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Sve informacije o časopisu, uputstva za autore i recenzente i sastav redakcije i imena recenzenata mogu se naći na sajtu na srpskom i engleskom jeziku. Prijava radova obavlja se putem sajta časopisa na internet adresi http://civitas.rs/index.php/prijava-rada ili mejlom na redakcija@civitas.rs.

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Do sledećeg broja,

***Prof. dr Vladimir Njegomir***

U Novom Sadu, 10. decembra 2022. godine

**Editor's Foreword**

Dear Readers, Colleagues, and Authors,

Welcome to the second issue of the CIVITAS Journal for 2022.

For the past 12 years, the CIVITAS journal has published articles focusing on various current developments and topics related to law, security, psychology, philology, and economics, as well as interdisciplinary research involving the above fields.

In 2021, the journal was awarded the M51 ranking by the Serbian Ministry of Education, Science and Technological Development, and classified as a leading national journal.

The journal has been indexed in the ERIH PLUS academic journal index for the HSS (Humanities and Social Sciences) society in Europe, in CNKI (China National Knowledge Infrastructure), Ulrich's Periodicals Directory, J-Gate (Indian database for e-journal literature), and CEEOL (Central and Eastern Europe Online Library).

The articles accepted for publication deal with a variety of issues related to social sciences and humanities, ranging from the associations between personality traits and perfectionism as predictors of attitudes towards organizational change, dispositional mindfulness as a mediator between neuroticism and worry, tension and lack of joy, to economic efficiency, public debt sustainability in Serbia during the COVID-19 pandemic, work outside the employer's premises, restrictions of property rights during the COVID-19 pandemic, dissolution of co-ownership, prisoners of war legal protection and status, inmates' treatment in penal institutions, corrective measures in the juvenile criminal sanctions system, to creation and development of positive obligations of STSTES signatories of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The information about the journal, instructions for authors and reviewers, editorial board members, and reviewers' names and affiliations are available on the journal website in Serbian and English.

The articles may be submitted via the journal web page http://civitas.rs/index.php/prijava-rada or via email to redakcija@civitas.rs

On behalf of the Editorial board, I wish to thank all the authors for the high standard of the articles that follow.

Hoping that this issue will inspire further research, we invite all interested researchers to submit their articles for publication in CIVITAS.

Until next issue,

***Prof. dr Vladimir Njegomir***

Novi Sad, 10 December 2022

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**Jelena Davidović Rakić**[2]
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# OSOBINE LIČNOSTI I PERFEKCIONIZAM KAO PREDIKTORI STAVA PREMA ORGANIZACIONIM PROMENAMA

**Apstrakt**: Cilj istraživanja je bio utvrditi da li su osobine ličnosti i perfekcionizam značajni u predviđanju stava prema organizacionim promenama. U istraživanju je učestvovalo 336 zaposlenih osoba prosečne starosti AS = 35,29; SD = 11,44. Primenjeni instrumenti su: Inventar ličnosti Velikih pet plus dva – VP + 2, Skala stavova prema organizacionim promenama – OP i Burnsova skala perfekcionizma. Rezultati regresione analize pokazuju da visoka ekstraverzija, otvorenost i pozitivna valenca dovode do iniciranja promena kod zaposlenih. Visok neuroticizam i pozitivna valenca, a niska ekstraverzija i otvorenost dovode do negativnog odnosa prema organizacionim promenama. Visoka ekstraverzija i otvorenost dovode do fleksibilnosti zaposlenih. Visok perfekcionizam dovodi do iniciranja promena i fleskibilnosti zaposlenih.

**Ključne reči**: osobine ličnosti, stav prema organizacionim promenama, perfekcionizam.

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## 1. Uvod

U savremenim trendovima poslovanja organizacije se suočavaju s različitim promenama koje se svakodnevno dešavaju kako na globalnom nivou tako i u neposrednom okruženju. Pošto je jedan od glavnih ciljeva svake organizacije da bude uspešna i produktivna, da bi se to i ostvarilo potrebne su promene u organizaciji. Jedan od ključnih uslova da zaposleni u organizacijama pravovremeno prepoznaju i odgovore na promene jeste da imaju pozitivan odnos prema promenama i da na njih gledaju kao na nešto neophodno i poželjno. Prema Folkmanu, Lazarusu, Dankel-Šeteru, De Longisu i Gruenu (Folkman, Lazarus, Dunkel-Schetter, DeLongis & Gruen, 1986), suočavanje sa organizacijskim promenama se definiše kao čovekov kognitivni i bihejvioralni napor da upravlja unutrašnjim i spoljašnjim zahtevima razmene između čoveka i okruženja, što može dovesti do preopterećenja čovekovih kapaciteta. Svaka promena utiče tako da remeti već naučeni i ustaljeni način funkcionisanja i ugrožava jednu od bazičnih ljudskih potreba – potrebu za sigurnošću. Prema Suvajdžić i Vujić (2015), primarni uzrok otpora prema promenama je gubitak kontrole, jer zaposleni u takvim situacijama smatraju da im je kontrola nad životnim situacijama oduzeta nametanjem promena. Ta informacija širi mogućnosti otkrivanja i primene rezultata psiholoških istraživanja u oblasti organizacionih promena.

## 2. Osobine ličnosti

Osobine ličnosti, kao deskriptori ponašanja, imaju vodeću ulogu u opisivanju karakteristika ponašanja pojedinca. Oslanjajući se na leksički pristup u izučavanju strukture ličnosti, u našoj zemlji su izvršene tri psiholeksičke studije (Smederevac, 2000; Smederevac, Mitrović i Čolović, 2010; DeRaad, Smedrevac, Čolović i Mitrović, 2017, prema Smederevac i Mitrović, 2018), čiji je rezultat model ličnosti Velikih pet plus dva (Smederevac, Mitrović & Čolović, 2010). Model ličnosti Velikih pet plus dva se sastoji od sedam osnovnih dimenzija: Neuroticizam, Ekstraverzija, Savesnost, Otvorenost za iskustvo, Agresivnost, Pozitivna valenca i Negativna valenca. Prema navodima Smederevčeve, Mitrovićeve i Čolovića (2010), neuroticizam je dimenzija koja se odnosi na sklonost

osobe ka iskustvu negativnih emocija, kao što su tuga, briga, strah ili anksioznost. Razlike na ovoj dimenziji mogu da se kreću od preterane reaktivnosti do izražene nereaktivnosti koju karakteriše hladnokrvnost i stabilnost u uznemirujućim situacijama. Ekstraverzija je dimenzija individualnih razlika u stepenu reaktivnosti na okruženje i razlike se mogu kretati od visoke reaktivnosti karakteristične za introverte do niske reaktivnosti karakteristične za ekstraverte. Savesnost, kao dimenzija, može se opisati kao stav prema obavezama, snaga volje, istrajnost i samodisciplina. Razlike na ovoj dimenziji mogu da se kreću od preterane aktivnosti i posvećenosti obavezama, karakterističnim za radoholičare, do izrazite neaktivnosti, što je karakteristično za inertne, pasivne ljude. Agresivnost je dimenzija ličnosti koja podrazumeva individualne razlike u učestalosti i intenzitetu agresivnih impulsa, u njihovoj kontroli i intenzitetu agresivnih reakcija, manifestaciji i provokativnim faktorima. Otvorenost prema iskustvu predstavlja osobinu koja obuhvata težnju ka napretku i usavršavanju, intelektualnu radoznalost, širok krug interesovanja i otvorenost za promene. Pozitivna valenca, kao dimenzija samoevaluacije, odnosi se na visoko samopouzdanje i spremnost da se otvoreno izrazi mišljenje o sopstvenoj vrednosti. Razlike na ovoj dimenziji mogu se kretati od izrazitog doživljaja superiornosti, egocentričnosti i narcizma do nedostatka samopoštovanja, snishodljivosti i samoumanjivanja. Negativna valenca odnosi se na doživljaj sebe kao loše osobe i na sklonost manipulaciji.

## 3. Stav prema organizacionim promenama

O organizacionim promenama moguće je govoriti u različitim kontekstima. Hus i Kamings (Huse & Cummings, 1985) o ovim promenama govore kada je akcenat na organizaciji koja se menja. Armenakis, Haris i Musholder (Armenakis, Harris, & Mossholder, 1993) raspravljaju o spremnosti na promene kada je akcenat na pojedincu, tj. na njegovim stavovima i namerama da li su i u kolikoj meri promene neophodne, ali i kapacitetima organizacije da te promene ostvari.

Prema Tenjoviću (2015), svaka organizacija se u procesu uvođenja promena susreće sa tri vrste zaposlenih: oni koji su fleksibilni, lako se prilagođavaju i brzo prihvataju promene; zaposleni koji u početku pru-

žaju otpor, zbog nedostatka sigurnosti u sebe i sumnje u svoje znanje i iskustvo; zaposleni koji se teško prilagođavaju promenama i koji pružaju značajan otpor promenama u organizacijama. Huczinski i Bašanan (Huczynski & Buchanan, 2004) tvrde da se na otpor prema promenama gleda kao na nesposobnost ili nepostojanje volje da se razgovara o promenama ili da se prihvate promene koje se smatraju štetnima ili pretećim po pojedinca. Razlozi koji dovode do pojave otpora prema promenama su mnogobrojni i složeni. Prema tvrdnjama Stolnika (2016), promene u organizaciji su u najvećoj meri determinisane sadržajem promene i načinom na koji se promena sprovodi. Pored toga, on navodi da su važni i različiti kontekstualni činioci, koji su karakteristični za svaku pojedinačnu organizaciju i koji dodatno utiču na proces sprovođenja promene u organizaciji. Preciznije rečeno, otpor pojedinih članova organizacije prema nekoj konkretnoj promeni zavisiće od toga koliko je za zaposlene prihvatljiv i poželjan sadržaj i proces sprovođenja date promene u organizaciji. Ljubičić (2018) smatra da je prirodna reakcija ljudi da osećaju otpor prema promenama, naročito kada osećaju da ih ta promena ugrožava na bilo koji način. Oreg (Oreg, 2003) je, baveći se otporom prema promenama, uočio da iz ličnosti potiče šest izvora otpora prema promenama: kognitivna rigidnost, nedostatak psihološke otpornosti, netrpeljivost za period prilagođavanja, preferencija niskog nivoa stimulacije, nespremnost na odricanje od starih navika. Prema Simonoviću i Damnjanoviću (2011), većina ljudi se plaši promena, jer svaka promena donosi neizvesnost i određeni rizik. U odnosu na to, zaposleni će se neizostavno suprotstaviti pokušaju promene i bilo da se radi o potrebi promene radnog procesa, promeni hijerarhijskog položaja, potrebi da se savladaju nova znanja i veštine ili promeni ekonomskog statusa, reakcija je očekivana, jer novo stanje za njih predstavlja određenu nesigurnost, prema tvrdnji Janićijevića (2006).

## 4. Perfekcionizam

Perfekcionizam se određuje kao tendencija postizanja ciljeva koje karakterišu visoki zahtevi. Smatra se da je perfekcionizam poželjan/prihvatljiv onda kada je osoba zadovoljna u težnji ka savršenstvu a istovre-

meno je svesna ličnih mogućnosti. Kada pojedinac ima nerealno visoka očekivanja i uz to je često nezadovoljan postignutim, perfekcionizam postaje problem (Hil, Crul i Trulington, 1997, prema Hamačehu, 1978). Šafran, Kuper i Feirburn (Shafran, Cooper & Fairburn, 2002) ponudili su novu definiciju jednodimenzionalnog perfekcionizma. Prema ovim autorima, perfekcionističke težnje javljaju se kod pojedinaca koji svoju ličnu vrednost procenjuju u zavisnosti od uspeha u određenoj aktivnosti. Da bi osoba sačuvala samopoštovanje i osećaj lične vrednosti, ona rigidno istrajava u nastojanju da ostvari postavljene ciljeve uprkos posledicama. U slučaju neuspeha, perfekcionisti su skloni izrazitoj samokritičnosti i samoomalovažavanju. U slučaju uspeha, Šafran i saradnici (Shafran, Cooper, & Fairburn, 2002) navode da perfekcionisti reevaluiraju standarde i postavljene ciljeve smatraju nedovoljno zahtevnim. U istraživanjima, perfekcionizam je dovođen u vezu i sa ličnim i socijalnim funkcionisanjem: nisko samopouzdanje, nisko postignuće, nisko zadovoljstvo životom, bračni i porodični problemi, pesimizam, anksioznost, depresija, usamljenost, suicidalnost. Flet i Hevit (Flett & Hewitt, 2002) smatraju da se perfekcionizam razvija pod uticajem spoljašnjih faktora i ličnih karakteristika osobe. Takođe, uzimaju se u obzir i trenutni životni uslovi koji dodatno podstiču razvoj perfekcionizma. Prvobitno se na perfekcionizam gledalo kao na jednodimenzionalni konstrukt.

Autori poput Hamačeka (Hamachek, 1978) i Rodela (Roedell, 1984) smatrali su da perfekcionizam može da omogući pokretačku energiju koja može da vodi velikim postignućima i briljantnim ostvarenjima. S druge strane, kasnija istraživanja, koja su sproveli neki autori (Onwuegbuzie & Daley, 1999), pokazuju da postoji povezanost perfekcionizma sa negativnim ishodima, što može da ograniči i spreči postgnuće. Perfekcionizam u tom slučaju prestaje da bude zdrava težnja i posmatra se kao neurotska težnja. Hajard i Artur (Hayward & Arthur, 1998) tvrde da su neurotični perfekcionisti usmereni na svoje nedostatke i prošle neuspehe, prenaglašavaju ih, kažnjavaju se zbog njih i svoju vrednost poistovećuju sa uspešno obavljenim. Prema nekim ranijim istraživanjima (Đurišić-Bojanović i Savković, 2010), spremnost za promene zaposlenih značajno je pozitivno povezana sa prihvatanjem pluraliteta ideja i sa snagom ega, a negativno sa dogmatizmom i netolerancijom prema neizvesnosti. Vakola (Vakola, 2013) je došla do nalaza

da postoji pozitivna povezanost između ekstraverzije, savesnosti, prijatnosti i otvorenosti sa afirmativnim stavovima prema organizacionim promenama, dok je neuroticizam negativno povezan sa afirmativnim stavovima prema organizacionim promenama. Na području Srbije, istraživanjem stavova prema organizacionim promenama bavile su se i autorke Suvajdžić i Vujić (2015). Prema ovim autorkama, najznačajniji prediktori pozitivnog odnosa prema organizacionim promenama su visoka otvorenost i pozitivna valenca a niska ekstraverzija.

## 5. Metodološki deo istraživanja

### 5.1. Predmet istraživanja

Predmet ovog istraživanja predstavlja ispitivanje odnosa između dispozicionih karakteristika osobe i perfekcionizma, s jedne strane, i otpora prema organizacionim promenama, s druge strane. Pomenuti odnos sagledaćemo i u kontekstu sociodemografskih karakteristika (pol, uzrast, stepen stručne spreme, zaposlenost u privatnom ili državnom sektoru i dužina radnog staža).

### 5.2. Varijable i instrumenti

Osnovne dimenzije ličnosti definisane su u skladu sa sedmofaktorskim modelom ličnosti Velikih pet plus dva (Smederevac, Mitrović i Čolović, 2010), koji razlikuje sedam osnovnih dimenzija: Neuroticizam, Ekstraverzija, Otvorenost, Savesnost, Agresivnost, Pozitivna valenca i Negativna valenca. Za ispitivanje osnovnih dimenzija ličnosti korišćen je upitnik Velikih pet plus dva – VP + 2 (Smederevac, Mitrović i Čolović, 2010). Sastoji se od 70 ajtema jednako raspoređenih u sedam širokih dimenzija ličnosti (svaka dimenzija po 10 ajtema). Veći broj empirijskih istraživanja je pokazao da je pouzdanost skale visoka, te da se kreće u rasponu od 0.81 do 0.92 (Smederevac, Mitrović i Čolović, 2010). Na našem uzorku kreće se od .70 do .84 Kronbahove alfa.

***Skala stava prema organizacionim promenama (OP; Suvajdžić i Vujić, 2015).*** Za ispitivanje stava prema organizacionim promenama korišćena je Skala stava prema organizacionim promenama, koja je na-

stala kao poboljšana i skrećena verzija skale iz 2013. (Suvajdžić i Vujić, 2015). Skala se sastoji od 15 ajtema jednako raspoređenih u tri dimenzije: Iniciranje promena, Negativan odnos prema organizacionim promenama i Fleksibilnost zaposlenih sa petostepenom Likertovom skalom za odgovore. Pouzdanost subskala kreće se u rasponu od .63 do .78, a na našem ozorku od .69 do .77 Kronbahove alfa.

***Perfekcionizam*** predstavlja tendenciju ostvarenja ili aspiracije ka vrlo visokim standardima. Za merenje perfekcionizma korišćena je Burnsova skala perfekcionizma (Burns, 1980, prema Calhoun & Accocela, 1990), koja sadrži 10 ajtema i meri sebi usmeren perfekcionizam. Autor skale navodi pouzdanost od .78 Kronbahove alfa, dok je na našem uzorku pouzdanost .75 Kronbahove alfa.

***Sociodemografske varijable*** uključuju podatke o polu, uzrastu ispitanika (kontinuirana varijabla), stručnoj spremi (kategorička varijabla sa pet kategorija), zaposlenosti (kategorička varijabla sa dve kategorije – državni ili privatni sektor), dužini radnog staža (kontinuirana varijabla).

### 5.3. Hipoteze istraživanja

Na osnovu pregleda literature i odnosu na cilj istraživanja, postavljeno je nekoliko hipoteza:

- *Na osnovu osobina ličnosti, moguće je predvideti stav prema organizacionim promenama*. Ova hipoteza je postavljena na osnovu modela ličnosti koji objašnjava procese i mehanizme koji se nalaze u osnovi ličnosti i na osnovu rezultata istraživanja koje su sproveli autori kod nas (Suvajdžić i Vujić, 2015) i u inostranstvu (Rogers, Miller & Judge; 1999; Vakola, 2013).

- *Na osnovu Perfekcionizma, moguće je predvideti Iniciranje promena, Negativan odnos prema organizacionim promenama i Fleksibilnost zaposlenih kao stava prema organizacionim promenama*. Ova hipoteza je postavljena na osnovu rezultata istraživanja koje su sprovele Suvajdžić i Vujić (2015).

### 5.4. Uzorak i procedura

Istraživanje je bilo anonimno i sprovedeno je na prigodnom uzorku od 336 zaposlenih osoba u državnom i privatnom sektoru na teritoriji Srbije od maja do decembra 2019. godine. Od ukupnog broja ispitanika 189 je bilo muških, a 147 ženskih. Prosečna starost ispitanika je AS = 35,29, SD = 11,44. Najveći procenat ispitanika ima završenu srednju školu (47,5%), zatim fakultet (39,9%), dok je znatno manje ispitanika sa završenom osnovnom školom, magistraturom, specijalizacijom i doktoratom. Od ukupnog broja 54,8% ispitanika je zaposleno u privatnom, a 45,2% u državnom sektoru. Najveći procenat ispitanika (43,4%) ima do pet godina radnog iskustva, zatim od pet do deset godina radnog iskustva ima 25,5% ispitanika, dok je ispitanika sa radnim stažom preko deset godina znatno manje. Podaci su obrađeni u statističkom paketu SPSS 17 i uz korišćenje postupaka korelacione i multiple regresione analize.

## 6. Rezultati

Za procenu prediktivne moći osobina ličnosti i perfekcionizma u predviđanju stava prema organizacionim promenama korišćen je model multiple regresije. U model regresione analize, kao prediktori, uključene su osobine ličnosti (Neuroticizam, Esktraverzija, Savesnost, Agresivnost, Otvorenost prema iskustvu, Pozitivna valenca i Negativna valenca) i Perfekcionizam, a skorovi na merenim dimenzijama stava prema organizacionim promenama tretirani su kao kriterijumske varijable.

### 6.1. Osobine ličnosti kao prediktori stava prema organizacionim promenama

***Iniciranje promena.*** U Tabeli 1. dat je prikaz rezultata regresione analize u kojoj je kriterijumska varijabla Iniciranje promena, kao dimenzija stava prema organizacionim promenama, a osobine ličnosti su prediktorske varijable. Osobine ličnosti objašnjavaju 33,1% varijanse iniciranja promena. Iz grupe prediktorskih varijabli izdvojili su se, kao značajni prediktori, Ekstraverzija ($\beta = .279$, $p < 0.05$), Otvorenost ($\beta = .289$, $p < 0.05$) i Pozitivna valenca ($\beta = .193$, $p < 0.05$).

Tabela 1. *Linearna regresiona analiza – Osobine ličnosti kao prediktori iniciranja promena*

| | R | $R^2$ | F | B | Sig |
|---|---|---|---|---|---|
| **Osobine ličnosti** | **.331** | **.316** | **22.192** | | |
| Neuroticizam | | | | .007 | .903 |
| **Ekstraverzija** | | | | **.279** | **.000** |
| **Otvorenost** | | | | **.289** | **.000** |
| Agresivnost | | | | -.013 | .835 |
| Savesnost | | | | -.072 | .208 |
| **Pozitivna valenca** | | | | **.193** | **.002** |
| Negativna valenca | | | | -.022 | .713 |

***p < 0,05 p < 0,01 p < 0,001***

***Negativan odnos prema organizacionim promenama***. Osobine ličnosti objašnjavaju 23,7% varijanse negativnog odnosa prema promenama, a kao značajni prediktori izdvojili su se: Neurotocizam ($\beta = .240$, $p < 0.01$), Ekstraverzija sa negativnim predznakom β koeficijenta ($\beta = -.223$, $p < 0.01$), Otvorenost sa negativnim predznakom β koeficijenta ($\beta = -.258$, $p < 0.01$) i Pozitivna valenca ($\beta = .145$, $p < 0.05$).

Tabela 2. *Linearna regresiona analiza – Osobine ličnosti kao prediktori negativnog odnosa prema organizacionim promenama*

| | R | $R^2$ | F | B | Sig |
|---|---|---|---|---|---|
| **Osobine ličnosti** | **.237** | **.220** | **13.923** | | |
| **Neuroticizam** | | | | **.240** | **.000** |
| **Ekstraverzija** | | | | **-.223** | **.000** |
| **Otvorenost** | | | | **-.258** | **.000** |
| Agresivnost | | | | .087 | .199 |
| Savesnost | | | | .113 | .065 |
| **Pozitivna valenca** | | | | **.145** | **.026** |
| Negativna valenca | | | | .026 | .682 |

***p < 0,05 p < 0,01 p < 0,001***

***Fleksibilnost zaposlenih.*** Osobine ličnosti objašnjavaju 26% varijanse fleksibilnosti, a kao značajni prediktori izdvojile su se Ekstraverzija ($\beta = .157$, $p < 0.05$) i Otvorenost ($\beta = .379$, $p < 0.01$).

Tabela 3. *Linearna regresiona analiza – Osobine ličnosti kao prediktori fleksibilnosti zaposlenih*

| | R | $R^2$ | F | B | Sig |
|---|---|---|---|---|---|
| **Osobine ličnosti** | **.260** | **.244** | **15.796** | | |
| Neuroticizam | | | | .038 | .538 |
| **Ekstraverzija** | | | | **.157** | **.009** |
| **Otvorenost** | | | | **.379** | **.000** |
| Agresivnost | | | | -.068 | .307 |
| Savesnost | | | | -.091 | .130 |
| Pozitivna valenca | | | | .099 | .121 |
| Negativna valenca | | | | -.076 | .220 |

***p < 0,05 **p < 0,01 ***p < 0,001***

### 6.2. Perfekcionizam kao prediktor stava prema organizacionim promenama

***Iniciranje promena.*** Perfekcionizam objašnjava 2,5% varijanse iniciranja promena kao dimenzija stava prema organizacionim promenama.

Tabela 4. *Linearna regresiona analiza – Perfekcionizam kao prediktor iniciranja promena*

| | R | $R^2$ | F | B | Sig |
|---|---|---|---|---|---|
| **Perfekcionizam** | **.025** | **.022** | **8.138** | **.157** | **.005** |

***p < 0,05 **p < 0,01 ***p < 0,001***

***Negativan odnos prema organizacionim promenama.*** Perfekcionizam nije značajan u predviđanju negativnog odnosa prema organizacionim promenama.

***Fleksiobilnost zaposlenih.*** Perfekcionizam objašnjava 2,1% varijanse fleksibilnosti na poslu, kao dimenzija stava prema organizacionim promenama.

Tabela 5. *Linearna regresiona analiza – Perfekcionizam kao prediktor fleksibilnosti*

| | R | $R^2$ | F | B | Sig |
|---|---|---|---|---|---|
| **Perfekcionizam** | **.021** | **.018** | **7.111** | **.145** | **.008** |

***p < 0,05 **p < 0,01 ***p < 0,001***

## 7. Diskusija

Faktore koji su u vezi sa (ne)uspehom implementiranja promena u organizacijama možemo locirati u različitim područjima poslovanja. Bez obzira na ekonomsku moć, prirodne resurse i tehnološku razvijenost, nesporna uloga pripada zaposlenima koji svojim karakteristikama, kompetencijama, iskustvom, motivacijom itd. olakšavaju ili otežavaju uvođenje promena u cilju napretka. Rezultati istraživanja ukazuju na povezanost osobina ličnosti i promena u organizacijama. Polazna pretpostavka ovog istraživanja bila je da su osobine ličnosti i perfekcionizam značajni prediktori stava prema organizacionim promenama. Dobijeni rezultati pokazali su da su najbolji prediktori iniciranja promena, kao dimenzije stava prema organizacionim promenama, Visoka ekstraverzija, Otvorenost i Pozitivna valenca. Optimistične, samopouzdane i aktivne osobe koje odlikuje težnja ka napretku i usavršavanju biće sklonije iniciranju i implementaciji promena u organizaciji, dok će osobe koju su manje optimistične, pasivne i koje odlikuje nisko samopouzdanje nastojati da očuvaju postojeće stanje u organizacijama. Imajući u vidu oprez pri poređenju naših rezultata s rezultatima Suvajdžić i Vujić (2015), prvenstveno zbog razlike u instrumentima za razumevanje odnosa prema organizacionim promenama, za razliku od rezultata koje su dobile Suvajdžić i Vujić (2015), u ovom istraživanju Savesnost se nije pokazala kao značajan prediktor iniciranja promena. Takođe, rezultati regresione analize pokazali su da visok Neuroticizam i Pozitivna valenca, a niska Ekstraverzija i Otvorenost dovode do negativnog odnosa prema organizacionim promenama. Konzervativne osobe, koje su sklone da doživljavaju negativne emocije, koje su povučene i rigidne, sklone ustaljenim obrascima ponašanja, neće biti inicijatori promena u svom radnom okruženju. Značaj ovih osobina, kao prediktora, potvrđuje se u nekoliko istraživanja. U istraživanju Rodžersa, Milera i Džadža (Rogers, Miller & Judge, 1999), značajnu povezanost s ličnom procenom suočavanja sa organizacionim promenama pokazali su i lokus kontrole, samoefikasnost, pozitivan afektivitet i otvorenost prema iskustvu. Istraživanje Vakole (Vakola, 2013) pokazalo je značajnu povezanost između otvorenosti za iskustvo i pozitivnih stavova prema promenama. U istraživanju Suvajdžić i Vujić (2015) takođe su izdvojene četiri dimenzije ličnosti, kao

značajni prediktori, a rezlika je što se u njihovom istraživanju pojavljuje Savesnost, a u ovom Neuroticizam. Osobe koje opisuje Visoka ekstraverzija i otvorenost dovode do fleskibilnosti zaposlenih, dok visok Perfekcionizam dovodi do iniciranja promena i fleskibilnosti zaposlenih. Takve osobe su intelektualno radoznale, spremnije da uče, usavršavaju se, rade na sebi, stiču nova znanja i veštine koje će im olakšati prilagođavanje na nove zahteve posla i radnog mesta. Za razliku od rezultata Suvajdžić i Vujić (2015), u ovom istraživanju se izdvajaju i Ekstraverzija i Perfekcionizam. Iako sa skromnim doprinosom, Perfekcionizam se u ovom istraživanju pokazao kao značajan prediktor iniciranja promena i fleksibilnosti. Osobine ličnosti i Perfekcionizam su veoma značajni za razumevanje stava prema organizacionim promenama. Ovo istraživanje može biti korisno pri profesionalnoj selekciji, pre svega rukovodilaca i agenata promena, čiji je sastavni deo profesionalne uloge iniciranje promena i upravljanje njima, ali i drugih zanimanja u kojima je inovativnost izrazito važna.

**Literatura**

Armenakis, A. A., Harris, S. G., & Mossholder, K. W. (1993). Creating readiness for organizational change. *Human Relations*, *46,* 681–703.

Huczynski, A., & Buchanan, D. (2004). Theory from fiction: A narrative process perspective on the pedagogical use of feature film. *Journal of management education*, *28*(6), 707–726.Calhoun, J. F., & Acocella, J. R. (1990). *Instructor's Manual to Accompany Psychology of Adjustment and Human Relationships*. McGraw-Hill.

Đurišić-Bojanović, M., & Savković, M. (2010). Workforce organisational flexibility: Readiness for change. *Strategic Management, 15* (2), 22–31.

Flett, G. L., & Hewitt, P. L. (2002). *Perfectionism; Theory, research, and treatment.* Washington, DC, American Psychological Association.

Folkman, S., Lazarus, R. S., Dunkel-Schetter, C., DeLongis, A., & Gruen, R. J. (1986). Dynamics of a stressful encounter: cognitive appraisal, coping, and encounter outcomes. *Journal of personality and social psychology, 50*(5), 992.

Hamachek, D. E. (1978). Psychodinamics of normal and neurotic perfectionism. *Psychology, 15,* 27–33.

Hayward, L., & Arthur, N. (1998). Perfectionism and post-secondary students. *Canadian Journal of Counseling, 32 (3),* 187–199.

Huse, E. F., & Cummings, G. T. (1985). *Organizational development and change.* Minesota: West Publishing Company.

Janićijević, N. (2006). Organizaciono učenje u teoriji organizacionih promena. *Ekonomski Anali/Economic Annals, 51* (171).

Ljubičić, A. M. (2018). *Strategije za upravljanje otporom organizacijskim promjenama.* [Diplomski rad].

https://urn.nsk.hr/urn:nbn:hr:124:249615

Onwuegbuzie, A. J., & Daley, C.E. (1999). Perfectionism and statistics anxiety. *Personality and Individual Differences, 26* (6), 1089–1102.

Oreg, S. (2003). Resistance to Change: Developing an individual differences measure. *Journal of Applied Psychology*, 88, 680–693.

Roedell, W. C. (1984). Vulnerability of highly gifted children. *Roeper Review, 6 (3),* 127–130.

Rogers, P. R., Miller, A., & Judge, W. Q. (1999). Using information-processing theory to understand planning/performance relationships in the context of strategy. *Strategic Management Journal*, *20*(6), 567–577.

Shafran, R., Cooper, Z., & Fairburn, C. G. (2002). Clinical perfectionism: a cognitive-behavioural analysis. *Behaviour research and therapy*, *40*(7), 773–791. https://doi.org/10.1016/s0005-7967(01)00059-6

Simonović, Z., & Damnjanović, R. (2011). Strategijsko prilagođavanje organizacije promenama. *Ekonomika: časopis za ekonomsku teoriju i praksu,* 57 (1), 152–162.

Smederevac, S., Mitrović, D., & Čolović, P. (2010). *Velikih pet plus dva, primena i interpretacija.* Beograd: Centar za primenjenu psihologiju.

Smederevac, S., & Mitrović, D. (2018). *Ličnost - metode i modeli. Treće dopunjeno i izmenjeno izdanje.* Beograd: Centar za primenjenu psihologiju društva psihologa Srbije.

Stolnik, V. (2016). *Organizacijske promjene i utjecaj stresa na zaposlenike lokalne samouprave* [Diplomski rad].

https://urn.nsk.hr/urn:nbn:hr:122:546702

Suvajdžić, K., & Vujić, D. (2015). Relacije između karakteristika ličnosti i stavova prema organizacionim promenama. *Psihološka istraživanja, 18* (2), 145–164.

Tenjović, L. (2015). *Odnos zaposlenika prema promjenama* [Završni rad]. https://urn.nsk.hr/urn:nbn:hr:137:625490

Vakola, M. (2013). Multilevel readiness to organizational change: A conceptual approach. *Journal of change management, 13(*1), 96–109.

# PERSONALITY TRAITS AND PERFECTIONISM AS PREDICTORS OF ATTITUDES TOWARDS ORGANISATIONAL CHANGES

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**Key words:** personality traits, attitude towards organisational change, perfectionism.

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## 1. Introduction

In the business world of today, organisations face various changes happening every day both at the global and local level. One of the main goals of every organisation is to be successful and productive, and organisational change is instrumental in achieving that goal. An essential prerequisite for employees in organisations to recognize and respond to change in a timely manner is to have a positive attitude towards change and to perceive it as necessary and desirable. According to Folkman, Lazarus, Dunkel-Schetter, DeLongis & Gruen (1986), coping with organisational change is defined as an individual's cognitive and behavioural effort to manage the internal and external demands of the exchange between people and environment, which at times may exceed human capacities. Every change can disrupt the already learned and established way of functioning and threatens one of the basic human needs – the need for security. According to Suvajdžić and Vujić (2015), the primary cause of resistance to change is loss of control, because employees believe that control over their life situations has been taken away by the external imposition of change. This insight creates further opportunities to explore and apply the results of psychological research in the field of organisational change.

## 2. Personality Traits

Personality traits as behavioural descriptors are highly instrumental for describing the individual behavioural characteristics. In line with the lexical approach to the study of personality structure, three psycholexical studies were carried out in Serbia: Smederevac, 2000; Smederevac, Mitrović & Čolović, 2010; DeRaad, Smederevac, Čolović & Mitrović, 2017, quoted in Smederevac & Mitrović, 2018. The outcome of these studies was the construction of The Big Five Plus Two Personality Model (Smederevac, Mitrović & Čolović, 2010). The Big Five Plus Two Personality Model consists of seven basic dimensions: Neuroticism, Extraversion, Conscientiousness, Openness to Experience, Aggressiveness, Positive Valence, and Negative Valence. According to Smederevac, Mitrović & Čolović (2010), neuroticism refers to an individual's tendency to experience negative emotions, such as sadness, worry, fear or anxiety.

The differences on this dimension can range from excessive emotional reactivity to marked non-reactivity, i.e., exhibiting impassiveness and stability in stressful situations. Extraversion is described as the degree of emotional reactivity to the environment. The differences range from high reactivity typical for introverts to low reactivity typical for extraverts. Conscientiousness can be described as an attitude towards obligations, willpower, perseverance, and self-discipline. The differences on this dimension can range from excessive activity and commitment to obligations, typical for workaholics, to marked inactivity, typical for inert, passive people. Aggressiveness describes individual differences in the frequency, intensity, and control of aggressive impulses, intensity and manifestation of aggressive reactions, and provocative factors. Openness to experience involves the pursuit of progress and improvement, intellectual curiosity, a wide range of interests, and openness to change. Positive valence, as a dimension of self-evaluation, refers to high self-confidence and willingness to openly express an opinion about self-worth. The differences on this dimension can range from a distinct self-experience of superiority, egocentricity, and narcissism to a lack of self-esteem, condescension, and self-deprecation. Negative valence refers to the perception of oneself as a bad person and a tendency to manipulation.

## 3. Attitude Towards Organisational Change

Organisational change has been examined in different contexts. Huse & Cummings (1985) discuss organisational change focusing on the organisation undergoing change, while Armenakis, Harris, & Mossholder (1993) discuss readiness for change focusing on the individual, i.e., their attitudes and intentions, as well as the necessity and extent of change, and organisational capacities to implement change.

When introducing changes, every organisation encounters three types of employees: those who are flexible, easily adaptable, and quickly accepting of the changes, those initially resist, due to a lack of self-confidence and doubts about their knowledge and experience, and those who find it difficult to adapt to changes and exhibit considerable resistance to organisational change (Tenjović, 2015). Huczynski & Buchanan (2004)

argue that resistance to change is seen as the inability or unwillingness to discuss or to accept changes that are considered harmful or threatening to the individual. The reasons that lead to resistance to change are numerous and complex. According to Stolnik (2016), organisational change is largely determined by its nature and mode of implementation. Stolnik further stresses the importance of different contextual factors in each organisation, which influence the process of implementing organisational change. More precisely, the resistance of individual members of the organisation to a specific change will depend on how acceptable and desirable the employees find its essence and mode of implementation. Ljubičić (2018) believes that people's natural reaction is to feel resistance to change, especially when they feel that change threatens them in any way. Oreg (2003) observed that there were six sources of resistance that appeared to derive from an individual's personality: cognitive rigidity, lack of psychological resilience, intolerance to the adjustment period involved in change, preference for a low level of stimulation, and reluctance to give up old habits. According to Simonović & Damnjanović (2011), most people are afraid of change, because every change brings uncertainty and risk. Therefore, employees will inevitably oppose any attempt to introduce changes, whether related to work process, hierarchy, economic status, or the necessity to master new knowledge and skills. This reaction is expected, because any novelty or change is perceived as uncertainty (Janićijević, 2006).

## 4. Perfectionism

Perfectionism is a tendency to achieve highly demanding goals. Perfectionism is considered desirable or acceptable when an individual is content to pursue perfection but is aware of their own abilities. When an individual has unrealistically high expectations and is often dissatisfied with what they achieved, perfectionism becomes a problem (Hill, Crull, & Trullington, 1997, according to Hamacheh, 1978). Shafran, Cooper & Fairburn (2002) offered a new definition of unidimensional perfectionism. They argued that perfectionist tendencies appear in individuals who evaluate their personal worth depending on success in a particular activity. Striving to preserve their self-esteem and sense of personal

worth, these individuals rigidly persist in their efforts to achieve their goals, regardless of consequences. If they fail, perfectionists are prone to extreme self-criticism and self-deprecation. If they succeed, they re-evaluate their standards and consider the set goals insufficiently demanding (Shafran et al., 2002). In previous research, perfectionism has been correlated to both personal and social dysfunctions, such as low self-confidence, low achievement, low life satisfaction, marital and family problems, pessimism, anxiety, depression, loneliness, suicidal ideation. Flett & Hewitt (2002) believe that perfectionism develops under the influence of external factors and individual personality traits. Current life circumstances that further encourage the development of perfectionism must be considered as well. Originally, perfectionism was viewed as a one-dimensional construct.

Authors such as Hamachek (1978) and Roedell (1984) believed that perfectionism can provide the driving force for great achievements and brilliant creations. On the other hand, later research (Onwuegbuzie & Daley, 1999) has demonstrated the correlation between perfectionism and negative outcomes, which can limit and prevent achievement. Perfectionism in that case ceases to be a healthy aspiration and becomes a neurotic tendency. Hayward & Arthur (1998) claim that neurotic perfectionists tend to focus on and obsess over their shortcomings and past failures, equating their personal value with successful accomplishments. Đurišić-Bojanović & Savković (2010) observed that readiness for change among employees is significantly positively correlated to acceptance of plurality of ideas and ego strength, and negatively correlated to dogmatism and intolerance of ambiguity. Vakola (2013) found that there is a positive correlation between extraversion, conscientiousness, agreeableness, and openness with affirmative attitudes toward organisational change, while neuroticism is negatively correlated with affirmative attitudes toward organisational change. Suvajdžić & Vujić (2015) studied attitudes towards organisational change in Serbia. They found that the most significant predictors of a positive attitude towards organisational change are high scores on openness and positive valence and low scores on extraversion.

## 5. Research Methodology

### 5.1. Research Topic

In the present research we examine the relationship between individual dispositional traits and perfectionism, on the one hand, and resistance to organisational change, on the other. The relationship will be examined in the context of socio-demographic characteristics (gender, age, level of education, employment in the private or state sector, and length of service).

### 5.2. Variables and Measures

The basic personality dimensions were defined in accordance with the Big Five Plus Two seven-factor personality model (Smederevac, Mitrović & Čolović, 2010), which encompasses seven basic dimensions: Neuroticism, Extraversion, Openness, Conscientiousness, Aggressiveness, Positive Valence, and Negative Valence. The Big Five Plus Two (BF + 2) inventory was used to tap the basic personality dimensions (Smederevac, Mitrović & Čolović, 2010). It consists of 70 items equally distributed in seven broad personality dimensions (each dimension consisting of 10 items). Many empirical studies have shown that the scale reliability is high, ranging from 0.81 to 0.92 (Smederevac, Mitrović & Čolović, 2010). Cronbach's alpha ranges from .70 to .84 in our sample.

**Attitudes Towards Organisational Change Scale** (OC; Suvajdžić & Vujić, 2015). To examine the attitude towards organisational changes, we used the Attitudes Towards Organisational Change, an improved and modified version of the 2013 scale (Suvajdžić & Vujić, 2015). The scale consists of 15 items equally distributed in three dimensions: Initiating change, Negative attitude towards organisational change and Employee flexibility, with answers formatted as a five-point Likert scale. The reliability of the subscales ranges from .63 to .78, and in our sample from .69 to .77 Cronbach's alpha.

**Perfectionism** is a tendency to achieve or aspire to very high standards. The Burns Perfectionism Scale (Burns, 1980, according to Cal-

houn & Accocela, 1990) was used to measure perfectionism. The scale contains 10 items and measures self-directed perfectionism. The author of the scale reports a reliability of .78 Cronbach's alpha, while in our sample the reliability is .75 Cronbach's alpha.

**Sociodemographic variables** include data on respondents' gender and age (continuous variable), level of education (categorical variable with five categories), employment (categorical variable with two categories - state or private sector), length of service (continuous variable).

