознавање и дефинисање људских права, као и њихова заштита, и даље су текући процеси. Расправа о томе да ли је боље бити либерална или традиционална држава је такође жива, јер традиционални приступ аутоматски подразумева слабије препознавање људских права, често неравноправне односе између мушкараца и жена, вредновање људи према њиховом имовном стању или пореклу, што је све незамисливо у либералном демократском друштву које почива на потпуно другачијим премисама. Али чак и ту остаје питање - колико је људских права довољно и да ли уопште постоји „довољна количина“ људских права, довољна да се успостави мир у друштву и задовоље потребе и снови свих.

Зато је институција заштитника права грађана (или омбудсмана) важна.

Од свог оснивања почетком 19. века у Шведској, институција омбудсмана-заштитника права грађана прошла је кроз различите фазе развоја у различитим земљама. Постоји више од два века, али и даље постоје многе предрасуде о начину рада омбудсмана и како тачно функционише, које су границе његовог деловања и, такође, какву истинску моћ ова институција има.

У овом раду аутор ће се бавити са два кључна принципа рада омбудсмана - независношћу и аутономијом, јер се чини да је те принципе најтеже објаснити, а и остварити у пракси. Значај овога је већи имајући у виду да је Република Србија једна од ретких земаља у свету која има омбудсмане на сва три нивоа власти - републичком, покрајинском и локалном, где не постоји и никада не би требало да постоји хијерархијска веза између ових институција. Сваки омбудсман ради на одређеном територијалном нивоу, контролишући рад извршних органа и других државних институција на том одређеном територијалном нивоу.

Кључне речи: омбудсман, независност, аутономија, интегритет.

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THE WELFARE STATE IN THE XXI CENTURY

Summary

This paper examines the welfare state as a constitutional and socio-economic framework aimed at promoting equality and social justice. Focusing on Bulgaria within a broader comparative context, it explores the legal foundations, ideological debates, and evolving challenges faced by welfare systems in the 21st century. Key issues such as globalization, neoliberal reforms, and demographic shifts are discussed, highlighting the need for adaptable and inclusive welfare policies. The study argues for the continued relevance of solidarity and social rights in addressing contemporary societal needs.

Key words: Welfare State, Social Justice, Globalization, Neoliberalism, Social Rights.

1. INTRODUCTION

The concept of the welfare state (It is necessary here to make an important clarification regarding the concept of the welfare state, which should not be associated solely with its classical interpretation (Drumeva 2018:; Tanchev, 2003). On the contrary, it must be taken into account that the welfare state represents a continuation of the rule-of-law state (Kirov, 2016)) has gained widespread recognition in constitutional frameworks following the end of the Second World War. At its core, it denotes a state system in which the government assumes responsibility for ensuring social justice and equality among all citizens. This is achieved through the redistribution of collective resources and the safeguarding of social rights via legislation grounded in the principle of solidarity. Consequently, the state is obligated to provide access to social services—such as healthcare, education, social support, pensions, and others—thereby guaranteeing equal opportunities regardless of an individual's social or economic status.

2. CONCEPTUAL FRAMEWORK OF THE WELFARE STATE

The Western academic literature offers numerous definitions of the welfare state. According to the *Oxford Handbook*, the welfare state entails government intervention in the free market to ensure a minimum income, favorable working conditions, and protection in cases of loss of working capacity (Beland et al. n.d. 2012:125). Other scholars emphasize that the welfare state is founded on the rule of law, rooted in individualistic notions of personal and property rights (Jacobson and Schlink n.d.1998:155). *Black's Law Dictionary*, the authoritative legal dictionary of the United States, defines the welfare state as one in which the government undertakes various social security programs, such as unemployment benefits, old-age pensions, family allowances, food stamps, and aid for the blind or deaf—also referred to as a social-regulatory state (Black and Nolan n.d. 2009:4924).

In Bulgarian legal, political, historical, and economic literature, scholars have generally not engaged in explicitly defining the concept of the welfare state. Emilia Drumeva notes that as early as the 19th century, there was a perceived need for state intervention to address major societal issues—marking the emergence of the so-called "social question." She further argues that modern constitutionalism elevates the welfare state to a fundamental tenet of the democratic and rule-of-law-based state (Drumeva 2018: 206). Plamen Kirov offers an even more definitive perspective. In his article "The Evolution of Constitutional Principles," he asserts that after the Second World War, a pivotal transformation occurred in constitutional development: a transition from a formal to a substantive rule-of-law state, denoted by the term "social rule-of-law state." (Kirov 2016: 22) This concept, according to him, entails binding public authority to certain supreme values and principles enshrined in constitutional legal order.