### 5.3. Research Hypotheses

On the basis of the literature review and in relation to the research aim, we proposed several hypotheses:

- Personality traits can be used to predict the attitude towards organisational change. This hypothesis is based on the personality model that explains the processes and mechanisms underlying personality and based on the results of research conducted by the researchers in Serbia (Suvajdžić & Vujić, 2015) and abroad (Rogers, Miller & Judge; 1999; Vakola, 2013).
- Perfectionism can be used to predict Initiating change, Negative attitude towards organisational change, and Employee flexibility as an attitude towards organisational change. This hypothesis is based on the results of research conducted by Suvajdžić & Vujić (2015).

### 5.4. Sample and Data Processing

The research was anonymous and was conducted on a purposive sample of 336 employees in Serbian state- and private-owned organisations from May to December 2019. Out of the total number of respondents, 189 were male and 147 were female. The average age of the respondents was 35.29 (SD = 11.44). The largest percentage of respondents had upper secondary education (47.5%), then bachelor's or

equivalent level (39.9%). There were significantly fewer respondents with primary education, master's or equivalent level, specialisation, and doctor or equivalent level. 54.8% of respondents are employed in the private sector, and 45.2% in the public sector. The highest percentage of respondents (43.4%) has up to five years of work experience, then 25.5% of respondents have five to ten years of work experience, while the number of respondents with more than ten years of experience is considerably lower. The data were processed in SPSS 17, using the correlation and multiple regression analysis tools.

## 6. Results

A multiple regression model was used to assess the predictive power of personality traits and perfectionism in predicting attitudes towards organisational changes. Personality traits (Neuroticism, Extraversion, Conscientiousness, Aggressiveness, Openness to Experience, Positive Valence, and Negative Valence) and Perfectionism were included in the regression analysis model as predictors, and the scores on the measured dimensions of attitude towards organisational change were treated as criterion variables.

### 6.1. Personality Traits as Predictors of Attitude Towards Organisational Change

**Initiating change**. Table 1 shows the results of the regression analysis for which the criterion variable is Initiating change as a dimension of the attitude towards organisational change, and the predictor variables are personality traits. Personality traits explain 33.1% of the variance in Initiating change. Extraversion ($\beta = .279$, $p < 0.05$), Openness ($\beta = .289$, $p < 0.05$) and Positive valence ($\beta = .193$, $p < 0.05$) were revealed as significant predictors.

***Table 1***

*Linear Regression Analysis – Personality Traits as Predictors of Initiating Change*

| | **R** | **$R^2$** | **F** | *B* | **Sig** |
|---|---|---|---|---|---|
| **Personality Traits** | **.331** | **.316** | **22.192** | | |
| Neuroticism | | | | .007 | .903 |
| **Extraversion** | | | | **.279** | **.000** |
| **Openness** | | | | **.289** | **.000** |
| Aggressiveness | | | | -.013 | .835 |
| **Conscientiousness** | | | | -.072 | .208 |
| **Positive Valence** | | | | **.193** | **.002** |
| Negative Valence | | | | -.022 | .713 |

***p < 0,05 p < 0,01 p < 0,001***

**Negative attitude towards organisational change.** Personality traits account for 23.7% of the variance of the negative attitude towards change, and the following stand out as significant predictors: Neuroticism ($\beta = .240$, $p < 0.01$), Extraversion with a negative β coefficient ($\beta = -.223$, $p < 0.01$), Openness with a negative β coefficient ($\beta = -.258$, $p < 0.01$) and Positive Valence ($\beta = .145$, $p < 0.05$).

***Table 2***

*Linear Regression Analysis – Personality Traits as Predictors of Negative Attitude Towards Organisational Change*

| | **R** | **$R^2$** | **F** | *B* | **Sig** |
|---|---|---|---|---|---|
| **Personality Traits** | **.237** | **.220** | **13.923** | | |
| Neuroticism | | | | **.240** | **.000** |
| **Extraversion** | | | | **-.223** | **.000** |
| **Openness** | | | | **-.258** | **.000** |
| Aggressiveness | | | | .087 | .199 |
| **Conscientiousness** | | | | .113 | .065 |
| **Positive Valence** | | | | **.145** | **.026** |
| Negative Valence | | | | .026 | .682 |

***p < 0,05 p < 0,01 p < 0,001***

**Employee flexibility.** Personality traits account for 26% of the flexibility variance, and Extraversion (β = .157, p < 0.05) and Openness (β = .379, p < 0.01) stood out as significant predictors.

***Table 3***

*Linear Regression Analysis – Personality Traits as Predictors of Employee Flexibility*

| | **R** | **$R^2$** | **F** | *B* | **Sig** |
|---|---|---|---|---|---|
| **Personality Traits** | **.260** | **.244** | **15.796** | | |
| Neuroticism | | | | .038 | .538 |
| **Extraversion** | | | | **.157** | **.009** |
| **Openness** | | | | **.379** | **.000** |
| Aggressiveness | | | | -.068 | .307 |
| **Conscientiousness** | | | | -.091 | .130 |
| **Positive Valence** | | | | .099 | .121 |
| Negative Valence | | | | -.076 | .220 |

***p < 0,05 **p < 0,01 ***p < 0,001***

### 6.2. Perfectionism as a Predictor of Attitude Towards Organisational Change

**Initiating change.** Perfectionism accounts for the 2.5% variance of Initiating change as a dimension of attitude towards organisational change.

Table 4

*Linear Regression Analysis – Perfectionism as a Predictor of Initiating Change*

| | **R** | **$R^2$** | **F** | *B* | **Sig** |
|---|---|---|---|---|---|
| **Perfectionism** | **.025** | **.022** | **8.138** | **.157** | **.005** |

***p < 0,05 **p < 0,01 ***p < 0,001***

**Negative attitude towards organisational change**. Perfectionism is not a significant predictor of negative attitudes toward organisational change.

**Employee flexibility.** Perfectionism accounts for 2.1% variance of flexibility at work, as a dimension of attitude towards organisational change.

Table 5

*Linear Regression Analysis – Perfectionism as a Predictor of Flexibility*

| | R | $R^2$ | F | *B* | Sig |
|---|---|---|---|---|---|
| **Perfectionism** | **.021** | **.018** | **7.111** | **.145** | **.008** |

***p < 0,05 **p < 0,01 ***p < 0,001*

## 7. Discussion

The factors that influence the success or failure to implement organisational change can come from different areas of business. Besides economic power, natural resources, and technological development, it is the employees, i.e., their qualities, competences, experience, motivation, etc., that remain the crucial factor in implementing change. The employees can thus facilitate or impede organisational change and progress. The results of the present research indicate the correlation between personality traits and organisational change. The initial hypothesis of this research was that personality traits and perfectionism are significant predictors of attitude towards organisational change. The results showed that the best predictors of initiating change, as dimensions of attitude towards organisational change, are High Extraversion, Openness and Positive Valence. Optimistic, self-confident, and active people eager to grow and improve will be more inclined to initiate and implement organisational change. People who are less optimistic, less confident, and passive will try to preserve the existing situation in organisations. While being cautious when comparing our results with the results of Suvajdžić & Vujić (2015), primarily due to the difference in

the measures used to tap attitudes towards organisational changes, we note that the present research did not indicate that Conscientiousness was a significant predictor of initiating change, unlike the results obtained by Suvajdžić & Vujić (2015). The results of the regression analysis also showed that high scores on Neuroticism and Positive Valence, and low scores on Extraversion and Openness indicate a negative attitude towards organisational change. Conservative people, who tend to experience negative emotions, are withdrawn and rigid, and prone to fixed patterns of behaviour, are not likely to be initiators of change in their work settings. The importance of these traits as predictors has been confirmed by previous empirical research. Rogers, Miller & Judge (1999) demonstrated that locus of control, self-efficacy, positive affectivity, and openness to experience highly correlate with self-assessment of coping with organisational change. Vakola's study (2013) showed a significant correlation between openness to experience and positive attitudes towards change. Suvajdžić & Vujić (2015) also identified four personality dimensions as significant predictors. However, their study identified Conscientiousness as a significant predictor, while in the present research it is Neuroticism. The people who score highly on Extraversion and Openness are likely to demonstrate Employee flexibility, while high Perfectionism scores correlate with Initiating change and Employee flexibility. These people are intellectually curious, ready to learn and improve, and acquire new knowledge and skills that will facilitate their adaptation to new workplace requirements. In contrast to the results of Suvajdžić & Vujić (2015), the present research stresses the importance of both Extraversion and Perfectionism. This research demonstrated that Perfectionism is a significant predictor of Initiating change and Employee flexibility. Personality traits and Perfectionism are very important for understanding the attitude towards organisational change. This research can be useful in the employee selection for manager and change agent roles, which involve initiating and managing change, and other professional roles which depend on innovation and change.

## References

Armenakis, A. A., Harris, S. G., & Mossholder, K. W. (1993). Creating readiness for organizational change. *Human Relations*, *46,* 681–703.

Huczynski, A., & Buchanan, D. (2004). Theory from fiction: A narrative process perspective on the pedagogical use of feature film. *Journal of management education*, *28*(6), 707–726.Calhoun, J. F., & Acocella, J. R. (1990). *Instructor's Manual to Accompany Psychology of Adjustment and Human Relationships*. McGraw-Hill.

Đurišić-Bojanović, M., & Savković, M. (2010). Workforce organisational flexibility: Readiness for change. *Strategic Management, 15* (2), 22–31.

Flett, G. L., & Hewitt, P. L. (2002). *Perfectionism; Theory, research, and treatment.* Washington, DC, American Psychological Association.

Folkman, S., Lazarus, R. S., Dunkel-Schetter, C., DeLongis, A., & Gruen, R. J. (1986). Dynamics of a stressful encounter: cognitive appraisal, coping, and encounter outcomes. *Journal of personality and social psychology, 50*(5), 992.

Hamachek, D. E. (1978). Psychodynamics of normal and neurotic perfectionism. *Psychology, 15,* 27–33.

Hayward, L., & Arthur, N. (1998). Perfectionism and post-secondary students. *Canadian Journal of Counseling, 32 (3),* 187–199.

Huse, E. F., & Cummings, G. T. (1985). *Organizational development and change.* Minnesota: West Publishing Company.

Janićijević, N. (2006). Organizaciono učenje u teoriji organizacionih promena. *Ekonomski Anali/Economic Annals, 51* (171).

Ljubičić, A. M. (2018). *Strategije za upravljanje otporom organizacijskim promjenama.* [Graduate paper].

https://urn.nsk.hr/urn:nbn:hr:124:249615

Onwuegbuzie, A. J., & Daley, C.E. (1999). Perfectionism and statistics anxiety. *Personality and Individual Differences, 26* (6), 1089–1102.

Oreg, S. (2003). Resistance to Change: Developing an individual differences measure. *Journal of Applied Psychology*, 88, 680–693.

Roedell, W. C. (1984). Vulnerability of highly gifted children. *Roeper Review, 6 (3),* 127–130.

Rogers, P. R., Miller, A., & Judge, W. Q. (1999). Using information-processing theory to understand planning/performance relationships in the context of strategy. *Strategic Management Journal*, *20*(6), 567–577.

Shafran, R., Cooper, Z., & Fairburn, C. G. (2002). Clinical perfectionism: a cognitive-behavioural analysis. *Behaviour research and therapy*, *40*(7), 773–791. https://doi.org/10.1016/s0005-7967(01)00059-6

Simonović, Z., & Damnjanović, R. (2011). Strategijsko prilagođavanje organizacije promenama. *Ekonomika:* časopis *za ekonomsku teoriju i praksu,* 57 (1), 152–162.

Smederevac, S., Mitrović, D., & Čolović, P. (2010). *Velikih pet plus dva, primena i interpretacija.* Beograd: Centar za primenjenu psihologiju.

Smederevac, S., & Mitrović, D. (2018). *Ličnost - metode i modeli. Treće dopunjeno i izmenjeno izdanje.* Beograd: Centar za primenjenu psihologiju društva psihologa Srbije.

Stolnik, V. (2016). *Organizacijske promjene i utjecaj stresa na zaposlenike lokalne samouprave* [Diplomski rad].

https://urn.nsk.hr/urn:nbn:hr:122:546702

Suvajdžić, K., & Vujić, D. (2015). Relacije između karakteristika ličnosti i stavova prema organizacionim promenama. *Psihološka istraživanja, 18* (2), 145–164.

Tenjović, L. (2015). *Odnos zaposlenika prema promjenama* [Završni rad]. https://urn.nsk.hr/urn:nbn:hr:137:625490

Vakola, M. (2013). Multilevel readiness to organizational change: A conceptual approach. *Journal of change management, 13(*1), 96–109.

## OSOBINE LIČNOSTI I PERFEKCIONIZAM KAO PREDIKTORI STAVA PREMA ORGANIZACIONIM PROMENAMA

**Apstrakt**: Cilj istraživanja je bio utvrditi da li su osobine ličnosti i perfekcionizam značajni u predviđanju stava prema organizacionim promenama. U istraživanju je učestvovalo 336 zaposlenih osoba prosečne starosti AS = 35,29; SD = 11,44. Primenjeni instrumenti su: Inventar ličnosti Velikih pet plus dva – VP + 2, Skala stavova prema organizacionim promenama – OP i Burnsova skala perfekcionizma. Rezultati regresione analize pokazuju da visoka ekstraverzija, otvorenost i pozitivna valenca dovode do iniciranja promena kod zaposlenih. Visok neuroticizam i pozitivna valenca, a niska ekstraverzija i otvorenost dovode do negativnog odnosa prema organizacionim promenama. Visoka ekstraverzija i otvorenost dovode do fleksibilnosti zaposlenih. Visok perfekcionizam dovodi do iniciranja promena i fleskibilnosti zaposlenih.

**Ključne reči**: osobine ličnosti, stav prema organizacionim promenama, perfekcionizam.

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# MEDIJACIONA ULOGA PUNE SVESNOSTI I PAŽNJE U ODNOSIMA NEUROTICIZMA I SAVESNOSTI SA BRIGAMA, TENZIJAMA I IZOSTANKOM SREĆE

**Rezime**: Cilj ovog istraživanja jeste da se ispitaju medijacioni doprinosi *Pune svesnosti i pažnje* u odnosima *Neuroticizma* i *Savesnosti* sa *Brigama, Tenzijama* i *Izostankom sreće*. Uzorak su činili dobrovoljci iz opšte populacije sa nemačkog govornog područja (N = 430; 73% ženskih i 23% muških ispitanika) prosečne starosti $\bar{x}$ = 39 godina, σ = 14.6 (min = 19, maks = 77 godina). Upotrebljene skale su demonstrirale dobru i visoku pouzdanost. Ukazano je da *Puna svesnost i pažnja* ostvaruje negativnu vezu sa *Neuroticizmom* (r = -0.64; p < .01) i pozitivnu sa *Savesnošću* (r = -0.41; p < .01), kao i negativne veze sa *Brigama* (r = -0.57; p < .01), *Tenzijama* (r = -0.54; p < .01) i *Izostankom sreće* (r = -0.62; p < .01) na osnovu čega je formiran Konceptualni model 1.2. Rezultati medijacionih analiza modela ukazuju na značajan indirektan efekat putem *Pune svesnosti i pažnje* u svim testiranim relacijama: *Neuroticizam* i *Brige* (b = 0.15; β = 0.12; p < .001, 95% Bca CI 0.091, 0.217), *Neuroticizam* i *Tenzije* (b = 0.13; β = 0.12; p < .001, 95% Bca CI 0.077, 0.208), *Neuroticizam* i *Izostanak sreće* (b = 0.18; β = 0.19; p < .001, 95% Bca CI 0.124, 0.241),

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Napomena I: Ovo istraživanje je podržano platformom za otvorenu nauku *Figshare* i bazom podataka Tran, U., Wasserbauer, J., & Voracek, M. (2021, Januar 25). Incremental validity of dispositional mindfulness over and above the Big Five.https://doi.org/10.6084/m9.figshare.9913085.v1.

Napomena II: Rezultati ovog istraživanja prezentovani su na naučnom skupu „Savremeni trendovi u psihologiji“, 2021. godine u organizaciji Odseka za psihologiju Filozofskog fakulteta u Novom Sadu.

kao i u relaciji *Savesnost* i *Izostanak sreće* (b = -0.10; β = -0.08; p < .001, 95% Bca CI -0.096, -0.058). Podaci govore u prilog teorijskim postavkama da puna svesnost i pažnja igraju važnu ulogu u vezi sa osobinama ličnosti i poteškoćama na kognitivnom i afektivnom i somatskom planu, da doprinose povećanom uvidu u sopstvena ponašanja i potencijalnom formiranju funkcionalnih odgovora.

**Ključne reči:** *Puna svesnost i pažnja, Neuroticizam, Savesnost***.**

## 1. Uvod

Konstrukt *Puna svesnost i pažnja*[2] označava stanje povećane svesnosti i pažnje u kom osoba sa stavom, bez osuđivanja i bez vrednovanja, posmatra aktuelne unutrašnje i spoljašnje promene (Brown, Ryan, & Creswell, 2007) tokom sadašnjeg trenutka (Marcel, 2003; Teasdale, 1999). Braun i saradnici (2007) navode da se radi o procesu kratkog usmeravanja pažnje ka stimulusu „u fokalnoj tački", koji se javlja pre ispoljavanja kognitivne ili emocionalne reakcije, bez poistovećivanja individue sa automatskim kognitivnim šemama i asocijacijama koje ima za određeni stimulus. Prema mišljenju ovih autora, u pitanju je receptivno stanje uma gde osoba ne procenjuje objekat, već ga registruje u formi u kojoj se pojavio. Perceptivni kontakt se odvija otvoreno, izlaganjem unutrašnjim i spoljašnjim stimulusima, i bez napora, a pre aktivacije automatskih misli i ponašanja, koji su pod uticajem iskustvenih filtera. Razlika između dva navedena stanja su povećana fleksibilnost, jasnoća spoznaje i „decentralizovana" perspektiva dešavanja kod *Pune svesnosti i pažnje* nasuprot pristrasnom percipiranju događaja. U drugom slučaju, automatska uverenja, stavovi i emocije manifestovani su kroz automatske bihejvioralne, kognitivne, emocionalne i somatske reakcije (Brown et al., 2007). Konstrukt *Puna svesnost i pažnja* teorijski je rekonceptualizovan početkom 2000. godine (Brown & Ryan, 2004; Baer, Smith &

[2] Prevod: Lazić, Lazarević, Žeželj i Purić (2020) Skala pune svesnosti i pažnje [Mindful Attention Awareness Scale]. *Repository of psychological instruments in Serbian*, OSF.

Allen, 2004). U početku su ga autori konceptualizovali kao veštinu ili kliničku intervenciju (Kabat-Zinn, 1994; 2011; Schmidth, 2011). Savremeni istraživači ga konceptualizuju kao stabilnu osobinu zastupljenu u opštoj populaciji (Brown & Ryan, 2004; Rau & Wiliams, 2015; 2016; Eisenlohr-Moul, Walsh, Charnigo, Lynam, & Baer, 2012; Kiken, Garland, Bluth, Palsson, & Gaylord, 2015). U literaturi se ističe značajna funkcija ovog sistema u regulaciji impulsivnosti i stabilnosti pažnje (Way, Creswell, Eisenberger, & Lieberman, 2006, prema Brown i et al., 2007; Siebelink, Asherson, Antonova, Bögels, Speckens, Buitelaar, & Greven, 2019) i afekta kod ispitanika koji ne praktikuju vežbe (ne meditiraju) (Brown, Goodman & Inzlicht, 2013; Zhuang, Bi, Li, Xia, Guo, Chen, Du, Wang, Wei, Yin, & Qiu, 2017; Creswell, Way, Eisenberger, & Lieberman, 2007; Prakash, De Leon, Klatt, Malarkey, & Patterson, 2013; Modinos, Ormel, & Aleman, 2010). Drugim rečima, individualne razlike na datoj dimenziji postoje nezavisno od praktikovanih vežbi[3].

### 1.1. Puna svesnost i pažnja u kontekstu psihološke funkcionalnosti

Istraživanja koja se bave relacijama konstrukata koji su povezani sa mentalnim zdravljem pokazuju da *Puna svesnost i pažnja* igra važnu ulogu za funkcionalnost individue, kao dispozicija za *regulaciju afekta* (Brown & Ryan, 2006). Rezultati govore u prilog tome da ispitanici s visokim postignućem u ovoj osobini ispoljavaju manje automatskih obrazaca ponašanja, te imaju manji konflikt po pitanju ispoljenog odgovora (Brown, Ryan, & Creswell, 2007). Pokazano je da rezultati na ovoj dimenziji značajno predviđaju aktivitet moždanih regija koje su zadužene za izvršenje zadataka i održavanje pažnje i koje su važne za zadovoljstvo individue (Brown, Ryan, & Creswell, 2007). Istaknuta su dva mehanizma putem kojih *Puna svesnost i pažnja* može da izvrši ovakav efekat (Shapiro, Carlson, Astin, & Freedman, 2006). Putem procesa ponovnog

[3] Postoje studije na internacionalnom uzorku između meditatora i ne-meditatora koje idu u prilog argumentu da se radi o „uopštenom" faktoru individualnih razlika (Brown & Ryan, 2004; Goldstein, 2002; Kabat-Zinn, 2003, prema Rau i Wiliams, 2016).

(zadržanog) opažanja (eng. *Reperceiving*[4]) ili otvorenog posmatranja ponašanja osoba može da reguliše odgovor pre nego što se pojavi potreba za iskustvenim izbegavanjem u odnosu na stimulus koje je karakteristično za neuroticizam. U zavisnosti od konteksta, automatski maladaptivni odgovori i neprijatne emocije mogu postati sve manje zastupljeni u svakodnevnom funkcionisanju (videti i Hayes, 2002). Neprijatnosti koje nastanu osoba može da posmatra sa stavom otvorenog posmatranja, bez osude, od momenta nastanka do momenta nestanka – bez reagovanja. Ovo može da smanji mogućnost aktiviranja maladaptivnog odgovora koji bi ih potkrepio (npr. ruminacije, konzumiranje psihoaktivnih supstanci itd.). Kada su u pitanju kognicije, automatsko procesiranje često je odlikovano brojnim pristrasnostima koje mogu ograničiti spoznaju vrednosno-kongruentnih odgovora važnih za ispunjavanje ličih ciljeva (Ryan, Kuhl & Deci, 1997). Posmatranje bez osuđivanja sopstvenih doživljaja i svesno promišljeni postupak mogu biti funkcionalnija alternativa u odnosu na reakcije ruminacije i promišljanja. Ovo pomaže osobi da preusmeri pažnju na važne izvore zadovoljstva i da se ponaša u pravcu ostvarivanja pozitivnih potkrepljenja u životu, a može i smanjiti verovatnoću javljanja pristrasnosti prilikom donošenja odluka u problemskim situacijama (Brown & Ryan, 2003). *Puna svesnost i pažnja* operacionalizovana je u ovom radu kao dispozicija i multidimenzionalni konstrukt koji je definisan Petofacetnim modelom (*Five Facet Mindfulness Questionnaire*; Baer, Smith, Hopkins, Kritemeyer, & Toney, 2006) koji pored karakteristika *Svesnog postupanja* i *Nereaktivnosti*, koji su teorijski i empirijski najbliži suštini samog konstrukta (Rau & Wiliams, 2016), sadrži i facete *Opservacije, Opisivanja* i *Neosuđivanja.*

### 1.2. **Neuroticizam, Savesnost i psihološke poteškoće**

Dimenzija *Puna svesnost i pažnja* ispitana je u relaciji sa dimenzijama ličnosti iz modela Velikih pet koje su relevantne za psihološku funkcionalnost (McCrae & Costa, 2008). *Neuroticizam* korelira umereno negativno sa *Punom svesnosću i pažnjom* (r = -.45; u metaanalitičkom istraživanju Giluk, 2009, prema Rau i Wiliams, 2016; Feltman, Robin-

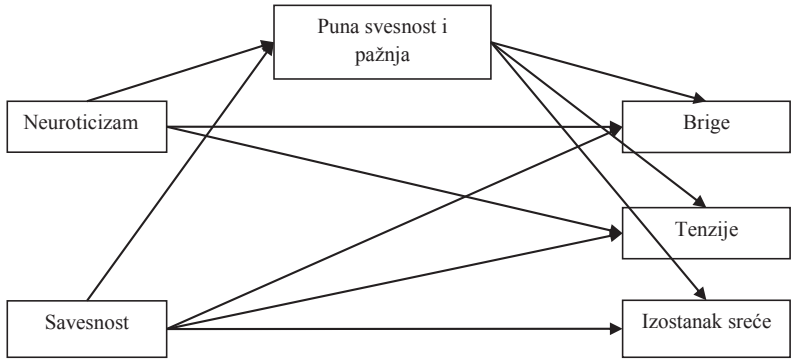
[4] Sudeći na osnovu dostupne literature, trenutno ne postoji zvaničan prevod na srpski jezik.

son, & Ode 2009; Wenzel, Versen, Hirschmüller, & Kubiak 2015), kao i sa njenih šest faceta, dok ne postoji dovoljno nalaza po pitanju relacija sa dimenzijom *Savesnosti* (Boyce, Wood i Brown, 2010; Giluk, 2009). Dugogodišnja istraživanja upućuju na to da su osobine ličnosti neuroticizam i savesnost povezane sa: zdravljem osobe (Mroczek, Spiro, & Turiano, 2009; Friedman, 2019); simptomskim reakcijama na stres (Ervasti, Kallio, Määttänen, Mäntyjärvi, & Jokela 2019; Thalmayer, Friedman, Azocar, Harwood, & Ettner, 2017); održavanjem zdravih navika (Joyner, Rhodes, & Loprinzi, 2018; Turiano, Hill, Graham, & Mroczek, 2018); zadovoljstvom životom (Szcześniak, Sopińska, & Kroplewski, 2019) i percipiranom samoefikasnošću (Wang, Yao, Liu, Yang, Wang & Wang, 2014). Ovo ide u prilog tezi da dispozicije imaju važnu ulogu u svakodnevnoj funkcionalnosti individue (Salehinezhad, 2012). Prema teoriji „Patoplastičnog odnosa" (Widiger & Smith, 2008), sklonosti izražene kroz ponašanja, razmišljanja i osećanja dovode do otežanog mentalnog funkcionisanja a nekada i do strukturisanog mentalnog oboljenja (Salehinezhad, 2012). Osoba koja je sklona da selektivno opaža, da percipira životne izazove kao ugrožavajuće, čak i situacije koje potencijalno obezbeđuju pozitivna životna potkrepljenja (npr. prilika za prosperitetniji posao, selidba na pogodniju lokaciju itd.), može doživeti povećanu anksioznost i tamo gde nema aktuelne pretnje. Ovo može dovesti do formiranja pogrešnih atribucija, očekivanja i neadekvatnih ponašanja (Rettew & McKee, 2005). Neuroticizam doprinosi nastanku uzbuđenosti, distresa, izbegavajućeg ponašanja, iracionalnih perfekcionističkih uverenja, niskog samopouzdanja i negativne pristrasnosti (Salehinezhad, 2012). U pitanju je kapacitet osobe da (u zavisnosti od konteksta) maladaptivno reaguje na dešavanja u okruženju i prema sopstvenim doživljajima. Najdoslednije je povezan sa: slabom regulacijom stresa (Shi, Liu, Wang, & Wang, 2015; Wiliams & Moroz, 2009; Lazarus & Folkman, 1984), simptomima anksioznosti (Jylhä & Isometsä, 2006); somatskim poteškoćama (Neitzert, Davis, & Kennedy, 1997; Denovan, Dagnall, & Lofthouse, 2018) i ruminacijama (Du Pont, Rhee, Corley, Hewitt, & Friedman, 2019). Sa druge strane, savesnost je tendencija ka osećanju smisla, ispunjenosti i vezana je za visok nivo aspiracija, ali takođe obuhvata i marljivost, opreznost, temeljnost i sklonost ka dugoročnom planiranju (Salehinezhad, 2012). Istraživanja ukazuju da je

nešto nedoslednija po pitanju veze sa ishodima koji su vezani za lično blagostanje (Steel, Smith i Schultz, 2008; Boyce, Wood i Brown, 2010). Dok u metaanalizi Boga i Robertsa (2004) savesnost ostvaruje pozitivnu vezu sa zdravstveno relevantnim ponašanjima i doprinosi prevladavanju stresa (Saeed, Oshio, Taku, & Hirano, 2018; Kotov, Gamez, Schmidt, & Watson 2010; Gartland, O'Connor, Lawton, & Ferguson, 2013), ostali autori navode da može dovesti do poteškoća vezanih za negativni afekat (Carter, Guan, Maples, Williamson, & Miller, 2016; Pickett, Jennifer, Joeri, Jonas, & De Fruyt 2020; Fayard, Roberts, Robins, & Watson, 2012; Boyce, Wood, & Brown, 2010; Pickett i sar., 2020). Neophodna su dodatna istraživanja da bi se razumela ova nedoslednost, kao i da se utvrdi koje dodatne varijable mogu objasniti mogući mehanizam odnosa osobina ličnosti i psiholoških poteškoća (Shi, Liu, Wang, & Wang, 2015; Miscel i Shoda, 2008; Rau & Wiliams, 2016). Tran, Wasserbauer & Vorachek (2020) ukazali su na postojanje relacija faceta navedenih konstrukata sa simptomima depresivnog afekta i anksioznosti. Ipak, postoji istraživačka potreba da se ispitaju mehanizmi uticaja *Pune svesnosti i pažnje* u ulozi medijatora (Shapiro et al., 2006). Stoga bi bilo značajno, a za potrebe razumevanja njihovih relacija, analizirati indirektni efekat kompletnih agregata: *Neuroticizma* ka simptomima *Brige*, *Tenzija* i *Izostanka sreće* putem *Pune svesnosti i pažnje*. Iako je istaknuto da *Puna svesnost i pažnja* štiti od afektivnog pobuđenja (Rau & Wiliams, 2016), nema poznatih nalaza o potencijalnom medijatorskom doprinosu kod ovih relacija, što čini teorijsko-empirijski jaz. Dodatne značajne istraživačke domene predstavljaju i nedosledni nalazi po pitanju povezanosti *Savesnosti* i teškoća izazvanih stresom, kao što su *Briga*, *Tenzija* i *Izostanak sreće*, kao i njihovih veza sa *Punom svesnosti i pažnjom* (Boyce, Wood i Brown, 2010; Giluk, 2009). Lee-Baggley, Preece, & DeLongis (2005) ističu da uprkos tome što je empirijski utvrđeno da savesnost igra važnu ulogu u reakcijama i procenama koje pojedinac ispoljava u stresnom stanju, mehanizmi te interakcije nisu poznati. Problem istraživanja mogao bi da se izrazi pitanjem: postoji li značajan medijacioni doprinos *Pune svesnosti i pažnje* u relacijama *Neuroticizma* i *Savesnosti* sa *Brigama*, *Tenzijama* i *Izostankom sreće*? Nalazi u ovom domenu upotpunili bi zapažanja koja iznose autori Tran, Wasserbauer, & Vorachek (2020) o značajnom doprinosu *Pune svesnosti i pažnje*, *Neuroticizma* i

*Savesnosti* u kontekstu psiholoških poteškoća. Rezultati bi potencijalno pružili odgovor na teorijske dileme koje imaju autori Shapiro et al. (2006), Rau & Wiliams (2016) i Giluk (2009), a razjasnile bi se i relacije *Savesnosti* sa *Brigom*, *Tenzijama* i *Izostankom sreće*. Stoga, ciljevi istraživanja su da se ispitaju: 1) medijacioni efekat *Pune svesnosti i pažnje* u relacijama *Neuroticizma* i *Savesnosti* sa *Brigama, Tenzijama* i *Izostankom sreće*; 2) priroda povezanosti *Savesnosti* sa *Brigama, Tenzijama* i *Izostankom sreće;* 3) odnos *Savesnosti* i *Pune svesnosti i pažnje*. Hipoteze u ovom radu mogu se izraziti iskazima:

- Postoji značajan medijacioni efekat *Pune svesnosti i pažnje* u odnosu *Neuroticizma* sa *Brigama*, *Tenzijama* i *Izostankom sreće*;
- Postoji značajan medijacioni efekat *Pune svesnosti i pažnje* u odnosu *Savesnosti* sa *Brigama*, *Tenzijama* i *Izostankom sreće*. Na osnovu argumenata iz literature, provere hipoteza izvršile bi se analizama puteva Konceptualnog modela 1.1:




Konceptualni model 1.1. Neuroticizam i Savesnost kao varijable u ulozi prediktora, *Briga, Tenzija i Izostanak sreće* kao kriterijumi i *Puna svesnost i pažnja* kao medijator relacija.

## 2. Metod

Prilikom analize uzorka korišćeni su otvoreni podaci iz baze podataka *figshare.com*; Tran, U., Wasserbauer, J., & Voracek, M. (2021, Januar 25). Incremental validity of dispositional mindfulness over and above the Big Five. Analize sprovedene u ovom radu razlikuju se u pogledu ispitivanja isključivo nefacetnih relacija i unosa *Pune svesnosti i pažnje*, kao medijatorske varijable, zarad dobijanja parametara o značajnosti indirektnih puteva u relacijama prediktora *Neuroticizma* i *Savesnosti* sa kriterijumima *Brige*, *Tenzije* i *Izostanak sreće* (a ne sa afektivnim dimenzijama *Depresivnosti* i *Anksioznosti* kao u originalnom radu). Uzorak su činili punoletni dobrovoljci sa nemačkog govornog područja N = 430 (73% žene i 27% muškarci; godine M = 38.0, SD = 14.7, raspon: 18–76 godine).

### 2.1. Instrumenti

Za procenu skorova na *Neuroticizmu* (četiri ajtema) i *Savesnosti* (četiri ajtema) primenjena je skraćena verzija Velikih pet koja sadrži 21 ajtem (*Kurzversion des Big Five Inventory*, BFI-K; Rammsted i John, 2005). Prostor za odgovore formiran je u vidu Likertove skale (1 – U potpunosti se ne slažem [...] 5 – U potpunosti se slažem). Instrument je validiran po više kriterijuma: faktorski, inter-rater u odnosu na partnerske procene i simultano u poređenju sa drugim instrumentima iz grupe Velikih pet i petofaktorskih modela (Kovaleva, Beierlein, Kemper, & Rammstedt, 2013). *Neuroticizam* (α = .78) i *Savesnost* (α = .69) demonstrirali su dobru i zadovoljavajuću pouzdanost.

Primenjena je skraćena verzija Petofacetnog upitnika pune svesnosti i pažnje (FFMQ; Baer i sar., 2006) kako bi se dobio sumativni skor na *Punoj svesnosti i pažnji.* Odgovori su raspoređeni u vidu Likertove skale. Skala ukupno sadrži 39 ajtema („Obraćam pažnju na to kako moja osećanja uzrokuju misli i ponašanja“ itd.) od kojih je 19 ajtema inverzno skorovano, a više postignuće ukazuje na veću izraženost osobine. Konstruktno i prediktivno je validirana u kontekstu aleksitimije, briga, ruminacija, disocijacije i psiholoških simptoma, koji su povezani sa stresom (Michalak, Zarbock, Drews, Otto, Mertens, Ströhle, Schwinger, Dahme, & Heidenreich, 2016; De Bruin, Topper, Muskens, Bögels, & Kamphuis, 2012), i demonstrirala je dobru pouzdanost (α = .92).

Upitnik percipiranog stresa (*Perceived Stress Questionnaire*) (PSQ; Fliege, Rose, Arck, Walter, Kocalevent, Weber, & Klapp, 2005) primenjen je za procenu reakcija *Briga* (pet ajtema) *Tenzija* (pet ajtema) i *Izostanka sreće* (pet ajtema). Viši skorovi označavaju veću izraženost reakcija. Upitnik sadrži instrukciju za ispitanike da na osnovu tvrdnji i dugoročnog osećaja daju konačan odgovor („Iziritiran/a si i napet/a", „Zabrinut/a si", „Osećaš se da radiš stvari zato što moraš, a ne zato što bi želeo/la"). Prostor za odgovore je raspoređen na četvorostepenoj skali progresivnih odgovora. Subskale su validirane na zdravoj i kliničkoj populaciji (Fliege, Rose, Arck, Walter, Kocalevent, Weber, & Klapp, 2005). Pouzdanosti subskala su visoke (*Brige* α = .88, *Tenzije* α = .85, *Izostanak sreće* α = .85).

## 2.2. **Podaci i analize**

Za potrebe testiranja hipoteza upotrebljeni su podaci iz baze podataka *figshare.com*; Tran, U., Wasserbauer, J., & Voracek, M. (2021, Januar 25). Incremental validity of dispositional mindfulness over and above the Big Five.

IBM AMOS 26 korišćen je za potrebe ispitivanja **Konceptualnog modela 1.1**, za analizu modifikacionih indeksa, kao i parametara fita RMSE-a, CFI i TLI, a po preporuci Garsona (2009). Pored toga, korišćen je i statistički paket JASP 0.14.1. Rezultati **o uzorku** dobijeni su deskriptivnom analizom i analizom frekvencija. Sprovedene su i analize o **internim konzistencijama** na osnovu čega su dobijeni parametri o pouzdanosti (Krombahove alfe) za sve primenjene skale. Pirsonova produkt-moment korelacija sprovedena je za potrebe ispitivanja uslova **linearnosti veza među varijablama**, a rezultati su tumačeni u skladu sa Evansovim kriterijumima (1996) (Divaris, Vann, Baker, & Lee, 2012). Nakon proverenih uslova, s naglaskom na uslov linearnosti, kao i u skladu sa preporukama (Hayes, 1996; Darlington, & Hayes 2017), sprovedene su **analize puteva** i koeficijenata determinacije ($R^2$) AMOS 26 softverskim rešenjem za proveru **Konceptualnog modela 1.1.**, gde su, u skladu sa mogućim teorijskim postavkama (Shi, Liu, Wang, & Wang, 2015; Rau & Wiliams, 2016), *Neuroticizam* i *Savesnost* unete kao prediktorske, *Puna svesnost i pažnja* kao medijatorska a *Briga*, *Tenzija* i

*Izostanak sreće* kao kriterijumske varijable. U skladu sa modifikacionim indeksima i parametrima fita (po preporuci Garsona (2009)), model će po potrebi biti modifikovan i ponovo analiziran. Nakon toga biće sprovedena **medijaciona analiza** puteva modifikovanog modela. U cilju ispitivanja značajnosti indirektnih puteva koristiće se medijaciona analiza. Nivo statističke značajnosti ($p < .01$) i interval pouzdanosti (LLCI i ULCI) dobijen metodom ponovnog uzorkovanja na 5.000 iteracija (kao relevantniji i manje zahtevan pokazatelj po pitanju uslova (MacKinnon, Lockwood, Hoffman, West i Sheets, 2002, prema Fong i Loi, 2016) koristiće se kao indikatori značajnosti uz navođenje standardizovanih i nestandardizovanih koeficijenata. Parametri indirektnog efekta su smatrani značajnim ukoliko raspon 95% CI ne uključuje 0 kao vrednost (Lockhart, MacKinnon, & Ohlrich, 2011).

## 2.3. **Rezultati korelacija**

*Tabela 1.2.* Pirsonove korelacije

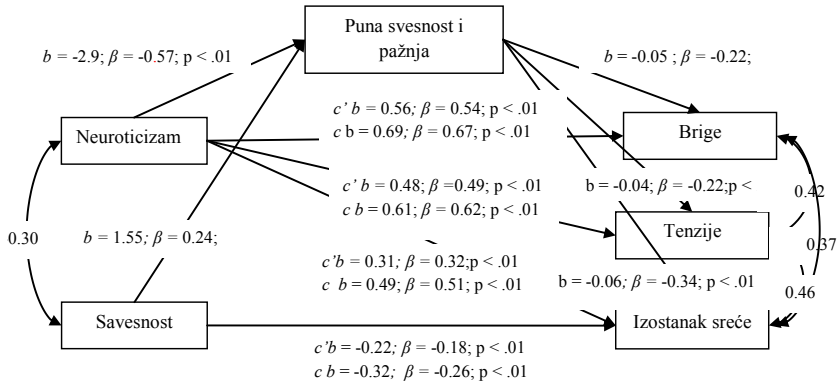
| Varijable | Neuroticizam | Savesnost | Puna svesnost i pažnja | Briga | Tenzija | Izostanak sreće |
|---|---|---|---|---|---|---|
| 1. Neuroticizam | — | | | | | |
| | — | | | | | |
| 2. Savesnost | -0.305 | — | | | | |
| | < .001 | — | | | | |
| 3. Puna svesnost i Pažnja | -0.641 | 0.413 | — | | | |
| | < .001 | < .001 | — | | | |
| 4. Briga | 0.686 | -0.352 | -0.571 | — | | |
| | < .001 | < .001 | < .001 | — | | |
| 5. Tenzija | 0.638 | -0.268 | -0.541 | 0.690 | — | |
| | < .001 | < .001 | < .001 | < .001 | — | |
| 6. Izostanak sreće | 0.592 | -0.448 | -0.619 | 0.666 | 0.685 | — |
| | < .001 | < .001 | < .001 | < .001 | < .001 | — |

U Tabeli 1.2. uočavaju se jake pozitivne korelacije između *Neuroticizma* i *Brige* ($r = .68$; $p < .01$), *Tenzije* ($r = .63$; $p < .01$), umerene sa *Izostankom sreće* ($r = .59$; $p < .01$), kao i jake negativne sa *Punom svesnošću*

*i pažnjom* (r = -.64; p < .01) i slabe negativne sa *Savesnošću* (r = -.30; p < .01). Što se tiče *Savesnosti*, ona ostvaruje umerenu pozitivnu povezanost sa *Punom svesnošću i pažnjom* (r = .41; p < .01), slabu negativnu povezanost sa *Brigama* (r = -.35; p < .01), veoma slabu negativnu povezanost sa *Tenzijama* (r = -.26; p < .01), kao i umerenu negativnu povezanost sa *Izostankom sreće* (r = -.44; p < .01). S obzirom na relativno zadovoljavajuće nivoe pokazatelja, u nastavku su sprovedene serije analiza sa ciljem daljih testiranja uslova, izuzev planiranog puta između varijabli *Savesnosti* i *Tenzije*, koji će se izopštiti usled veoma niske korelacije, zbog čega pretpostavka o linearnosti može ugroziti dalje tumačenje regresionih koeficijenata (Darlington & Hayes, 2017). Vizuelnom inspekcijom dijagrama raspršenja utvrđena su odstupanja u relaciji *Savesnosti* sa *Brigama,* što govori u prilog narušenosti homoskedasciteta. Na osnovu inspekcije histrograma, uočeno je da reziduali varijabli *Brige* i *Tenzije* nisu normalno distribuirani, zbog čega će se, u skladu sa preporukama (Hayes, 2018, str. 98), uvažiti pokazatelji *Bootstrap* metode ponovnog uzorkovanja podešene na 5.000 replikacija sa podešavanjem intervala pouzdanosti na 95%.

## 2.4. **Analiza modela i medijacija**

Nakon provere **Konceptualnog modela 1.1.** ustanovljeno je da su svi putevi statistički značajni izuzev direktnog puta *Savesnosti* i *Tenzija* (*b* = -0.03; p > .01), kao i direktnog puta *Savesnosti* i *Briga* (*b* = -0.15; p > .01). Testirani model objašnjava 51% varijanse *Briga*, 43% varijanse *Tenzija* i 48% varijanse *Izostanka sreće*, a parametri fita su nezadovoljavajući (CFI = .84; TLI = .23; RMSEA = .39). Direktni putevi *Savesnosti* i *Tenzija* i *Savesnosti* i *Briga* su izbačeni, model je modifikovan i uspostavljeni su putevi kovarijacija, u skladu sa indeksima modifikacije. Posle provere **Konceptualnog modela 1.2.** dobijeni su dobri i osrednji indeks fita (CFI = .99; TLI = .95; RMSEA = .09) (Kline, 2005; Kim, Ku, Kim, Park, & Park, 2016; Fabrigar, Wegener, MacCallum, & Strahan, 1999). Prilikom inspekcija koeficijenata determinacije ($R^2$) ustanovljeno je da prediktori objašnjavaju 50% udela varijanse *Briga*, 44% udela varijanse *Tenzija* i 48% udela varijanse *Izostanka sreće*.




**Konceptualni model 1.2**. c' – pokazatelji direktnog efekta; c – pokazatelji totalnog efekta; b – nestandardizovani koeficijenti; β – standardizovani koeficijenti; p – nivo statističke značajnosti.

Nakon ispitivanja modifikovanog **Konceptualnog modela 1.2.** ustanovljeno je da *Neuroticizam* značajno pozitivno predviđa varijable *Brige* (b = 0.56; β = 0.54; p < .01), *Tenzije* (b = 0.48; β = 0.49; p < .01) i *Izostanak sreće* (b = 0.31; β = 0.32; p < .01), kao i da negativno predviđa *Punu svesnost i pažnju* (b = -2.9; β = -0.57; p < .01). *Puna svesnost i pažnja* negativno i statistički značajno predviđa sva tri kriterijuma: *Brige* (b = -0.05; β = -0.22; p < .01), *Tenzije* (b = -0.04; β = -0.22; p < .01) i *Izostanak sreće* (b = -0.06; β = -0.34; p < .01).

Potvrđeno je da postoji negativna povezanost između *Neuroticizma* i *Pune svesnosti i pažnje* i pozitivna sa *Brigama*, *Tenzijama* i *Izostankom sreće*. Takođe, potvrđeno je i da *Puna svesnost i pažnja* pravi negativne relacije sa *Brigama*, *Tenzijama* i sa *Izostankom sreće*. U nastavku su predstavljene vrednosti indirektnih puteva (Tabela 1.4).

*Tabela 1.4.* Indirektni efekti

| | | | | | | | 95% Interval pouzdanosti | |
|---|---|---|---|---|---|---|---|---|
| | | | *b* | SE | z-vrednost | p | LLCI | ULCI |
| BF_Neuroticizam | → FFMQ_SUM → | Brige | 0.149 | 0.028 | 4.806 | < .001 | 0.091 | 0.217 |
| BF_Neuroticizam | → FFMQ_SUM → | Tenzija | 0.139 | 0.017 | 4.578 | < .001 | 0.077 | 0.208 |
| BF_Neuroticizam | → FFMQ_SUM → | Izostanak_sreće | 0.180 | 0.028 | 4.149 | < .001 | 0.124 | 0.241 |
| BF_Savesnost | → FFMQ_SUM → | Izostanak_sreće | -0.100 | 0.010 | -4.728 | < .001 | -0.096 | -0.058 |

*Napomena.* Delta metod standardnih grešaka, Parametar maksimalne verovatnoće

Na osnovu vrednosti koje su navedene u **Konceptualnom modelu 1.2.** i u **Tabeli 1.4.** uočeno je da *Neuroticizam*, pored direktnog efekta, ostvaruje i značajan **indirektan efekat** putem varijable *Pune svesnosti i pažnje* na varijablu *Brige* (b = 0.15; β = 0.12; p < .001, 95% Bca CI = 0.091, 0.217). Potvrđena je **hipoteza**, prema kojoj postoji značajan medijacioni efekat *Pune svesnosti i pažnje* u odnosu *Neuroticizma* i *Brige*. Značajan indirektan doprinos Pune svesnosti i pažnje uočen je i u relacijama Neuroticizma i *Tenzije* (b = 0.13; β = 0.12; p < .001, 95% Bca CI = 0.077, 0.0208) i u slučaju *Izostanka sreće* (b = 0.18; β = 0.19; p < .001, 95% Bca CI = 0.124, 0.241), što potvrđuje pretpostavke da postoji značajan medijacioni efekat *Pune svesnosti i pažnje* u odnosu *Neuroticizma* i *Tenzije* i da postoji značajan medijacioni efekat *Pune svesnosti i pažnje* u odnosu *Neuroticizma* i *Izostanka sreće*.

S obzirom na to da nisu ispunjeni uslovi za ispitivanje relacija *Savesnosti* i *Briga* i *Savesnosti* i *Tenzija*, kao i zbog modifikacionih indeksa, odgovori na hipoteze, prema kojima postoji značajan **medijacioni efekat *Pune svesnosti i pažnje*** u odnosu ***Savesnosti*** i ***Brige***, odnosno značajan **medijacioni efekat *Pune svesnosti i pažnje*** u odnosu ***Savesnosti*** i ***Tenzije***, ostavljeni su, kao preporuke, za buduća istraživanja.

Sa druge strane, *Savesnost* gradi pozitivnu direktnu vezu sa *Punom svesnošću i pažnjom* (b = 1.5; β = 0.24; p < .01) i negativnu vezu sa *Izostankom sreće* (b = -0.22; β = -0.18; p < .01). *Savesnost*, takođe, pored direktnog efekta, ostvaruje i značajan **indirektan efekat** putem varijable

*Pune svesnosti i pažnje* na varijablu *Izostanak sreće* (b = -0.10; β = -0.08; p < .001, 95% Bca CI = -0.146, -0.058). Potvrđeno je da *Savesnost* pravi relaciju sa *Punom svesnošću i pažnjom*, sa *Izostankom sreće*, kao i da postoji značajan **medijacioni efekat *Pune svesnosti i pažnje*** u odnosu ***Savesnosti*** i ***Izostanka sreće***. U okviru diskusije biće razmotreni najvažniji nalazi kroz teorijske implikacije, ograničenja istraživanja, kao i preporuke za buduća istraživanja.

## 3. Diskusija

Istraživanje je sprovedeno kako bi se ispitala medijaciona uloga *Pune svesnosti i pažnje* u relaciji *Neuroticizma* i *Savesnosti* sa *Brigama*, *Tenzijama* i *Izostankom sreće*. Ustanovljeno je da: 1) *Neuroticizam* ostvaruje značajan pozitivni doprinos za *Brige*, *Tenzije* i *Izostanak sreće* i negativni za *Punu svesnost i pažnju*, 2) *Savesnost* ostvaruje negativni doprinos za *Izostanak sreće* i pozitivni za *Punu svesnost i pažnju*. *Puna svesnost i pažnja* ostvaruje značajan medijacioni efekat u svim relacijama, što potvrđuje pretpostavke, izuzev u slučaju izopštenih puteva *Svesnosti* sa *Brigama* i *Tenzijama*. *Neuroticizam* ili dispozicija ka negativnom afektu ostvaruje pozitivne veze sa svim ispitanim kriterijumima (Thompson, 2008; Banjongrewadee, Wongpakaran, Wongpakaran, Pipanmekaporn, Punjasawadwong, & Mueankwan, 2020). Njegov doprinos u relaciji sa varijablom *Brige* potencijalno govori u prilog pretpostavkama koje iznose Harle, Shenoy, & Paulus (2013), prema kojima neprijatna emocionalna stanja aktiviraju informacije, koncepte i stavove koji su kongruentni sa aktuelnim osećanjem i povećavaju verovatnoće da pojedinac percipira i doživljava svet kao „preteći" (Tellegen, Watson & Clark, 1999; Watson & Clark, 1992; Kercher, Rapee, & Schniering, 2009). Prema „Kognitivno vulnerabilnom modelu", veći nivo pobuđenja i negativna valenca mogu suziti spektar potencijalnih rešenja za problemske situacije, mogu doprineti da pojedinac preuveliča rizik i mogu ometati efektivan odgovor (Harle et al., 2013). Nalaz da *Neuroticizam* ostvaruje značajan doprinos *Brigama* putem negativnog doprinosa *Punoj svesnosti i pažnji* pruža potencijalno teorijsko proširenje ove pretpostavke. Prema „Hipotezi kompetitivnih procesa" (Harle et al., 2013), emocionalno procesiranje oduzima deo resursa pažnje i egzekucionih resursa

i ometa više nivoe kognitivnih procesa koji su relevantni za preciznu procenu i obavljanje aktuelnog zadatka. S obzirom na to da *Neuroticizam* pravi negativnu vezu sa varijablom *Puna svesnost i pažnja,* moguće je da pojedinci sa izraženim neuroticizmom imaju poteškoću da fleksibilno posmatraju aktuelne doživljaje i dešavanja i da bivaju nefleksibilno fokusirani na negativne naznake. Osim što to može navesti pojedinca da odlaže pravovremeno i efikasno rešavanje problema, može dovesti i do toga da učestalo brine. Podatak je u skladu sa nalazima da negativni doživljaji remete kapacitet za balansirani odnos prema aktuelnim emocijama (Chang, Yu, Najarian, Wright, Chen, Chang, Du, & Hirsch, 2016). Što se tiče tvrdnje da *Puna svesnost i pažnja* doprinose (samo) regulaciji odgovora, treba biti obazriv. Iako je indirektan efekat *Neuroticizma* putem *Pune svesnosti i pažnje* manji od direktnog efekta, veza nije pozitivna (porast na *Neuroticizmu* ne implicira porast *Pune svesnosti i pažnje*). Shodno tome, sugestija je da se sprovedu longitudinalna istraživanja ove relacije i da se uključi varijabla *Samokontrola* kako bi se dalje razjasnio ovaj efekat u više vremenskih serija. Sklonost osoba sa visokim neuroticizmom da preuveličavaju naznake pretnji (Hecht, 2013 prema Denovan, Dagnall, & Lofthouse, 2018) mogla bi da objasni potencijalnu povezanost *Neuroticizma* sa *Tenzijom* i značajan indirektni uticaj preko varijable *Puna svesnost i pažnja*. „Hipoteza o percepciji simptoma" (Watson & Penebacker, 1989 prema Denovan, Dagnall, & Lofthouse, 2019) govori o senzibilitetu osoba sa visokim neuroticizmom, o tome da su sklone da precene ozbiljnost stanja kada obrate pažnju na telesne reakcije, kao i da prekomerno izveštavaju o telesnim poteškoćama (Howren & Suls, 2011). Ovo je delimično podržano i rezultatom o kovarijaciji *Briga* i *Tenzija* u predstavljenom modelu 1.2. Ipak, nije isključeno da ne postoji doprinos dodatnih varijabli, poput stvarnih psihosomatskih poteškoća (Johnson, 2003, prema Denovan, Dagnall, & Lofthouse, 2019), zbog čega bi bilo dobro da se u budućim istraživanjima analiziraju i ove varijable. Ovo je teorijski relevantno i po pitanju *Pune svesnosti i pažnje* koja je dovedena u vezu sa adekvatnim telesnim i fiziološkim funkcionisanjem (Vest Rogers, 2009 prema Bowlin, 2012; Brown, Weinstein, & Creswell, 2012; Jaiswal, Muggleton, Juan, & Liang, 2019).

Nalaz o povezanosti *Neuroticizma* i *Izostanka sreće* mogao bi da se objasni po principu „Modela nivoa afekta" (DeNeve & Cooper, 1998;

Gross, Stuton, & Ketelaar, 1998; Lucas &, Baird, 2004), gde osobe sa višim neuroticizmom intenzivnije proživljavaju neprijatna stanja i redukovano prijatna. Drugim rečima, prag pobuđenja za negativni afekat je mnogo niži, tonalitet je intenzivniji, zbog čega su stanja neprijatnosti učestalija. Takođe, osobe sa izraženim neuroticizmom pribegavaju maladaptivnim, izbegavajućim stilovima ponašanja koji na duže staze mogu dovesti do ograničenih potkrepljenja tokom svakodnevice i učestalijih stanja distresa (Ireland, Hepler, Li, & Albarracin, 2014; Barlow, Sauer-Zavala, Carl, Bullis, & Elard, 2014).

Podaci da *Savesnost* i *Puna svesnost i pažnja* ostvaruju značajne neg. doprinose *Izostanku sreće,* kao i da *Puna svesnost i pažnja* ostvaruje značajan medijacioni efekat, ukazuju na dva važna aspekta. *Savesnost* je prirodan kapacitet za aktivno delanje u kontekstu problemskih situacija (Bartley & Roesch, 2011) i dosledno predviđa održavanje zdravstveno pogodnih ponašanja (Connor-Smith & Flachsbart, 2007; Saklofske, Austin, Galloway, & Davidson, 2007). Moguće je da se radi o tome da posvećeni i odlučni pojedinci s izraženom tendencijom ka organizaciji aktivno unapređuju kvalitet svog života tako što to povećava verovatnoću potkrepljenja u različitim aspektima života. Takva zalaganja mogu služiti pojedincu da predupredi nastanak pojedinih stresnih situacija, a tendencije ka samokontroli i istrajnosti u okviru ove dimenzije mogu doprineti održavanju (konstruktivnih) postupaka (Bartley & Roesch, 2011).

Puna svesnost i pažnja bi mogle potencijalno da doprinesu dubljem fokusu prilikom izvršavanja zadataka, što je povezano sa pozitivnim afektom (McCay-Peet, Lalmas, & Navalpakkam, 2012). Savesnost bi u sadejstvu sa punom svesnošću i pažnjom mogla da doprinese formiranju i aktualizaciji ličnih vrednosti, sudeći po naznakama iz prethodnih istraživanja (Roccas, Sagiv, Schwartz, & Knafo, 2002; Grankvist & Kajonius, 2015). Ipak, buduća istraživanja bi trebalo da prošire modele u vidu serijskih medijacija sa varijablama vrednosti kako bi se detaljnije istražile ove relacije.

Postoji nekoliko značajnih ograničenja u ovom istraživanju. Kros-sekciona priroda podataka onemogućava donošenje zaključaka o kauzalnosti, tj. smeru odnosa između varijabli, pa je preporučljivo da se rezultati tumače u hipotetičko-prediktivnom maniru. Gotovo u svakoj od navedenih interakcija moguć je obrnut smer dejstava varija-

bli. Tako, na primer, povećano pozitivno raspoloženje može dovesti do boljeg fokusa i posvećenosti ličnim planovima, ciljevima i obavezama (Silvia, Abele, 2002), a izostanak brige može omogućiti osobi da ostvari nepristrasniji uvid i da smanji doživljaj pretnje i neprijatnosti. Ovaj nedostatak mogao bi da se otkloni ispitivanjem interakcija u više vremenskih serija. Drugo, budući da su nalazi dobijeni na opštoj populaciji, nemoguće je generalizovati podatke u kontekstu kliničke populacije, gde su prisutni potencijalno intenzivniji simptomi sa fiziološkim uzrocima. Takođe, važan aspekt budućih istraživanja mogao bi da bude i uključivanje podataka dobijenih drugačijim pristupima merenja (neurološki, opservacioni itd.) kako bi se predupredila eventualna pristrasnost ispitanika prilikom davanja odgovora putem samoocene. S obzirom da postoje indicije da vežbanje *Pune svesnosti i pažnje* može doprineti promeni na osobini (Shapiro et al., 2006; Bailey, Opie, Hassed, & Chambers, 2019), ispitivanje povezanosti ove dve forme *Pune svesnosti i pažnje* bi upotpunilo nalaze o njihovim karakteristikama.

## Literatura

Carter, N. T., Miller, J. D., & Widiger, T. A. (2018). *Extreme Personalities at Work and in Life. Current Directions in Psychological Science, 09637214187 9313*. doi:10.1177/0963721418793134

Baer, R. A., Smith, G. T., & Allen, K. B. (2004). Assessment of mindfulness by self-report: the Kentucky inventory of mindfulness skills. *Assessment*, *11*(3), 191–206. https://doi.org/10.1177/1073191104268029

Baer, R. A., Smith, G. T., Hopkins, J., Krietemeyer, J., & Toney, L. (2006). Using self-report assessment methods to explore facets of mindfulness. *Assessment*, *13*(1), 27–45. https://doi.org/10.1177/1073191105283504

Bailey, N. W., Opie, J. L., Hassed, C. S., & Chambers, R. H. (2019). Meditation practice, dispositional mindfulness, personality and program outcomes in mindfulness training for medical students. *Focus on Health Professional Education*, *20*(1), 50–68.

Banjongrewadee, M., Wongpakaran, N., Wongpakaran, T., Pipanmekaporn, T., Punjasawadwong, Y., & Mueankwan, S. (2020). The role of perceived stress and cognitive function on the relationship between neuroticism and depression among the elderly: a structural equation model approach. *BMC psychiatry*, *20*(1), 25. https://doi.org/10.1186/s12888-020-2440-9

Barlow, D. H., Sauer-Zavala, S., Carl, J. R., Bullis, J. R., & Ellard, K. K. (2014). The Nature, Diagnosis, and Treatment of Neuroticism: Back to the Future. *Clinical Psychological Science*, *2*(3), 344–365. https://doi.org/10.1177/2167702613505532

Bartley, C. E., & Roesch, S. C. (2011). Coping with Daily Stress: The Role of Conscientiousness. *Personality and individual differences*, *50*(1), 79–83. https://doi.org/10.1016/j.paid.2010.08.027

Bogg, T., & Roberts, B. W. (2004). Conscientiousness and Health-Related Behaviors: A Meta-Analysis of the Leading Behavioral Contributors to Mortality. *Psychological Bulletin, 130(6), 887–919.* doi:10.1037/0033-2909.130.6.887

Bowlin, S. (2012). *Dispositional Midnfulness And Self-Compassion And Their Influence On Oxytocin And Parasympathetic Functioning* (dissertation).

Boyce, C. J., Wood, A. M., & Brown, G. D. A. (2010). The dark side of conscientiousness: Conscientious people experience greater drops in life satisfaction following unemployment. *Journal of Research in Personality, 44*(4), 535–539. https://doi.org/10.1016/j.jrp.2010.05.001

Brown, K. W., & Ryan, R. M. (2003). The benefits of being present: Mindfulness and its role in psychological well-being. *Journal of Personality and Social Psychology,84*(4), 822–848. doi:10.1037/0022-3514.84.4.822

Brown, K. W., & Ryan, R. M. (2004). Perils and promise in defining and measuring mindfulness: observations from experience. *Clinical Psychology: Science and Practice*, *11*, 242–248.

Brown, K. W., Goodman, R. J., & Inzlicht, M. (2013). Dispositional mindfulness and the attenuation of neural responses to emotional stimuli. *Social cognitive and affective neuroscience*, *8*(1), 93–99. https://doi.org/10.1093/scan/nss004

Brown, K. W., Ryan, R. M., & Creswell, J. D. (2007). Mindfulness: Theoretical Foundations and Evidence for its Salutary Effects. *Psychological Inquiry,18*(4), 211–237. doi:10.1080/10478400701598298

Brown, K. W., Weinstein, N., & Creswell, J. D. (2012). Trait mindfulness modulates neuroendocrine and affective responses to social evaluative threat. *Psychoneuroendocrinology*, *37*(12), 2037–2041. https://doi.org/10.1016/j.psyneuen.2012.04.003

Chang, E. C., Yu, T., Najarian, A. S.-M., Wright, K. M., Chen, W., Chang, O. D., Du, Y., & Hirsch, J. K. (2017). Understanding the association between negative life events and suicidal risk in college students: Examining self-compassion as a potential mediator. *Journal of Clinical Psychology, 73*(6), 745–755. https://doi.org/10.1002/jclp.22374

Connor-Smith, J. K., & Flachsbart, C. (2007). Relations between personality and coping: a meta-analysis. *Journal of personality and social psychology*, *93*(6), 1080–1107. https://doi.org/10.1037/0022-3514.93.6.1080

Creswell, J. D., Way, B. M., Eisenberger, N. I., & Lieberman, M. D. (2007). Neural correlates of dispositional mindfulness during affect labeling. *Psychosomatic Medicine*, 69, 560–565. https://doi.org/10.1097/PSY.0b013e3180f6171f

Darlington, R. B., & Hayes, A. F. (2017). *Regression analysis and linear models: Concepts, applications, and implementation*. New York, NY: Guilford Press.

De Bruin, E. I., Topper, M., Muskens, J. G., Bögels, S. M., & Kamphuis, J. H. (2012). Psychometric properties of the Five Facets Mindfulness Questionnaire (FFMQ) in a meditating and a non-meditating sample. *Assessment*, *19*(2), 187–197. https://doi.org/10.1177/1073191112446654

DeNeve, K. M., & Cooper, H. (1998). The happy personality: A meta-analysis of 137 personality traits and subjective well-being. *Psychological Bulletin, 124(2), 197–229.* doi:10.1037/0033-2909.124.2.197

Denovan, A., Dagnall, N., & Lofthouse, G. (2019). Neuroticism and Somatic Complaints: Concomitant Effects of Rumination and Worry. *Behavioural and cognitive psychotherapy*, *47*(4), 431–445. https://doi.org/10.1017/S1352465818000619

Divaris, K., Vann, W. F., Jr, Baker, A. D., & Lee, J. Y. (2012). Examining the accuracy of caregivers' assessments of young children's oral health status. *Journal of the American Dental Association (1939)*, *143*(11), 1237–1247. https://doi.org/10.14219/jada.archive.2012.0071

Du Pont, A., Rhee, S. H., Corley, R. P., Hewitt, J. K., & Friedman, N. P. (2019). Are rumination and neuroticism genetically or environmentally distinct risk factors for psychopathology?. *Journal of abnormal psychology*, *128*(5), 385–396. https://doi.org/10.1037/abn0000430

Eisenlohr-Moul, T. A., Walsh, E. C., Charnigo, R. J., Jr, Lynam, D. R., & Baer, R. A. (2012). The "what" and the "how" of dispositional mindfulness: using interactions among subscales of the five-facet mindfulness questionnaire to understand its relation to substance use. *Assessment*, *19*(3), 276–286. https://doi.org/10.1177/1073191112446658

Ervasti, M., Kallio, J., Määttänen, I., Mäntyjärvi, J., & Jokela, M. (2019). Influence of Personality and Differences in Stress Processing Among Finnish Students on Interest to Use a Mobile Stress Management App: Survey Study. *JMIR mental health*, *6*(5), e10039. https://doi.org/10.2196/10039

Fabrigar, L. R., Wegener, D. T., MacCallum, R. C., & Strahan, E. J. (1999). Evaluating the use of exploratory factor analysis in psychological research. *Psychological Methods, 4*(3), 272–299. https://doi.org/10.1037/1082-989X.4.3.272

Fayard, J. V., Roberts, B. W., Robins, R. W., & Watson, D. (2012). Uncovering the affective core of conscientiousness: the role of self-conscious emotions. *Journal of personality*, *80*(1), 1–32. https://doi.org/10.1111/j.1467-6494.2011.00720.x

Feltman, R., Robinson, M. D., & Ode, S. (2009). Mindfulness as a moderator of neuroticism–outcome relations: A self-regulation perspective. *Journal of Research in Personality, 43*(6), 953–961. https://doi.org/10.1016/j.jrp.2009.08.009

Fliege, H., Rose, M., Arck, P., Walter, O. B., Kocalevent, R. D., Weber, C., & Klapp, B. F. (2005). The Perceived Stress Questionnaire (PSQ) reconsidered: validation and reference values from different clinical and healthy adult samples. *Psychosomatic medicine*, *67*(1), 78–88. https://doi.org/10.1097/01.psy.0000151491.80178.78

Fong, M., & Loi, N. M. (2016). The Mediating Role of Self-compassion in Student Psychological Health. *Australian Psychologist*, *51*(6), 431–441. https://doi.org/10.1111/ap.12185

Friedman, H. S. (2019). Neuroticism and health as individuals age. *Personality Disorders: Theory, Research, and Treatment, 10*(1), 25–32. https://doi.org/10.1037/per0000274

Garson, G. D. (2009). Structural equation modeling. Retrieved October 23, 2010, from http://faculty.chass.ncsu.edu/garson/PA765/structur.htm.

Gartland, N., O'Connor, D. B., Lawton, R., & Ferguson, E. (2013). Investigating the effects of conscientiousness on daily stress, affect and physical symptom processes: A daily diary study. *British Journal of Health Psychology*, 19(2), 311–328. doi:10.1111/bjhp.12077

Giluk, T. L. (2009). Mindfulness, Big Five personality, and affect: A meta-analysis. *Personality and Individual Differences,47*(8), 805-811. doi-:10.1016/j.paid.2009.06.026

Grankvist, G., & Kajonius, P. (2015). Personality traits and personal values : A replication with a Swedish sample. International Journal of Personality Psychology, 1(1), 8–14. Retrieved from http://urn.kb.se/resolve?urn=urn:nbn:se:hv:diva-8655

Gross, J. J., Sutton, S. K., & Ketelaar, T. (1998). Relations between Affect and Personality: Support for the Affect-Level and Affective-Reactivity Views. *Personality and Social Psychology Bulletin*, 24(3), 279–288. doi:10.1177/0146167298243005

Harlé, K. M., Shenoy, P., & Paulus, M. P. (2013). The influence of emotions on cognitive control: feelings and beliefs-where do they meet?. *Frontiers in human neuroscience*, *7*, 508. https://doi.org/10.3389/fnhum.2013.00508

Hayes, A. F. (1996). The permutation test is not distribution-free: Testing*H*0 : _ = 0. *Psychological Methods*, *1*, 184–198.

Hayes, A. F. (2017). *Introduction to mediation, moderation, and conditional process analysis: A regression-based approach*. Guilford Publications.

Hayes, A. F. (2018). *Introduction to mediation, moderation, and conditional process analysis a regression-based approach*. The Guilford Press.

Hayes, S. C. (2002). Acceptance, mindfulness, and science. *Clinical Psychology: Science and Practice, 9*(1), 101–106. https://doi.org/10.1093/clipsy.9.1.101

Hecht, D. (2013). The neural basis of optimism and pessimism. *Experimental Neurobiology*, 22, 173–199. DOI:10.5607/en.2013.22.3.173

Hicks, A., Phillips, K., Siwik, C., Salmon, P., Litvan, I., Jablonski, M. E., Filoteo, J. V., Kayser, K., & Sephton, S. E. (2019). The role of dispositional mindfulness in a stress-health pathway among Parkinson's disease patients and caregiving partners. *Quality of life research : an international journal of quality of life aspects of treatment, care and rehabilitation*, *28*(10), 2705–2716. https://doi.org/10.1007/s11136-019-02217-6

Ireland, M. E., Hepler, J., Li, H., & Albarracín, D. (2015). Neuroticism and attitudes toward action in 19 countries. *Journal of personality*, *83*(3), 243–250. https://doi.org/10.1111/jopy.12099

Jaiswal, S., Muggleton, N. G., Juan, C. H., & Liang, W. K. (2019). Indices of association between anxiety and mindfulness: a guide for future mindfulness studies. *Personality neuroscience*, *2*, e9. https://doi.org/10.1017/pen.2019.12

Jaiswal, S., Tsai, S.-Y., Juan, C.-H., Muggleton, N. G., & Liang, W.-K. (2019). Low delta and high alpha power are associated with better conflict control and working memory in high mindfulness, low anxiety individuals. *Social Cognitive and Affective Neuroscience, 14*(6), 645–655. https://doi.org/10.1093/scan/nsz038

Johnson, M. (2003). The vulnerability status of neuroticism: Over-reporting or genuine complaints? Personality and Individual Differences, 35, 877–887. DOI:10.1016/S0191- 8869(02)00303-3

Joyner, C., Rhodes, R. E., & Loprinzi, P. D. (2018). The Prospective Association Between the Five Factor Personality Model With Health Behaviors and Health Behavior Clusters. *Europe's Journal of Psychology*, *14*(4), 880–896. https://doi.org/10.5964/ejop.v14i4.1450

Jylhä, P. and Isometsä, E. (2006), The relationship of neuroticism and extraversion to symptoms of anxiety and depression in the general population. *Depress. Anxiety*, 23: 281–289. https://doi.org/10.1002/da.20167

Kabat-Zinn, J. (1994). Wherever you go, there you are: Mindfulness meditation in everyday life. New York, NY: Hyperion

Kabat-Zinn, J. (2011). Some reflections on the origins of MBSR, skillful means, and the trouble with maps, *Contemporary Buddhism*, 12:1, 281–306, DOI : 10.1080/14639947.2011.564844

Kercher, A. J., Rapee, R. M., & Schniering, C. A. (2009). Neuroticism, life events and negative thoughts in the development of depression in adolescent girls. *Journal of abnormal child psychology*, *37*(7), 903–915. https://doi.org/10.1007/s10802-009-9325-1

Kiken, L. G., Garland, E. L., Bluth, K., Palsson, O. S., & Gaylord, S. A. (2015). From a state to a trait: Trajectories of state mindfulness in meditation during intervention predict changes in trait mindfulness. *Personality and individual differences*, *81*, 41–46. https://doi.org/10.1016/j.paid.2014.12.044

Kim, H., Ku, B., Kim, J. Y., Park, Y. J., & Park, Y. B. (2016). Confirmatory and Exploratory Factor Analysis for Validating the Phlegm Pattern Questionnaire for Healthy Subjects. *Evidence-based complementary and alternative medicine : eCAM*, *2016*, 2696019. https://doi.org/10.1155/2016/2696019

Kline, R. B. (2005). *Methodology in the social sciences.Principles and practice of structural equation modeling (2nd ed.).* Guilford Press.

Kotov, R., Gamez, W., Schmidt, F., & Watson, D. (2010). Linking "big" personality traits to anxiety, depressive, and substance use disorders: A meta-analysis. *Psychological Bulletin, 136*(5), 768–821. https://doi.org/10.1037/a0020327

Lazarus, R. S., & Folkman, S. (1984). *Stress, appraisal, and coping*. New York: Springer.

Lee-Baggley, D., Preece, M., & Delongis, A. (2005). Coping with interpersonal stress: role of big five traits. *Journal of personality*, *73*(5), 1141–1180. https://doi.org/10.1111/j.1467-6494.2005.00345.x

Lockhart, G., MacKinnon, D. P., & Ohlrich, V. (2011). Mediation Analysis in Psychosomatic Medicine Research. Psychosomatic Medicine, 73(1), 29–43. doi:10.1097/psy.0b013e318200a54b

Lucas, R. E., & Baird, B. M. (2004). Extraversion and Emotional Reactivity. *Journal of Personality and Social Psychology, 86*(3), 473–485. https://doi.org/10.1037/0022-3514.86.3.473

MacKinnon, D. P., Lockwood, C. M., Hoffman, J. M., West, S. G., & Sheets, V. (2002). A comparison of methods to test mediation and other intervening variable effects. *Psychological Methods, 7*(1), 83–104. https://doi.org/10.1037/1082-989X.7.1.83

Marcel, A. J. (2003). Introspective report: Trust, self-knowledge and science. *Journal of Consciousness Studies*, 10, 167–186.

McCay-Peet, L., Lalmas, M., & Navalpakkam, V. (2012). On saliency, affect and focused attention. Proceedings of the 2012 ACM Annual Conference on Human Factors in Computing Systems - CHI '12. doi:10.1145/2207676.2207751

McCrae, R. R., & Costa, P. T., Jr. (2008). *The five-factor theory of personality.* In O. P. John, R. W. Robins, & L. A. Pervin (Eds.), *Handbook of personality: Theory and research* (p. 159–181). The Guilford Press.

Michalak, J., Zarbock, G., Drews, M., Otto, D., Mertens, D., Ströhle, G., Schwinger, M., Dahme, B., & Heidenreich, T. (2016). Erfassung von Achtsamkeit mit der deutschen Version des Five Facet Mindfulness Questionnaires (FFMQ-D) [Assessment of mindfulness with the German version of the Five Facet Mindfulness Questionnaires (FFMQ-D)]. *Zeitschrift für Gesundheitspsychologie, 24*(1), 1–12. https://doi.org/10.1026/0943-8149/a000149

Mischel, W., & Shoda, Y. (2008). *Toward a unified theory of personality: Integrating dispositions and processing dynamics within the cognitive-affective processing system.* In O. P. John, R. W. Robins, & L. A. Pervin (Eds.), *Handbook of personality: Theory and research* (p. 208–241). The Guilford Press.

Modinos, G., Ormel, J., & Aleman, A. (2010). Individual differences in dispositional mindfulness and brain activity involved in reappraisal of emotion. *Social Cognitive and Affective Neuroscience, 5(4), 369–377*. https://doi.org/10.1093/scan/nsq006

Mroczek, D. K., Spiro, A., & Turiano, N. A. (2009). Do health behaviors explain the effect of neuroticism on mortality? Longitudinal findings from the VA Normative Aging Study. *Journal of Research in Personality, 43(4), 653–659.* doi:10.1016/j.jrp.2009.03.016

Neitzert, C. S., Davis, C., & Kennedy, S. H. (1997). Personality factors related to the prevalence of somatic symptoms and medical complaints in a healthy student population. *The British journal of medical psychology*, *70 (Pt1)*, 93–101.

https://doi.org/10.1111/j.2044-8341.1997.tb01889.x

Oshio, A., Taku, K., Hirano, M., & Saeed, G. (2018). Resilience and Big Five personality traits: A meta-analysis. *Personality and Individual Differences, 127,* 54–60. https://doi.org/10.1016/j.paid.2018.01.048

Pickett, J., Hofmans, J., Debusscher, J., & De Fruyt, F. (2019). Counterdispositional Conscientiousness and Wellbeing: How Does Acting Out of Character Relate to Positive and Negative Affect At Work? *Journal of Happiness Studies*. doi:10.1007/s10902-019-00139-1

Prakash, R. S., De Leon, A. A., Klatt, M., Malarkey, W., & Patterson, B. (2013). Mindfulness disposition and default-mode network connectivity in older adults. *Social Cognitive and Affective Neuroscience, 8*(1), 112–117. https://doi.org/10.1093/scan/nss115

Rammstedt, B., & Beierlein, C. (2014). Can't we make it any shorter? The limits of personality assessment and ways to overcome them. *Journal of Individual Differences, 35*(4), 212–220. https://doi.org/10.1027/1614-0001/a000141

Rammstedt, B., & John, O. P. (2005). Kurzversion des Big Five Inventory (BFI-K): Entwicklung und Validierung eines ökonomischen Inventars zur Erfassung der fünf Faktoren der Persönlichkeit [Short version of the Big Five Inventory (BFI-K): Development and validation of an economic inventory for assessment of the five factors of personality]. *Diagnostica, 51*(4), 195–206. https://doi.org/10.1026/0012-1924.51.4.195

Rau, H. K., & Williams, P. G. (2016). Dispositional mindfulness: A critical review of construct validation research. *Personality and Individual Differences, 93,* 32–43. https://doi.org/10.1016/j.paid.2015.09.035

Rettew, D. C., & McKee, L. (2005). Temperament and Its Role in Developmental Psychopathology. Harvard Review of Psychiatry, 13(1), 14–27. doi:10.1080/10673220590923146

Roccas, S., Sagiv, L., Schwartz, S. H., & Knafo, A. (2002). The Big Five personality factors and personal values. *Personality and Social Psychology Bulletin, 28*(6), 789–801. https://doi.org/10.1177/0146167202289008

Ryan, R. M., Kuhl, J., & Deci, E. L. (1997). Nature and autonomy: An organizational view of social and neurobiological aspects of self-regulation in behavior and development. *Development and Psychopathology, 9*(4), 701–728. https://doi.org/10.1017/S0954579497001405

Saklofske, D. H., Austin, E. J., Galloway, J., & Davidson, K. (2007). Individual difference correlates of health-related behaviours: Preliminary evidence for links between emotional intelligence and coping. *Personality and Individual Differences, 42*(3), 491–502. https://doi.org/10.1016/j.paid.2006.08.006

Salehinezhad, M. A. (2012). *Personality and Mental Health*. INTECH Open Access Publisher.

Schmidt, S. (2011). Mindfulness in east and west—it is the same? In H. Walach, S. Schmidt, & W. B. Jonas (Eds.), *Neuroscience, consciousness and spirituality* (pp. 23–39). New York: Springer.

Shapiro, S. L., Carlson, L. E., Astin, J. A., & Freedman, B. (2006). Mechanisms of mindfulness. *Journal of clinical psychology*, *62*(3), 373–386. https://doi.org/10.1002/jclp.20237

Shi, M., Liu, L., Wang, Z. Y., & Wang, L. (2015). The mediating role of resilience in the relationship between big five personality and anxiety among Chinese medical students: a cross-sectional study. *PloS one*, *10*(3), e0119916. https://doi.org/10.1371/journal.pone.0119916

Siebelink, N. M., Asherson, P., Antonova, E., Bögels, S. M., Speckens, A. E., Buitelaar, J. K., & Greven, C. U. (2019). Genetic and environmental aetiologies of associations between dispositional mindfulness and ADHD traits: a population-based twin study. *European child & adolescent psychiatry*, *28*(9), 1241–1251. https://doi.org/10.1007/s00787-019-01279-8

Silvia, P. J., & Abele, A. E. (2002). Can positive affect induce self-focused attention? Methodological and measurement issues. *Cognition and Emotion, 16*(6), 845–853. https://doi.org/10.1080/02699930143000671

Steel, P., Schmidt, J., & Shultz, J. (2008). Refining the relationship between personality and subjective well-being. *Psychological Bulletin, 134*(1), 138–161. https://doi.org/10.1037/0033-2909.134.1.138

Suls, J., & Howren, M. B. (2012). *Understanding the Physical-Symptom Experience. Current Directions in Psychological Science, 21(2), 129–134.* doi:10.1177/0963721412439298

Szcześniak, M., Sopińska, B., & Kroplewski, Z. (2019). *Big F*ive Personality Traits and Life Satisfaction: The Mediating Role of Religiosity. *Religions, 10(7), 437.* doi:10.3390/rel10070437

Teasdale, J. D. (1999). Emotional processing, three modes of mind and the prevention of relapse in depression. *Behaviour Research and Therapy*, 37, 53–77.

Tellegen, A., Watson, D., and Clark, L. A. (1999). On the dimensional and hierarchical structure of affect. *Psychological Science* 10, 297–303. doi: 10.1111/1467-9280.00157

Thalmayer, A. G., Friedman, S. A., Azocar, F., Harwood, J. M., & Ettner, S. L. (2017). The Mental Health Parity and Addiction Equity Act (MHPAEA) Evaluation Study: Impact on Quantitative Treatment Limits. *Psychiatric Services*, 68(5), 435–442. doi:10.1176/appi.ps.201600110

Thompson, E. R. (2008). Development and validation of an international english big-five mini-markers. *Personality & Individual Differences* 45, 542–548. doi: 10.1016/j.paid.2008.06.013

Turiano, N. A., Hill, P. L., Graham, E. K., & Mroczek, D. K. (2018). Associations Between Personality and Health Behaviors Across the Life Span. In C. D. Ryff, & R. F. Krueger (Eds.), *The Oxford Handbook of Integrative Health Sciences* (Oxford Library of Psychology). Oxford University Press.

Vest Rogers, E. (2009). The relationship between levels of mindfulness and heart rate variability. Unpublished 3373888, The University of Wisconsin - Milwaukee, United States – Wisconsin

Wang, Y., Yao, L., Liu, L., Yang, X., Wu, H., Wang, J., & Wang, L. (2014). The mediating role of self-efficacy in the relationship between Big five personality and depressive symptoms among Chinese unemployed population: a cross-sectional study. *BMC Psychiatry, 14(1).* doi:10.1186/1471-244x-14-61

Watson, D., & Clark, L. A. (1992). On traits and temperament: general and specific factors of emotional experience and their relation to the five-factor model. *Journal of personality*, *60*(2), 441–476. https://doi.org/10.1111/j.1467-6494.1992.tb00980.x

Watson, D., & Pennebaker, J. W. (1989). Health complaints, stress, and distress: Exploring the central role of negative affectivity. *Psychological Review, 96*(2), 234–254. https://doi.org/10.1037/0033-295X.96.2.234

Way, B. M., Creswell, J. D., Eisenberger, N. I., & Lieberman, M. D. (2006). Associations between dispositional mindfulness and genetic variation of M-AOA. Unpublished raw data, University of California, Los Angeles.

Wehner, C., Schils, T., & Borghans, L. (2016). Personality and Mental Health: The Role and Substitution Effect of Emotional Stability and Conscientiousness. *Human Cognition in Evolution & Development eJournal.*

Wenzel, M., von Versen, C., Hirschmüller, S., & Kubiak, T. (2015). Curb your neuroticism—Mindfulness mediates the link between neuroticism and subjective well-being. *Personality and Individual Differences, 80,* 68–75. https://doi.org/10.1016/j.paid.2015.02.020

Widiger, T. A., & Smith, G. T. (2008). *Personality and psychopathology.* In O. P. John, R. W. Robins, & L. A. Pervin (Eds.), *Handbook of personality: Theory and research* (p. 743–769). The Guilford Press.