Stefan Stoychev examines the welfare state within the broader theory of constitutionalism, particularly through its classification systems. He identifies this model of governance as a component of modern constitutionalism, achievable only in a state governed by its constitution and laws, with established mechanisms for protecting citizens' rights and freedoms (Stoychev 2002: 107). Bliznashki defines the welfare state as a form of the modern state and describes it as a state that exercises governance over the social sphere of society (Bliznashki 1999:34). Evgeni Tanchev argues that the constitutional principle of the welfare state is primarily embodied in third-generation rights and the system of legal guarantees for their implementation. Furthermore, this principle is reflected in constitutional provisions concerning the powers, procedures, and acts of state authorities (Tanchev 2003:355).

The commentary on the Constitution of the Republic of Bulgaria identifies the welfare state as one of the three defining characteristics of the state—alongside its democratic and rule-of-law dimensions (Balamezov et al. 1999:21). Vasil Mruchkov interprets the social dimension of the Bulgarian Constitution as a condition of human

existence that is shaped by state measures related to economic development[1]. Valentina Stoyanova defines the welfare state as one whose primary goal is the formation of a middle class composed of economically active and independent citizens (Mruchkov 2017:12).

In my view, the term *welfare state* may be understood in both a narrow and a broad sense. In its narrow sense, the welfare state functions as a constitutional principle associated with the protection of human dignity and the development of socio-economic rights. In this sense—as a constitutional principle and the rights it encompasses—it falls within the scope of analysis of general legal theory and civil law. This includes not only the constitutional safeguarding of such rights but also their statutory protection.

In its broader sense, the concept of the welfare state derives from its inherent social function and does not necessarily require explicit constitutional codification. Rather, it is embedded in the material understanding of the rule-of-law state. Its elements are evident in the mechanisms and actions undertaken by the state to redistribute public goods, as well as in the legal framework that governs socio-economic relations. Thus, the welfare state constitutes an integral component of any politico-legal system that pursues economic and fiscal policies and generates wealth.

The welfare state encompasses a range of policies and institutions aimed at promoting social and economic well-being, redistributing resources, and ensuring enhanced protection of social rights. While the idea of the welfare state becomes widely recognized in the twentieth century, its core features—such as social welfare, equitable distribution of wealth, and resource allocation—can be traced back to earlier historical periods marked by industrialization, urbanization, and social upheaval. As previously stated, my objective is not to explore the historical origins or intellectual evolution of the welfare state—as is the focus of many cited authors, who analyze the political, social, and ideological conditions underpinning its development in the twentieth century. Rather, I aim to examine the welfare state specifically within the framework of the Bulgarian constitutional model.

In most academic works, the rise of the welfare state is closely linked to the significant social and economic transformations that occurred at the end of the nineteenth and the beginning of the twentieth century. The Industrial Revolution led to rapid urbanization, growing economic inequality, and the exploitation of labor, thereby placing the “social question” on the political agenda. This, in turn, provoked demands from the working class for governmental intervention to mitigate social disparities and address the adverse effects of industrialization (Shamov 2023:20).

The emergence of the welfare state is accompanied by intense ideological debates concerning the role of the state, the boundaries of individual responsibility, and the ideals of social justice. Proponents advocate for expanding governmental involvement to ensure a basic standard of living for all individuals. Opponents, however, raise concerns about the

[1] **Mruchkov, V.** “The ‘Social’ Dimension in the Current Bulgarian Constitution,” *Legal World* Journal, No. 1, 2017, Sibi Publishing, p. 12

potential overreach of state authority, the erosion of individual freedom, and the long-term sustainability of welfare initiatives.

Across different nations, the implementation of the welfare state varies significantly, reflecting distinct political traditions, social values, and economic conditions. Following the Second World War, several Western democracies witness a considerable expansion of the welfare state's powers. This development is driven by social cohesion, economic prosperity, and political consensus—later shaped and challenged by globalization. The adoption of universal healthcare systems, public education, and social assistance programs epitomizes the broad postwar commitment to social welfare as a vital component of citizenship.