Williams, P. G., & Moroz, T. L. (2009). Personality vulnerability to stress-related sleep disruption: Pathways to adverse mental and physical health outcomes. *Personality and Individual Differences, 46*(5–6), 598–603. https://doi.org/10.1016/j.paid.2008.12.017

Zhuang, K., Bi, M., Li, Y., Xia, Y., Guo, X., Chen, Q., Du, X., Wang, K., Wei, D., Yin, H., & Qiu, J. (2017). A distinction between two instruments measuring dispositional mindfulness and the correlations between those measurements and the neuroanatomical structure. *Scientific reports*, *7*(1), 6252. https://doi.org/10.1038/s41598-017-06599-w

# MEDIATING EFFECTS OF DISPOSITIONAL MINDFULNESS ON THE RELATIONSHIP BETWEEN NEUROTICISM, CONSCIENTIOUSNESS AND WORRIES, TENSION AND LACK OF JOY

**Abstract:** The aim of the present research was to examine the mediating effects of Dispositional Mindfulness on the associations of the traits Neuroticism and Conscientiousness with Worries, Tension and (Lack of) Joy. The research sample consisted of participants from German-speaking general population (N=430; 73% females and 23% males) mean age $\bar{x}$=39, σ=14.6 (min=19, max=77). The scales demonstrated high reliability. The Conceptual Model 1.2 was structured on the following associations: a negative correlation between Dispositional Mindfulness and Neuroticism (r=-0.64; p<.01) positive correlation with Conscientiousness (r=-0.41; p<.01), and negative correlations with Worries (r=-0.57; p<.01), Tension (r=-0.54; p<.01), and (Lack of) Joy (r=-0.62; p<.01). The results of mediation analysis indicate powerful indirect effects of Dispositional Mindfulness in all of the tested relationships: between Neuroticism and Worries (b=0.15; β=0.12; p <.001, 95% Bca CI 0.091, 0.217), Neuroticism and Tension (b=0.13; β=0.12; p <.001, 95% Bca CI 0.077, 0.208), Neuroticism and (Lack of) Joy (b=0.18; β=0.19; p <.001, 95% Bca CI 0.124, 0.241), and Conscientiousness and (Lack of) Joy (b=-0.10; β=-0.08; p <.001, 95% Bca CI -0.096, -0.058). Empirical evidence supports the theoretical assumptions that Dispositional Mindfulness strongly influences personality traits in the context of cognitive, affective, and somatic difficulties, and stimulates insight into one's own behaviours and potential formation of functional responses.

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**Key words:** Dispositional mindfulness, neuroticism, conscientiousness.

## 1. Introduction

Dispositional Mindfulness (Mindful attention and awareness) refers to a state of heightened awareness and attention in which an individual observes current internal and external changes (Brown, Ryan, & Creswell, 2007) during the present moment with a non-judgemental attitude (Marcel, 2003; Teasdale, 1999). Brown et al. (2007) state that mindfulness involves an individual briefly directing attention to the stimulus, before manifesting any cognitive or emotional reaction, without identifying with automatic cognitive schemes and associations that they have for a certain stimulus. Mindfulness is a receptive state of mind, in which an individual does not evaluate the object, but observes it as it is. Perceptual contact takes place openly and effortlessly, through exposure to internal and external stimuli, before "switching on" automatic thoughts and behaviours, which are influenced by experiential filters. Dispositional Mindfulness is characterized by increased flexibility, clarity of cognition and a "decentralized", instead of a biased perspective. In contrast, automatic beliefs, attitudes, and emotions manifest as automatic behavioural, cognitive, emotional, and somatic reactions (Brown et al., 2007).

The mindfulness construct was theoretically reconceptualized in the early 2000s (Brown & Ryan, 2004; Baer, Smith & Allen, 2004). Initially, researchers conceptualized it as a skill or clinical intervention (Kabat-Zinn, 1994; 2011; Schmidt, 2011). Contemporary researchers conceptualize it as a stable trait represented in the general population (Brown & Ryan, 2004; Rau & Williams, 2015; 2016; Eisenlohr-Moul, Walsh, Charnigo, Lynam, & Baer, 2012; Kiken, Garland, Bluth, Palsson, & Gaylord, 2015). The body of literature highlights the significant role that mindfulness has in the impulsivity regulation and attention stability (Way, Creswell, Eisenberger, & Lieberman, 2006, qtd in Brown and et al., 2007; Siebelink, Asherson, Antonova, Bögels, Speckens, Buitelaar, & Greven, 2019) and affect in non-exercising (non-meditating) subjects (Brown, Goodman & Inzlicht, 2013; Zhuang, Bi, Li, Xia, Guo, Chen, Du, Wang, Wei, Yin, & Qiu, 2017; Creswell, Way, Eisenberger, & Lieberman, 2007; Prakash, De Leon, Klatt, Malarkey, & Patterson, 2013; Modinos, Ormel, & Aleman, 2010). In other words, individual differences on this dimension exist independently of the exercises practiced.

### 1.1. **Dispositional Mindfulness and Psychological Functioning**

The body of research examining the relationships of mental health constructs has shown that Dispositional Mindfulness is a major factor in the individual psychological functioning, as an affective regulation disposition (Brown & Ryan, 2006). The findings support the argument that respondents with high scores on this trait exhibit fewer automatic behavioural patterns and feel less conflicted regarding the expressed response (Brown, Ryan, & Creswell, 2007). Empirical research has shown that high scores on this dimension significantly predict the activity of brain regions that are in charge of performing tasks and maintaining attention and that are important for individual satisfaction (Brown, Ryan, & Creswell, 2007). There are two mechanisms which use mindfulness to achieve this (Shapiro, Carlson, Astin, & Freedman, 2006): reperceiving, or open observation of behaviour, where an individual can regulate their response before the need for experiential avoidance of the stimulus arises, which is a response typical for neuroticism. Depending on the context, automatic maladaptive responses and unpleasant emotions may become less prevalent in everyday functioning (see also Hayes, 2002). The discomforts can be observed by an individual with an attitude of open observation, without judgment, from the moment they appear until they disappear, without reacting. This can reduce the possibility of maladaptive responses that would reinforce the discomforts (e.g., rumination, psychoactive substance use, etc.). Cognition-wise, automatic processing is often accompanied by numerous biases that can limit the cognition of value-congruent responses important for fulfilling personal goals (Ryan, Kuhl & Deci, 1997). Non-judgmental observation of one's own experiences and consciously thought-out action can be a more functional alternative to rumination and deliberation. This helps a person to redirect attention to important sources of pleasure and to achieving positive reinforcements in life and can also reduce the likelihood of bias in making decisions in problem situations (Brown & Ryan, 2003). In the present research, Dispositional Mindfulness is operationalized as a disposition and a multidimensional construct defined by the Five Facet Mindfulness Questionnaire (Baer, Smith, Hopkins, Krietemeyer, & Toney, 2006), which, besides Awareness and Nonreact-

ing, which are theoretical and empirically closest to the essence of the construct (Rau & Williams, 2016), also contains the facets of Observing, Describing and Non-judging.

### 1.2. **Neuroticism, Conscientiousness, and Psychological Dysfunctions**

The dimension Dispositional Mindfulness was examined in relation to the Big Five personality dimensions relevant to psychological functioning (McCrae & Costa, 2008). For Neuroticism, associations are moderate and negative with Dispositional Mindfulness and each of its six facets (r = -.45; in a meta-analytic study by Giluk, 2009, qtd in Rau & Williams, 2016; Feltman, Robinson, & Ode 2009; Wenzel, Versen, Hirschmüller, & Kubiak 2015). There are not enough findings regarding the associations with Conscientiousness (Boyce, Wood and Brown, 2010; Giluk, 2009). Different longitudinal studies have proposed that neuroticism and conscientiousness correlate with individual health (Mroczek, Spiro, & Turiano, 2009; Friedman, 2019), symptomatic reactions to stress (Ervasti, Kallio, Määttänen, Mäntyjärvi, & Jokela 2019; Thalmayer, Friedman, Azocar, Harwood, & Ettner, 2017), having healthy habits (Joyner, Rhodes, & Loprinzi, 2018; Turiano, Hill, Graham, & Mroczek, 2018), life satisfaction (Szcześniak, Sopińska, & Kroplewski, 2019) and perceived self-efficacy (Wang, Yao, Liu, Yang, Wang & Wang, 2014). This supports the assumption that dispositions play an important role in the daily functioning of an individual (Salehinezhad, 2012). According to the theory of pathoplastic relationship (Widiger & Smith, 2008), behavioural, cognitive, and emotional tendencies of an individual can lead to impaired mental functioning and sometimes to a structured mental illness (Salehinezhad, 2012). An individual with a tendency to perceive the challenges in life as threatening, even the situations that potentially provide positive life reinforcement (e.g., a better job opportunity, moving to a more convenient location, etc.), can experience increased anxiety even where there is no threat. This can lead them to make wrong attributions, have unreal expectations and exhibit inappropriate behaviours (Rettew & McKee, 2005). Neuroticism contributes to

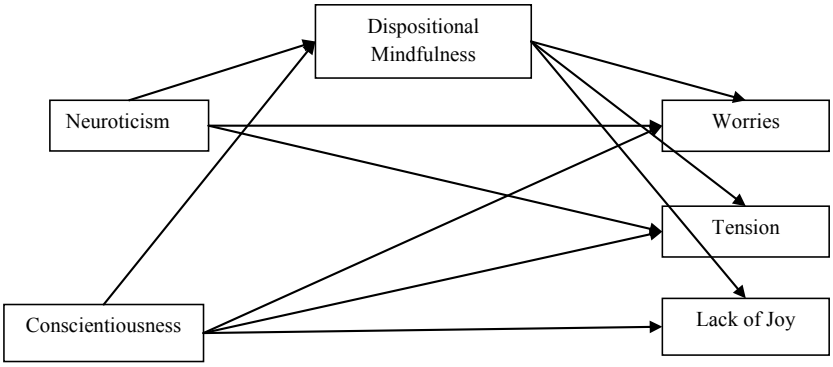
excitability, distress, avoidant behaviour, irrational perfectionist beliefs, low self-esteem, and negative bias (Salehinezhad, 2012). Neuroticism refers to individual capacity to react maladaptively to events in the environment and to their own experiences, depending on the context. It is most consistently associated with poor stress regulation (Shi, Liu, Wang, & Wang, 2015; Williams & Moroz, 2009; Lazarus & Folkman, 1984), anxiety symptoms (Jylhä & Isometsä, 2006), somatic difficulties (Neitzert, Davis, & Kennedy, 1997; Denovan, Dagnall, & Lofthouse, 2018), and rumination (Du Pont, Rhee, Corley, Hewitt, & Friedman, 2019). On the other hand, conscientiousness is a tendency towards a sense of purpose and fulfilment and is associated with high aspirations. It also involves diligence, caution, thoroughness, and a tendency towards long-term planning (Salehinezhad, 2012). Empirical findings indicate that the association between conscientiousness and personal well-being outcomes is less consistent (Steel, Smith, & Schultz, 2008; Boyce, Wood, & Brown, 2010). The meta-analysis by Boga and Roberts (2004) showed that conscientiousness positively correlates with health-related behaviours and helps overcome stress (Saeed, Oshio, Taku, & Hirano, 2018; Kotov, Gamez, Schmidt, & Watson 2010; Gartland, O'Connor, Lawton, & Ferguson, 2013). Other studies have claimed that it can lead to high negative affect (Carter, Guan, Maples, Williamson, & Miller, 2016; Pickett, Jennifer, Joeri, Jonas, & De Fruyt 2020; Fayard, Roberts, Robins, & Watson, 2012; Boyce, Wood, & Brown, 2010; Pickett et al., 2020). Further research is needed to understand this inconsistency and to determine which variables may explain the possible mechanism of the relationship between personality traits and psychological problems (Shi, Liu, Wang, & Wang, 2015; Miscel & Shoda, 2008; Rau & Williams, 2016). Tran, Wasserbauer & Voracek (2020) proposed that the facets of the above constructs can be associated with depressive affect and anxiety symptoms. However, the mechanisms of the mediating effects of mindfulness need to be investigated (Shapiro et al., 2006). Therefore, to understand these associations, it would be important to analyse the indirect effect of the complete aggregates: Neuroticism towards the symptoms of Worries, Tension and Lack of Joy via Dispositional Mindfulness. Although mindfulness protects against affective arousal (Rau & Williams, 2016), there are no known findings about the potential medi-

ating effects of these relationships, which constitutes a theoretical-empirical gap. Further research should address the inconsistent findings regarding the associations between Conscientiousness and stress-related problems, such as Worries, Tension, and Lack of Joy, as well as their relationship with Dispositional Mindfulness (Boyce, Wood, & Brown, 2010; Giluk, 2009). Lee-Baggley, Preece, & DeLongis (2005) stress that, although it was empirically proven that conscientiousness is a major factor in stress responses, the mechanisms of this interaction remain unknown. The research problem can be phrased as a question: Does Dispositional Mindfulness have substantial mediating effects on the associations of Neuroticism and Conscientiousness with Worries, Tension and Lack of Joy? These findings would complement the observations made by Tran, Wasserbauer, & Voracek (2020) about the substantial impact of Mindfulness, Neuroticism, and Conscientiousness in the context of psychological dysfunctions. The results would provide an answer to the theoretical dilemmas noted by Shapiro et al. (2006), Rau & Williams (2016) and Giluk (2009), and the associations of Conscientiousness with Worries, Tension and Lack of Joy would become clearer. Therefore, the research aims are: 1) to explore the mediating effects of Mindfulness in the associations between Neuroticism and Conscientiousness and Worries, Tension and Lack of Joy; 2) to examine the nature of the association between Conscientiousness and Worries, Tension and Lack of Joy; 3) to examine the association between Conscientiousness and Dispositional Mindfulness. The hypotheses of the present research can be expressed in the form of the following statements:

- Dispositional Mindfulness has a substantial mediating effect on the association between Neuroticism and Worries, Tension and Lack of Joy.

- Dispositional Mindfulness has a substantial mediating effect on the association between Conscientiousness and Worries, Tension and Lack of Joy.

Based on the arguments from the literature, the hypotheses would be tested by analysing the paths of Conceptual Model 1.1:




**Conceptual Model 1.1.** Neuroticism and Conscientiousness as predictor variables, Worries, Tension, and Lack of Joy as criteria, and Dispositional Mindfulness as a mediator variable.

## 2. Method

The sample was analysed using the open data from the database *figshare.com*; Tran, U., Wasserbauer, J., & Voracek, M. (2021, January 25). Incremental validity of Dispositional Mindfulness over and above the Big Five. https://doi.org/10.6084/m9.figshare.9913085.v1. The present research examines only non-facet associations and inputs of Dispositional Mindfulness as a mediator variable, in order to obtain the parameters for the importance of indirect pathways in the associations between the predictors Neuroticism and Conscientiousness with the criteria Worries, Tension and Lack of Joy (not with the dimensions Depression and Anxiety, as in the original research). The sample consisted of adult German-speaking volunteers N = 430 (73% female and 27% male; mean age 38.0, SD = 14.7, age range: 18–76).

### 2.1. Measures

The short version of the Big Five Inventory (*Kurzversion des Big Five Inventory*, BFI-K; Rammstedt & John, 2005) was used to assess the scores on Neuroticism (4 items) and Conscientiousness (4 items). The questions use a five-point Likert-type scale ranging from 1 (Completely disagree) to 5 (Completely agree). The instrument was validated accord-

ing to several criteria: factorial, inter-rater in relation to partner assessments and simultaneously in comparison with other instruments from the group of Big Five and five-factor models (Kovaleva, Beierlein, Kemper, & Rammstedt, 2013). Both alpha coefficients, Neuroticism (α = .78) and Conscientiousness (α = .69) provide evidence of adequate reliability.

The short version of the Five Factor Mindfulness Questionnaire (FFMQ; Baer et al., 2006) was used to obtain the aggregate score on Dispositional Mindfulness. The questions are formatted as a five-point Likert-type scale, containing a total of 39 items ("I pay attention to how my emotions affect my thoughts and behaviour") with 19 inverse-scored items. Higher scores indicate higher levels of traits. The scale was constructively and predictively validated for alexythimia, Worries, rumination, dissociation, and stress-related psychological symptoms (Michalak, Zarbock, Drews, Otto, Mertens, Ströhle, Schwinger, Dahme, & Heidenreich, 2016; De Bruin, Topper, Muskens, Bögels, & Kamphuis, 2012). The alpha coefficient provides evidence of high consistency. (α = .92).

The Perceived Stress Questionnaire (PSQ; Fliege, Rose, Arck, Walter, Kocalevent, Weber, & Klapp, 2005) was used to assess the scores on Worries (5 items), Tension (5 items), and Lack of Joy (5 items). Higher scores indicate higher manifestations of these responses. The questionnaire instructs respondents to provide final answers based on how much they agree with the statement and their long-term perception ("You feel irritable and tense"; "You have many worries"; "You feel you're doing things because you have to, not because you want to"). The questions use a four-point progressive scale. The subscales were validated with a healthy and clinical population (Fliege, Rose, Arck, Walter, Kocalevent, Weber, & Klapp, 2005). The subscales' alpha coefficients demonstrate high reliability (Worries α = .88, Tension α = .85, Lack of Joy α = .85).

## 2.2. **Podaci i analize**

The hypotheses were tested using the open data from the database *figshare.com*; Tran, U., Wasserbauer, J., & Voracek, M. (2021, January 25). Incremental validity of Dispositional Mindfulness over and above the Big Five. https://doi.org/10.6084/m9.figshare.9913085.v1

IBM AMOS 26 was used to test the Conceptual Model 1.1, to analyse the modification indices and RMSE, CFI and TLI fit parameters, as recommended by Garson (2009). The statistical package JASP 0.14.1 was also used. The sample results were obtained using descriptive analysis and frequency analysis. Internal consistency was also analysed, and the reliability parameters (Cronbach's alphas) were calculated for all applied scales. Pearson's product-moment correlation was used to test the linearity of relationships between variables, and the results were interpreted in accordance with Evans' (1996) criteria (Divaris, Vann, Baker, & Lee, 2012). After inspecting the conditions, with an emphasis on linearity, and in accordance with the recommendations (Hayes, 1996; Darlington, & Hayes 2017), determination pathways and coefficients (R2) were examined using the AMOS 26 software solution for checking the Conceptual Model 1.1. In line with the theoretical assumptions (Shi, Liu, Wang, & Wang, 2015; Rau & Williams, 2016), Neuroticism and Conscientiousness were entered as predictors, Dispositional Mindfulness as mediator, and Worries, Tension, and Lack of Joy as criterion variables. In accordance with modification indices and fit parameters (recommended by Garson (2009)), the model was modified and re-examined. Then, a mediation analysis of the paths of the modified model followed. To examine the importance of indirect paths, we used the mediation analysis. The levels of statistical significance ($p < .01$) and confidence interval (LLCI and ULCI) obtained by the resampling method at 5,000 iterations (as a more relevant and less demanding indicator of the condition (MacKinnon, Lockwood, Hoffman, West, & Sheets, 2002, according to Fong & Loi, 2016) were used as indicators of significance with standardized and unstandardized coefficients reported. Indirect effect parameters were considered significant if the 95% CI range did not include 0 as a value (Lockhart, MacKinnon, & Ohlrich, 2011).

## 2.3. **Correlation Results**

*Table 1.2*. Pearson Correlations

| Variables | Neuroticism | Conscientiousness | Dispositional Mindfulness | Worries | Tension | Lack of Joy |
|---|---|---|---|---|---|---|
| 1. Neuroticism | — | | | | | |
| | — | | | | | |
| 2. Conscientiousness | -0.305 | — | | | | |
| | < .001 | — | | | | |
| 3. Dispositional Mindfulness | -0.641 | 0.413 | — | | | |
| | < .001 | < .001 | — | | | |
| 4. Worries | 0.686 | -0.352 | -0.571 | — | | |
| | < .001 | < .001 | < .001 | — | | |
| 5. Tension | 0.638 | -0.268 | -0.541 | 0.690 | — | |
| | < .001 | < .001 | < .001 | < .001 | — | |
| 6. Lack of Joy | 0.592 | -0.448 | -0.619 | 0.666 | 0.685 | |
| | < .001 | < .001 | < .001 | < .001 | < .001 | |

Table 1.2. indicates strong positive correlations between Neuroticism and Worries ($r = .68$; $p < .01$), Neuroticism and Tension ($r = .63$; $p < .01$), a moderate correlation between Neuroticism and Lack of Joy ($r = .59$; $p < .01$), a strong negative correlation between Neuroticism and Dispositional Mindfulness ($r = -.64$; $p < .01$), and a weak negative correlation with Conscientiousness ($r = -.30$; $p < .01$). For Conscientiousness, the correlations are moderate and positive with Dispositional Mindfulness ($r = .41$; $p < .01$), weak and negative with Worries ($r = -.35$; $p < .01$), very weak and negative with Tension ($r = -.26$; $p < .01$), and moderate and negative with Lack of Joy ($r = -.44$; $p < .01$). Given the relatively satisfactory levels of the indicators, a series of analyses were carried out next with the aim of further testing the conditions. The path between the variables Conscientiousness and Tension was excluded due to a very low correlation, to avoid the assumption of linearity and not compromise the further interpretation of the regression coefficients (Darlington & Hayes, 2017). A visual inspection of the scatter diagram revealed deviations in the relationship between Conscientiousness and Worries, which is proof of violation of homoscedasticity. Based on the

inspection of the histograms, we observed that the residuals of the Worry and Stress variables were not normally distributed. Therefore, in accordance with the recommendations (Hayes, 2018, p. 98), the indicators of the Bootstrap method of resampling were set to 5,000 replications with confidence interval adjustment 95%.

## 2.4. **Model and Mediation Analysis**

The examination of the Conceptual Model 1.1 showed that all pathways are statistically significant, except for the direct path Conscientiousness and Tension ($b$ = -0.03; p > .01) and direct path Conscientiousness and Worries ($b$ = -0.15; p > .01). The tested model accounts for 51% of the variance Worries, 43% Tension and 48% Lack of Joy, and the fit parameters are unsatisfactory. (CFI = .84; TLI = .23; RMSEA = .39). The direct pathways Conscientiousness and Tension and Conscientiousness and Worries were consequently excluded. The model was modified, and covariation pathways were identified, according to modification indices. The Conceptual Model 1.2 examination showed that the fit index was satisfactory and moderate (CFI = .99; TLI = .95; RMSEA = .09) (Kline, 2005; Kim, Ku, Kim, Park, & Park, 2016; Fabrigar, Wegener, MacCallum, & Strahan, 1999). Inspecting the determination coefficients ($R^2$) we determined that the predictors account for 50% of the variance Worries, 44% Tension and 48% Lack of Joy.

After examining the Conceptual Model 1.2., we determined that Neuroticism is a strong positive predictor for the variable Worries (b = 0.56; β = 0.54; p < .01), Tension (b = 0.48; β = 0.49; p < .01), and Lack of Joy (b = 0.31; β = 0.32; p < .01), and a negative predictor for Dispositional Mindfulness (b = -2.9; *β = -0.57; p < .01).* Dispositional Mindfulness is a statistically significant negative predictor for the three criteria: Worries (b = -0.05; β = -0.22; p < .01), Tension (b = -0.04; β = -0.22; p < .01) and Lack of Joy (b = -0.06; β = -0.34; p < .01).

It was confirmed that Neuroticism associates negatively with Dispositional Mindfulness and positively with Worries, Tension, and Lack of Joy. It was also confirmed that Dispositional Mindfulness negatively correlates with Worries, Tension, and Lack of Joy. The indirect path values are presented in Table 1.4. below.

*Table 1.4*. Indirect Effects

| | | | | | | 95% Reliability Interval | |
|---|---|---|---|---|---|---|---|
| | | *b* | SE | z- value | p | LLCI | ULCI |
| BF_Neuroticism | → FFMQ_SUM → Worries | 0.149 | 0.028 | 4.806 | < .001 | 0.091 | 0.217 |
| BF_Neuroticism | → FFMQ_SUM → Tension | 0.139 | 0.017 | 4.578 | < .001 | 0.077 | 0.208 |
| BF_Neuroticism | → FFMQ_SUM → Lack of Joy | 0.180 | 0.028 | 4.149 | < .001 | 0.124 | 0.241 |
| BF_Conscientiousness | → FFMQ_SUM → Lack of Joy | -0.100 | 0.010 | -4.728 | < .001 | -0.096 | -0.058 |

*Note:* Delta Method Standard Errors, Maximum Likelihood Parameter

On the basis of values in Conceptual Model 1.2. and Table 1.4. we noted that Neuroticism, besides having direct effect, also has a strong indirect effect on the varible Worries via the variable Dispositional Mindfulness (b = 0.15; β = 0.12; p < .001, 95% Bca CI = 0.091, 0.217). The hypothesis that Dispositional Mindfulness strongly mediates in the relationship between Neuroticism and Worries was confirmed. Dispositional Mindfulness has a significant indirect effect on the relationship between Neuroticism and Tension (b = 0.13; β = 0.12; p < .001, 95% Bca CI = 0.077, 0.0208), and Lack of Joy (b = 0.18; β = 0.19; p < .001, 95% Bca CI = 0.124, 0.241). This confirms the hypotheses that Dispositional Mindfulness strongly mediates in the relationships between Neuroticism and Tension and Neuroticism and Lack of Joy. The study did not meet the conditions for examining the associations between Conscientiousness and Worries and Conscientiousness and Tension, due to modification indices. Therefore, the hypotheses that (1) Dispositional Mindfulness strongly mediates in the relationship between Conscientiousness and Worries, and (2) Dispositional Mindfulness strongly mediates in the relationship between Conscientiousness and Tension were left as recommendations for further research.

On the other hand, Conscientiousness associates directly and positively with Dispositional Mindfulness (b = 1.5; β = 0.24; p < .01), and negatively with Lack of Joy (b = -0.22; β = -0.18; p < .01). Besides having direct effect, Conscientiousness also has a strong indirect effect on the

varible Lack of Joy via the variable Dispositional Mindfulness (b = -0.10; β = -0.08; p < .001, 95% Bca CI = -0.146, -0.058). It was confirmed that Conscientiousness associates with Dispositional Mindfulness, and with Lack of Joy. Dispositional Mindfulness strongly mediates in the relationship between Conscientiousness and Lack of Joy. The next section, Discussion, deals with the most important findings, theoretical implications, limitations, and recommendations for further research.

## 3. **Discussion**

The aim of the present research was to examine the mediating effects of Dispositional Mindfulness in the associations between the traits Neuroticism and Conscientiousness, on the one hand, and Worries, Tension, and Lack of Joy, on the other. The following findings were confirmed: 1) For Neuroticism, the associations are large and positive with Worries, Tension, and Lack of Joy, and negative for Dispositional Mindfulness; 2) For Conscientiousness, the associations are negative for Lack of Joy, and positive for Dispositional Mindfulness. As was expected, Dispositional Mindfulness has strong mediating effects in each association, except in excluded pathways Conscientiousness – Worries and Tension. Neuroticism or negative affect disposition associates positively with all the examined criteria (Thompson, 2008; Banjongrewadee, Wongpakaran, Wongpakaran, Pipanmekaporn, Punjasawadwong, & Mueankwan, 2020). The correlation between Neuroticism and Worries could be in favour of the assumptions by Harle, Shenoy, & Paulus (2013), who state that disagreeable emotional states activate information, concepts, and attitudes congruent with current feelings and thus increase the likelihood of perceiving and experiencing the world as threatening (Tellegen, Watson & Clark, 1999; Watson & Clark, 1992; Kercher, Rapee, & Schniering, 2009). In contrast, arousal may have a more selective role in biasing expectancies of action cancellation. According to the Cognitive Vulnerability Model, higher levels of arousal and negative valence may decrease the range of potential solutions, stimulate risk exaggeration, and impair effective responses (Harle et al., 2013). The finding that Neuroticism strongly associates with Worries via the negative correlation with Dispositional Mindfulness could expand the theoretical

implications of this assumption. According to the Competitive Processes Hypothesis (Harle et al., 2013), emotional processing redirects attentional and performative resources away from task-relevant information and generally impairs higher cognitive processes relevant to correct appraisal and task performance function and related computational mechanisms.

As Neuroticism associates negatively with the variable Dispositional Mindfulness, it is possible that individuals with high Neuroticism scores experience difficulties in perceiving current events flexibly and become rigidly focused on the negative aspects. This can lead to postponing effective and timely problem-solving and to frequent worrying. This finding supports the conclusion that negative life experiences decrease the individuals' ability to be open and balanced with their emotions (Chang, Yu, Najarian, Wright, Chen, Chang, Du, & Hirsch, 2016). Regarding the claim that Dispositional Mindfulness contributes to the (self) regulation of responses, it is advisable to proceed with caution. Although the indirect effects of Neuroticism via Dispositional Mindfulness are less pronounced than direct effects, the association is not a positive one, i.e., higher Neuroticism does not imply higher Dispositional Mindfulness. Therefore, we suggest that this correlation be further examined in multiple time series longitudinal research, together with the variable Self-Control, to shed light on this phenomenon. The inclination of highly neurotic individuals to perceive events as harmful or threatening (Hecht, 2013; qtd in Denovan, Dagnall, & Lofthouse, 2018) could explain the potential association between Neuroticism and Tension and strong indirect effects via Dispositional Mindfulness. The symptom perception hypothesis (Watson & Pennebaker, 1989; qtd in Denovan, Dagnall, & Lofthouse, 2019) contends that high neuroticism increases perception of pain levels, which results in over reporting of physical grievances (Howren & Suls, 2011). This is partially supported by the covariation of Worries and Tension in the 1.2. Model. However, this does not exclude the possible contribution of other variables, such as genuine psychosomatic symptoms (Johnson, 2003, qtd in Denovan, Dagnall, & Lofthouse, 2019). Future research should take into account these variables as well. This is theoretically relevant because Dispositional Mindfulness has been associated with adequate physical and physiological functioning (Vest Rogers, 2009; qtd in Bowlin, 2012; Brown, Weinstein,

& Creswell, 2012; Jaiswal, Muggleton, Juan, & Liang, 2019). The association between Neuroticism and Lack of Joy could be explained by referring to the Affect Level Model (DeNeve & Cooper, 1998; Gross, Stuton, & Ketelaar, 1998; Lucas &, Baird, 2004), which suggests that higher neuroticism individuals react more strongly to unpleasant experiences, and less intensely to pleasant ones. Their negative affect arousal threshold is lower and the affective tone more intense, so the unpleasant emotions are more frequent. The individuals with high neuroticism scores tend to adopt maladaptive and avoidant behaviours, which, in the long run, can lead to impaired motivation and frequent distress in daily life (Ireland, Hepler, Li, & Albarracin, 2014; Barlow, Sauer-Zavala, Carl, Bullis, & Ellard, 2014).

The findings that Conscientiousness and Dispositional Mindfulness have strong negative associations with Lack of Joy, and that Dispositional Mindfulness has significant mediating effects, suggest that there are two important aspects to this phenomenon. Conscientiousness is a natural capacity to cope in stressful situations (Bartley & Roesch, 2011), and consistently predicts the use of adequate health related behaviours (Connor-Smith & Flachsbart, 2007; Saklofske, Austin, Galloway, & Davidson, 2007). Well organized, thorough, and self-determined individuals high in Conscientiousness are likely to actively improve their quality of life, which in turn increases the likelihood of positive reinforcement in different spheres. These efforts may help these individuals prevent potential stressors, and their high levels of self-control and persistence may contribute to sustaining constructive behaviours over time (Bartley & Roesch, 2011).

Dispositional Mindfulness could provide a deeper focus on task performance, associated with positive affect (McCay-Peet, Lalmas, & Navalpakkam, 2012). As some studies have suggested (Roccas, Sagiv, Schwartz, & Knafo, 2002; Granqvist & Kajonius, 2015) Conscientiousness and Dispositional Mindfulness, acting together, could support the formation and actualization of personal values. Future research would benefit from adopting a serial mediation model with value variables to examine these associations.

There are several significant limitations to this research. The cross-sectional nature of the data makes it impossible to draw conclusions about causality, i.e., direction of the relationship between the variables, Therefore, the results should be interpreted in a hypothetical

or predictive manner. The opposite direction of the variables' effects is possible in almost every association. For example, an increased positive affect may lead to better focus and commitment to personal plans, goals, and obligations (Silvia, Abele, 2002), and the absence of Worries may allow individuals to achieve a more impartial insight and reduce the experience of threat and discomfort. This shortcoming could be overcome by examining the associations in multiple time series. Second, since the findings were obtained from the general population, it is impossible to generalize the data for the clinical population, where there are potentially more intense symptoms with physiological causes. An important aspect of future research could be the inclusion of data obtained by different measurement approaches (neurological, observational, etc.) in order to prevent the respondents' potential bias in self-report measures. Since, previous research showed that practicing Dispositional Mindfulness can contribute to trait change (Shapiro et al., 2006; Bailey, Opie, Hassed, & Chambers, 2019), examining the association between these two forms of mindfulness would provide further insight into the structure of Dispositional Mindfulness. complement findings on their characteristics.

**References**

Carter, N. T., Miller, J. D., & Widiger, T. A. (2018). *Extreme Personalities at Work and in Life. Current Directions in Psychological Science, 09637214187 9313.* doi:10.1177/0963721418793134

Baer, R. A., Smith, G. T., & Allen, K. B. (2004). Assessment of mindfulness by self-report: the Kentucky inventory of mindfulness skills. *Assessment*, *11*(3), 191–206. https://doi.org/10.1177/1073191104268029

Baer, R. A., Smith, G. T., Hopkins, J., Krietemeyer, J., & Toney, L. (2006). Using self-report assessment methods to explore facets of mindfulness. *Assessment*, *13*(1), 27–45. https://doi.org/10.1177/1073191105283504

Bailey, N. W., Opie, J. L., Hassed, C. S., & Chambers, R. H. (2019). Meditation practice, Dispositional Mindfulness, personality, and program outcomes in mindfulness training for medical students. *Focus on Health Professional Education*, *20*(1), 50–68.

Banjongrewadee, M., Wongpakaran, N., Wongpakaran, T., Pipanmekaporn, T., Punjasawadwong, Y., & Mueankwan, S. (2020). The role of perceived stress and cognitive function on the relationship between neuroticism and depression among the elderly: a structural equation model approach. *BMC psychiatry*, *20*(1), 25. https://doi.org/10.1186/s12888-020-2440-9

Barlow, D. H., Sauer-Zavala, S., Carl, J. R., Bullis, J. R., & Ellard, K. K. (2014). The Nature, Diagnosis, and Treatment of Neuroticism: Back to the Future. *Clinical Psychological Science*, *2*(3), 344–365. https://doi.org/10.1177/2167702613505532

Bartley, C. E., & Roesch, S. C. (2011). Coping with Daily Stress: The Role of Conscientiousness. *Personality and individual differences*, *50*(1), 79–83. https://doi.org/10.1016/j.paid.2010.08.027

Bogg, T., & Roberts, B. W. (2004). Conscientiousness and Health-Related Behaviors: A Meta-Analysis of the Leading Behavioral Contributors to Mortality. *Psychological Bulletin, 130(6), 887–919.* doi:10.1037/0033-2909.130.6.887

Bowlin, S. (2012). *Dispositional Midnfulness And Self-Compassion And Their Influence On Oxytocin And Parasympathetic Functioning* (dissertation).

Boyce, C. J., Wood, A. M., & Brown, G. D. A. (2010). The dark side of conscientiousness: Conscientious people experience greater drops in life satisfaction following unemployment. *Journal of Research in Personality, 44*(4), 535–539. https://doi.org/10.1016/j.jrp.2010.05.001

Brown, K. W., & Ryan, R. M. (2003). The benefits of being present: Mindfulness and its role in psychological well-being. *Journal of Personality and Social Psychology,84*(4), 822–848. doi:10.1037/0022-3514.84.4.822

Brown, K. W., & Ryan, R. M. (2004). Perils and promise in defining and measuring mindfulness: observations from experience. *Clinical Psychology: Science and Practice*, *11*, 242–248.

Brown, K. W., Goodman, R. J., & Inzlicht, M. (2013). Dispositional Mindfulness and the attenuation of neural responses to emotional stimuli. *Social cognitive and affective neuroscience*, *8*(1), 93–99. https://doi.org/10.1093/scan/nss004

Brown, K. W., Ryan, R. M., & Creswell, J. D. (2007). Mindfulness: Theoretical Foundations and Evidence for its Salutary Effects. *Psychological Inquiry,18*(4), 211–237. doi:10.1080/10478400701598298

Brown, K. W., Weinstein, N., & Creswell, J. D. (2012). Trait mindfulness modulates neuroendocrine and affective responses to social evaluative threat. *Psychoneuroendocrinology*, *37*(12), 2037–2041. https://doi.org/10.1016/j.psyneuen.2012.04.003

Chang, E. C., Yu, T., Najarian, A. S.-M., Wright, K. M., Chen, W., Chang, O. D., Du, Y., & Hirsch, J. K. (2017). Understanding the association between negative life events and suicidal risk in college students: Examining self-compassion as a potential mediator. *Journal of Clinical Psychology, 73*(6), 745–755. https://doi.org/10.1002/jclp.22374

Connor-Smith, J. K., & Flachsbart, C. (2007). Relations between personality and coping: a meta-analysis. *Journal of personality and social psychology*, *93*(6), 1080–1107. https://doi.org/10.1037/0022-3514.93.6.1080

Creswell, J. D., Way, B. M., Eisenberger, N. I., & Lieberman, M. D. (2007). Neural correlates of Dispositional Mindfulness during affect labeling. *Psychosomatic Medicine*, 69, 560–565. https://doi.org/10.1097/PSY.0b013e3180f6171f

Darlington, R. B., & Hayes, A. F. (2017). *Regression analysis and linear models: Concepts, applications, and implementation*. New York, NY: Guilford Press.

De Bruin, E. I., Topper, M., Muskens, J. G., Bögels, S. M., & Kamphuis, J. H. (2012). Psychometric properties of the Five Facets Mindfulness Questionnaire (FFMQ) in a meditating and a non-meditating sample. *Assessment*, *19*(2), 187–197. https://doi.org/10.1177/1073191112446654

DeNeve, K. M., & Cooper, H. (1998). The happy personality: A meta-analysis of 137 personality traits and subjective well-being. *Psychological Bulletin, 124(2), 197–229.* doi:10.1037/0033-2909.124.2.197

Denovan, A., Dagnall, N., & Lofthouse, G. (2019). Neuroticism and Somatic Complaints: Concomitant Effects of Rumination and Worry. *Behavioural and cognitive psychotherapy*, *47*(4), 431–445. https://doi.org/10.1017/S1352465818000619

Divaris, K., Vann, W. F., Jr, Baker, A. D., & Lee, J. Y. (2012). Examining the accuracy of caregivers' assessments of young children's oral health status. *Journal of the American Dental Association (1939)*, *143*(11), 1237–1247. https://doi.org/10.14219/jada.archive.2012.0071

Du Pont, A., Rhee, S. H., Corley, R. P., Hewitt, J. K., & Friedman, N. P. (2019). Are rumination and neuroticism genetically or environmentally distinct risk factors for psychopathology?. *Journal of abnormal psychology*, *128*(5), 385–396. https://doi.org/10.1037/abn0000430

Eisenlohr-Moul, T. A., Walsh, E. C., Charnigo, R. J., Jr, Lynam, D. R., & Baer, R. A. (2012). The "what" and the "how" of Dispositional Mindfulness: using interactions among subscales of the five-facet mindfulness questionnaire to understand its relation to substance use. *Assessment*, *19*(3), 276–286. https://doi.org/10.1177/1073191112446658

Ervasti, M., Kallio, J., Määttänen, I., Mäntyjärvi, J., & Jokela, M. (2019). Influence of Personality and Differences in Stress Processing Among Finnish Students on Interest to Use a Mobile Stress Management App: Survey Study. *JMIR mental health*, *6*(5), e10039. https://doi.org/10.2196/10039

Fabrigar, L. R., Wegener, D. T., MacCallum, R. C., & Strahan, E. J. (1999). Evaluating the use of exploratory factor analysis in psychological research. *Psychological Methods, 4*(3), 272–299. https://doi.org/10.1037/1082-989X.4.3.272

Fayard, J. V., Roberts, B. W., Robins, R. W., & Watson, D. (2012). Uncovering the affective core of conscientiousness: the role of self-conscious emotions. *Journal of personality*, *80*(1), 1–32. https://doi.org/10.1111/j.1467-6494.2011.00720.x

Feltman, R., Robinson, M. D., & Ode, S. (2009). Mindfulness as a moderator of neuroticism–outcome relations: A self-regulation perspective. *Journal of Research in Personality, 43*(6), 953–961. https://doi.org/10.1016/j.jrp.2009.08.009

Fliege, H., Rose, M., Arck, P., Walter, O. B., Kocalevent, R. D., Weber, C., & Klapp, B. F. (2005). The Perceived Stress Questionnaire (PSQ) reconsidered: validation and reference values from different clinical and healthy adult samples. *Psychosomatic medicine*, *67*(1), 78–88. https://doi.org/10.1097/01.psy.0000151491.80178.78

Fong, M., & Loi, N. M. (2016). The Mediating Role of Self-compassion in Student Psychological Health. *Australian Psychologist*, *51*(6), 431–441. https://doi.org/10.1111/ap.12185

Friedman, H. S. (2019). Neuroticism and health as individuals age. *Personality Disorders: Theory, Research, and Treatment, 10*(1), 25–32. https://doi.org/10.1037/per0000274

Garson, G. D. (2009). Structural equation modeling. Retrieved October 23, 2010, from http://faculty.chass.ncsu.edu/garson/PA765/structur.htm.

Gartland, N., O'Connor, D. B., Lawton, R., & Ferguson, E. (2013). Investigating the effects of conscientiousness on daily stress, affect and physical symptom processes: A daily diary study. *British Journal of Health Psychology*, 19(2), 311–328. doi:10.1111/bjhp.12077

Giluk, T. L. (2009). Mindfulness, Big Five personality, and affect: A meta-analysis. *Personality and Individual Differences,47*(8), 805-811. doi: 10.1016/j.paid.2009.06.026

Grankvist, G., & Kajonius, P. (2015). Personality traits and personal values: A replication with a Swedish sample. International Journal of Personality Psychology, 1(1), 8–14. Retrieved from http://urn.kb.se/resolve?urn=urn:nbn:se:hv:diva-8655

Gross, J. J., Sutton, S. K., & Ketelaar, T. (1998). Relations between Affect and Personality: Support for the Affect-Level and Affective-Reactivity Views. *Personality and Social Psychology Bulletin*, 24(3), 279–288. doi:10.1177/0146167298243005

Harlé, K. M., Shenoy, P., & Paulus, M. P. (2013). The influence of emotions on cognitive control: feelings and beliefs-where do they meet?. *Frontiers in human neuroscience*, *7*, 508. https://doi.org/10.3389/fnhum.2013.00508

Hayes, A. F. (1996). The permutation test is not distribution-free: Testing*H*0 : _ = 0. *Psychological Methods*, *1*, 184–198.

Hayes, A. F. (2017). *Introduction to mediation, moderation, and conditional process analysis: A regression-based approach*. Guilford Publications.

Hayes, A. F. (2018). *Introduction to mediation, moderation, and conditional process analysis a regression-based approach*. The Guilford Press.

Hayes, S. C. (2002). Acceptance, mindfulness, and science. *Clinical Psychology: Science and Practice, 9*(1), 101–106. https://doi.org/10.1093/clipsy.9.1.101

Hecht, D. (2013). The neural basis of optimism and pessimism. *Experimental Neurobiology*, 22, 173–199. DOI:10.5607/en.2013.22.3.173

Hicks, A., Phillips, K., Siwik, C., Salmon, P., Litvan, I., Jablonski, M. E., Filoteo, J. V., Kayser, K., & Sephton, S. E. (2019). The role of Dispositional Mindfulness in a stress-health pathway among Parkinson's disease patients and caregiving partners. *Quality of life research: an international journal of quality of life aspects of treatment, care and rehabilitation*, *28*(10), 2705–2716. https://doi.org/10.1007/s11136-019-02217-6

Ireland, M. E., Hepler, J., Li, H., & Albarracín, D. (2015). Neuroticism and attitudes toward action in 19 countries. *Journal of personality*, *83*(3), 243–250. https://doi.org/10.1111/jopy.12099

Jaiswal, S., Muggleton, N. G., Juan, C. H., & Liang, W. K. (2019). Indices of association between anxiety and mindfulness: a guide for future mindfulness studies. *Personality neuroscience*, *2*, e9. https://doi.org/10.1017/pen.2019.12

Jaiswal, S., Tsai, S.-Y., Juan, C.-H., Muggleton, N. G., & Liang, W.-K. (2019). Low delta and high alpha power are associated with better conflict control and working memory in high mindfulness, low anxiety individuals. *Social Cognitive and Affective Neuroscience, 14*(6), 645–655. https://doi.org/10.1093/scan/nsz038

Johnson, M. (2003). The vulnerability status of neuroticism: Over-reporting or genuine complaints? Personality and Individual Differences, 35, 877–887. DOI:10.1016/S0191- 8869(02)00303-3

Joyner, C., Rhodes, R. E., & Loprinzi, P. D. (2018). The Prospective Association Between the Five Factor Personality Model with Health Behaviors and Health Behavior Clusters. *Europe's Journal of Psychology*, *14*(4), 880–896. https://doi.org/10.5964/ejop.v14i4.1450

Jylhä, P. and Isometsä, E. (2006), The relationship of neuroticism and extraversion to symptoms of anxiety and depression in the general population. *Depress. Anxiety*, 23: 281–289. https://doi.org/10.1002/da.20167

Kabat-Zinn, J. (1994). Wherever you go, there you are: Mindfulness meditation in everyday life. New York, NY: Hyperion

Kabat-Zinn, J. (2011). Some reflections on the origins of MBSR, skillful means, and the trouble with maps, *Contemporary Buddhism*, 12:1, 281–306, DOI: 10.1080/14639947.2011.564844

Kercher, A. J., Rapee, R. M., & Schniering, C. A. (2009). Neuroticism, life events and negative thoughts in the development of depression in adolescent girls. *Journal of abnormal child psychology*, *37*(7), 903–915. https://doi.org/10.1007/s10802-009-9325-1

Kiken, L. G., Garland, E. L., Bluth, K., Palsson, O. S., & Gaylord, S. A. (2015). From a state to a trait: Trajectories of state mindfulness in meditation during intervention predict changes in trait mindfulness. *Personality and individual differences*, *81*, 41–46. https://doi.org/10.1016/j.paid.2014.12.044

Kim, H., Ku, B., Kim, J. Y., Park, Y. J., & Park, Y. B. (2016). Confirmatory and Exploratory Factor Analysis for Validating the Phlegm Pattern Questionnaire for Healthy Subjects. *Evidence-based complementary and alternative medicine: eCAM*, *2016*, 2696019. https://doi.org/10.1155/2016/2696019

Kline, R. B. (2005). *Methodology in the social sciences. Principles and practice of structural equation modeling (2nd ed.).* Guilford Press.

Kotov, R., Gamez, W., Schmidt, F., & Watson, D. (2010). Linking "big" personality traits to anxiety, depressive, and substance use disorders: A meta-analysis. *Psychological Bulletin, 136*(5), 768–821. https://doi.org/10.1037/a0020327

Lazarus, R. S., & Folkman, S. (1984). *Stress, appraisal, and coping*. New York: Springer.

Lee-Baggley, D., Preece, M., & Delongis, A. (2005). Coping with interpersonal stress: role of big five traits. *Journal of personality*, *73*(5), 1141–1180. https://doi.org/10.1111/j.1467-6494.2005.00345.x

Lockhart, G., MacKinnon, D. P., & Ohlrich, V. (2011). Mediation Analysis in Psychosomatic Medicine Research. Psychosomatic Medicine, 73(1), 29–43. doi:10.1097/psy.0b013e318200a54b

Lucas, R. E., & Baird, B. M. (2004). Extraversion and Emotional Reactivity. *Journal of Personality and Social Psychology, 86*(3), 473–485. https://doi.org/10.1037/0022-3514.86.3.473

MacKinnon, D. P., Lockwood, C. M., Hoffman, J. M., West, S. G., & Sheets, V. (2002). A comparison of methods to test mediation and other intervening variable effects. *Psychological Methods, 7*(1), 83–104. https://doi.org/10.1037/1082-989X.7.1.83

Marcel, A. J. (2003). Introspective report: Trust, self-knowledge and science. *Journal of Consciousness Studies*, 10, 167–186.

McCay-Peet, L., Lalmas, M., & Navalpakkam, V. (2012). On saliency, affect and focused attention. Proceedings of the 2012 ACM Annual Conference on Human Factors in Computing Systems - CHI '12. doi:10.1145/2207676.2207751

McCrae, R. R., & Costa, P. T., Jr. (2008). *The five-factor theory of personality.* In O. P. John, R. W. Robins, & L. A. Pervin (Eds.), *Handbook of personality: Theory and research* (p. 159–181). The Guilford Press.

Michalak, J., Zarbock, G., Drews, M., Otto, D., Mertens, D., Ströhle, G., Schwinger, M., Dahme, B., & Heidenreich, T. (2016). Erfassung von Achtsamkeit mit der deutschen Version des Five Facet Mindfulness Questionnaires (FFMQ-D) [Assessment of mindfulness with the German version of the Five Facet Mindfulness Questionnaires (FFMQ-D)]. *Zeitschrift für Gesundheitspsychologie, 24*(1), 1–12. https://doi.org/10.1026/0943-8149/a000149

Mischel, W., & Shoda, Y. (2008). *Toward a unified theory of personality: Integrating dispositions and processing dynamics within the cognitive-affective processing system.* In O. P. John, R. W. Robins, & L. A. Pervin (Eds.), *Handbook of personality: Theory and research* (p. 208–241). The Guilford Press.

Modinos, G., Ormel, J., & Aleman, A. (2010). Individual differences in Dispositional Mindfulness and brain activity involved in reappraisal of emotion. *Social Cognitive and Affective Neuroscience, 5(4), 369–377.* https://doi.org/10.1093/scan/nsq006

Mroczek, D. K., Spiro, A., & Turiano, N. A. (2009). Do health behaviors explain the effect of neuroticism on mortality? Longitudinal findings from the VA Normative Aging Study. *Journal of Research in Personality, 43(4), 653–659.* doi: 10.1016/j.jrp.2009.03.016

Neitzert, C. S., Davis, C., & Kennedy, S. H. (1997). Personality factors related to the prevalence of somatic symptoms and medical complaints in a healthy student population. *The British journal of medical psychology*, *70 (Pt1)*, 93–101.

https://doi.org/10.1111/j.2044-8341.1997.tb01889.x

Oshio, A., Taku, K., Hirano, M., & Saeed, G. (2018). Resilience and Big Five personality traits: A meta-analysis. *Personality and Individual Differences, 127,* 54–60. https://doi.org/10.1016/j.paid.2018.01.048

Pickett, J., Hofmans, J., Debusscher, J., & De Fruyt, F. (2019). Counter dispositional Conscientiousness and Wellbeing: How Does Acting Out of Character Relate to Positive and Negative Affect at Work? *Journal of Happiness Studies*. doi:10.1007/s10902-019-00139-1

Prakash, R. S., De Leon, A. A., Klatt, M., Malarkey, W., & Patterson, B. (2013). Mindfulness disposition and default-mode network connectivity in older adults. *Social Cognitive and Affective Neuroscience, 8*(1), 112–117. https://doi.org/10.1093/scan/nss115

Rammstedt, B., & Beierlein, C. (2014). Can't we make it any shorter? The limits of personality assessment and ways to overcome them. *Journal of Individual Differences, 35*(4), 212–220. https://doi.org/10.1027/1614-0001/a000141

Rammstedt, B., & John, O. P. (2005). Kurzversion des Big Five Inventory (BFI-K): Entwicklung und Validierung eines ökonomischen Inventars zur Erfassung der fünf Faktoren der Persönlichkeit [Short version of the Big Five Inventory (BFI-K): Development and validation of an economic inventory for assessment of the five factors of personality]. *Diagnostica, 51*(4), 195–206. https://doi.org/10.1026/0012-1924.51.4.195

Rau, H. K., & Williams, P. G. (2016). Dispositional Mindfulness: A critical review of construct validation research. *Personality and Individual Differences, 93,* 32–43. https://doi.org/10.1016/j.paid.2015.09.035

Rettew, D. C., & McKee, L. (2005). Temperament and Its Role in Developmental Psychopathology. Harvard Review of Psychiatry, 13(1), 14–27. doi:10.1080/10673220590923146

Roccas, S., Sagiv, L., Schwartz, S. H., & Knafo, A. (2002). The Big Five personality factors and personal values. *Personality and Social Psychology Bulletin, 28*(6), 789–801. https://doi.org/10.1177/0146167202289008

Ryan, R. M., Kuhl, J., & Deci, E. L. (1997). Nature and autonomy: An organizational view of social and neurobiological aspects of self-regulation in behavior and development. *Development and Psychopathology, 9*(4), 701–728. https://doi.org/10.1017/S0954579497001405

Saklofske, D. H., Austin, E. J., Galloway, J., & Davidson, K. (2007). Individual difference correlates of health-related behaviours: Preliminary evidence for links between emotional intelligence and coping. *Personality and Individual Differences, 42*(3), 491–502. https://doi.org/10.1016/j.paid.2006.08.006

Salehinezhad, M. A. (2012). *Personality and Mental Health*. INTECH Open Access Publisher.

Schmidt, S. (2011). Mindfulness in east and west—it is the same? In H. Walach, S. Schmidt, & W. B. Jonas (Eds.), *Neuroscience, consciousness, and spirituality* (pp. 23–39). New York: Springer.

Shapiro, S. L., Carlson, L. E., Astin, J. A., & Freedman, B. (2006). Mechanisms of mindfulness. *Journal of clinical psychology*, *62*(3), 373–386. https://doi.org/10.1002/jclp.20237

Shi, M., Liu, L., Wang, Z. Y., & Wang, L. (2015). The mediating role of resilience in the relationship between big five personality and anxiety among Chinese medical students: a cross-sectional study. *PloS one*, *10*(3), e0119916. https://doi.org/10.1371/journal.pone.0119916

Siebelink, N. M., Asherson, P., Antonova, E., Bögels, S. M., Speckens, A. E., Buitelaar, J. K., & Greven, C. U. (2019). Genetic and environmental etiologies of associations between Dispositional Mindfulness and ADHD traits: a population-based twin study. *European child & adolescent psychiatry*, *28*(9), 1241–1251. https://doi.org/10.1007/s00787-019-01279-8

Silvia, P. J., & Abele, A. E. (2002). Can positive affect induce self-focused attention? Methodological and measurement issues. *Cognition and Emotion, 16*(6), 845–853. https://doi.org/10.1080/02699930143000671

Steel, P., Schmidt, J., & Shultz, J. (2008). Refining the relationship between personality and subjective well-being. *Psychological Bulletin, 134*(1), 138–161. https://doi.org/10.1037/0033-2909.134.1.138

Suls, J., & Howren, M. B. (2012). *Understanding the Physical-Symptom Experience. Current Directions in Psychological Science, 21(2), 129–134.* doi:10.1177/0963721412439298

Szcześniak, M., Sopińska, B., & Kroplewski, Z. (2019). *Big F*ive Personality Traits and Life Satisfaction: The Mediating Role of Religiosity. *Religions, 10(7), 437.* doi:10.3390/rel10070437

Teasdale, J. D. (1999). Emotional processing, three modes of mind and the prevention of relapse in depression. *Behaviour Research and Therapy*, 37, 53–77.

Tellegen, A., Watson, D., and Clark, L. A. (1999). On the dimensional and hierarchical structure of affect. *Psychological Science* 10, 297–303. doi: 10.1111/1467-9280.00157

Thalmayer, A. G., Friedman, S. A., Azocar, F., Harwood, J. M., & Ettner, S. L. (2017). The Mental Health Parity and Addiction Equity Act (MHPAEA) Evaluation Study: Impact on Quantitative Treatment Limits. *Psychiatric Services*, 68(5), 435–442. Doi: 10.1176/appi.ps.201600110

Thompson, E. R. (2008). Development and validation of an international English big-five mini-markers. *Personality & Individual Differences* 45, 542–548. doi: 10.1016/j.paid.2008.06.013

Turiano, N. A., Hill, P. L., Graham, E. K., & Mroczek, D. K. (2018). Associations Between Personality and Health Behaviors Across the Life Span. In C. D. Ryff, & R. F. Krueger (Eds.), *The Oxford Handbook of Integrative Health Sciences* (Oxford Library of Psychology). Oxford University Press.

Vest Rogers, E. (2009). The relationship between levels of mindfulness and heart rate variability. Unpublished 3373888, The University of Wisconsin - Milwaukee, United States – Wisconsin

Wang, Y., Yao, L., Liu, L., Yang, X., Wu, H., Wang, J., & Wang, L. (2014). The mediating role of self-efficacy in the relationship between Big five personality and depressive symptoms among Chinese unemployed population: a cross-sectional study. *BMC Psychiatry, 14(1).* doi:10.1186/1471-244x-14-61

Watson, D., & Clark, L. A. (1992). On traits and temperament: general and specific factors of emotional experience and their relation to the five-factor model. *Journal of personality*, *60*(2), 441–476. https://doi.org/10.1111/j.1467-6494.1992.tb00980.x

Watson, D., & Pennebaker, J. W. (1989). Health complaints, stress, and distress: Exploring the central role of negative affectivity. *Psychological Review, 96*(2), 234–254. https://doi.org/10.1037/0033-295X.96.2.234

Way, B. M., Creswell, J. D., Eisenberger, N. I., & Lieberman, M. D. (2006). Associations between Dispositional Mindfulness and genetic variation of M-AOA. Unpublished raw data, University of California, Los Angeles.

Wehner, C., Schils, T., & Borghans, L. (2016). Personality and Mental Health: The Role and Substitution Effect of Emotional Stability and Conscientiousness. *Human Cognition in Evolution & Development eJournal.*

Wenzel, M., von Versen, C., Hirschmüller, S., & Kubiak, T. (2015). Curb your neuroticism—Mindfulness mediates the link between neuroticism and subjective well-being. *Personality and Individual Differences, 80,* 68–75. https://doi.org/10.1016/j.paid.2015.02.020

Widiger, T. A., & Smith, G. T. (2008). *Personality and psychopathology.* In O. P. John, R. W. Robins, & L. A. Pervin (Eds.), *Handbook of personality: Theory and research* (p. 743–769). The Guilford Press.

Williams, P. G., & Moroz, T. L. (2009). Personality vulnerability to stress-related sleep disruption: Pathways to adverse mental and physical health outcomes. *Personality and Individual Differences, 46*(5–6), 598–603. https://doi.org/10.1016/j.paid.2008.12.017

Zhuang, K., Bi, M., Li, Y., Xia, Y., Guo, X., Chen, Q., Du, X., Wang, K., Wei, D., Yin, H., & Qiu, J. (2017). A distinction between two instruments measuring Dispositional Mindfulness and the correlations between those measurements and the neuroanatomical structure. *Scientific reports*, *7*(1), 6252. https://doi.org/10.1038/s41598-017-06599-w

# MEDIJACIONA ULOGA PUNE SVESNOSTI I PAŽNJE U ODNOSIMA NEUROTICIZMA I SAVESNOSTI SA BRIGAMA, TENZIJAMA I IZOSTANKOM SREĆE

**Rezime**: Cilj ovog istraživanja jeste da se ispitaju medijacioni doprinosi *Pune svesnosti i pažnje* u odnosima *Neuroticizma* i *Savesnosti* sa *Brigama, Tenzijama* i *Izostankom sreće*. Uzorak su činili dobrovoljci iz opšte populacije sa nemačkog govornog područja (N = 430; 73% ženskih i 23% muških ispitanika) prosečne starosti $\bar{x}$ = 39 godina, **σ = 14.6 (min = 19, maks = 77 godina). Upotrebljene skale su demonstrirale dobru i visoku pouzdanost. Ukazano je da** *Puna svesnost i pažnja* ostvaruje negativnu vezu sa *Neuroticizmom* (r = -0.64; p < .01) i pozitivnu sa *Savesnošću* (r = -0.41; p < .01), kao i negativne veze sa *Brigama* (r = -0.57; p < .01), *Tenzijama* (r = -0.54; p < .01) i *Izostankom sreće* (r = -0.62; p < .01) na osnovu čega je formiran Konceptualni model 1.2. Rezultati medijacionih analiza modela ukazuju na značajan indirektan efekat putem *Pune svesnosti i pažnje* u svim testiranim relacijama: *Neuroticizam* i *Brige* (b = 0.15; β = 0.12; p < .001, 95% Bca CI 0.091, 0.217), *Neuroticizam* i *Tenzije* (b = 0.13; β = 0.12; p < .001, 95% Bca CI 0.077, 0.208), *Neuroticizam* i *Izostanak sreće* (b = 0.18; β = 0.19; p < .001, 95% Bca CI 0.124, 0.241), kao i u relaciji *Savesnost* i *Izostanak sreće* (b = -0.10; β = -0.08; p < .001, 95% Bca CI -0.096, -0.058). Podaci govore u prilog teorijskim postavkama da puna svesnost i pažnja igraju važnu ulogu u vezi sa osobinama ličnosti i poteškoćama na kognitivnom i afektivnom i somatskom planu, da doprinose povećanom uvidu u sopstvena ponašanja i potencijalnom formiranju funkcionalnih odgovora.

**Ključne reči:** *Puna svesnost i pažnja, Neuroticizam, Savesnost***.**

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# EKONOMSKA EFIKASNOST OSIGURAVAJUĆIH KUĆA: UPOREDNA ANALIZA RASTA PRODUKTIVNOSTI NA NIVOU DRŽAVA

**Apstrakt:** Ovaj rad se bavi analizom ekonomske efikasnosti osiguravajućih društava u Hrvatskoj, Srbiji i Sloveniji. U radu se koristi DEA analiza kako bi se ispitalo u kojoj meri promene tehničke i ekonomske efikasnosti doprinose rastu produktivnosti u sektoru osiguranja u navedenim zemljama. U analizi je primenjen generalizovani izlazno-orijentisani Malmkvistov indeks za period od 2014. do 2015.godine. Podaci za ulaz i izlaz prikupljeni su na osnovu uzorka od 19 osiguravajućih društava iz Srbije, 23 osiguravajuća društva iz Hrvatske i 13 osiguravajućih društava iz Slovenije. U istraživanju su korišćena četiri vrste ulaza i dva izlaza: troškovi provizije i upravljanja, akcijski kapital i radna snaga, odnosno prihod od premija i neto investicije. Efikasnost se meri korišćenjem Malmkvistovog indeksa koji se može podeliti na dve komponente: indeks promene efikasnosti i indeks tehničkih promena. Rezultati su pokazali da je do 50% hrvatskih i slovenačkih kompanija efikasno, u poređenju sa 30% srpskih kompanija.

**Ključne reči:** ekonomska efikasnost, osiguranje, produktivnost, rast, cross-countri.

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## 1. Uvod

Pojam i praksa osiguranja nastali su i razvijali se u cilju zaštite pojedinaca i preduzeća od različitih rizika. Osiguranje pruža indirektnu zaštitu u vidu nadoknade gubitka ili štete, **što doprinosi** ekonomskom rastu, i omogućava stabilizaciju finansijske situacije pojedinaca i preduzeća i tako podstiče trgovinu. Osim toga, osiguranje igra važnu ulogu u oporavku od gubitaka i može da funkcioniše kao zamena i dopuna državnih programa (Skipper, 2001). Državni rashodi se mogu smanjiti transferom finansiranja gubitaka, a višak se može iskoristiti za podsticanje rasta. Delatnost osiguravajućih društava predstavlja rešenje za prenos rizika i obeštećenja. Često su ove firme i investitori na finansijskim tržištima. Mnoge studije (Skipper i Kvon, 2007; Dorfman, 2008) su pokazale da je osiguranje od višestruke koristi za privredu i društvo. Cvajfel i Ajzen ( Zveifel & Eisen, 2012) navode da „osiguranje utiče na proizvodnju i potrošnju, unutrašnju i međunarodnu trgovinu, platne transakcije, kao i na očuvanje postojećeg i stvaranje novog bogatstva". Prema Cvajfelu i Ajzenu, „osiguravači smanjuju gubitke i stoga povećavaju efikasnost privrede i doprinose njenoj stabilnosti i rastu".

Empirijski podaci iz razvijenih zemalja pokazuju da osiguravajuća društva spadaju među najveće poslodavce, investitore i poreske obveznike u SAD (Insurance Information Institute, 2015), Velikoj Britaniji (Association of British Insurers, 2015) i Evropskoj Uniji (Insurance Europe, 2015). Sektor osiguranja spada u najvažnije privredne sektore u SAD, sa približno 2,4 miliona radnih mesta. Finansijska vrednost ovog sektora iznosila je oko 6 biliona dolara 2013. godine. Osiguravajuća društva doprinose više od 413 milijardi dolara američkom bruto domaćem proizvodu, a u 2013. su platila 17,4 milijarde dolara poreza u 50 država, ili oko 2% svih državnih poreza (Insurance Information Institute, 2015). Britanski sektor osiguranja upravlja investicijama od 1,9 biliona funti (što je ekvivalentno 25% ukupne neto vrednosti države), zapošljava oko 334.000 ljudi i plaća skoro 12 milijardi funti poreza (Association of British Insurers, 2015). Evropski osiguravajuća društva su 2014. godine ostvarila prihod od premija od skoro 1.170 milijardi evra, zapošljavala preko milion ljudi i uložila gotovo 9.900 milijardi evra u privredu (Insurance Europe, 2015).

Sektor osiguranja u Istočnoj i Jugoistočnoj Evropi, meren premijom po glavi stanovnika, raste sporije nego u razvijenim zemljama. Pre ekonomske tranzicije u ovom regionu, „nije bilo ni mnogo potrebe, a ni potražnje za privatnim osiguranjem" (Dorfman, 2008), zbog prekomerne upotrebe javnih sredstava za pokrivanje gubitaka, preovlađujućeg sistema socijalnog osiguranja i državnog vlasništva nad sredstvima za proizvodnju. Privatizacija (denacionalizacija) podstakla je razvoj upravljanja rizicima i rast potražnje za osiguranjem. Istovremeno, tržišta osiguranja su postala deregulisana i liberalizovana, pri čemu su mnoge strane osiguravajuće firme ušle na tržišta osiguranja ovih zemalja (Roaf et al., 2014). Ova tržišta osiguranja su još uvek skromno razvijena u smislu gustine osiguranja u poređenju sa zapadnoevropskim zemljama; međutim, rast premije osiguranja u zemljama istočne Evrope nadmašio je rast premije u razvijenim ekonomijama (npr. Marović et al., 2010). Predmet istraživanja ovog rada su performanse sektora osiguranja u Hrvatskoj, Srbiji i Sloveniji, i upoređivanje efikasnosti osiguravajućih društava u ovim zemljama. Prema saznanjima autora, ovo je prva studija koja upoređuje performanse sektora osiguranja u zemljama bivše Jugoslavije.

Postoje mnoge studije o učinku drugih sektora finansijskih usluga, kao što su institucije koje primaju depozite, ali se do sada mali broj studija bavio sektorom osiguranja. Ispitivanje performansi sektora osiguranja je veoma važno jer se ovaj sektor trenutno suočava sa mnogim izazovima, uključujući povećanu konkurenciju, konsolidaciju, rizike solventnosti i promenljivo regulatorno okruženje. Merenje efikasnosti ovog sektora je važno jer će pomoći da se utvrdi kako će sektor odgovoriti na ove izazove i koje firme imaju izgleda da opstanu na tržištu (Berger et. al, 1993).

U ovoj studiji se upoređuje efikasnost osiguravajućih društava u Hrvatskoj, Srbiji i Sloveniji u periodu od 2014. do 2015. godine korišćenjem metoda Data Envelopment Analysis (DEA). U DEA analizi efikasnost se meri Malmkvistovim indeksom. Malmkvistove mere efikasnosti se dele na dve komponente: indeks promene efikasnosti i indeks tehničkih promena. Promena efikasnosti se dalje razlaže na čistu efikasnost i efikasnost. Izlazno-ulazni podaci obuhvatili su 19 osiguravajućih kuća iz Srbije, 23 iz Hrvatske i 13 iz Slovenije. Korišćena su četiri ulaza (akcionarski kapital, broj zaposlenih, provizija i troškovi upravljanja) i dva izlaza (ukupna prikupljena premija i neto prihod od ulaganja). Još

jedna studija o efikasnosti srpskih osiguravajućih društava urađena je korišćenjem trećeg izlaznog podatka, koji je bio nedostupan za Hrvatsku i Sloveniju – broj ugovora o osiguranju. Rad se sastoji od četiri dela: Pregled literature, Metodologija (sa objašnjenjem DEA i Malmkvistovog indeksa), Rezultati i diskusija, i Zaključna razmatranja.

## 2. Pregled literature

U svetu su sprovedena mnoga istraživanja o učinku drugih sektora finansijskih usluga, kao što je bankarski sektor, ali se do sada mali broj studija bavio sektorom osiguranja. Ispitivanje performansi sektora osiguranja je veoma važno jer se ovaj sektor trenutno suočava sa mnogim izazovima, uključujući povećanu konkurenciju, konsolidaciju, rizike solventnosti i promenljivo regulatorno okruženje. Rezultati istraživanja ukazuju na to da osiguravajuća društva treba da unaprede svoju konkurentnost; takođe, rezultati govore o značaju stabilnosti finansijskih institucija koja se može postići zajedničkim delovanjem državnih organa i regulatora osiguravajućih društava.

U najčešće korišćene metode za merenje efikasnosti industrije osiguranja spadaju Stochastic Frontier Analysis (SFA) i Data Envelopment Analysis (DEA). Metodu SFA, takođe poznat kao Econometric Frontier Approach, osmislili su Aigner i saradnici (Aigner et al., 1977). U ovoj metodi postoji funkcionalni obrazac za odnos troškova, profita ili proizvodnje između ulaza, izlaza i faktora okoline, a dozvoljene su nasumične greške (Berger & Humphrey, 1997). Glavni nedostatak ekonometrijskog pristupa jeste upotreba jakih pretpostavki u pogledu oblika efikasne granice. Metodu Data Envelopment Analysis (DEA), ili metodu matematičkog programiranja, osmislili su Čarns i saradnici (Charnes et al., 1978) i zasniva se na konceptu efikasnosti kod Farela (Farrell, 1957). Prema Čarnsu i saradnicima (Charnes et al., 1978), DEA meri efikasnost pod pretpostavkom konstantnog prinosa na obim. S druge strane, Banker i saradnici (Banker et al., 1984) koristili su pretpostavku promenljivog prinosa na obim. U ovoj metodi se konstruiše granica posmatranih odnosa između ulaza i izlaza pomoću linearnog programiranja. Pretpostavlja se da je moguća linearna zamena između posmatranih ulaznih kombinacija na izokvanti.

Vanke i Baros (Wanke and Barros, 2016) su istraživali heterogenost, koju predstavljaju različite vrste osiguranja koja nude brazilska osiguravajuća društva, dok su Nektarios i Baros (Nektarios and Barros, 2010) izvršili procenu efekta deregulacije nakon implementacije Treće direktive o osiguranju na grčkom tržištu osiguranja. Obe studije su koristile DEA i Malmkvistov indeks dekomponovan na promenu tehničke efikasnosti (čista tehnička efikasnost i efikasnost razmere) i tehnološke promene. Rezultati ukazuju na to da su mešovita osiguravajuća društva imala najmanju produktivnost. Bertoni i Kroće (Bertoni & Croce, 2011) su ispitali implikacije Treće direktive na evoluciju produktivnosti u evropskom sektoru životnog osiguranja. Autori su primenili DEA model na panel od 602 kompanije za životno osiguranje koje posluju u pet evropskih zemalja (Nemačka, Francuska, Italija, Španija i Velika Britanija) između 1997. i 2004. godine. Primenili su generalizovanu Malmkvistovu dekompoziciju efikasnosti kako bi procenili relativnu važnost poboljšanja najbolje prakse koje trenutno usvajaju domaći ili strani najbolji osiguravači u klasi. Mijašita i saradnici (Miyashita et al., 2011) su ispitivali kako izbor portfelja osiguranja utiče na troškovnu efikasnost neživotnih osiguravača u različitim tržišnim okruženjima. Rezultati su pokazali da efikasnost osiguravača opada srazmerno smanjenju diverzifikacije. Dakle, neživotni osiguravači mogu uspešno da unaprede svoju efikasnost diverzifikacijom svog portfelja polisa osiguranja. Mari i saradnici (Marie et al., 2009) istraživali su neefikasnost troškova i njihov odnos sa pokretačima vrednosti osiguravača u Ujedinjenim Arapskim Emiratima (UAE). Istraživanje je pokazalo da je kod ovih osiguravača postojalo 21-33% troškovne neefikasnosti po različitim specifikacijama modela stohastičke granice i DEA. Kamins i Šie (Cummins & Xie, 2013) su ispitivali efikasnost, produktivnost i ekonomiju obima u američkom sektoru osiguranja imovine od odgovornosti. Promenu produktivnosti su analizirali pomoću Malmkvistovih indeksa, a efikasnost pomoću DEA modela. Rezultati pokazuju da najveći broj osiguravajućih firmi ispod srednje veličine posluje sa povećanjem prinosa na obim, dok najveći broj firmi iznad srednje veličine posluje sa smanjenjem prinosa na obim. Segovija i saradnici (Segovia et al., 2009) su koristili podatke iz 80.000 polisa osiguranja automobila da bi ispitali kombinacije rizika koje generišu najveće prinose za kompaniju.

## 3. Podaci i metodologija

Četiri ulaza i izlaza korišćena su u istraživanju efikasnosti osiguravajućih kuća u Hrvatskoj, Srbiji i Sloveniji. Ulazi su troškovi provizije i upravljanja, broj zaposlenih i osnovni kapital. Rezultati su ukupna prikupljena premija i neto prihod od ulaganja. Uzorak srpskih osiguravajućih društava čine: AMS, AKSA Non-Life, AKSA Life, DDOR, Dunav, Energoprojekt, Generali, Globos, Grave, Merkur, Milenijum, Sava Non-Life, Sava Life, Societe, Sogaz, Triglav, Unika Non-Life, Unika Life i Viener. Uzorak hrvatskih preduzeća čine: Agram Life, Allianz Zagreb, BNP Paribas Cardif, Hrvatska, Hrvatska zdravstveno osiguranje, Ergo, Ergo Life, Erste Vienna Insurance Group, Euroherc, Generali Hrvatska, GRAVE Hrvatska, HOK, Hrvatsko kreditno osiguranje, Izvor, Jadransko, Merkur Hrvatska, Societe Generale, TRIGLAV Hrvatska, Unika, Velebit, Velebit Life, Viener Vienna Insurance Group i Vustenrot Life. Uzorak slovenačkih preduzeća čine: Adriatic Slovenica, GENERALI Slovenija, GRAVE Slovenija, Merkur Zavarovalnica, Modra Zavarovalnica, NLB Vita Življenjska Zavarovalnica, SID – Prva Kreditna Zavarovalnica, Skupna Pokojninska, Triglav Zdravstvena Zavarovalnica, Vzajemna Zdravstvena Zavarovalnica, Vzajemna Zdravstvena Zavarovalnica, Zavarovalnica Zavarovalnica Maribor (Sava), Zavarovalnica Tilia i Zavarovalnica Triglav.

Podaci o ulazima i izlazima su prikupljeni za period od 2014 do 2015. godine Sve monetarne vrednosti su prilagođene inflaciji i obračunate u evrima po kursu iz 2015. godine. Podaci za srpska osiguravajuća društva preuzeti su sa sajta Narodne banke Srbije. Podaci za hrvatske i slovenačke kompanije preuzeti su iz godišnjih finansijskih izveštaja kompanija.

Koristili smo generalizovani izlazno-orijentisani Malmkvistov indeks, koji su razvili Fare i saradnici (Fare et al., 1994) za merenje tehničke promene i promene efikasnosti u porastu produktivnosti u sektoru osiguranja. Malmkvistovi indeksi se konstruišu pomoću DEA modela na sledeći način:

$$M_0(x^t, y^t, x^{t+1}, y^{t+1}) = \frac{D_0^{t+1}(x^{t+1}, y^{t+1})}{D_0^t(x^t, y^t)} \cdot \left[\left(\frac{D_0^t(x^{t+1}, y^{t+1})}{D_0^{t+1}(x^{t+1}, y^{t+1})}\right) \cdot \left(\frac{D_0^t(x^t, y^t)}{D_0^{t+1}(x^t, y^t)}\right)\right]^{\frac{1}{2}},$$

gde $D_0^t(x^{t+1}, y^{t+1})$ označava rastojanje od perioda t+1 do tehnologije perioda t. Prvi izraz na desnoj strani formule meri promenu relativne efikasnosti između godine t i t+1. Drugi izraz, tj. geometrijski prosek u zagradama meri pomak u tehnologiji, ili kretanje same granične funkcije.

Tabela 1 predstavlja deskriptivnu statistiku izlaza i ulaza 55 osiguravajućih društava u tri zemlje od 2014. do 2015. godine. U tom periodu slovenačka kompanija *Triglav zavarovalnica* stekla je 600 miliona premija, dok je *ERGO life* imao nešto manje od 150 hiljada evra. Međutim, za drugi proizvod, odnosno prihod od ulaganja, najveći prihod imala je hrvatska UNIQA. Što se tiče ulaza, najveće troškove akvizicije ima *Croatia Insurance*, dok *Triglav zavarovalnica* ima najveće troškove upravljanja od oko 90 miliona.

*Tabela 1.* Deskriptivna statistika

| | Ulazne varijable | | | | Izlazne varijable | |
|---|---|---|---|---|---|---|
| | *Kapital* | *Troškovi provizije* | *Troškovi upravljanja* | *Zaposleni* | *Premije* | *Prihod od ulaganja* |
| Mean | 17550217 | 9961296 | 9855878 | 499 | 64201572 | 5181446 |
| Median | 7984555 | 5322000 | 3953391 | 228 | 27062095 | 1707656 |
| St. Dev. | 25528436 | 11640280 | 15895398 | 682 | 103179055 | 6571392 |
| Minimum | 3081545 | 5628 | 232668 | 9 | 143717 | 0 |
| Maximum | 152200000 | 49590838 | 88671593 | 3047 | 584869502 | 21393194 |

Izvor: Kalkulacije autora

Tabela 2 pokazuje procenat stvarnog izlaznog nivoa u poređenju sa maksimalnim potencijalnim izlaznim nivoom na datom ulaznom miksu. Zbog širokog raspona izlaznih vrednosti, odlučili smo se za promenljivi prinos na obim. 19 firmi je zadržalo isti nivo efikasnosti u obe godi-

ne, četiri su postigle punu efikasnost u 2015. godini (*UNIQA Slovenija, Sava, HOK, Generali Srbija*), dok je jedna izgubila punu efikasnost od 2014. godine (*Merkur*, Srbija). Srpska *AXA Non-Life* ostala je na dnu po efikasnosti, ostvarivši samo 4,3% i 9,1% svoje potencijalne proizvodnje u 2014. i 2015. godini.

*Tabela 2*. Efficiency of the insurance firms – variable returns to scale, Malmquist index and changes

| Država | DMU Name | 2015 | | 2014 | | MI | Tehnička promena | Promena efikasnosti |
|---|---|---|---|---|---|---|---|---|
| | | Obj. vrednost | Efikasna | Obj. vredn. | Efikasna | | | |
| Srbija | AMS | 0,469 | | 0,394 | | 1,036 | 0,930 | 1,190 |
| | AXA n | 0,091 | | 0,043 | | 1,907 | 0,916 | 2,111 |
| | AXA l | 1,000 | Da | 1,000 | Da | 0,947 | 0,896 | 1,000 |
| | DDOR | 0,640 | | 0,620 | | 1,126 | 1,052 | 1,032 |
| | Dunav | 0,747 | | 0,553 | | 1,523 | 1,071 | 1,351 |
| | Energoprojekt | 1,000 | Da | 1,000 | Da | 1,015 | 1,030 | 1,000 |
| | Generali | 1,000 | Da | 0,948 | | 1,149 | 1,187 | 1,055 |
| | Globos | 0,298 | | 0,315 | | 0,868 | 0,842 | 0,946 |
| | Grawe | 0,861 | | 0,776 | | 1,190 | 1,151 | 1,109 |
| | Merkur | 0,824 | | 1,000 | Da | 0,877 | 1,135 | 0,824 |
| | Milenijum | 1,000 | Da | 1,000 | Da | 1,029 | 1,060 | 1,000 |
| | Sava n | 0,453 | | 0,496 | | 0,953 | 1,093 | 0,912 |
| | Sava z | 1,000 | Da | 1,000 | Da | 1,065 | 1,135 | 1,000 |
| | Societe | 1,000 | Da | 1,000 | Da | 1,172 | 1,375 | 1,000 |
| | Sogaz | 0,516 | | 0,383 | | 1,454 | 1,165 | 1,347 |
| | Triglav | 0,417 | | 0,427 | | 0,958 | 0,963 | 0,977 |
| | Uniqa n | 0,435 | | 0,341 | | 1,270 | 0,992 | 1,275 |
| | Uniqa l | 0,731 | | 0,379 | | 1,279 | 1,160 | 1,130 |
| | Wiener | 0,677 | | 0,803 | | 0,860 | 1,040 | 0,843 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | AGRAM LIFE | 0,938 | | 0,724 | | 1,411 | 1,187 | 1,295 |
| | ALLIANZ ZAGREB | 1,000 | Da | 1,000 | Da | 0,907 | 0,823 | 1,000 |
| | BNP Paribas | 0,399 | | 0,402 | | 0,986 | 0,989 | 0,992 |
| | CROATIA osiguranje | 1,000 | Da | 1,000 | Da | 1,065 | 1,134 | 1,000 |
| | CROATIA zdravstveno | 0,539 | | 0,422 | | 1,287 | 1,012 | 1,279 |
| | ERGO osiguranje | 0,190 | | 0,102 | | 1,853 | 0,989 | 1,863 |
| | ERGO l | 1,000 | Da | 1,000 | Da | 1,070 | 1,146 | 1,000 |
| | Erste osiguranje Vienna | 1,000 | Da | 1,000 | Da | 1,070 | 1,145 | 1,000 |
| H | EUROHERC osiguranje | 0,724 | | 0,884 | | 0,711 | 0,753 | 0,820 |
| r | GENERALI OSIGURANJE | 0,672 | | 0,557 | | 1,206 | 0,999 | 1,207 |
| v | GRAWE Hrvatska | 1,000 | Da | 1,000 | Da | 1,133 | 1,284 | 1,000 |
| a | HOK OSIGURANJE | 1,000 | Da | 0,544 | | 1,770 | 0,928 | 1,837 |
| t | Hrvatsko kreditno osiguranje | 1,000 | Da | 1,000 | Da | 1,021 | 1,043 | 1,000 |
| s | IZVOR OSIGURANJE | 0,199 | | 0,202 | | 0,949 | 0,929 | 0,984 |
| k | JADRANSKO OSIGURANJE | 0,486 | | 0,534 | | 0,967 | 1,128 | 0,911 |
| a | MERKUR OSIGURANJE | 1,000 | Da | 1,000 | Da | 0,799 | 0,638 | 1,000 |
| | Societe Generale | 1,000 | Da | 1,000 | Da | 1,085 | 1,177 | 1,000 |
| | TRIGLAV OSIGURANJE | 0,430 | | 0,274 | | 1,418 | 0,815 | 1,570 |
| | UNIQA osiguranje | 1,000 | Da | 0,849 | | 0,992 | 0,710 | 1,177 |
| | VELEBIT OSIGURANJE | 0,197 | | 0,237 | | 0,820 | 0,976 | 0,830 |
| | VELEBIT ZIVOTNO OSIGURANJE | 0,271 | | 0,229 | | 1,370 | 1,335 | 1,186 |
| | Wiener osiguranje VIG | 0,778 | | 0,778 | | 1,061 | 1,125 | 1,001 |
| | Wustenrot zivotno | 1,000 | Da | 1,000 | Da | 1,039 | 1,080 | 1,000 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Slovenija | Adriatic Slovenica | 0,891 | | 0,894 | | 0,971 | 0,950 | 0,996 |
| | GENERALI zavarovalnica | 0,454 | | 0,513 | | 1,044 | 1,394 | 0,884 |
| | GRAWE Zavarovalnica | 0,567 | | 0,549 | | 1,101 | 1,136 | 1,033 |
| | Merkur zavarovalnica | 0,733 | | 0,799 | | 1,035 | 1,273 | 0,917 |
| | Modra zavarovalnica | 0,803 | | 0,803 | | 1,112 | 1,236 | 1,000 |
| | NLB Vita zivljenjska zavarovalnica | 1,000 | Da | 1,000 | Da | 1,158 | 1,342 | 1,000 |
| | SID Prva kreditna zavarovalnica | 0,243 | | 0,214 | | 1,131 | 0,992 | 1,136 |
| | Skupna pokojninska druzba | 1,000 | Da | 1,000 | Da | 0,995 | 0,990 | 1,000 |
| | Triglav Zdravstvena zavarovalnica | 1,000 | Da | 1,000 | Da | 0,918 | 0,843 | 1,000 |
| | Vzajemna zdravstvena zav | 1,000 | Da | 1,000 | Da | 1,040 | 1,082 | 1,000 |
| | Zavarovalnica Maribor Sava | 1,000 | Da | 1,000 | | 0,991 | 0,982 | 1,000 |
| | Zavarovalnica Tilia | 0,344 | | 0,305 | | 0,927 | 0,674 | 1,129 |
| | Zavarovalnica Triglav | 1,000 | Da | 1,000 | Da | 1,033 | 1,067 | 1,000 |

Izvor: Kalkulacije autora

Malmkvistov indeks se dalje dekomponuje na dve komponente, tehničku promenu i promenu efikasnosti. Rezultati tehničke promene i promene efikasnosti su prikazani u poslednje 3 kolone tabele 2. Vrednosti indeksa tehničkog napredovanja ili nazadovanja merene su prosečnim pomeranjima granice najbolje prakse od 2014. do 2015. godine. Rezultati pokazuju da su sve firme doživele i tehnički napredak i nazadovanje. Od srpskih osiguravajućih društava, DDOR je zabeležio najveću tehničku promenu od preko 55%, dok je Globos zabeležio tehničko nazadovanje više od 15%. Hrvatske firme su doživele manje dramatič-

nih promena. Merkur Hrvatska je tehnički nazadovala za 36%, dok je Velebitsko zdravstveno osiguranje povećalo tehničku efikasnost za 33%. Konačno, koeficijenti tehničke efikasnosti slovenačkih kompanija kretali su se od smanjenja od 32% za Zavarovalnicu Tilia do povećanja od 39% za Generali. Primetili smo velike razlike u efikasnosti između 55 kompanija iz tri zemlje.