Despite its achievements, the welfare state faces growing challenges and criticism in the second half of the twentieth century. Its viability is called into question by economic stagnation, demographic shifts, and the pressures of globalization, prompting debates over welfare reform, fiscal constraints, and privatization. Critics also express concerns about dependency on assistance, inefficiency, and the erosion of traditional family values.

The rise of neoliberalism during this period introduces a shift characterized by a retrenchment of welfare provisions and the implementation of market-oriented reforms. Governments influenced by free-market ideologies adopt measures such as deregulation, privatization, and austerity to reduce the scope and scale of state intervention. The welfare state increasingly contends with demands for greater individual accountability, workplace-based welfare initiatives, and stricter eligibility requirements for benefits. In this context, it is worth noting Plant's observation that the neoliberal welfare state effectively denies the ideal of social justice, based on the premise that state intervention in the individual sphere should be limited and must not alter the social status of individuals or groups. He further argues that the state should refrain from directly providing welfare services, limiting its role to financing non-governmental initiatives (Plant 2010:250).

Despite the pressures of neoliberalism and globalization, the welfare state demonstrates remarkable resilience and adaptability in responding to evolving socio-economic conditions. Many countries introduce innovative policy reforms aimed at modernizing social support systems, promoting social inclusion, and addressing emerging societal challenges, including population aging, technological transformation, and environmental degradation.

3. THE WELFARE STATE IN THE 21ST CENTURY: CHALLENGES, PROSPECTS, AND PERSISTENT IDEALS

Entering the twenty-first century, the future of the welfare state appears both uncertain and promising. The COVID-19 pandemic underscores the importance of social protection, healthcare accessibility, and financial support during crises, reigniting debates over the state's responsibility in ensuring social welfare. Looking ahead, policymakers must carefully navigate the difficult trade-offs between maintaining fiscal stability, promoting

social justice, and enhancing productivity in order to design welfare systems that are robust, inclusive, and responsive to the needs of all individuals.

The rise and development of the welfare state mark a significant phase in the evolution of social policy, reflecting shifting conceptions of citizenship, social justice, and the role of the state in contemporary society. Initially conceived as a utopian ideal, the welfare state gradually becomes a core feature of modern welfare capitalism, leaving a lasting impact on societies across unified Europe. In the face of new challenges and uncertainty in the twenty-first century, the values embodied by the welfare state—solidarity, compassion, and social responsibility—remain as relevant as ever.

In modern society, the division of labor deepens alongside growing interdependence among various social groups and interests. It is the state that seeks to rationalize public life by regulating goals and values through a legal system shaped by these same principles. Over the past century, state power has progressively expanded into all areas of social life—an overarching trend observable in both totalitarian and democratic regimes. The difference lies in the extent and nature of state intervention: in the former, politics tends to dominate and subsume all other spheres of life under the logic of expediency; in the latter, institutional mechanisms such as the separation of powers preserve a relative autonomy of social domains, upholding the rule of law as a fundamental principle.

Since the development of the welfare state in the aftermath of the Second World War, equality has become an increasingly emphasized objective in the United Kingdom. However, consensus is lacking as to how broadly equality should be pursued and to what extent it must be achieved. Opponents argue that equality threatens individual freedom and that inequality is essential for economic growth. Proponents, by contrast, contend that equality is vital to democracy because it mitigates disparities in economic power and political influence stemming from differences in wealth, status, and privilege.

The welfare state aims to promote greater equality of opportunity through policies such as state-funded universal education and the guarantee of minimum standards of well-being. Nonetheless, full equality has never been as widely accepted in the UK as in other countries, due in part to longstanding traditions such as reverence for aristocratic titles (William 2018:11). The pursuit of equality has nonetheless driven substantial social reforms, including the expansion of higher education, the development of comprehensive schools, and the implementation of fiscal policies aimed at narrowing wealth disparities—such as high taxes on inheritance and income. Still, no broad agreement exists regarding how egalitarian British society should—or is willing to—become. Furthermore, inequality is widely regarded as an inevitable feature of any modern industrial society, whether capitalist or socialist.