## Zaključna razmatranja

U ovoj studiji korišćen je DEA model za istraživanje doprinosa tehničke promene i efikasnosti promene produktivnosti u tri zemlje bivše Jugoslavije: Hrvatskoj, Srbiji i Sloveniji. Primenili smo generalizovani Malmkvistov indeks orijentisan na proizvodnju za period od 2014. do 2015. godine. Rezultati merenja efikasnosti ne potvrđuju hipotezu da su najveće kompanije i najefikasnije, budući da je efikasnost bila prilično ravnomerno raspoređena po kompanijama i zemljama.

## Literatura

Aigner, D.J., Lovell, C.A.K., and Schmidt, P. (1977). Formulation and estimation of stochastic frontier production function models. *Journal of Econometrics*, 6, 21–37.

Association of British Insurers (2015). UK Insurance and Long-Term Savings Key Facts 2015 [online]. London: Association of British Insurers. Available from: https://www.abi.org.uk/~/media/Files/Documents/Publications/Public/2015/Statistics/Key%20Facts%202015.pdf (Accessed 10 July 2022).

Banker, R.D., Charnes, A., and Cooper, W.W. (1984). Some models for estimating technical and scale inefficiencies in data envelopment analysis. *Management Science*, 30(9), 1078– 1092.

Berger, A.N., Hunter, W.C., and Timme, S.G. (1993). The efficiency of financial institutions: A review and preview of research past, present and future. *Journal of Banking and Finance*, 17, 221–250.

Berger, A.N., and Humphrey, D.B. (1997). Efficiency of financial institutions: International survey and directions for future research. *European Journal of Operational Research*, 98, 175–212.

Bertoni, F., and Croce, A. (2011). The Productivity of European Life Insurers: Best-Practice Adoption vs. Innovation. *The Geneva Papers on Risk and Insurance - Issues and Practice*, 36(2), 165–185.

Charnes, A., Cooper, W.W., and Rhodes, E. (1978). Measuring the efficiency of decision-making units. *European Journal of Operational Research*, 2, 429–444.

Cummins, J.D., and Xie, X. (2013). Efficiency, productivity, and scale economies in the U. S. property-liability insurance industry. *Journal of Productivity Analysis*, 39(2), 141–164.

Dorfman, M. S. (2008). *Introduction to Risk Management and Insurance*. Upper Saddle River, NJ: Pearson Education, Inc.

Fare, R., Shawna, G., Bjorn, L., and Ross, P. (1994). Productivity Developments in Swedish Hospitals: A Malmquist Output Index Approach. *Data Envelopment Analysis: Theory, Methodology, and Applications*, 253–272.

Farrell, M.J. (1957). The measurement of productive efficiency. *Journal of the Royal Statistical Society*, Series A, 120 (3), 253–290.

Forsund, F. (1991). The Malmquist productivity index. Paper Presented at the 2nd European Workshop on Efficiency and Productivity Measurement. Belgium: Centre of Operations Research & Econometrics, University Catholique de Louvain, Lauvain-la-Neuve.

Insurance Europe (2015). European Insurance – Key Facts [online]. Brussels: Insurance Europe. Available from:

http://www.insuranceeurope.eu/sites/default/files/attachments/European%20Insurance%20-%20Key%20Facts%20-%20August%202015.pdf (Accessed 5 May 2022).

Insurance Information Institute (2015). A Firm Foundation: How Insurance Supports the Economy [online]. New York: Insurance Information Institute. Available from: http://www.iii.org/sites/default/files/docs/pdf/a_firm_foundation_2015_brochure.pdf (Accessed 10 December 2021).

Marie, A., Rao, A., and Kashani, H. (2009). Cost Efficiency and Value Driver Analysis of Insurers in an Emerging Economy. *Managerial and Decision Economics*, 30(4), 265-280.

Marovic, B., Njegomir, V., and Maksimovic, R. (2010). The Implications of the Financial Crisis to the Insurance Industry – Global and Regional Perspective, *Economic Research*, 23 (2), 127–141.

Miyashita, H., Yoneyama, T., Suzawa, Y., and Tseng, Y. (2011). Efficiency performance of japanese non-life insurers and their portfolio of insurance policies. *Hitotsubashi Journal of Commerce and Management*, 45(1), 59–79.

Nektarios, M., and Barros, C.P. (2010). A Malmquist Index for the Greek Insurance Industry. *The Geneva Papers on Risk and Insurance – Issues and Practice*, 35(2), 309–324.

Roaf, J., et al. (2014). *25 Years of Transition Post-Communist Europe and the IMF: Regional Economic Issues*, Special Report, New York: International Monetary Fund.

Segovia-Gonzalez, M.M., Contreras,I., and Mar-Molinero, C. (2009). A DEA Analysis of Risk, Cost, and Revenues in Insurance. *The Journal of the Operational Research Society*, 60(11), Data Envelopment Analysis: Theory and Applications, 1483–1494.

Skipper, H.D. (2001). *Insurance in the general agreement on trade in services*. Washington, D.C: American Enterprise Institute.

Skipper, H. D., and Kwon, W. J. (2007). *Risk Management and Insurance: Perspectives in a Global Economy*. Oxford: Blackwell Publishing, Ltd.

Wanke, P., and Barros, C.P. (2016). Efficiency drivers in Brazilian insurance: A two-stage DEA meta frontier-data mining approach. *Economic Modelling*, 53, 8–22.

Zweifel, P., and Eisen, R. (2012). *Insurance Economics*. Berlin: Springer–Verlag.

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**Key words:** economic efficiency, insurance, productivity, growth, cross-country.

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# ECONOMIC EFFICIENCY OF INSURANCE COMPANIES: CROSS-COUNTRY COMPARISON OF PRODUCTIVITY GROWTH

**Abstract**: This paper focuses on the economic efficiency of the insurance companies in Croatia, Serbia, and Slovenia. Data Envelopment Analysis (DEA) is used to examine the contributions of technical and economic efficiency change to the productivity growth in the insurance industries of these countries by applying the generalized output-oriented Malmquist index for the 2014-2015 period. The output-input data consists of a panel of 19 insurance firms in Serbia, 23 insurance companies in Croatia and 13 Slovenian companies chosen as the sample of the study. The study utilizes four inputs and two outputs: commission and management costs, stock capital and labor force, as well as premium and net investment income, respectively. The efficiency is measured using the Malmquist index which can be decomposed into two components: the efficiency change index and the technical change index. The results have shown that up to 50% of Croatian and Slovenian companies are efficient, compared to 30% of Serbian companies.

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## 1. Introduction

The concept and practice of insurance have been developed to protect individuals and businesses from various risks. Insurance provides indirect protection by way of financing loss impacts and thus facilitating economic growth. Insurance helps stabilize the financial situation of individuals and businesses and thus boosts trade and commerce. Additionally, insurance can encourage loss mitigation and can be a substitute for and complement government security programs (Skipper, 2001). Government expenditures can be reduced by loss financing transfer, and the surplus can be used for boosting growth instead. Additionally, insurance companies act not only as providers of risk transfer solutions and loss indemnification but also as institutional investors at financial markets. Many studies (Skipper and Kwon, 2007; Dorfman, 2008) have demonstrated the multiple benefits of insurance to the economy and society. Zweifel and Eisen (2012) state that "insurance influences production and consumption, internal and international trade, transaction payment as well as the conservation of existing and creation of new wealth." According to Zweifel and Eisen, "insurers reduce losses and therefore increase the efficiency of the economy and contribute to its stability and growth".

The empirical evidence from the developed economies demonstrates that insurers are major employers, investors, and tax contributors in the U.S. (Insurance Information Institute, 2015), in the U.K. (Association of British Insurers, 2015) and in the EU (Insurance Europe, 2015). The insurance industry is a major U.S. employer, providing about 2.4 million jobs. The industry's financial assets amounted to about $6 trillion in 2013. Insurers contribute more than $413 billion to the U.S. gross domestic product. Insurance companies paid $17.4 billion in taxes to the 50 states in 2013, or about 2% of all state taxes (Insurance Information Institute, 2015). UK insurance industry manages investments of £1.9 trillion (equivalent to 25% of the UK's total net worth), employs around 334,000 individuals and pays nearly £12 billion in taxes (Association of British Insurers, 2015). In 2014, European insurers generated premium income of nearly €1,170 billion, employed over one million people and invested nearly €9,900 billion in the economy (Insurance Europe, 2015).

The insurance industry in Eastern and Southeastern Europe, measured by premium per capita, has been growing more slowly than in developed economies. Prior to the economic transition in this region, "private insurance was neither much needed nor purchased" (Dorfman, 2008), because of the excessive use of public funds to cover losses, prevalent social insurance system and state ownership of the means of production. Privatization (denationalization) initiated the development of risk management and growth of insurance demand. At the same time, insurance markets became deregulated and liberalized, with many foreign insurance companies entering insurance markets of these countries (Roaf et al., 2014). These insurance markets are still modestly developed in terms of insurance density compared to the Western European countries; however, insurance premium growth in Eastern European countries has outpaced premium growth in developed economies (e.g., Marovic et al., 2010). This study focuses on the performance of the insurance industries in Croatia, Serbia, and Slovenia by comparing the efficiency of insurance companies in these countries. To our knowledge, this is the first study that compares the performance of insurance industries in the countries of former Yugoslavia.

Many studies on the performance of other financial service industries, such as deposit-taking institutions, have been conducted worldwide. So far, few of them have been concerned with the insurance industry. Investigating the performance of the insurance industry is crucial since this industry is currently facing many challenges, including increased competition, consolidation, solvency risks, and a changing regulatory environment. Measuring the efficiency of this industry is important as it will help determine how the industry will respond to these challenges and which firms are likely to survive (Berger et. al, 1993).

This study measures the efficiency of insurance companies in Croatia, Serbia, and Slovenia in 2014 – 2015 using the Data Envelopment Analysis (DEA). In the DEA technique, efficiency is measured by the Malmquist index. The Malmquist efficiency measures are decomposed into two components: efficiency change and technical change index. Efficiency change is further decomposed into pure and scale efficiency. The output-input data consisted of 19, 23 and 13 insurance firms from Serbia, Croatia, and Slovenia, respectively. Four inputs (share capital,

number of employees, commission, and management expenses) and two outputs (total premium collected and net investment income) were used. Another study on the efficiency of Serbian insurance companies was done using the third output data, which was unavailable for Croatia and Slovenia – the number of insurance contracts. The paper consists of 4 sections: Literature Review, Methodology (explaining the DEA and Malmquist Index), Results and Discussion, and finally, Concluding Remarks.

## 2. Literature review

Many studies on the performance of financial services industries, especially banks, have been conducted worldwide; yet only a few have been concerned with the insurance industry. Investigating the performance of the insurance industry is crucial since this industry is currently facing many challenges, including increased competition, consolidation, solvency risks, and a changing regulatory environment. The research findings reveal the need for insurance operators to improve their competitiveness and underline the importance of stability of the financial institutions which can be achieved through joint action of policymakers and insurance companies' regulators.

Among the most widely used methods for measuring the efficiency of the insurance industry are Stochastic Frontier Analysis (SFA) and Data Envelopment Analysis (DEA). The SFA, also known as the Econometric Frontier Approach, was developed by Aigner et al., (1977). This approach specifies a functional form for cost, profit or production relationship among inputs, outputs, and environmental factors and allows for random error (Berger and Humphrey, 1997). The econometric approach has the main disadvantage of using strong assumptions regarding the form of the efficient frontier. Data Envelopment Analysis (DEA), or the mathematical programming approach, was introduced by Charnes et al. (1978) and is based on the efficiency concept in Farrell (1957). According to Charnes et al. (1978), DEA estimates efficiency under the assumption of constant returns to scale, while Banker et al. (1984) assumed variable returns to scale. This approach constructs the frontier of the observed input-output ratios by linear programming. It assumes that linear substitution is possible between observed input combinations on an isoquant.

Wanke and Barros (2016) investigated heterogeneity, represented by different types of insurance provided, served by Brazilian insurance companies, while Nektarios and Barros (2010) estimated the effects of deregulation after the implementation of the Third Insurance Directive in the Greek insurance market. Both studies used DEA and the Malmquist Index decomposed into technical efficiency change (pure technical and scale efficiency) and technological change. The findings suggest that the mixed insurance companies had the lowest productivity. Bertoni and Croce (2011) examined the implications of the Third Directive on productivity evolution in the European life insurance industry. The authors applied DEA to a panel of 602 life insurance companies operating in five European countries (Germany, France, Italy, Spain, and the UK) between 1997 and 2004. They developed a generalized Malmquist efficiency decomposition to gauge the relative importance of the improvement of best practices, and the adoption of practices currently adopted by local or foreign best-in-class insurers. Miyashita et al. (2011) estimated how the selection of the insurance underwriting portfolio affects the cost efficiency of non-life insurers in different market environments. The results showed that the efficiency of insurers deteriorates as they decreased their diversification. This indicates that non-life insurers can successfully improve their efficiency by diversifying their insurance policy portfolio. Marie et al. (2009) investigated cost inefficiencies and how they relate to value drivers of insurers in United Arab Emirates (UAE). The study revealed that there were 21-33% cost inefficiencies in these insurers under different model specifications of stochastic frontier and DEA. Cummins and Xie (2013) examined efficiency, productivity, and scale economies in the US property-liability insurance industry. Productivity change was analyzed using Malmquist indices, and efficiency was estimated using DEA. The results indicate that most firms below median size in the industry are operating with increasing returns to scale, while most firms above median size are operating with decreasing returns to scale. Segovia et al. (2009) used data from 80 000 car insurance policies to assess the combinations of risk that generate the highest returns for the company under existing pricing practices.

## 3. Data and Methodology

Four inputs and outputs have been used in the efficiency investigation of insurance firms in Croatia, Serbia, and Slovenia. The inputs are commission and management expenses, number of employees and stock capital. The outputs are total premium collected and net investment income. The Serbian insurance companies sample consists of the following: AMS, AXA Non-Life, AXA Life, DDOR, Dunav, Energoprojekt, Generali, Globos, Grawe, Merkur, Milenijum, Sava Non-Life, Sava Life, Societe, Sogaz, Triglav, Uniqa Non-Life, Uniqa Life, and Wiener. The Croatian companies include: Agram Life, Allianz Zagreb, BNP Paribas Cardif, Croatia, Croatia Health Insurance, Ergo, Ergo Life, Erste Vienna Insurance Group, Euroherc, Generali Croatia, GRAWE Croatia, HOK, Hrvatsko Kreditno Osiguranje, Izvor, Jadransko, Merkur Croatia, Societe Generale, TRIGLAV Croatia, Uniqa, Velebit, Velebit Life, Wiener Vienna Insurance Group, Wüstenrot Life. The sample of Slovenian companies consists of the following: Adriatic Slovenica, GENERALI Slovenia, GRAWE Slovenia, Merkur Zavarovalnica, Modra Zavarovalnica, NLB Vita Življenjska Zavarovalnica, SID – Prva Kreditna Zavarovalnica, Skupna Pokojninska Družba, Triglav Zdravstvena Zavarovalnica, Vzajemna Zdravstvena Zavarovalnica D. V. Z, Zavarovalnica Maribor (Sava), Zavarovalnica Tilia, Zavarovalnica Triglav.

Data on inputs and outputs have been collected for the 2014-2015 period. All monetary values were adjusted for inflation and calculated in euros by 2015 exchange rates. The data for the Serbian insurance companies were taken from the National Bank of Serbia website. The data for Croatian and Slovenian companies were taken from companies' annual financial reports.

The generalized output-oriented Malmquist index, developed by Fare et al. (1994) was used to measure the technical and efficiency change to the growth of productivity in the insurance industries. The Malmquist indexes are constructed using the Data Envelopment Approach in the following manner:

$$M_0(x^t, y^t, x^{t+1}, y^{t+1}) = \frac{D_0^{t+1}(x^{t+1}, y^{t+1})}{D_0^t(x^t, y^t)} \cdot \left[ \left( \frac{D_0^t(x^{t+1}, y^{t+1})}{D_0^{t+1}(x^{t+1}, y^{t+1})} \right) \cdot \left( \frac{D_0^t(x^t, y^t)}{D_0^{t+1}(x^t, y^t)} \right) \right]^{\frac{1}{2}},$$

where the notation $D_0^t(x^{t+1}, y^{t+1})$ denotes the distance from the period t+1 to the period t technology. The first ratio on the right-hand side of the formula measures the change in relative efficiency between year t and t+1. The second term, i.e., the geometric average in the brackets measures the shift in technology, or movements of the frontier function itself.

*Table 1* presents the descriptive statistics of the outputs and inputs of 55 insurance firms in the three countries during 2014-2015. Within this period, the Slovenian company *Triglav zavarovalnica* acquired 600 million in premiums, while ERGO life had just under 150 thousand Euros. However, for the second output, i.e., investment income, the Croatian UNIQA had the highest income. As for inputs, *Croatia insurance* has the highest acquisition costs, while *Triglav zavarovalnica* has the highest management expenses of around 90 million.

*Table 1.* Descriptive statistics

| | input variables | | | | output variables | |
|---|---|---|---|---|---|---|
| | *Capital* | *Commision expenses* | *Manage-ment expenses* | *Emplo-yees* | *Premiums* | *Investment income* |
| Mean | 17550217 | 9961296 | 9855878 | 499 | 64201572 | 5181446 |
| Median | 7984555 | 5322000 | 3953391 | 228 | 27062095 | 1707656 |
| St. Dev. | 25528436 | 11640280 | 15895398 | 682 | 103179055 | 6571392 |
| Minimum | 3081545 | 5628 | 232668 | 9 | 143717 | 0 |
| Maximum | 152200000 | 49590838 | 88671593 | 3047 | 584869502 | 21393194 |

Source: Authors' calculations

Table 2 show the percentage of the actual output level compared to the maximum potential output level at the given input mix. Due to the wide range of output values, we opted for the variable returns to scale. 19 companies remained efficient in both years, 4 gained full efficiency in 2015 (*Uniqa Slovenia*, *Sava*, *HOK*, *Generali Serbia*), one lost full efficiency from 2014 (Merkur, Serbia). Serbian *AXA Non-Life* remained at the efficiency bottom, producing only 4.3% and 9.1% of its potential output in 2014 and 2015 respectively.

*Table 2.* Efficiency of the insurance firms – variable returns to scale, Malmquist index and changes

| Country | DMU Name | 2015 | | 2014 | | MI | Technical change | Efficiency change |
|---|---|---|---|---|---|---|---|---|
| | | Obj. Value | Efficient | Obj. Value | Efficient | | | |
| Serbia | AMS | 0,469 | | 0,394 | | 1,036 | 0,930 | 1,190 |
| | AXA n | 0,091 | | 0,043 | | 1,907 | 0,916 | 2,111 |
| | AXA l | 1,000 | Yes | 1,000 | Yes | 0,947 | 0,896 | 1,000 |
| | DDOR | 0,640 | | 0,620 | | 1,126 | 1,052 | 1,032 |
| | Dunav | 0,747 | | 0,553 | | 1,523 | 1,071 | 1,351 |
| | Energoprojekt | 1,000 | Yes | 1,000 | Yes | 1,015 | 1,030 | 1,000 |
| | Generali | 1,000 | Yes | 0,948 | | 1,149 | 1,187 | 1,055 |
| | Globos | 0,298 | | 0,315 | | 0,868 | 0,842 | 0,946 |
| | Grawe | 0,861 | | 0,776 | | 1,190 | 1,151 | 1,109 |
| | Merkur | 0,824 | | 1,000 | Yes | 0,877 | 1,135 | 0,824 |
| | Milenijum | 1,000 | Yes | 1,000 | Yes | 1,029 | 1,060 | 1,000 |
| | Sava n | 0,453 | | 0,496 | | 0,953 | 1,093 | 0,912 |
| | Sava z | 1,000 | Yes | 1,000 | Yes | 1,065 | 1,135 | 1,000 |
| | Societe | 1,000 | Yes | 1,000 | Yes | 1,172 | 1,375 | 1,000 |
| | Sogaz | 0,516 | | 0,383 | | 1,454 | 1,165 | 1,347 |
| | Triglav | 0,417 | | 0,427 | | 0,958 | 0,963 | 0,977 |
| | Uniqa n | 0,435 | | 0,341 | | 1,270 | 0,992 | 1,275 |
| | Uniqa l | 0,731 | | 0,379 | | 1,279 | 1,160 | 1,130 |
| | Wiener | 0,677 | | 0,803 | | 0,860 | 1,040 | 0,843 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Croatia | AGRAM LIFE | 0,938 | | 0,724 | | 1,411 | 1,187 | 1,295 |
| | ALLIANZ ZAGREB | 1,000 | Yes | 1,000 | Yes | 0,907 | 0,823 | 1,000 |
| | BNP Paribas | 0,399 | | 0,402 | | 0,986 | 0,989 | 0,992 |
| | CROATIA osiguranje | 1,000 | Yes | 1,000 | Yes | 1,065 | 1,134 | 1,000 |
| | CROATIA zdravstveno | 0,539 | | 0,422 | | 1,287 | 1,012 | 1,279 |
| | ERGO osiguranje | 0,190 | | 0,102 | | 1,853 | 0,989 | 1,863 |
| | ERGO l | 1,000 | Yes | 1,000 | Yes | 1,070 | 1,146 | 1,000 |
| | Erste osiguranje Vienna | 1,000 | Yes | 1,000 | Yes | 1,070 | 1,145 | 1,000 |
| | EURO-HERC osiguranje | 0,724 | | 0,884 | | 0,711 | 0,753 | 0,820 |
| | GENERALI OSIGURANJE | 0,672 | | 0,557 | | 1,206 | 0,999 | 1,207 |
| | GRAWE Hrvatska | 1,000 | Yes | 1,000 | Yes | 1,133 | 1,284 | 1,000 |
| | HOK OSIGURANJE | 1,000 | Yes | 0,544 | | 1,770 | 0,928 | 1,837 |
| | Hrvatsko kreditno osiguranje | 1,000 | Yes | 1,000 | Yes | 1,021 | 1,043 | 1,000 |
| | IZVOR OSIGURANJE | 0,199 | | 0,202 | | 0,949 | 0,929 | 0,984 |
| | JADRANSKO OSIGURANJE | 0,486 | | 0,534 | | 0,967 | 1,128 | 0,911 |
| | MERKUR OSIGURANJE | 1,000 | Yes | 1,000 | Yes | 0,799 | 0,638 | 1,000 |
| | Societe Generale | 1,000 | Yes | 1,000 | Yes | 1,085 | 1,177 | 1,000 |
| | TRIGLAV OSIGURANJE | 0,430 | | 0,274 | | 1,418 | 0,815 | 1,570 |
| | UNIQA osiguranje | 1,000 | Yes | 0,849 | | 0,992 | 0,710 | 1,177 |
| | VELEBIT OSIGURANJE | 0,197 | | 0,237 | | 0,820 | 0,976 | 0,830 |
| | VELEBIT ZIVOTNO OSIGURANJE | 0,271 | | 0,229 | | 1,370 | 1,335 | 1,186 |
| | Wiener osiguranje VIG | 0,778 | | 0,778 | | 1,061 | 1,125 | 1,001 |
| | Wustenrot zivotno | 1,000 | Yes | 1,000 | Yes | 1,039 | 1,080 | 1,000 |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Slovenia | Adriatic Slovenica | 0,891 | | 0,894 | | 0,971 | 0,950 | 0,996 |
| | GENERALI zavarovalnica | 0,454 | | 0,513 | | 1,044 | 1,394 | 0,884 |
| | GRAWE Zavarovalnica | 0,567 | | 0,549 | | 1,101 | 1,136 | 1,033 |
| | Merkur zavarovalnica | 0,733 | | 0,799 | | 1,035 | 1,273 | 0,917 |
| | Modra zavarovalnica | 0,803 | | 0,803 | | 1,112 | 1,236 | 1,000 |
| | NLB Vita zivljenjska zavarovalnica | 1,000 | Yes | 1,000 | Yes | 1,158 | 1,342 | 1,000 |
| | SID Prva kreditna zavarovalnica | 0,243 | | 0,214 | | 1,131 | 0,992 | 1,136 |
| | Skupna pokojninska druzba | 1,000 | Yes | 1,000 | Yes | 0,995 | 0,990 | 1,000 |
| | Triglav Zdravstvena zavarovalnica | 1,000 | Yes | 1,000 | Yes | 0,918 | 0,843 | 1,000 |
| | Vzajemna zdravstvena zav | 1,000 | Yes | 1,000 | Yes | 1,040 | 1,082 | 1,000 |
| | Zavarovalnica Maribor Sava | 1,000 | Yes | 1,000 | | 0,991 | 0,982 | 1,000 |
| | Zavarovalnica Tilia | 0,344 | | 0,305 | | 0,927 | 0,674 | 1,129 |
| | Zavarovalnica Triglav | 1,000 | Yes | 1,000 | Yes | 1,033 | 1,067 | 1,000 |

Source: Authors' calculations

The Malmquist index is further decomposed into its two components, technical change and efficiency change. The results of technical change and efficiency change are displayed in the last 3 columns of Table 2. The index values of technical progress or regress as measured by average shifts in the best-practice frontier from 2014 to 2015. The results show that all the firms experienced both technical progress and regress. Of the Serbian insurance companies, DDOR marked the highest technical change of over 55%, while Globos experienced technical regress by over 15%. The Croatian companies changed less dramatically. Merkur Croatia regressed technically by

36%, while Velebit health insurance increased its technical efficiency by 33%. Finally, the Slovenian companies' technical efficiency coefficients ranged from a decrease of 32% for Zavarovalnica Tilia to an increase of 39% for Generali. We have observed large efficiency differences between the 55 companies from 3 countries.

## Concluding Remarks

In this study, DEA is used to explore the contributions of technical and efficiency change to the change in productivity in three countries of former Yugoslavia: Croatia, Serbia, and Slovenia. We applied the generalized output-oriented Malmquist index for the 2014-2015 period. The efficiency measures do not bear out the hypothesis that the biggest companies are also the most efficient, since the efficiency was rather uniformly distributed throughout the companies and countries.

## References

Aigner, D.J., Lovell, C.A.K., and Schmidt, P. (1977). Formulation and estimation of stochastic frontier production function models. *Journal of Econometrics*, 6, 21-37.

Association of British Insurers (2015). UK Insurance and Long-Term Savings Key Facts 2015 [online]. London: Association of British Insurers. Available from: https://www.abi.org.uk/~/media/Files/Documents/Publications/Public/2015/Statistics/Key%20Facts%202015.pdf (Accessed 10 July 2022).

Banker, R.D., Charnes, A., and Cooper, W.W. (1984). Some models for estimating technical and scale inefficiencies in data envelopment analysis. *Management Science*, 30(9), 1078-1092.

Berger, A.N., Hunter, W.C., and Timme, S.G. (1993). The efficiency of financial institutions: A review and preview of research past, present and future. *Journal of Banking and Finance*, 17, 221-250.

Berger, A.N., and Humphrey, D.B. (1997). Efficiency of financial institutions: International survey and directions for future research. *European Journal of Operational Research*, 98, 175-212.

Bertoni, F., and Croce, A. (2011). The Productivity of European Life Insurers: Best-Practice Adoption vs. Innovation. *The Geneva Papers on Risk and Insurance - Issues and Practice*, 36(2), 165-185.

Charnes, A., Cooper, W.W., and Rhodes, E. (1978). Measuring the efficiency of decision-making units. *European Journal of Operational Research*, 2, 429-444.

Cummins, J.D., and Xie, X. (2013). Efficiency, productivity, and scale economies in the U. S. property-liability insurance industry. *Journal of Productivity Analysis*, 39(2), 141-164.

Dorfman, M. S. (2008). *Introduction to Risk Management and Insurance*. Upper Saddle River, NJ: Pearson Education, Inc.

Fare, R., Shawna, G., Bjorn, L., and Ross, P. (1994). Productivity Developments in Swedish Hospitals: A Malmquist Output Index Approach. *Data Envelopment Analysis: Theory, Methodology, and Applications*, 253–272.

Farrell, M.J. (1957). The measurement of productive efficiency. *Journal of the Royal Statistical Society*, Series A, 120 (3), 253-290.

Forsund, F. (1991). The Malmquist productivity index. Paper Presented at the 2nd European Workshop on Efficiency and Productivity Measurement. Belgium: Centre of Operations Research & Econometrics, University Catholique de Louvain, Lauvain-la-Neuve.

Insurance Europe (2015). European Insurance – Key Facts [online]. Brussels: Insurance Europe. Available from:

http://www.insuranceeurope.eu/sites/default/files/attachments/European%20Insurance%20-%20Key%20Facts%20-%20August%202015.pdf (Accessed 5 May 2022).

Insurance Information Institute (2015). A Firm Foundation: How Insurance Supports the Economy [online]. New York: Insurance Information Institute. Available from: http://www.iii.org/sites/default/files/docs/pdf/a_firm_foundation_2015_brochure.pdf (Accessed 10 December 2021).

Marie, A., Rao, A., and Kashani, H. (2009). Cost Efficiency and Value Driver Analysis of Insurers in an Emerging Economy. *Managerial and Decision Economics*, 30(4), 265-280.

Marovic, B., Njegomir, V., and Maksimovic, R. (2010). The Implications of the Financial Crisis to the Insurance Industry – Global and Regional Perspective, *Economic Research*, 23 (2), 127-141.

Miyashita, H., Yoneyama, T., Suzawa, Y., and Tseng, Y. (2011). Efficiency performance of japanese non-life insurers and their portfolio of insurance policies. *Hitotsubashi Journal of Commerce and Management*, 45(1), 59-79.

Nektarios, M., and Barros, C.P. (2010). A Malmquist Index for the Greek Insurance Industry. *The Geneva Papers on Risk and Insurance - Issues and Practice*, 35(2), 309-324.

Roaf, J., et al. (2014). *25 Years of Transition Post-Communist Europe and the IMF: Regional Economic Issues*, Special Report, New York: International Monetary Fund.

Segovia-Gonzalez, M.M., Contreras,I., and Mar-Molinero, C. (2009). A DEA Analysis of Risk, Cost, and Revenues in Insurance. *The Journal of the Operational Research Society*, 60(11), Data Envelopment Analysis: Theory and Applications, 1483-1494

Skipper, H.D. (2001). *Insurance in the general agreement on trade in services*. Washington, D.C: American Enterprise Institute.

Skipper, H. D., and Kwon, W. J. (2007). *Risk Management and Insurance: Perspectives in a Global Economy*. Oxford: Blackwell Publishing, Ltd.

Wanke, P., and Barros, C.P. (2016). Efficiency drivers in Brazilian insurance: A two-stage DEA meta frontier-data mining approach. *Economic Modelling*, 53, 8-22.

Zweifel, P., and Eisen, R. (2012). *Insurance Economics*. Berlin: Springer-Verlag.

# EKONOMSKA EFIKASNOST OSIGURAVAJUĆIH KUĆA: UPOREDNA ANALIZA RASTA PRODUKTIVNOSTI NA NIVOU DRŽAVA

**Apstrakt:** Ovaj rad se bavi analizom ekonomske efikasnosti osiguravajućih društava u Hrvatskoj, Srbiji i Sloveniji. U radu se koristi DEA analiza kako bi se ispitalo u kojoj meri promene tehničke i ekonomske efikasnosti doprinose rastu produktivnosti u sektoru osiguranja u navedenim zemljama. U analizi je primenjen generalizovani izlazno-orijentisani Malmkvistov indeks za period od 2014. do 2015.godine. Podaci za ulaz i izlaz prikupljeni su na osnovu uzorka od 19 osiguravajućih društava iz Srbije, 23 osiguravajuća društva iz Hrvatske i 13 osiguravajućih društava iz Slovenije. U istraživanju su korišćena četiri vrste ulaza i dva izlaza: troškovi provizije i upravljanja, akcijski kapital i radna snaga, odnosno prihod od premija i neto investicije. Efikasnost se meri korišćenjem Malmkvistovog indeksa koji se može podeliti na dve komponente: indeks promene efikasnosti i indeks tehničkih promena. Rezultati su pokazali da je do 50% hrvatskih i slovenačkih kompanija efikasno, u poređenju sa 30% srpskih kompanija.

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# RAD VAN PROSTORIJA POSLODAVCA KAO AKTUELNI OBLIK RADNOG ODNOSA

**Rezime:** U okviru rada analizirana je aktuelna vrsta radnog odnosa – rad od kuće i rad na daljinu, koji se, kao posebni oblici rada, obavljaju van prostorija poslodavca. Pored činjenice da je Zakon o radu Republike Srbije posebno uredio ovo pitanje još u izvornom obliku 2005. godine, globalni razvoj tržišta rada, posebno u uslovima još uvek aktuelne pandemije COVID-19, otvorio je mogućnost za ekspanziju ovog načina zaposlenja. Rad od kuće i rad na daljinu svakako predstavljaju vrste radnog odnosa koji su se pokazali ne samo kao ekonomični i efikasni načini realizacije zadataka i ostvarenja poslovnih ciljeva, već i kao oblici rada i uspešna mera prevencije zdravlja zaposlenih i članova njihove porodice u uslovima pandemije. Imajući u vidu prednosti i pogodnosti ove vrste radnog odnosa, kao i njegovu perspektivu kako u trenutnim, tako i u budućim poslovnim okolnostima, rad van prostorija poslodavca zaslužuje posebnu pažnju i veći prostor za naučnu i stručnu raspravu, pre svega u pogledu noveliranja i unapređenja.

**Ključne reči:** rad van prostorija poslodavca, rad od kuće, rad na daljinu, prava i obaveze zaposlenih i poslodavca.

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## 1. Uvod

Radni odnosi uvek su aktuelna tema koja odavno transcendira isključivo pravne okvire i pravnu nauku. Razvojem društva i novih tehnologija menjaju se i noveliraju oblici rada. Rad van prostorija poslodavca, prvenstveno u obliku rada od kuće, postojao je i ranije, međutim, uz progresiju tehnike i interneta, takozvanu digitalnu revoluciju u procesu rada, rad na daljinu doživeo je pravu ekspanziju. U poslednjoj dekadi, naročito u vreme još uvek aktuelne pandemije COVID-19, značajan broj radnih organizacija menjao je proces rada, te upravo rad od kuće primenio kao dodatnu ili jedinu vrstu realizacije poslovnih zadataka.

Rad van prostorija poslodavca u domaćem pravnom okviru definisan je i uređen Zakonom o radu (2005, u daljem tekstu: ZOR), koji predviđa da ovaj oblik radnog odnosa obuhvata rad na daljinu i rad od kuće. Rad od kuće i rad na daljinu mogu se svrstati u istu kategoriju, s obzirom da se rad ne obavlja u prostorijama poslodavca, ali činjenica je da su u pitanju dve različite vrste poslova na šta će u radu biti posebno ukazano. Sam ZOR nije posebno uredio svaku ovu vrstu rada, već sadrži zajedničke odredbe o sadržini ugovora i opštim elementima koji se odnose na zaradu, raspodelu radnog vremena i odmore.

Imajući u vidu aktuelizaciju, kapacitete i realno stanje na tržištu rada, kada je u pitanju ova vrsta radnog odnosa, autor ovog rada smatra da je postojeća regulativa nepotpuna i da zaslužuje noveliranje. Trebalo bi pritom imati u vidu sve prednosti, ali i potencijalne opasnosti ove vrste rada, pre svega po pitanju zaštite prava kako zaposlenih, tako i poslodavaca. Takođe, veoma važno bi bilo urediti samu organizaciju radnih zadataka i poslova, bezbednost i zdravlje zaposlenih, opremanje i korišćenje sredstava za rad, troškove poslovanja i sl.

U radu će biti ukazano na stanje postojeće međunarodne i domaće regulative po ovom pitanju, kao i na samu determinaciju i primenu rada van prostorija poslodavca u praksi.

## 2. Pojam rada van prostorija poslodavca

Rad van prostorija poslodavca nije tipičan režim radnog odnosa. U samom nazivu ove vrste rada jasno je naglašeno da se poslovi i radni zadaci ne obavljaju u prostorijama poslodavca, već u prostoru koji je obazbedio sam zaposleni kao vlasnik, stanar, zakupac, korisnik ili držalac tog prostora (Ivošević, 2019, str. 80).

Za razliku od standardnog oblika rada koji podrazumeva rad u poslovnim prostorijima poslodavca gde poslodavac lično i neposredno vrši svoja ovlašćenja i nadzor prema zaposlenom, kod ove posebne vrste radnog odnosa taj odnos je nešto drugačiji. Direktno upravljanje i kontrola zaposlenog od strane poslodavca su prilagođeni uslovima i mogućnostima kontakta, što stvara utisak povećane autonomije zaposlenog u poslovanju, te ovakav vid angažovanja jedan deo pravnih teoretičara podvodi pod pojam nezavisnog rada (Kovačević, 2013, str. 315–316).

Imajući u vidu postojeće odredbe Zakona o radu, stav autora ovog rada ipak je bliži stanovištu teorije koja rad van prostorija poslodavca opredeljuje kao vid radnog odnosa kod poslodavca, gde zaposleni ne uživa niti ekonomsku niti poslovnu slobodu kakvu ima preduzetnik, te da je po tim pitanjima gotovo apsolutno zavisan od poslodavca. Ovde se svakako treba ograditi i jasno istaći da je ovakav stav isključivo vezan za one vrste poslova gde način i organizaciju poslovanja isključivo uređuje poslodavac koji, samim tim, i snosi teret odgovornosti za realizaciju poslovnih zadataka prema trećim licima, kao naručiocima posla i poslovnim partnerima.

Kao što je prethodno navedeno, a u skladu sa čl. 42 st. 2. ZOR (2005), ugovor o radu kod ove vrste radnog odnosa može se zaključiti u dva oblika – kao ugovor o radu od kuće i ugovor o radu na daljinu.

*Rad od kuće* predstavlja oblik angažovanja u okviru kojeg radnik obavlja rad za poslodavca u svojoj kući, stanu ili iznajmljenom prostoru (Ivošević, 2019, str. 81). Dakle, sam rad se ne obavlja u prostorijama poslodavca, već prostoriju za rad i svoj poslovni ambijent obezbeđuje uposleno lice – radnik. Posao i radne zadatke obezbeđuje poslodavac koji za obavljen rad isplaćuje zaradu radnicima. Pored činjenice da se lica koja obavljaju ovu vrstu rada ne smatraju klasičnim i redovno zaposlenim

licima kod poslodavca, s obzirom na izostanak pravne subordinacije, međunarodni standardi po ovom pitanju uglavnom teže da izjednače statuse ovih lica sa statusom zaposlenih kako po pitanju individualnih tako i kolektivnih prava iz radnog odnosa (Lubarda, 2021, str. 134). Rad od kuće je ranije u praksi podrazumevao poslove koji su bili vezani za izradu, odnosno sklapanje određenih proizvoda. U eri digitalizacije, interneta i široke upotrebe savremenih tehnologija u svakodnevnom životu ovakav oblik angažovanja sve više podrazumeva obavljanje usluga za poslodavca i realizaciju poslovnih zadataka putem računara, te se često prepliće sa ugovorom na daljinu.