The debate surrounding equality often remains more ideological than evidence-based, and the divergence of perspectives is rarely reconciled. In this context, it is useful to summarize a study conducted by a group of Western scholars that outlines the main arguments both in favor of and against the welfare state (See a more detailed discussion of

the arguments for and against the welfare state in: Backhouse, R.E., Bateman, B.W., Nishizawa, T. and Plehwe, D., 2017. Liberalism: The Welfare State. Oxford: Oxford University Press, pp.118–131.):

A) Arguments in Support of the Welfare State

- **Social Citizenship and Equality** – The welfare state serves as a mechanism for securing social citizenship and reducing inequality by mitigating the consequences of uneven wealth distribution.
- **Protection from Market Risks** – It provides safeguards against risks associated with capitalist development, such as poverty in old age, unemployment, and health-related vulnerabilities.
- **Stimulation of Economic Growth** – Some economists argue that excessive inequality may inhibit economic growth by suppressing consumption, whereas social assistance can stimulate the economy to the benefit of all social strata.
- **Moral and Ethical Principles** – Support for the welfare state often rests on principles of solidarity and the moral imperative to ensure basic human needs are met.
- **Historical Context** – The emergence of the welfare state is linked to liberal economic thought and the ideas of figures such as William Beveridge and John Maynard Keynes, who advocate for social measures within the capitalist system.

B) Arguments Against the Welfare State

- **Economic Burden** – High expenditures on social assistance may strain the economy, reduce market efficiency, and discourage entrepreneurship.
- **Dependency Culture** – Critics warn that welfare benefits may foster a culture of dependency, wherein individuals rely on the state rather than assuming personal responsibility for their well-being.
- **Inefficiency of State Management** – Neoliberal economists contend that state monopolies in providing social services often result in inefficiency and that free market mechanisms could address these needs more effectively.
- **Fiscal Constraints** – Economic crises, such as the 2008 financial crash, demonstrate that elevated social spending can increase public debt and necessitate austerity measures.
- **Moral Hazard** – There are concerns that welfare benefits may encourage risk-taking behavior by shielding individuals from negative consequences, thereby potentially increasing the costs of social policy.

These arguments illustrate the complex trade-offs between the economic, ethical, and historical dimensions of the welfare state.

The welfare state remains a cornerstone of modern societies. In the aftermath of the Second World War, welfare states initially develop expansive social programs aimed at securing economic stability and the well-being of citizens. However, shifting demographics, economic globalization, technological advancement, and political change have prompted a re-evaluation of traditional welfare models.

Globalization reshapes the economic landscape, challenging the resilience of conventional social systems. Increased market competition and technological innovation contribute to job insecurity and income inequality, straining social welfare budgets and exacerbating social disparities. In response, welfare states face growing pressure to adapt their policies to the evolving nature of labor relations while preserving social cohesion and inclusion.

One of the defining features of the twenty-first century is an unprecedented demographic transition, marked by declining birth rates and aging populations in industrialized countries. This shift poses substantial challenges, including rising healthcare costs, pension obligations, and growing demand for long-term care. Policymakers are therefore compelled to reform social protection systems to ensure their sustainability and adequacy in the context of demographic crises.

These developments have rendered traditional welfare frameworks increasingly inadequate in addressing modern challenges such as climate change, migration, and heightened labor market insecurity. Welfare states are thus expanding their scope to address a broader spectrum of risks and vulnerabilities, necessitating innovative policy responses and cross-sector collaboration.

Advancements in information and communication technologies (ICTs) are revolutionizing the delivery of social services, giving rise to the concept of digital welfare. From online benefit applications to telehealth services, digital technologies offer unprecedented opportunities to improve efficiency, accessibility, and responsiveness in welfare provision. At the same time, digitalization raises critical concerns regarding privacy, data security, and the digital divide, underscoring the need for equitable access and ethical governance in the era of digital welfare.

In response to fiscal constraints and ideological shifts, many welfare states have adopted strategies of privatization and marketization in the provision of social services. This trend toward market-oriented welfare governance involves outsourcing, public–private partnerships, and the commercialization of social goods. While proponents argue that market mechanisms can enhance efficiency and consumer choice, critics warn of declining fairness, weakened accountability, and the erosion of social solidarity within welfare systems.

In recent years, increasing attention has been devoted to social investment and activation policies aimed at fostering human capital development and labor market participation. These approaches prioritize investment in education, skills training, and active labor market measures to empower individuals and promote social inclusion. By combining

social protection with activation strategies, welfare states aim to facilitate the transition from dependency to sustainable employment, thereby enhancing economic stability and upward social mobility.

Despite shared challenges, welfare states in the twenty-first century display significant cross-national variation, resulting in divergent policy trajectories. Scandinavian countries, for example, continue to maintain comprehensive welfare provisions, supported by high taxation and strong norms of social solidarity. In contrast, liberal regimes emphasize market-oriented reforms and targeted assistance, reflecting a more limited approach to social protection. These diverse pathways underscore the complex interplay of historical legacies, political ideologies, and economic contexts that shape the evolution of the welfare state.

In an era of growing complexity and uncertainty, participatory governance and social innovation emerge as key drivers of welfare state transformation. By engaging citizens, civil society organizations, and social entrepreneurs in policy design and implementation, welfare states can leverage local knowledge, foster community resilience, and enhance the legitimacy of social policies. Furthermore, social innovation initiatives offer experimental spaces to pilot new approaches to meeting social needs and advancing social justice through collaboration with a broad array of stakeholders.

In the twenty-first century, the welfare state stands at a crossroads, confronted by unprecedented challenges and opportunities. As societies grapple with globalization, demographic shifts, and technological transformation, the imperative to reform welfare institutions has never been more urgent. Among the central issues arising from globalization is the emergence of multiculturalism and evolving interpretations of neoliberalism.

Some Western scholars argue that government-led multicultural policies do not necessarily undermine public support for the welfare state. In fact, empirical studies and policy analyses fail to provide systematic evidence that a shift from citizen-centered policies to those addressing the needs of immigrants leads to a decline in public support for redistribution, trust, or solidarity(Banting, Kymlicka 2006:98). For example, data on public opinion in Western democracies—discussed in Chapter 3—reveal no indication that multicultural policies (MCPs) compromise support for the welfare state. On the contrary, by embracing innovation, solidarity, and inclusive governance, welfare states can adapt to the evolving needs of their populations while upholding their commitment to social justice and human dignity in the contemporary era.

4. CONCLUSION

In conclusion, the welfare state constitutes a vast and multifaceted field of inquiry, primarily examined as a complex political and legal construct within contemporary society. Its origins and historical development have been extensively studied by historians, political scientists, and sociologists—though comparatively less so by legal scholars.

In the present day, the concept of the welfare state is increasingly appropriated for political purposes, often acquiring a demagogic or populist tone. Its future, meanwhile, appears increasingly uncertain, lacking clear guarantees and mechanisms for safeguarding citizens' socio-economic rights. This ambiguity is perplexing, given that the welfare state—initially conceptualized in the political writings of Rousseau and more clearly shaped by the conditions of the Industrial Revolution—ought to provide coherent responses to the challenges it currently faces.

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Ваљу АНЧЕВ*

СОЦИЈАЛНА ДРЖАВА У XXI ВЕКУ

Апстракт

Овај рад разматра социјалну државу као уставноправни и социоекономски оквир усмерен ка унапређењу једнакости и социјалне правде. Фокусирајући се на Бугарску у ширем компаративном контексту, анализирају се правни темељи, идеолошке расправе и савремени изазови са којима се суочавају системи социјалне заштите у 21. веку. Посебна пажња посвећена је утицају глобализације, неолибералних реформи и демографских промена, при чему се наглашава потреба за прилагодљивим и инклузивним политикама социјалне сигурности. У раду се заступа став о трајној релевантности солидарности и социјалних права у одговору на савремене друштвене потребе.

Кључне речи: социјална држава, социјална правда, глобализација, неолиберализам, социјална права.

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INSTRUCTIONS TO AUTHORS

1. GENERAL NOTES

The manuscript must be computerized using the WORD program. With the exception of the title in Serbian and English (size: font 14), the text of the paper and all segments included in the structure of the paper are written using Times New Roman font (size: 12pt, spacing: 1.5). The paper should be written in Serbian, Cyrillic script (Serbian, Cyrillic Serbia) or English.

The paper should be up to 16 pages of computer-processed text and should be submitted to the address **2025@pr.ac.rs**.