*Rad na daljinu* je oblik radnog odnosa koji se obavlja takođe van prostorija poslodavca, dakle kod kuće ili u drugim prostorijama zaposlenog lica. Osnovno obeležje ove vrste rada je da se realizuje uz upotrebu računara, odnosno opreme sa ekranom, video-uređaja, telefonije ili drugih informaciono-tehnoloških sredstava (Ivošević, 2019, str. 81). Za ovu vrstu radnog angažovanja karakterističan je veći stepen autonomije zaposlenog lica pre svega u pogledu načina izvršavanja radnih zadataka, organizacije rada i rasporeda radnog vremena. Pored takvog stepena samostalnosti u radu, zaposleno lice obavlja rad na daljinu u ime i za račun poslodavca tako da se ono ne može smatrati samozaposlenim licem (Lubarda, 2021, str. 133). Rad na daljinu se u pravnoj teoriji postavlja kao koncept koji pored rada od kuće obuhvata i neke druge oblike, kao što su mobilni rad na daljinu, virtuelni rad na daljinu i slično (Urdarević, 2021, str. 206). I pored dodirnih tačaka sa radom od kuće, rad na daljinu ima širi kontekst, pre svega u pogledu specifičnih obeležja koja se odnose na upotrebu savremenih tehnologija za obavljanje rada, obavljanja posla u pokretu, na putu. Međutim, i pored različitih tumačenja i distinkcije koju pravna teorija pravi, u praksi se ova dva oblika poistovećuju.

Obavezna sadržina ugovora o radu koji se zaključuju za oba oblika rada van prostorija poslodavca na skroman način je uređena u Zakonu o radu (o čemu će biti više reči u narednom poglavlju). Svakako se može i ovde napomenuti nužnost novelacije odredbi koje uređuju ovu vrstu rada, imajući u vidu njegovu evoluciju i sve veću prisutnost u poslovanju.

U praksi radnih odnosa aktuelno je pitanje *digitalnih radnika, odnosno radnika na internetu* tzv. frilensera. Ova lica u praksi ostvaruju prihode radeći najčešće za inostranog poslodavca koji nije registrovao delatnost prema zakonima države u kojoj iznajmljuje usluge rada, odnosno gde se sam rad izvršava (Radović-Marković i dr., 2021, str. 172). Rad frilensera se uglavnom realizuje putem digitalnih platformi, a poslovi koji se najčešće obavljaju u praksi su: podučavanje, informacione tehnologije, prevođenje, mediji i marketing, konsalting, administracija, pisanje itd. S obzirom da Zakon o radu a ni drugi opšti akt ne uređuju ovaj oblik rada ni pravni status, položaj, ovlašćenja i obaveze radnika na digitalnim platformama, dešava se da su ova lica za pravni sistem formalno „nevidljiva". Država bi svakako aktivnije trebalo da se uključi u regulisanje ovog pitanja, imajući u vidu progresivni rast ove kategorije zaposlenih, te pitanja zaštite njihovih prava i obaveza. Uređenje statusa ovih lica za državu bi trebalo da bude značajno i nužno, posebno po pitanju plaćanja njihovih poreskih obaveza.

## 3. Međunarodni izvori rada van prostorija poslodavca

Rad koji se obavlja van prostorija poslodavca nije tekovina savremenog doba poslovanja, već je kao oblik radnog odnosa postojao i pre digitalne „revolucije". Manufakturni rad od kuće, najčešće u vidu izrade pojedinih predmeta za konkretnog naručioca posla, u okviru zanata kojim su se pojedinci bavili, svakako da ima svoju dugu istoriju. U daljem tekstu ovog poglavlja biće ukazano na najznačajnije akte globalnog i regionalnog nivoa, koji su uredili pitanje rada od kuće i rada na daljinu.

### 3.1. Akti Međunarodne organizacije rada

Međunarodna organizacija rada, osnovana 1919. godine, predstavlja specijalizovanu agenciju Ujedinjenih nacija koja se bavi unapređivanjem uslova rada na globalnom nivou i danas broji 187 država članica. Svoju normativnu aktivnost realizuje donošenjem opštih pravnih akata u vidu preporuka i konvencija. Preporuke, osim političkog i moralnog autoriteta, nemaju obavezujuću pravnu snagu za članice s obzirom da nude smernice, savete, ideje, stavove i vrednosti po određenom prav-

nom pitanju iz oblasti radnih odnosa. S druge strane, konvencije obavezuju države članice da svoje unutrašnje pravne akte usklade sa propisanim odredbama.

Konvencija br. 26 iz 1928. godine, kojom je uređen sistem utvrđivanja minimalne zarade, predstavlja prvi akt u kom se pominje rad van prostorija poslodavca. Tako se u okviru prvog člana ovog akta navodi da je svaka država potpisnica Konvencije u obavezi da ustanovi sistem utvrđivanja minimalne zarade za zaposlene u određenim zanatima, a posebno uključujući i ona lica koja rade od kuće.

Konvencija o radu od kuće br. 177 iz 1996. godine predstavlja prvi globalni akt koji je uredio radni odnos van prostorija poslodavca. U okviru ovog akta, pod pojmom *rad od kuće* označava se posao koji obavlja lice u svom domu ili u drugim prostorijama po svom izboru, osim na radnom mestu poslodavca, za odgovarajuću naknadu. Ovakav rad rezultira proizvodom ili uslugom, bez obzira na to ko obezbeđuje opremu, materijale ili druga korišćena sredstva, osim ukoliko radnik ima takav stepen autonomije i ekonomske nezavisnosti neophodan da se smatra nezavisnim samozaposlenim radnikom, odnosno preduzetnikom, prema nacionalnim zakonima, propisima ili sudskim odlukama. Takođe, ne smatraju se radnicima od kuće ni ona lica koja samo povremeno obavljaju svoj posao od kuće, a koji imaju svoje uobičajeno radno mestu u prostorijama poslodavca (čl. 1). Konvencijom se, takođe, proklamuje i jednakost tretmana radnika od kuće i ostalih radnika, uključujući pravo na: sindikalno organizovanje, zaštitu od diskriminacije, zaštitu zdravlja i bezbednost na radu, visinu zarade, obavezno zdravstveno osiguranje, mogućnost stručnog osposobljavanja i usavršavanja, godine starosti za zasnivanje radnog odnosa i materinsku zaštitu (čl. 4). Utvrđeno je još da će se uređenje ovog instituta na nivou nacionalnog zakonodavstva realizovati na osnovu zakona i propisa, kolektivnih ugovora, arbitražnih odluka ili na bilo koji drugi odgovarajući način, u skladu sa nacionalnom praksom (čl. 5).

Uz navedenu konvenciju, usvojena je i Preporuka o radu od kuće br. 184, kojom su predviđene određene smernice za uređivanje ovog obilika rada na nivou nacionalnog zakonodavstva. Tako je utvrđeno da država, po potrebi, na regionalnom ili lokalnom nivou treba da obezbe-

di registraciju poslodavaca koji angažuju radnike od kuće i svih posrednika koje ti poslodavci koriste, a u tu svrhu takav organ treba da odredi informacije koje poslodavci treba da dostave ili drže na raspolaganju organu (čl. 6). Dalje se navodi obaveza poslodavaca da obaveste nadležni organ kada prvi put angažuju radnika od kuće, kao i da vode evidenciju ovih radnika u kojoj je iskazano: radno vreme, visina naknade, troškovi koje ima radnik, bruto dospelu naknadu i isplaćenu neto naknadu sa datumom plaćanja (čl. 7). Na ovakav način bio bi uređen poseban sistem nadzora nad radom od kuće. Kada su u pitanju minimalne godine starosti za rad od kuće, trebalo bi da budu iste kao i kod opštih uslova za zasnivanje redovnog radnog odnosa koji su već utvrđeni nacionalnim propisima. Takođe, utvrđeno je da ne smeju postojati prepreke za sindikalno udruživanje i delovanje (čl. 8). Preporuka ukazuje i da visina minimalne zarade mora biti utvrđena putem socijalnog dijaloga, a predviđa se zaštita i za one radnike koji rade po radnom učinku. Pored zarade, radnici bi trebalo da primaju i nadoknadu za troškove nastale u vezi sa njihovim radom, kao što su oni koji se odnose na korišćenje energije i vode, komunikacije i održavanje mašina i opreme, kao i za vreme provedeno u održavanju mašina i opreme, menjanju alata, sortiranju, raspakivanju i pakovanju i drugim sličnim operacijama. Vreme isplate je utvrđeno tako da radnici treba da budu plaćeni ili po predaji svakog obavljenog radnog zadatka ili u redovnim intervalima, a ne dužim od mesec dana. Kada je u pitanju bezbednost i zaštita zdravlja na radu posebno se naglašava uloga poslodavca i zaposlenog, kao i kod opšteg režima radnog odnosa. Takođe, predviđeno je poštovanje prava radnika od kuće na dnevni, nedeljni i godišnji odmor, kao i privremeno odsustvo sa rada usled bolesti. Radnicima od kuće garantuje se pravo na socijalnu i materinsku zaštitu, kao i zaštitu u slučaju prestanka radnog odnosa, u svemu jednaka pravima radnika koji rad obavljaju u prostorijama poslodavca. U tom smislu, država potpisnica bi preuzela obavezu da novelira opšte akte kojima se uređuje sistem socijalnog osiguranja, uz mogućnost uspostavljanja posebnih jedinica ili fondova za zaposlene od kuće. Država se, takođe, obavezuje da obezbedi mehanizme rešavanja sporova koji mogu nastati između radnika od kuće i poslodavaca. Na kraju, država potpisnica se obavezuje da afirmativno utiče na ovaj oblik rada kroz odgovarajuće aktivnosti i podršku u vidu programa obuke,

informisanja o pravima i podizanja svesti, i pitanjima značajnim kako za poslodavce, tako i za radnike olakša ostvarivanje kompletnog korpusa prava iz oblasti rada (čl. 13-30).

Konvenciju o radu od kuće ratifikovalo je svega trinaest zemalja članica MOR-a, među kojima nije Republika Srbija.

### 3.2. Regionalni akti (EU)

Kada su u pitanju regionalni akti na evropskom nivou, najznačajniji za radni odnos van prostorija poslodavca je Okvirni sporazum o radu na daljinu iz 2002. godine. Ovom sporazumu je prethodila inicijativa Evropskog saveta, upućena socijalnim partnerima, da se pristupi pregovorima radi zaključivanja sporazuma kojim bi se modernizovala organizacija rada, uključujući tu i fleksibilne oblike rada, te posebno rad na daljinu. U pregovorima i konačnom potpisivanju ovog sporazuma učestvovali su predstavnici Udruženja poslodavačkih i industrijskih konfederacija Europe (UNICE), Evropskog udruženja za promet i MSP-a (UEAPME), Evropskog centra preduzeća u javnom vlasništvu ili od opšteg javnog interesa (CEEP) i Evropske konfederacije sindikata (ETUC). Sporazum o radu na daljinu je potpisan 16. jula 2002. godine i predstavlja prvi evropski autonomni sporazum.

Okvirni sporazum o radu na daljinu definiše rad na daljinu kao oblik organizacije i/ili izvođenja rada uz upotrebu informacionih tehnologija u okviru ugovora o radu u kojem se posao koji bi se mogao obavljati u prostorijama poslodavca redovno obavlja van tih prostorija. Jasno je u Sporazumu naglašena dobrovoljnost, kao osnova ovakvog angažovanja, te da ukoliko rad na daljinu nije uključen u originalni opis poslova, a poslodavac ponudi rad na daljinu, radnik tu ponudu može prihvatiti ili odbiti, a ako radnik izrazi želju da radi na daljinu, poslodavac takođe taj zahtev može prihvatiti ili odbiti. Svaki prelazak zaposlenog na rad na daljinu mora biti propraćen izmenama individualnog ili kolektivnog ugovora o radu. Naglašeno je radnici na daljinu uživaju u potpunosti ista prava iz radnog odnosa, zajemčena zakonom ili kolektivnim ugovorom, kao i uporedivi radnici koji rade u krugu poslovnih prostorija poslodavca. Dalje se navodi da poslodavac ima obavezu da obezbedi, instalira i održava opremu neophodnu za obavljanje rada na daljinu, a u

slučaju da zaposleni koristi svoju opremu, poslodavac je dužan da nadoknadi sve troškove korišćenja i održavanja opreme. Proklamuje se, takođe, i pravo radnika na daljinu da sam upravlja organizacijom svog radnog vremena, kao i pravo na edukaciju i napredovanje, te ista kolektivna prava koja imaju i ostali radnici koji rade u prostorijama poslodavca. Na ovaj način garantuje se primena načela jednakosti i ravnopravnosti i isključena je diskriminacija ovih radnika, kada je korpus prava iz oblasti rada i socijalnog osiguranja u pitanju.

Od regionalnih propisa koji uređuju rad van prostorija poslodavca značajna je i Direktiva Evropske ekonomske zajednice br. 90/270/EEZ o minimalnim zahtevima u pogledu bezbednosti i zaštite zdravlja na radu koji se obavlja posredstvom opreme sa ekranom iz 1990. godine. U skladu sa ovim aktom, poslodavci imaju obavezu da sprovedu analizu radnih mesta i procene opasnosti kojima su u radu izloženi zaposleni koji koriste opremu sa ekranom, a pre svega misleći na rizike vezane za vid, psihičko zdravlje i stres na radu, te da preduzmu odgovarajuće mere kako bi otklonili otkrivene rizike, uzimajući u obzir dodatne i/ili kombinovane učinke tako otkrivenih rizika.

## 4. Domaći pravni okvir

Rad van prostorija poslodavca uređuje Zakon o radu Republike Srbije, u okviru članova 42 i 44. Ovu vrstu rada domaći zakonodavac konkretno tretira kao vrstu radnog odnosa koji se zasniva ugovorom o radu. U okviru ove vrste radnog odnosa obuhvaćeni su rad od kuće i rad na daljinu. Samim zakonom nije izvršena jasnija distinkcija ovih, sadržinski i suštinski, ipak različitih kategorija rada. Tako je, na jedinstven način, zakonodavac utvrdio da ugovor o radu, koji se zaključuje u ovim oblicima rada, pored obaveznih elemenata sadrži i: trajanje radnog vremena, prema normativima rada; način vršenja nadzora nad radom i kvalitetom obavljanja poslova zaposlenog; sredstva za rad za obavljanje poslova, koja je poslodavac dužan da nabavi, instalira i održava; korišćenje i upotrebu sredstava za rad zaposlenog i naknadu troškova za njihovu upotrebu; naknadu drugih troškova rada i način njihovog utvrđivanja i druga prava i obaveze. Dalje se definiše da osnovna zarada zaposlenog ne može biti utvrđena u manjem iznosu od osnovne zarade

zaposlenog koji radi na istim poslovima u prostorijama poslodavca. Takođe, u okviru dodatna dva stava konstatovana je supsidijarna primena opštih odredbi Zakona o radu na ovu vrstu ugovora o radu koje se odnose na raspored radnog vremena, prekovremeni rad, preraspodelu radnog vremena, noćni rad, odmore i odsustva, te prava na odmor u toku dnevnog rada, dnevni, nedeljni i godišnji odmor. Posebnim članom u okviru ove kategorije rada, imajući u vidu zaštitu bezbednosti i zdravlja zaposlenih, određeno je da poslodavac može da ugovori samo one poslove van svojih prostorija koji nisu opasni ili štetni po zdravlje zaposlenog i drugih lica i ne ugrožavaju životnu sredinu.

Pored ovakvog skromnog zakonskog okvira, ovde možemo navesti i Vodič za bezbedan i zdrav rad od kuće koji je donela Uprava za bezbednost i zdravlje na radu Ministarstva za rad, zapošljavanje, boračka i socijalna pitanja 2021. godine. Kako se navodi u uvodnom delu ovog akta, Vodič je donet kako bi se poslodavcima i zaposlenima olakšao rad u novonastaloj situaciji izazvanoj pandemijom COVID-19. Tako poslodavcima, koji su obezbedili rad od kuće svojim zaposlenima, ovaj vodič pruža praktične smernice, poput obaveza i odgovornosti poslodavaca i zaposlenih, uslove koje radni prostor, koji je opredeljen kao radno mesto kod kuće, treba da ispunjava, brige poslodavca o zdravlju svojih zaposlenih, uključujući i mentalno zdravlje, procenu rizika i praćenje bezbednosti i zdravlja na radu zaposlenih koji rade od kuće, prijavu povreda na radu prilikom rada od kuće itd.

Dakle, kao što je već navedeno u prethodnom delu rada, prema mišljenju autora, postojeći domaći zakonski okvir nije adekvatan, potpun i precizan, te bi ga trebalo što hitnije novelirati i prilagoditi realnim tržišnim uslovima i kapacitetima ovog posebnog i progresivnog oblika rada.

## 5. Aktuelna situacija i perspektiva ovog oblika rada – prednosti i nedostaci

Rad van prostorija poslodavca, koji konstantno beleži progresivnu primenu u mnogim delatnostima, na značaju je dobio posebno tokom pandemije COVID-19. Kroz odgovarajuće mere i akte, koje su donosile pojedine zemlje, ovaj oblik radnog odnosa je evoluirao i dobio važnu

ulogu kako u funkcionisanju i očuvanju redovnog poslovanja, tako i u zaštiti zdravlja.

Na početku pandemije, tokom marta 2020. godine, skoro sve države u svetu uvele su određene restriktivne mere radi suzbijanja širenja bolesti izazvane korona virusom, kojima su ograničile pojedina osnovna prava i slobode građana, te tako i oblast rada nije bila izuzeta.

U Republici Srbiji je 15. 03. 2020. godine uvedeno vanredno stanje, na osnovu ustavne odredbe (čl. 200 Ustava RS), kojom je predviđeno da usled javne opasnosti koja ugrožava opstanak države ili građana postoji mogućnost za odstupanje od pojedinih zajemčenih ljudskih i manjinskih prava. Zbog nemogućnosti da se u to vreme sastane Narodna skupština, odluku o proglašenju vanrednog stanja je donela Vlada Republike Srbije, uredbom uz potpis predsednika Republike Srbije. Vlada je tada donela Odluku o proglašenju bolesti COVID-19 izazvanoj virusom SARS-CoV-2 zaraznom bolešću čije je sprečavanje i suzbijanje od interesa za Republiku Srbiju, a radi sprečavanja pojave, širenja i suzbijanja zarazne bolesti COVID-19 i zaštite stanovništva od te bolesti. Po ovoj odluci i izmenama i dopunama iste primenjivale su se mere propisane Zakonom o zaštiti stanovništva od zaraznih bolesti, Zakonom o zdravstvenoj zaštiti, Zakonom o javnom zdravlju, kao i druge mere koje priroda te bolesti nalaže, u skladu sa epidemiološkom situacijom. S obzirom na uvedeno vanredno stanje i nastale okolnosti, koje podrazumevaju ograničenje kretanja stanovništva a time i zaposlenih, poslodavci su bili primorani na skraćenje radnog vremena, preraspodelu radnog vremena, uvođenje rada od kuće ili na najgoru opciju – da obustave rad na period dok traje ovakvo stanje.

S proglašenjem vanrednog stanja, Vlada RS je, uz supotpis predsednika RS, donela Uredbu o organizovanju rada poslodavaca za vreme vanrednog stanja, kojom su uređeni poseban način i organizacija rada poslodavaca na teritoriji Republike Srbije za vreme vanrednog stanja. Ovom uredbom uvedena je dužnost poslodavca da omogući zaposlenima obavljanje poslova van prostorija poslodavca (rad na daljinu i rad od kuće), na svim radnim mestima na kojima je moguće organizovati takav rad, u skladu sa opštim aktom i ugovorom o radu. Ukoliko ovim aktima nije bio predviđen takav način rada, poslodavac je mogao reše-

njem omogućiti zaposlenom obavljanje poslova van prostorija poslodavca ukoliko mu to organizacioni uslovi dozvoljavaju, s tim da je rešenje moralo da sadrži trajanje radnog vremena i način vršenja nadzora nad radom zaposlenog. Ovaj podzakonski akt bio je prelazno i privremeno rešenje, po mišljenju autora, dosta skromno i nepotpuno, a kao glavni nedostatak ovog akta može se navesti propust da se utvrde bitni elementi rada, kao što su: nabavke, instaliranja i održavanja opreme za rad, naknada troškova korišćenja interneta, telekomunikacione opreme, kompjuterske opreme i sl. Imajući u vidu činjenicu da je prestao da važi posle pedeset dva dana, nema potrebe za daljim elaboriranjem njegove sadržine.

U eri tehnološke revolucije i digitalizacije poslovnih sistema, svakako da i radni odnosi prolaze kroz transformaciju i adaptaciju novim zahtevima tržišta. Rad od kuće i rad na daljinu postaju sve prisutniji oblik radnog angažovanja i zapošljavanja. Uglavnom su u pitanju poslovi za čiju realizaciju su, kao osnovna sredstva rada, neophodni adekvatan računar i funkcionalna internet konekcija.

Najčešće se, kao prednosti ove vrste rada, navode ekonomski razlozi, koji su povoljni za poslodavca, poput: manjih (ili potpuno odsustvo) izdataka za troškove poslovnog prostora, oslobađanja obaveze plaćanja troškova prevoza na rad i sa rada (putni troškovi) i troškova za ishranu (topli obrok) zaposlenog i sl. Značajnije su svakako prednosti lične i profesionalne prirode koje se odnose na samog zaposlenog, a tiču se: veće autonomije u radu (radno vreme, radni prostor, samostalnost), lakšeg usklađivanja porodičnih i profesionalnih obaveza, uštede vremena koje se provede u prevozu do posla i do kuće, mogućnosti obavljanja posla na bilo kom mestu koje odgovara zaposlenom, slobode u oblačenju zaposlenog tokom rada i sl.

S druge strane, rad van prostorija poslodavca sa sobom nosi i određena odstupanja od redovne i uobičajene radne sredine koja u određenim slučajevima zaposlenom može biti podsticajna, motivaciona za rad, ali i pogodovati u pogledu socijalizacije, aktivizma i relaksacije od porodičnih i ličnih problema. Negativne posledice ovakvog rada, dakle, odnose se, pre svega, na: smanjenu mogućnost komunikacije i socijalizacije sa ostalim radnicima; osećaj usamljenosti i izolovanosti koji može

uticati na mentalno zdravlje radnika; smanjenu mogućnost sindikalnog delovanja; odsustvo granice između radnog okruženja i privatnog života; nepostojanje konkretnog utvrđenog radnog vremena i vremena odmora; bezbednost i zaštitu ličnih podataka i informacija o radniku tokom rada na mreži i platformi itd.

Uzimajući u obzir prethodno navedeno, te činjenicu da je ovaj oblik rada u ekspanziji i sve prisutniji u sferi radnih odnosa, sasvim je opravdano očekivati da kao takav zaslužuje normativni okvir kojim će se na adekvatan, savremen, funkcionalan i praktičan način urediti i precizirati prava, obaveze i odgovornosti zaposlenog i poslodavca kod rada od kuće i rada na daljinu.

## 6. Zaključna razmatranja

Rad van prostorija poslodavca doživeo je u vreme digitalne revolucije široku primenu u realnoj sferi rada na globalnom nivou. Još uvek aktuelna pandemija COVID-19 posebno je afirmisala njegov značaj i ulogu kako u obavljanju radnih zadataka, tako i u očuvanju kolektivnog zdravlja.

U međunarodnim okvirima ovaj oblik rada uglavnom je uređen i standardizovan kao fleksibilna vrsta posla u okviru posebnih i atipičnih kategorija rada od kuće ili rada na daljinu. Domaći zakonodavac rad od kuće i rad na daljinu svrstava u istu kategoriju rada van prostorija poslodavca, s tim da nije posebno uredio svaku ovu vrstu rada, već sadrži zajedničke odredbe o sadržini ugovora i opštim elementima koji se odnose na zaradu, raspodelu radnog vremena i odmore.

Imajući u vidu široku primenu i potencijal ovih atipičnih oblika rada, autor ovog rada je stava da postojeća regulativa nije adekvatna i da zaslužuje noveliranje. Kada se pristupi noveliranju, trebalo bi uzeti u obzir sve prednosti, ali i potencijalne opasnosti ove vrste rada, pre svega po pitanju zaštite prava kako zaposlenih, tako i poslodavaca. Takođe, veoma važno bi bilo urediti samu organizaciju radnih zadataka i poslova, bezbednost i zdravlje zaposlenih, opremanje i korišćenje sredstava za rad, troškove poslovanja i sl.

**Literatura:**


- Direktiva Evropske ekonomske zajednice br. 90/270/EEZ o minimalnim zahtevima u pogledu bezbednosti i zaštite zdravlja na radu koji se obavlja posredstvom opreme sa ekranom, https://eur-lex.europa.eu/eli/dir/1990/270/oj, datum prostupa 15. 10. 2022.
- International Labour Organization https://www.ilo.org/global/about-the-ilo/lang--en/index.htm, datum pristupa 14. 10. 2022.
- Ivošević Z. (2019). *Radno pravo.* JP Službeni glasnik i Pravni fakultet Univerziteta Union u Beogradu.
- Konvencija o radu od kuće https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:C177:NO, 14. 10. 2022.
- Konvencija o uređenju sistema utvrđivanja minimalne zarade https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C026 datum pristupa14. 10. 2022.
- Kovačević LJ. (2013). *Pravna subordinacija u radnom odnosu i njene granice*. Pravni fakultet Univerziteta u Beogradu.
- Lubarda B. (2021). *Uvod u Radno pravo*. Pravni fakultet Univerziteta u Beogradu.
- Odluka o proglašenju bolesti COVID-19 izazvane virusom SARS-CoV-2 zaraznom bolešću. „Sl. glasnik RS", br. 23/2020 i 24/2020.
- Okvirni sporazum o radu na daljinu, https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf, datum pristupa 15. 10. 2022.
- Preporuka o radu od kuće, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R184, datum pristupa 15. 10. 2022.
- Radović-Marković M., Radulović D., Đukanović B. (2021). *Rad (k)od kuće – ekonomski, pravni i socijalno-psihološki aspekti*. Izdavačka knjižarnica Zorana Stojanovića. Novi Sad.
- Rezultati ankete: frilenseri, problemi, potrebe i očekivanja, https://uri.rs/2021/07/30/rezultati-ankete-frilenseri-problemi-potrebe-i-ocekivanja/, datum pristupa 12. 10. 2022.
- Urdarević B. (2021). *Rad na daljinu kao specifičan način organizacije rada*. Pravni fakultet Univerziteta u Kragujevcu.
- Uredba o organizovanju rada poslodavaca za vreme vanrednog stanja. „Sl. glasnik RS", br. 31/2020.
- Ustav Republike Srbije. „Sl. glasnik Republike Srbije", br. 98/2006.
- Vodič za bezbedan i zdrav rad od kuće, https://www.paragraf.rs/100pitanja/posao/vodic-za-bezbedan-i-zdrav-rad-od-kuce.html, datum pristupa 15. 10. 2022.

• Zakon o radu. „Sl. glasnik RS“, br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 - odluka US, 113/2017 i 95/2018 - autentično tumačenje.

## WORK OUTSIDE THE EMPLOYER'S PREMISES: A RECENT FORM OF EMPLOYMENT

**Abstract:** This research deals with a current type of employment, work from home and remote work, which are special forms of employment performed outside the employer's premises. The Labour Law of the Republic of Serbia regulated this issue in its original form as early as 2005. In recent years, the global development of the labour market, especially in the conditions of the still ongoing COVID-19 pandemic, opened the possibility for the expansion of this way of employment. Working from home and remote work have proven to be not only economical and efficient ways of performing tasks and achieving business goals, but also as forms of work and an efficient measure to for the health and safety of employees and their family members during the pandemic. This type of employment has many advantages and benefits and can be expected to become even more commonplace in the future. Therefore, we believe that this type of employment deserves more attention and discussion among scholars and professionals, for the sake of further innovation and improvement.

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# WORK OUTSIDE THE EMPLOYER'S PREMISES: A RECENT FORM OF EMPLOYMENT

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**Keywords:** work outside the employer's premises, work from home, remote work, rights and obligations of employees and the employer

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## 1. Introduction

Employment relationships is a subject that has long exceeded the framework of legislation and jurisprudence. With the development of society and new technologies, the forms of work are being changed and revised as well. Although the work outside the employer's premises (primarily in the form of working from home), also existed in the past, with the progress of information technology and Internet (the so-called digital revolution in the process of work), remote work has expanded significantly. In the last decade, especially during the period of still current COVID-19 pandemic, significant number of work organizations have changed their work process and implemented work from home as an additional or the only way of performing business tasks.

Work outside the employer's premises in national legislation is defined and regulated by the Labour Law (2005), which states that this form of employment relationship encompasses remote work and work from home. Work from home and remote work can be classified into the same category considering that the work is not being done in the employer's premises. However, these are two different types of jobs which will be distinguished in this paper. The Labour Law (hereinafter: LL) does not treat each of these types separately, yet it contains common provisions on the contents of the contract and the general elements which are related to wages, distribution of working hours and holidays.

Given the current situation and capacities of the labour market, the author believes that the already existing LL is incomplete and that it needs to be revised. Secondly, all advantages and potential risks of this type of work should be taken into consideration, primarily regarding the topic of protection of rights of both employees and employers. Lastly, it would be very important to properly organise and regulate tasks and jobs, employees' health and safety, business resources and expenses, etc.

In this paper, the author will examine the existing international and national legislation on this issue, as well as the determination and application of work outside the employer's premises in practice.

## 2. Work outside the employer's premises: the definition

Work outside the employer's premises is not typical employment. As the name clearly indicates, work tasks are not carried out in the employer's premises, but in the space provided by the employee himself as the owner, tenant, lessee or lessor (Ivošević, 2019, p. 80).

Typical employment implies working in the employer's business premises in which the employer performs his duties and supervision of employees. However, with this special type of employment, the situation is somewhat different. Direct management and control of the employee by the employer are adjusted to conditions and possibilities of interaction, which creates the impression of increased autonomy of the employee. For this reason, some legal theorists classify this type of engagement into the category of independent work (Kovačević, 2013, pp. 315–316).

In view of the existing provisions of the LL, the author favours the theory which defines work outside the employer's premises as a type of employment relationship with the employer, in which the employee does not enjoy neither the economic nor business freedom that an entrepreneur has, and that he/she is almost completely dependent on the employer. In this case we must stress that this refers to only those types of jobs for which the manner and organization of business is exclusively regulated by the employer, who, therefore, bears the burden of responsibility for the performance of business tasks towards third parties, i.e., clients and business partners.

As previously stated, and in accordance with Art. 42 para. 2 LL (2005), the employment contract for this type of employment relationship can be take two forms - as a work-from-home contract and a remote work contract.

Work from home represents the type of engagement in which the employee performs his work duties for the employer, in his own house, apartment or rented space (Ivošević, 2019, p. 81). Therefore, the work is not being conducted inside the employer's premises and the work office and the personal business environment are provided by the employee. The work and business tasks are provided by the employer who pays

wages to the employees. The individuals who perform this type of work are often not considered to be regularly employed persons by the employer, given the absence of legal subordination. However, international standards on this matter generally tend to equalize the status of these persons with the status of the employees, in terms of both individual and collective rights related to employment relationship (Lubarda, 2021, p. 134). In the past, the term work from home referred to jobs that were related to manufacturing, i.e., the folding up of certain products. In the digital era, Internet, and the wide use of modern technologies in everyday life, this type of engagement largely implies the performance of services for the employer and doing work via computer, so it is often used interchangeably with a remote contract.

Remote work is the form of employment relationship carried out outside the employer's premises as well, at home or other premises of the employee. Primary feature of this type of work is that it is being performed using the computer, equipment with a screen, video devices, telephone or with other means of information technology (Ivošević, 2019, p. 81). This type of employment is characterized by a greater degree of autonomy for the employee, primarily in terms of performing and organizing the business tasks and organization of the working hours schedule as well. Even though the employee has such a degree of independence in his/her work, he/she performs remote work in the name and at the expense of the employer, so that he/she is not considered to be a self-employed person (Lubarda, 2021, p. 133). Remote work is legally defined as a concept that, in addition to working from home, also includes some other forms of work, such as mobile remote work, virtual remote work, and the like (Urdarević, 2021, p. 206). Although it does have certain similarities with the concept of working from home, remote work has a broader meaning, primarily in terms of specific features related to the use of modern technologies for performing work, performing work on the move or the work on the road. However, despite the different interpretations and the distinction made by legal theory, in practice these two forms are seen as identical.

The mandatory content of the employment contract, concluded for both types of work performed outside the employer's premises, is somewhat regulated in the Labour Law (will be discussed in more detail

in the next section). Here we must restate the necessity of revising the provisions governing this type of work, having in mind its evolution and increasing presence in business.

In the area of employment relationships, the status of digital workers, i.e., freelancers, is a current issue. These people usually earn their wages by working for a foreign employer whose business has not been registered according to the legislation of the country where the work is performed (Radović-Marković et al., 2021, p. 172). The work of freelancers is mainly carried out through digital platforms, and the jobs they most frequently perform in practice are: teaching, jobs related to information technology, translation, media and marketing, consulting, administrative jobs, writing, etc. Since neither the Labour Law nor any other general act do not regulate this form of work, the legal status, position, licenses, and obligations of workers on digital platforms, these persons are formally "invisible" to the legal system. The state should certainly become more actively involved in the regulation of this issue, taking into account the progressive growth of this category of employees, and the issue of protecting their rights and obligations. Regulating the status of these persons should be important and necessary for Serbia, especially in terms of paying their taxes.

## 3. International sources of work outside the employer's premises

The concept of working outside the employer's premises is not a product of the modern era of business, but it existed as a form of employment relationship even before the digital "revolution". Manufacturing work from home, most often performed in the form of producing individual items for a specific client, within the trades that individuals were engaged in, certainly has its own long history. In the following section of this chapter, the most significant acts on the global and regional level, which regulate the acts of working from home and working remotely, will be discussed.

### 3.1. Acts of the International Labour Organization

The International Labour Organization, founded in 1919, is a specialized agency of the United Nations that deals with the improvement of working conditions on a global level and today it includes 187 member states. It performs its normative activity by adopting general legal acts in the form of recommendations and conventions. The recommendations, apart from political and moral authority, do not possess binding legal force for members, considering that they offer guidelines, advice, ideas, attitudes, and values on a specific legal issue in the field of employment relationships. On the other hand, the conventions oblige the member states to coordinate their internal legal acts with the prescribed provisions. The 1928 Convention no. 26, which regulates the system of determining the minimum wage, is the first act in which the work outside the employer's premises is officially mentioned. Therefore, within the first article of this act, it is stated that each country that is a signatory to the Convention is obliged to establish a system for determining the minimum wage for employees in certain trades, especially for the people working from home.

Home Work Convention no. 177, published in 1996, was the first global act that regulated employment relationship outside the employer's premises. Within the framework of this act, the term "work from home" defines the work performed by a person in his home or in other premises of his/her choice, except for the workplace of the employer, for appropriate compensation. Such work results in creating a product or providing a service, regardless of who provides the equipment, materials or other means that are used, unless the worker has such a degree of autonomy and economic independence which is necessary for him/her to be considered an independent self-employed worker, i.e. an entrepreneur, according to national laws, regulations or court decisions.

Also, those persons who only occasionally perform their work at home, and who use their employer's premises as the place where they actively work most of the time, are not considered to be workers from home (Art. 1). The convention also proclaims the equal treatment for people working from home and other workers, including the right to:

trade union organising, protection from discrimination, health protection and safety at work, amount of earnings, mandatory health insurance, the possibility of professional training and development, age for establishing an employment relationship and maternity protection (Art. 4). It was also established that the organization of this institute at the level of national legislation would be implemented on the basis of laws and regulations, collective agreements, arbitration decisions or in any other appropriate way, in accordance with national practice (Art. 5).

Along with the mentioned convention, the Home Work Recommendation no.184 was adopted as well, which provided certain guidelines for regulating this type of work at the level of national legislation. This way, it was determined that the state (if necessary) at the regional or local level should ensure the registration of employers who hire people that work from home and all intermediaries used by these employers. For this purpose, such an authority should determine the information that employers should provide or keep available to an authority (Art. 6). It is further stated that the obligation of employers is to inform the supervisor when they hire a person working from home for the first time, as well as to keep these worker's records in which the following information is stated: working hours, amount of compensation/earnings, expenses made by the employee, gross compensation due and paid net compensation with the date of payment (Art. 7). In this way, a special system of supervision over work from home would be established. When it comes to determining the minimum age of workers that are working from home, it should be the same as in the general conditions for establishing a regular employment relationships, which are already established by national regulations. Also, it was established that there must not be any obstacles for Trade Union association and performance (Article 8). The recommendation also indicates that the amount of the minimum wage must be determined through social dialogue, and protection is foreseen for those workers who work according to their performance as well. In addition to the topic of wages, workers should also receive compensation for costs incurred in connection with their work, such as those related to the use of energy and water, communication and maintenance of machinery and equipment, as well as for the time spent in the maintenance of machinery and equipment, changing of tools,

sorting, unpacking and packing and other similar operations. The payment time is determined so that the workers should be paid either upon the submission of each completed work task or at regular intervals, not longer than a month. When it comes to safety and health protection at work, the role of the employer and the employee is particularly emphasized, as it is also the case when it comes to general employment regime. Also, it is foreseen to respect the right of workers from home for daily, weekly, and annual leave, as well as temporary absence from work due to illness.

Workers from home are guaranteed the right to social and maternity protection, as well as the protection in case of termination of employment, in all respects equal to the rights of workers who work in the employer's premises. In this sense, the signatory state would undertake the obligation to amend the general acts regulating the social insurance system, with the possibility of establishing special units or funds for employees from home. The state also binds to provide mechanisms for resolving disputes that may arise between people working from home and employers. Lastly, the signatory state's obligation is to positively influence this type of work through appropriate activities and support in the form of training programs, informing on rights and raising awareness, and issues important for both employers and workers, for the sake of easier realization of the complete body of rights in the field of labour.

The Home Work Convention has been ratified by only thirteen ILO member countries, not including the Republic of Serbia.

### 3.2. Regional Acts (EU)

Regarding regional acts at the European level, the most significant one for the employment outside of the employer's premises is the 2002 Framework Agreement on Remote Work. An initiative of the European Council preceded this agreement which was addressed to the social partners to enter negotiations in order to conclude an agreement that would modernize the organization of work, including flexible forms of work, especially remote work. Representatives of the Association of Employers and Industrial Confederations of Europe (UNICE), the Eu-

ropean Association for Transport and SMEs (UEAPME), the European Centre for Publicly Owned Enterprises or Enterprises of General Public Interest (CEEP), and the European Trade Union Confederation (ETUC) participated in the negotiations and the final signing of this agreement. The remote work agreement was signed on July 16, 2002, and is the first European autonomous agreement.

The framework agreement on remote work defines remote work as a form of organization or performance of work with the use of information technologies within the scope of the work contract in which work that could be performed on the employer's premises is regularly performed outside of those premises. Willingness is clearly emphasized in the Agreement as the basis of such arrangement. If remote work is not included in the original job description, and the employer offers remote work, the employee can accept or reject the offer. If the employee wants to work remotely, the employer can also accept or deny that request. Changes to the individual or collective employment contract must accompany any transfer of an employee to remote work. It is emphasized that remote workers enjoy the same rights from the employment relationship, guaranteed by law or collective agreement, just as comparable workers who work in the business environment at the employer's premises. It is further stated that the employer is obliged to provide, install, and maintain the equipment necessary for remote work. If the employee uses his equipment, the employer must compensate for all the costs of operating and maintaining the equipment. The right of remote workers to manage and organize their working hours themselves is also proclaimed, as well as the right to education and advancement and the same collective rights that other workers who work on the employer's premises have. In this way, applying principles of equality is guaranteed, and discrimination against these workers is excluded pertaining to the body of law in the field of labour and social security.

One of the regulations that handle work outside the employer's premises, Directive of the European Economic Community no. 90/270/EEC on minimum safety and health protection requirements at work using screen equipment from 1990 is also essential. By this act, employers must analyse workplaces and assess the dangers to which employees who use screen equipment are exposed at work, primarily con-

sidering the risks related to vision, mental health, and stress at work and take appropriate measures to eliminate the detected threats, considering additional or the combined effects of such found risks.

## 4. Serbian legislation

Work outside the employer's premises is regulated by the Labour Law of the Republic of Serbia, within Articles 42 and 44. This work is treated explicitly by the Serbian legislator as an employment relationship based on the employment contract. This type of employment includes working from home and remote work. The law itself did not make a more apparent distinction between these, essentially, different categories of work. Thus, uniquely, the legislator determined that the employment contract, which is concluded in these forms of work, contains, in addition to mandatory elements: duration of working hours, according to work norms; the way of supervising the work and the quality of employee's work performance; equipment for doing the work which the employer is obliged to acquire, install and maintain; use of funds for the employee's work and reimbursement of expenses for their use; compensation of other labour costs and the method of their determination and other rights and obligations. It is further defined that the basic salary of an employee cannot be determined in a smaller amount than the basic salary of an employee who does the same work on the employer's premises. Also, within the additional two paragraphs, the subsidiary application of the general provisions of the Labour Law in regard to this type of employment contract related to the schedule of working hours, overtime work, redistribution of working hours, night work, vacations and absences, and the right to rest during daily work, daily, weekly and annual leave was discerned. A special article within this category of work, considering the protection of the safety and health of employees, stipulates that the employer can contract only those jobs outside its premises that are not dangerous or harmful to the health of the employee and other persons and do not endanger the environment.