2. FORM AND STRUCTURE OF THE WORK

In the upper left corner, before the title of the paper, information about the author(s): academic title, first and last name, title, affiliation (in the footnote, electronic address and ORCID). These data should be also submitted in English language.

The TITLE of the paper should be written in the middle, in capital letters, followed by an abstract of up to 20 lines and a maximum of five keywords. If the paper contains a note of thanks to persons and organizations that are not the authors, and who contributed to the realization of the research or preparation of the paper, the same, along with the indication of the role of those persons, is stated in a footnote marked with an asterisk.

SUBTITLES are written in the middle, in capital letters. They should be numbered with Arabic numerals. If the subtitle contains several units of different levels, they are also marked with Arabic numbers, namely: 1.1. in lowercase letters, font 12, 1.1.1. - in small ordinary letters.

After the integral text of the work, there follows a summary in English (Summary) of up to one page, with information about the author, the title of the work and keywords in English. If the paper is written in English, the abstract, information about the author, the title of the paper and keywords should be submitted in Serbian language.

At the end of the work, it is necessary to attach a list of used literature. This list must contain all bibliographic units used in the text of the work listed without numbering, in alphabetical order, according to the first letter of the last name of the author or the first co-author, that is, the editor-in-chief if it is a comment on the regulations. Regulations and court decisions are listed separately, after the list of used literature.

3. CITATION RULES

Citation and formatting of references is entirely done according to the style of citation and referencing - Harvard British standard, modified in terms of the way of citing

legal sources and court decisions. References are given in the text (in text citation). In the paper, it is possible to use footnotes for additional clarification of the main text. If the author refers to a specific reference in the footnotes, the same citation model is used as in the main part of the text.

Page numbers must be given when quoting someone else's text verbatim, when paraphrasing or referring to a specific part of a book or article.
Some of the reference examples are listed below.

3.1. In the text

If the work has only one author:
- (Stojanović, 2010, 254)
- As pointed out by Professor Orlić (1998, 254), the proposed solution was more adequate.
- Although it is possible to find a different argument in the literature (Radišić, 2006, 254-256), most of the theory accepted the idea of Professor Perović (2003, 23).

If the work has two or three authors:
- (Mayer & Bryan, 2021, 112)
- Research conducted by Perić, Milošević and Zarić (2011, 11) showed...

If the work has more than three authors:
- (Petrović et al., 2000, 121-124)

If the work is published under the auspices of the organization:
- (UNMIK, 2016, 22)

When the same author published several works in the same year, next to the year a Latin letter is indicated in the order of a, b, c, d and so on.
- (Bečić, 2020a, 33)
- According to Jovanov (1998s, 17), there are several reasons why...

Stating regulations:
The regulations are listed by their full name, with an indication of the legal order to which they belong and with the year referred to in the work, then adding the relevant article)
- (Criminal Code, 2005, art. 20, s. 2)
- According to the letter of the Law on Obligations (2003, Art. 12)

Citation of court decisions and decisions of other authorities:

Court decisions should be listed with as complete information as possible (type, authority that made it, number of the decision, date when it was made, publication in which it was published).
- By the decision of the Constitutional Court of the Republic of Serbia, number IUo-173/2017, it was established...
- (Decision US, 2017)

- Borodin v Russia, application no. 41867/04, judgment of the ECHR, 6 February 2013, para. 166

Sources from the internet should include both the web address and the date of access

3.2. In the list of literature

Višekruna, A. 2018. Achieving cooperation in bankruptcy proceedings with a foreign element: an example of a protocol. Foreign legal life, 62(3), pp. 65-88. Available at: https://doi.org/10.5937, (January 18, 2019)

Meijer, S. 2017. Rehabilitation as A Positive Obligation. European Journal of Crime, Criminal Law Criminal Justice, 25(2), pp. 145–162. DOI:10.1163/15718174–2502211

Popić, S. S. & Šuvaković, U. V. 2014. Academician Radomir D. Lukić - forerunner of the study of globalization in Serbia. Topics, 1(38), p. 377−390,

Srzentić, N., Stajić, A. & Lazarević, Lj. 1995. Criminal law of Yugoslavia. General part. 18th ed. Belgrade: Contemporary Administration.

Stanić, M. 2017. Legal nature of the parliamentary mandate

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