In addition to this modest legal framework, we can also mention the Guide for safe and healthy work from home, which was adopted by

the Directorate for Occupational Safety and Health of the Ministry of Labour, Employment, Veterans and Social Affairs in 2021. As stated in the introductory part of this act, the Guide was adopted to make it easier for employers and employees to work in the new situation caused by the COVID-19 pandemic. Thus, for employers who have provided work from home for their employees, this guide offers practical guidelines, such as the obligations and responsibilities of employers and employees, the conditions that the workplace, which is decided to be a workplace at home, should meet, the employer's care of the health of their employees, including mental health, risk assessment and monitoring of occupational safety and health of employees working from home, reporting injuries at work while working from home, etc.

Therefore, as stated in the previous sections, according to the author's opinion, the existing Serbian legislation is not adequate, complete, and precise, and it should be amended as soon as possible and adapted to the actual market conditions and capacities of this unique and progressive form of work.

## 5. Current situation and potential of this form of work: advantages and disadvantages

Work outside the employer's premises, which is increasingly used in many industries, gained importance, especially during the COVID-19 pandemic. Through appropriate measures and acts adopted by individual countries, this form of employment has evolved and gained an important role in the functioning and preservation of regular business and health protection.

At the beginning of the pandemic, during March 2020, almost all countries in the world introduced specific restrictive measures in order to suppress the spread of the disease caused by the coronavirus, which limited certain fundamental rights and freedoms of citizens. The field of work was not exempt.

In the Republic of Serbia, on March 15, 2020, a state of emergency was introduced based on the constitutional provision (Article 200 of the Constitution of the RS), which provides that due to public danger that

threatens the survival of the state or citizens, there is a possibility of deviating from certain guaranteed human and minority rights. Due to the impossibility of the National Assembly meeting at that time, the Government of the Republic of Serbia decided to declare a state of emergency, with a decree signed by the President of the Republic of Serbia. In that moment, the government adopted the Decision to declare the disease COVID-19 caused by the SARS-CoV-2 virus as an infectious disease, the prevention and suppression of which is of interest to the Republic of Serbia in order to prevent the occurrence, spread, and suppression of the infectious disease COVID-19 and to protect the population from this disease. According to this decision and its amendments, the measures prescribed by the Law on the Protection of the Population from Infectious Diseases, the Law on Health Care, the Law on Public Health, as well as other measures called upon by the nature of the disease were applied in accordance with the epidemiological situation. Considering the state of emergency introduced and the resulting circumstances, which imply the restriction of the movement of the population and thus the employees, employers were forced to shorten working hours, redistribute working hours, introduce work from home, or the worst option – to suspend work while the state of emergency is in force.

With the declaration of the state of emergency, the Government of the Republic of Serbia, with the co-signature of the President of the Republic of Serbia, passed the Decree on organizing the work of employers during the state of emergency, which regulates the special way of working and organization of work for employers on the territory of the Republic of Serbia during the state of emergency. This regulation introduced the employer's duty to enable employees to perform work outside the employer's premises (remote work and work from home) in all workplaces where it is possible to organize such work following the general act and employment contract. If these acts did not provide for such a way of working, in that case the employer could, by a decision, enable the employee to perform work outside the employer's premises if the organizational conditions allow it, with the fact that the decision had to contain the working hours and the method of supervising the employee's work. This by-law was transitional and a temporary solution, in the author's opinion, relatively modest and incomplete, and the main

shortcoming of this act can be specified as the failure to determine the essential elements of the work, such as procurement, installation, and maintenance of work equipment, reimbursement of the costs of using the Internet, telecommunication equipment, computer equipment, etc. Since it ceased to be valid after fifty-two days, there is no need for further elaboration of its content.

In the era of technological revolution and digitization of business systems, working relationships are indeed undergoing transformation and adaptation to new market requirements. Working from home and remote work are increasingly prevalent forms of work arrangement and employment. These are mostly jobs for which an adequate computer and a functional internet connection are necessary as the primary means of work.

Most often, as advantages of this type of work, economic reasons are mentioned, which are favourable for the employer, such as less (or complete absence of) expenses for the costs of office space, exemption from the obligation to pay transportation costs to and from work (travel expenses) and expenses for food of the employee. More significant are certainly the advantages of a personal and professional nature that relate to the employee himself. They concern greater autonomy in work (working hours, workspace, independence), easier management of family and professional obligations, saving time spent in transportation to work and home, the possibility of doing work in any place that suits the employee, freedom to wear whatever the employee wants during work etc.

On the other hand, working outside the employer's premises also entails certain deviations from the regular and usual work environment, which in some instances can be stimulating and motivating for the employee, but also favourable in terms of socialization, activism, and relaxation from family and personal problems. The negative consequences of this kind of work refer, first of all, to: reduced possibility of communication and socialization with other workers; feeling of loneliness and isolation which can affect the mental health of the workers; reduced ability of trade union action; absence of boundary between work environment and private life; absence of specific established working hours and rest time; security and protection of personal data and information about the worker during work on the network and platform etc.

Taking into account previously mentioned and the fact that this form of work is expanding and increasingly present in the sphere of labour relations, it is completely justified to expect that, as such, it deserves a normative framework that would in an adequate, contemporary, functional and practical way regulate and specify rights, obligations and responsibilities of the employee and the employer when working from home and working remotely.

## 6. Concluding remarks

Working outside the employer's premises saw a wide use in the actual sphere of work at the global level during the digital revolution. The still ongoing COVID-19 pandemic significantly affirmed its importance and role both in the performance of work tasks as well as in preserving collective health.

In the international legislation, this form of work is regulated and standardized as a flexible type of work within the unique and atypical categories of work-from-home or remote work. The Serbian legislator classifies work from home and remote work in the same category of work outside of the employer's premises, with the fact that it did not separately regulate each type of work. Instead, it contains mutual provisions on the content of the contract and general elements related to earnings, distribution of working time and vacations.

In view of the wide use and potential of these atypical forms of work, the author of this paper believes that the existing regulation is not adequate and that it deserves amendment. When the amendment takes place, all the advantages as well as potential dangers of this type of work should be taken into account, primarily in regard to protecting the rights of both employees and employers. Also, it would be essential to regulate the organization of work tasks and jobs, employees' health and safety, work tools and equipment, business expenses, and the like.

**References:**


- Council Directive 90/270/EEC of 29 May 1990 on the minimum safety and health requirements for work with display screen equipment, https://eur-lex.europa.eu/eli/dir/1990/270/oj, Accessed 15/10/ 2022
- International Labour Organization https://www.ilo.org/global/about-the-ilo/lang--en/index.htm, Accessed 14/10/2022
- Ivošević Z. (2019), *Radno pravo,* JP Službeni glasnik i Pravni fakultet Univerziteta Union u Beogradu.
- Home Work Convention, 1996 (No. 177) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:::NO:12100:P12100_ILO_CODE:C177:NO, Accessed: 14/10/2022
- Minimum Wage-Fixing Machinery Convention, 1928 (No. 26) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C026 Accessed: 14/10/2022
- Kovačević LJ. (2013), *Pravna subordinacija u radnom odnosu i njene granice*, Pravni fakultet Univerziteta u Beogradu.
- Lubarda B. (2021), *Uvod u radno pravo*, Pravni fakultet Univerziteta u Beogradu
- Odluka o proglašenju bolesti COVID-19 izazvane virusom SARS-CoV-2 zaraznom bolešću, „Sl. glasnik RS", br. 23/2020 i 24/2020 [Decision on declaring the disease COVID-19 caused by the SARS-CoV-2 virus as an infectious disease, *Official Gazette of the Republic of Serbia*, No. 23/2020 and 24/2020]
- Framework Agreement on Telework
- https://resourcecentre.etuc.org/sites/default/files/2020-09/Telework%202002_Framework%20Agreement%20-%20EN.pdf, Accessed: 15/10/2022
- Home Work Recommendation, 1996 (No. 184) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R184, Accessed: 15/10/2022
- Radović-Marković M., Radulović D., Đukanović B., (2021), *Rad (k)od kuće – ekonomski, pravni i socijalno-psihološki aspekti*, Izdavačka knjižarnica Zorana Stojanovića, Novi Sad.
- Rezultati ankete: frilenseri, problemi, potrebe i očekivanja [Survey Results: Freelancers – Issues, Needs, and Expectations], https://uri.rs/2021/07/30/rezultati-ankete-frilenseri-problemi-potrebe-i-ocekivanja/, Accessed: 12/10/2022
- Urdarević B., (2021), *Rad na daljinu kao specifičan način organizacije rada*, Pravni fakultet Univerziteta u Kragujevcu.

- Uredba o organizovanju rada poslodavaca za vreme vanrednog stanja, „Sl. glasnik RS", br. 31/2020. [Decree on organizing the work of employers during a state of emergency, *Official Gazette of the Republic of Serbia*, No. 31/2020]
- Ustav Republike Srbije, „Sl. glasnik Republike Srbije", br. 98/2006. [Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia,* No. 98/2006]
- Vodič za bezbedan i zdrav rad od kuće [Work from Home Health and Safety Guidelines], https://www.paragraf.rs/100pitanja/posao/vodic-za-bezbedan-i-zdrav-rad-od-kuce.html, Accessed: 15/10/2022
- Zakon o radu, „Sl. glasnik RS", br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – odluka US, 113/2017 i 95/2018 – autentično tumačenje [Labour Law, *Official Gazette of the Republic of Serbia*, No. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – Constitutional Court Decision No. 113/2017 and 95/2018 – authentic interpretation]

## RAD VAN PROSTORIJA POSLODAVCA KAO AKTUELNI OBLIK RADNOG ODNOSA

**Rezime:** U okviru rada analizirana je aktuelna vrsta radnog odnosa – rad od kuće i rad na daljinu, koji se, kao posebni oblici rada, obavljaju van prostorija poslodavca. Pored činjenice da je Zakon o radu Republike Srbije posebno uredio ovo pitanje još u izvornom obliku 2005. godine, globalni razvoj tržišta rada, posebno u uslovima još uvek aktuelne pandemije COVID-19, otvorio je mogućnost za ekspanziju ovog načina zaposlenja. Rad od kuće i rad na daljinu svakako predstavljaju vrste radnog odnosa koji su se pokazali ne samo kao ekonomični i efikasni načini realizacije zadataka i ostvarenja poslovnih ciljeva, već i kao oblici rada i uspešna mera prevencije zdravlja zaposlenih i članova njihove porodice u uslovima pandemije. Imajući u vidu prednosti i pogodnosti ove vrste radnog odnosa, kao i njegovu perspektivu kako u trenutnim, tako i u budućim poslovnim okolnostima, rad van prostorija poslodavca zaslužuje posebnu pažnju i veći prostor za naučnu i stručnu raspravu, pre svega u pogledu noveliranja i unapređenja.

**Ključne reči:** rad van prostorija poslodavca, rad od kuće, rad na daljinu, prava i obaveze zaposlenih i poslodavca.

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# OGRANIČENJE PRAVA SVOJINE I NJENE FUNKCIJE U USLOVIMA PANDEMIJE COVID-19[2*]

**Rezime:** U radu su analizirani uticaj pojedinih restriktivnih mera u uslovima pandemije COVID-19 na institut prava svojine u kontekstu njegove transformacije od liberalnog koncepta do sve češćeg državnog intervencionizma i ograničavanje tri osnovna svojinska ovlašćenja, tj. držanje, korišćenje i raspolaganje. Shvatanje prava svojine, kao instituta koji ima socijalnu funkciju, bio je podsticaj da se sagleda kakve je sve nove uloge dobio u okolnostima pandemije. Takođe, autor ispituje, oslanjajući se na raniju praksu Evropskog suda za ljudska prava i najnovije presude američkih i francuskih sudova vezane za ograničenje prava svojine, kako su organi državne vlasti uredili ostvarivanje ovog prava u svrhu zaštite zdravlja i sprečavanja širenja zaraze.

**Ključne reči:** pravo svojine, ograničenja prava svojine, ljudska prava, pandemija COVID-19.

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[2] Preliminarni rezultati sprovedenog istraživanja prezentovani su na mađunarodnom naučnom skupu „Društveni i lični izazovi tokom pandemije COVID-19“ održanom na Fakultetu za pravne i poslovne studije dr Lazar Vrkatić novembra 2021. godine.

## 1. Uvodne napomene

Kompleksni društveni odnosi u svetu izloženi dodatnim izazovima uzrokovanim pandemijom COVID-19 otvorili su niz pitanja u čijem središtu je uspostavljanje balansa između privatnih i javnih interesa. Uvođenje vanrednog stanja, primena restriktivnih epidemioloških mera koje su često podrazumevale i zabranu ili ograničenje kretanja, udruživanja i poslovanja, što je praćeno i velikom ekonomskom krizom, iz korena su promenili način života i rada ljudi u čitavom svetu.

Osnovni pravni instituti i društvene vrednosti, izloženi novonastalim okolnostima, očekivano su doživeli određene promene. Ovo se odnosi i na pravo svojine, kao centralni institut svakog pravnog sistema koji se već niz godina transformiše kroz sve češći državni intervencionizam i ograničavanje tri osnovna svojinska ovlašćenja – držanje, korišćenje i raspolaganje. U periodu pandemije, uvođenjem restriktivnih mera, vlasnicima je onemogućeno ili ograničeno vršenje prava svojine u onom obimu u kojem bi to inače činili u redovnim okolnostima.

Novonastale okolnosti jasna su potvrda da je liberalni koncept prava svojine i njenog shvatanja kao prava uživanja i raspologanja stvarima na najapsolutniji način, gde su vlasnikova ovlašćenja ograničena samo pravima drugih lica, napušten. Kriza, strah i potreba za sprečavanjem širenja zaraze nametnuli su potrebu za ograničenjem prava svojine posebno vlasnicima nepokretnih dobara. Ovo je samo potvrdilo osnovanost ideja s kraja XIX i početka XX veka o svojini koja, prema Leonu Digiju (Léon Diguit), nije pravo u klasičnom smislu, nego socijalna funkcija, odnosno ovo pravo se ne ostvaruje isključivo u privatnom, nego i u javnom interesu (Nikolić & Midorović, 2020; Medić, 2020; Nikolić, 2014). Ovakva shvatanja zadobila su kasnije brojne pristalice i izvršila značajan uticaj na mnoga zakonodavstva, kao i na kreiranje adekvatne sudske prakse.

Sva pomenuta shvatanja podsticaj su da se sagleda kako se to institut prava svojine sa svojim tradicionalnim obeležjima suočio sa pandemijom, kako su organi državne vlasti uredili ostvarivanje ovog prava u svrhu zaštite zdravlja i kakve sve uloge je dobio u novonastalim okolnostima.

## 2. Osnovanost ograničenja prava svojine u uslovima pandemije COVID-19

U uslovima pandemije skoro sve države u svetu uvele su određene restriktivne mere radi suzbijanja širenja zaraze, kojima su se ograničila neka od osnovnih prava i sloboda građana garantovana Univerzalnom deklaracijom o ljudskim pravima iz 1948. godine, Međunarodnim paktom o građanskim i političkim pravima i Međunarodnim paktom o ekonomskim, socijalnim i kulturnim pravima iz 1966. godine, kao i Evropskom konvencijom o zaštiti ljudskih prava i osnovnih sloboda iz 1950. godine (u daljem tekstu: EKLJP). Zbog ugroženosti života i zdravlja ljudi, u gotovo svim zemljama Evrope, izuzev u Nemačkoj, uvedeno je vanredno stanje glasanjem u parlamentu; odlukom vlade, kao kod nas, ili odlukom predsednika uz odobrenje parlamenta, kao u Rumuniji, dok je u Francuskoj i Italiji to urađeno delegiranjem odluke parlamenta vladi. U ovakvim okolnostima, pravo svojine, koje se najčešće ograničava zakonom, retko ustavom, aktima izvršne vlasti, pa čak i odlukama najviših sudova, suočilo se sa brojnim direktnim ili indirektnim ograničenjima (Nikolić, 2014).

Danas je opšteprihvaćeno pravilo da pravo svojine može biti oduzeto ili ograničeno samo u javnom interesu, uz naknadu koja ne može biti niža od tržišne, u skladu sa principima zakonitosti i pravne sigurnosti. U Univerzalnoj deklaraciji o ljudskim pravima, pored garancije prava na imovinu svakom licu, navodi se i da niko ne sme biti samovoljno lišen imovine. Dve godine od usvajanja EKLJP, kroz dopunski Protokol 1, svakom pravnom i fizičkom licu garantovano je pravo na neometano uživanje imovine (Bubnjak, 2019). U Protokolu se dalje navodi da niko ne može biti lišen imovine, osim u javnom interesu i pod uslovima predviđenim zakonom i opštim načelima međunarodnog prava. Ipak, EKLJP ne sadrži pojam imovine, sledeći tako princip da prava koja se njome štite ne treba usko tumačiti (Komnenić, 2017). Tako je, zahvaljujući Evropskom sudu za ljudska prava, stvoren autonomni koncept imovine, nezavisan od onih zastupljenih u nacionalnim pravima, ali i širi od sadržine pojma svojine u tradicionalnom značenju utemeljenom na rimskom pravu (Komnenić, 2017, str. 66). Pod imovinom se ovde podrazumevaju ne samo isključivo vlasništvo nad pokretnim telesnim i

bestelesnim stvarima, nego i sva prava ili ekonomski interesi koji imaju imovinsku vrednost (Komnenić, 2017, str. 67). Tu se, pre svega, misli na pravo na zakupninu, naknadu štete, interese za vođenje nekog posla, pribavljene dozvole za obavljanje određene delatnosti (*Tre Traktörer Aktiebolag protiv Švedske*), potom na klijentelu stvorenu tokom nečijeg dugogodišnjeg rada (*Iatridis protiv Grčke*), kao i na razna prava iz oblasti poslovanja koja su u vreme pandemije bila posebno na udaru restriktivnih mera državne vlasti (Komnenić, 2017, str. 67). Ipak, pojam imovine ne odnosi se na izgubljenu dobit, što je istaknuto u predmetu *Van der Mussele protiv Belgije*. Za razliku od toga, očekivano povećanje imovine vršenjem određene delatnosti predstvalja imovinu, prema članu 1 Protokola 1 EKLJP (*Pine Valley Developments protiv Irske*).

Pravo na mirno uživanje imovine opšte je prirode i podrazumeva dva pravila – da niko ne može biti lišen imovine radnjama ili odlukama koje su nezakonite i koje nisu preduzete u cilju zaštite javnog interesa i da države pod određenim uslovima vrše kontrolu nad korišćenjem imovine. Prema tome, sva mešanja države u pitanja uživanja prava na imovinu moraju počivati na određenom pravnom osnovu. Pri tome, o neophodnosti primene bilo kakvih mera ograničenja odlučuju same države, dok Evropski sud za ljudska prava vrši nadzor kako bi uspostavio balans između potrebe poštovanja odredbi EKLJP, s jedne strane, i društveno-ekonomskih uslova u dotičnoj državi, s druge strane (Komnenić, 2017).

Prema praksi Evropskog suda za ljudska prava, pod lišenjem imovine smatraju se samo slučajevi direktne eksproprijacije, eventualno i skup mera koje imaju toliki uticaj na imovinu da se mogu izjednačiti s oduzimanjem (Braithwaite, Harby & Miletić, 2020, str. 129). Ostala ograničenja blaže prirode podvode se pod slučajeve kontrole korišćenja imovine, uključujući i promene uslova poslovanja na tržištu, sisteme kontrole zakupnine i obustavljanje izvršenja naloga o iseljenju stanara koji su prestali da plaćaju zakupninu, što su u uslovima pandemije bila posebno aktuelna pitanja (*Pine Valley Developments protiv Irske*).

## 3. Ispitivanje osnovanosti preduzetih restriktivnih mera

Okolnosti u kojima se našao svet u proteklom periodu nameću potrebu za ispitivanjem osnovanosti preduzetih restriktivnih mera državnih vlasti. Pre svega se, u skladu sa EKLJP, misli na uslove zakonitosti, legitimnosti, kao i neophodnosti radi uspostavljanja ravnoteže između privatnih i javnih interesa koji kumulativno moraju biti ispunjeni u svakom konkretnom slučaju. Ovo će u narednom periodu svakako obogatiti praksu domaćih i međunarodnih sudova.

Kada govorimo o zakonitosti, tu se ne misli isključivo na zakone u formalnom smislu, nego i na ustav, međunarodne ugovore i podzakonske akte. Konkretno, kod nas je vanredno stanje uvedeno na osnovu člana 200 Ustava Republike Srbije („Službeni glasnik Republike Srbije" br. 98/2006, 115/2021), kojim je predviđeno da usled javne opasnosti koja ugrožava opstanak države ili građana postoji mogućnost odstupanja od pojedinih zajemčenih ljudskih i manjinskih prava. Zbog nemogućnosti da se sastane Skupština, odluku o proglašenju vanrednog stanja je uredbom donela Vlada, uz potpis predsednika Republike. Inače, u ovom periodu je kod nas donet niz odluka, uredbi, rešenja, naredbi, odnosno zaključaka od značaja za građane i pravna lica koja posluju u uslovima javne opasnosti. Neke od njih odnose se i na ograničenje korišćenja ili oduzimanje prava svojine za šta, prema Ustavu, sleduje adekvatna naknada koja ne može biti niža od tržišne (član 58 Ustava Republike Srbije).

Pitanje legitimnosti preduzetih mera u cilju sprečavanja širenja zaraze državama ostavlja mogućnost da, prema slobodnoj oceni, u datim okolnostima donose različite odluke, kao što su bile: ograničavanje poslovanja; ustupanje na privremeno korišćenje pojedinih objekata određenih za karantin ili zabrana prisilnog iseljavanja stanara zbog kašnjenja u plaćanju zakupnine. Evropski sud za ljudska prava u ovakvim situacijama daje državama visok stepen slobode u odabiru mera i poštuje njihove stavove, izuzev ukoliko su očigledno neutemeljeni (Braithwaite i dr., 2020).

Kada je reč o neophodnosti preduzetih mera radi uspostavljanja balansa između individualnih i javnih interesa, važno je razmotriti kontekst i trajanje preduzete mere. Očekuje se da Evropski sud za ljudska prava neće dovoditi u pitanje odluke država u uslovima vanredne

situacije, kao ni usvojene pakete privrednih mera koji, kao posledice, mogu imati gašenje poslovanja, pa samim tim i gubitak posla. Teško da će ishodi tužbi građana zbog ovakvih povreda biti pozitivni, posebno ukoliko je lice otpušteno shodno uslovima ugovora.

Očigledna nesrazmernost preduzetih mera mogla bi postojati u situaciji kada bi pogođenim licima bili nametnuti preterani pojedinačni tereti, odnosno kada bi određene grupe pojedinaca bile izložene nepovoljnijem postupanju od strane nadležnih organa. Za to se, kao primeri, mogu uzeti ranije presude u vezi sa merama vlasti Malte usmerenim na kontrolu cena zakupnine kojima se nameće nesrazmeran teret zakupodavcima (Braithwaite i dr., 2020; *Cassar protiv Malte*). Tokom pandemije, u periodu kada je većina prodajnih objekata kod nas bila zatvorena, zamrzavanje plaćanja zakupnine značajno je opteretilo zakupodavce. Takva mera mogla je imati alternativu u subvencionisanju cena zakupnine od strane države, kao što je to učinjeno na Kosovu. Na nepovoljniji tretman mogli bi se kod nas pozvati zakupodavci lokala ili ugostiteljskih objekata unutar tržnih centara koji su bili zatvoreni, dok se dešavalo da oni van mogu nesmetano da rade.

Izvesnije je da će se kao nesrazmerne pre okvalifikovati trajne mere u odnosu na privremene. U vreme pandemije mnoge od ovih mera su primenjivane, potom ukidane, a sa porastom broja zaraženih ponovo vraćane na snagu, pa je vremenska odrednica u ovakvim uslovima relativna. U svakom slučaju potrebno je svim pojedincima garantovati da u svakom trenutku mogu uputiti zahtev kojim se nalaže preispitivanje zakonitosti, legitimnosti i neophodnosti svakog pojedinačnog ograničenja.

Ocena neophodnosti primene određene mere posebno dobija na značaju kada se radi o oduzimanju imovine. Eksproprijacija se vrši uz obaveznu naknadu, čiji iznos predstavlja važan činilac za ocenu postizanja pravične ravnoteže između privatnog i javnog interesa prilikom lišenja nekog lica imovine. Sprovođenja određenih mera ekonomske politike i postizanja većeg stepena ekonomske pravde (*Lithgow and others v. The United Kingdom*) mogu u određenim situacijama opravdati naknade koje su niže od tržišne vrednosti imovine (Komnenić, 2017). Samo izuzetne okolnosti, koje ujedno predstavljaju i presedan u praksi

Evropskog suda, dopuštaju oduzimanje imovine bez naknade. Ovo se dogodilo u slučaju *Jahn i drugi protiv Nemačke* i odnosi se na oduzimanje zemlje nakon ujedinjenja Nemačke, specifičnih političkih prilika i reforme agrarnog sistema. Naslednicima zemljišta dobijenog putem agrarne reforme takva zemlja je mogla biti oduzeta bez naknade ukoliko nisu ispunjavali neophodan uslov – da su tu zemlju obrađivali pre usvajanja novih propisa. Ipak, pandemija i mere zaštite od širenja korona virusa su gotovo uvek bile razlozi za privremeno ograničenje svojinskih ovlašćenja. Sa druge strane, eksproprijacija imovine sa ciljem izgradnje COVID bolnica, koje su se intenzivno gradile u proteklom periodu, mogla bi biti izvršena, ali isključivo uz plaćanje naknade koja mora odgovarati uslovima na tržištu.

## 4. Pojedini slučajevi ograničenja prava svojine u uslovima pandemije COVID-19 i prvi sudski procesi

Prateći tok pandemije, mutiranje virusa i pojavu novih sojeva, države su, kroz različite kombinacije restriktivnih mera i uvođenje vanrednog stanja, pokušale da suzbiju širenje virusa, ograničavajući, direktno ili indirektno, pojedina svojinska ovlašćenja. Neka od direktnih bili su nalozi za ustupanje na privremeno korišćenje pojedinih objekata određenih za karantin. Kod nas je ovo sprovođeno na osnovu Odluke o proglašenju bolesti COVID-19 izazvane virusom SARS-CoV-2 zaraznom bolešću („Službeni glasnik Republike Srbije", br. 23/2020). Tako su za ove potrebe prilagođeni mnogi hoteli, moteli, banjska lečilišta, ali i škole, sportski objekti, kao i hale za održavanje različitih manifestacija. Bivši fudbaleri „Mančester junajteda", Geri Nevil i Rajan Gigs, ustupili su svoje hotele. Isto je učinio i ruski milijarder, Roman Abramovič, nudeći raspoložive smeštajne kapacitete u hotelu „Stamford Bridge Millennium". Takođe, imamo i primere gde je država otkupila pojedine objekte ovakve vrste i pretvorila ih, uz minimalna ulaganja, u karantinski prostor. Ovakvu sudbinu doživeo je motel iz velikog lanca „EconoLogde". Kao karantin za zaražene putnike i osoblje kruzera „Grand Princes", jednog od prvih žarišta zaraze, poslužio je luksuzni hotel sa konferencijskom salom „Alisomar" u Kaliforniji, koji inače donosi ogroman profit (Malenica, 2020).

Tokom vanrednog stanja u našoj zemlji, a zbog ograničavanja kretanja, s velikim problemima suočili su se poljoprivrednici. Zatvaranje granica sprečilo je pojedince da obrađuju svoje parcele koje deli administrativna granica ili čak čitava imanja u susednoj državi. Problemi ograničenog kretanja u vreme trajanja policijskog časa brzo su rešeni izdavanjem posebnih dozvola. U jednom periodu, bar kada je reč o Srbiji, osobama starijim od 65 godina, među kojima je bilo i zemljoradnika i stočara iz Vojvodine, bilo je zabranjeno kretanje, što je dodatno komplikovalo situaciju.

Usled zatvaranja granica, većina vlasnika nekretnina i plovila u inostranstvu nije mogla da pristupi svojoj imovini. Prekogranične, regionalne, pa i međumesne razmene robe, rada, kapitala i usluga trpele su značajna ograničenja. Nakon početnih problema i potpunog zatvaranja mnogih gradova, regiona i država, situacija se postepeno normalizovala.

Duh solidarnosti i zajedništvo u borbi protiv korona virusa uglavnom su imali prevagu nad otvaranjem pitanja osnovanosti ograničenja prava svojine. Mnogi vlasnici privremeno su se odricali svojih prava u cilju zaštite interesa čitavog društva, smatrajući to moralnim činom. Ipak, među prvim sporovima u kojima se raspravljalo o uvedenim ograničenjima bio je *Dodero v. Walton County*. Grupa vlasnika poseda u okrugu Valton na Floridi podnela je tužbu protiv lokalnih vlasti koje su uredbom zatvorile plažu na koju izlaze njihova imanja, pozivajući se, između ostalog, i na Peti amandman Ustava Sjedinjenih Američkih Država, kao i na kršenje prava na privatnost garantovanog ustavnim zakonom Floride. Okružni sud je odbio tužbeni zahtev, konstatujući da podnosioci tužbe nisu jedini kojima su ograničena pojedina prava u uslovima pandemije, budući da su u ovim okolnostima i mnoge privredne aktivnosti, za koje je država procenila da nisu od vitalnog značaja, privremeno obustavljene. Uz to je zaključeno i da ne postoji kršenje prava na privatnost jer se ovde radi isključivo o pitanjima svojinskih prava (Budak, 2019, Sjuggerud, 2020). Dalje se konstatuje da je bez obzira na privremena ograničenja punog pristupa plaži i vodi na koju izlaze posedi podnosilaca tužbe pretrpljena šteta zanemarljiva u odnosu na onu koja potencijalno preti u slučaju širenja zaraze. Inače, u ovoj odluci pomenuti sud nije dao detaljnije obrazloženje koje se odnosilo na navode tužilaca.

Za razliku od pomenute, jedna presuda Vrhovnog suda Pensilvanije sadrži detaljnu analizu uticaja vanrednih epidemioloških mera na prava svojine. U slučaju *Friends of Danny Devito v. Wolf*, četiri privredna društva i jedan preduzetnik podneli su tužbu protiveći se odluci guvernera Pensilvanije o zabrani svih privrednih aktivnosti i delatnosti koje nisu od vitalnog značaja, a sa ciljem suzbijanja širenja virusa. Pozivajući se na Peti amandman Ustava Sjedinjenih Američkih Država, kao i na odredbe Ustava Pensilvanije, tužioci su smatrali da su im kroz ovakvo postupanje uskraćena prava na privatnu imovinu. Vrhovni sud Pensilvanije nije prihvatio tužbeni zahtev, pozivajući se na dve ranije presude: *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency* i *Nat'l Amusements Inc. v. Borough of Palmyra* iz 2002, odnosno 2013. godine. U presudi se navodi da tužioci nisu uspeli da dokažu da se radi o legitimnom lišenju imovine, te da su hitne mere po odluci guvernera, oročene na 90 dana, koju Generalna skupština može da ukine u svakom trenutku, slične postupanju policijskih službenika u pojedinim kriznim situacijama (Sjuggerud, 2020). Slučaj *Friends of Danny Devito v. Wolf* kasnije je svoj epilog dobio na Vrhovnom sudu. Tužbeni zahtev je odbijen uz konstataciju da će u odsustvu konfiskacije konkretne imovine po osnovu odluke Vlade vlasniku biti teško da zaštiti svoja prava u slučaju privremenih mera donetih u cilju zaštite javnih interesa (Sjuggerud, 2020).

Trgovinski sud u Parizu je u maju 2021. godine doneo presudu u korist jednog od najpoznatijih francuskih ugostitelja – Stefana Manigolda (Stephane Manigold), vlasnika više bistroa i restorana u Francuskoj kome je osiguravajuća kuća „Aksa" (AXA) odbila da isplati odštetu usled privremenog zatvaranja restorana Odlukom Ministarstva solidarnosti i zdravlja. Po nalogu ovoga suda, „Aksa" je bila dužna da ispuni odredbe ugovora i isplati Manigoldu naknadu u visini prosečnih prihoda za dva i po meseca, premda je on zahtevao za četiri. Nakon toga, „Aksa" je ponudila većini restorana koje osigurava isplatu od 20 odsto prosečne zarade za poslednja četiri meseca, ako se obavežu da je neće tužiti. S druge strane, američke osiguravajuće kuće odbijaju da nadoknade ovakve gubitke, smatrajući da aktuelna pandemija nije predviđena polisama.

## 5. Dalji pravci tumačenja ograničenja prava svojine

Sve pomenute presude imaće uticaj i na kasnije postupanje sudova u slučajevima ograničenja prava svojine usled primene različitih epidemioloških mera. Ima li osnova za naknadu pretrpljene štete, ključno je pitanje i ono će zahtevati pojedinačnu procenu. Ostavljajući po strani eksproprijaciju, koja gotovo uvek podrazumeva naknadu, privremena ograničenja svojinskih ovlašćenja usled sprovođenja pojedinih zdravstvenih mera teško da će, bar kako se očekuje, dovesti do obeštećenja. Čak i ako se radi o privremenoj zabrani poslovnih aktivnosti koja je vodi do gubitka budućih prihoda, država se opredelila za modele podsticaja i finansijskih olakšica umesto klasičnih obeštećenja, iako se budući prihodi smatraju imovinom, u smislu Protokola 1 EKLJP i podrazumevaju naknadu (Nekit, 2021).

Tradicionalno shvaćen kao neograničen, institut prava svojine, razapet između zadovoljavanja javnih i pojedinačnih interesa u novonastalim i krajnje nepredvidivim okolnostima za čitavo čovečanstvo, nastavlja put transformacije. Pandemija i zaštita zdravlja, jasno se pokazalo, predstavljaju dovoljan povod za dodatno preispitivanje značaja, uloge, mogućnosti i osnovanosti privremeno uvedenih ograničenja prava svojine.

**Literatura:**

Braithwaite, B., Harby, H., & Miletić, G. (2020). *COVID-19 i njegov uticaj na ljudska prava*, *Pregled relevantne prakse Evropskog suda za ljudska prava*. AIRE centar.

Bubnjak, A. (2019). Pravo na imovinu u kontekstu ljudskih prava sa posebnim osvrtom na praksu Evropskog suda za ljudska prava. *Socijalna politika 1*. 9–27.

Budak, A. (2019). Teorijski i praktični aspekti prava privatnosti sa osvrtom na praksu Evropskog suda za ljudska prava u digitalnom dobu. *CIVITAS 2.* 58–71.

*Cassar v. Malta*.

*Dodero v. Walton County*, No. 3:30-cv-05358-RV-HTC (N.D. Fla. Apr. 6, 2020).

*Friends of Danny Devito v. Wolf*, No. 68 MM 2020 (Penn. Apr. 3, 2020).

*Iatridis v. Greece*.

*Immobiliare Saffi v. Italy.*

Komnenić, D. (2017). *Pravo na mirno uživanje imovine u presudama i odlukama Evropskog suda za ljudska prava donetim u postupcima u kojima su bivše jugoslovenske republike bile odgovorne države*. Beograd: Doktorska disertacija, Pravni fakultet Univerziteta u Beogradu.

*Lithgow and others v. The United Kingdom.*

Malenica, B. (2020). *Arhitekturom protiv korone: Kako objekti širom sveta menjaju namenu*. Preuzeto 22. 06. 2021. sa: https://www.gradnja.rs/aritekturom-protiv-korone-kako-objekti-sirom-sveta-menjaju-namenu/.

Medić, D. (2020). Ograničenja prava svojine. *Godišnjak fakulteta pravnih nauka*, *10*. 21–34.

*Nat'l Amusements Inc. v. Borough of Palmyra*, 716 F.3d 57 (3d Cir. 2013).

Nekit, K. (2021). Restrictions of Private Property Right in Terms of the Covid-19 Pandemic: The Experience of the US, UK and Ukraine. *The Age of Human Rights Journal 16.* 263–277.

Nikolić, D. (2014). Apsolutnost prava svojine u francuskom pravu. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *4*. 85–101.

Nikolić, D., & Midorović, S. (2018). Savremena evropska pravna teorija o socijalnoj funkciji prava svojine: Nemačka doktrina. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *1*. 65–78.

Osiguranik. com. *Francuski osguravači restoranima moraju pokriti gubitke uzrokovane pandemijom COVID-19* Preuzeto 30. 03. 2022. sa: https://www.osiguranik.com/blog/francuski-osiguravaci-restoranima-moraju-pokriti-gubitke-uzrokovane-pandemijom-covid-19/.

*Pine Valley Developments v. Ireland.*

Sjuggerud A. *The Real Estate and Covid*, *The Effect of COVID-19 Orders on Private Property Rights*. Preuzeto 05. 07. 2021. sa: https://www.shutts.com/assets/htmldocuments/5.7.2020_The%20Effect%20of%20COVID-19%20Orders%20on%20Private%20Property%20Rights.pdf.

Sporrong and Lönnroth *v. Sweden*.

Stern S. (2021). *Taking emergencies seriously*. *Urban Lawyer*. Preuzeto 05. 02. 2022. sa: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3632203.

*Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency* 535 U.S. 302 (2002).

*The Covid-19 crisis in the Western Balkans Economic Impact, Policy Responses, and Short-term Sustainable Solutions*. Preuzeto 17. 03. 2022. sa: https://www.oecd.org/south-east-europe/COVID-19-Crisis-Response-Western-Balkans.pdf.

*Tre Traktörer Aktiebolag v. Sweden*.

# PROPERTY RIGHTS RESTRICTIONS IN THE CONTEXT OF THE COVID-19 PANDEMIC[3*]

**Abstract**: This paper will examine the impact of certain restrictive measures introduced during the COVID-19 pandemic, in the context of transformation of property rights from a liberal concept to increasingly frequent government interventionism, along with the limitation of three basic ownership rights — possession, use and disposal. As property rights have a social function, this paper examines the new functions that emerged during the pandemic. With respect to the practice of the European Court of Human Rights and recent verdicts of American and French courts, the paper further deals with restricting private ownership rights and ways in which these rights were regulated by the state authorities in an attempt to protect public health and prevent the spread of infection.

**Key words:** ownership rights, ownership restrictions, human rights, COVID-19 pandemic.

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# PROPERTY RIGHTS RESTRICTIONS IN THE CONTEXT OF THE COVID-19 PANDEMIC[2]

**Abstract**: This paper will examine the impact of certain restrictive measures introduced during the COVID-19 pandemic, in the context of transformation of property rights from a liberal concept to increasingly frequent government interventionism, along with the limitation of three basic ownership rights — possession, use and disposal. As property rights have a social function, this paper examines the new functions that emerged during the pandemic. With respect to the practice of the European Court of Human Rights and recent verdicts of American and French courts, the paper further deals with restricting private ownership rights and ways in which these rights were regulated by the state authorities in an attempt to protect public health and prevent the spread of infection.

**Keywords**: property rights, property rights restrictions, human rights, COVID-19 pandemic.

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## Introduction

The complex social relations worldwide, further complicated by the COVID-19 pandemic, have raised many issues centred on establishing a balance between private and public interests. The state of emergency and restrictive epidemiological measures that frequently involved prohibiting or restricting movements, gatherings and the way of conducting business, together with the economic crisis that followed, fundamentally changed the way people live and work the world over.

As was expected, basic legal institutes and social values experienced certain changes in the new situation. This also applies to the right to property, as the central institution of every legal system. For some time, it has been undergoing major changes, due to increasingly frequent government interventionism, and the limitation of three basic ownership rights — possession, use and disposal. During the pandemic, owners were prevented or limited from exercising their ownership rights by the introduction of restrictive measures.

The current situation has shown that the liberal concept of ownership rights as the right to use and dispose of things in the most absolute way, where the owner's powers are limited only by the rights of other persons, has been abandoned. The atmosphere of crisis, fear, and the need to prevent the spread of the infection imposed the need to limit ownership rights, especially for owners of immovable property. This confirmed the validity of 19th and 20th century concepts about ownership rights: according to Léon Diguit, the right to property is not a right in the classical sense, but rather a social function, exercised not only in the private, but also in the public interest (Nikolić & Midorović, 2020; Medić, 2020; Nikolić, 2014). Such notions later gained numerous advocates and exerted a significant influence on many legislations, as well as on the creation of adequate judicial practices.

These ideas offer an incentive to closely examine how the traditional concept of property rights fared during the pandemic, what functions it had, and how the state arranged the exercise of this right in the interest of public health.

## 1. The grounds for ownership restrictions during the COVID-19 pandemic

During the COVID-19 pandemic nearly every country in the world introduced restrictive measures to suppress the spread of the infection, limiting some of the basic rights and freedoms of citizens guaranteed by the Universal Declaration of Human Rights from 1948, the International Covenant on Civil and Political Rights and the International Covenant on economic, social and cultural rights from 1966, as well as the European Convention on the Protection of Human Rights and Fundamental Freedoms from 1950 (hereinafter: ECHR). Due to the threat to people's lives and health, almost all European countries (except for Germany) introduced a state of emergency by a parliament vote. In Serbia this was the government's responsibility, while in Romania the decision was that of the president, but not without the parliament's approval. The parliaments of France and Italy delegated their respective decisions to their governments. In such circumstances, private property rights, which are most often limited by law, rarely by the constitution, acts of executive power, or even decisions of the highest courts, were subject to numerous direct or indirect restrictions (Nikolić, 2014).

Today, it is widely accepted that private property can be confiscated or limited only in the public interest, with compensation that cannot be lower than the market price, in accordance with the principles of legality and legal certainty. In addition to guaranteeing ownership rights to every person, the Universal Declaration of Human Rights also states that no one may be arbitrarily deprived of property. Two years after the adoption of ECHR, through supplementary Protocol 1, every legal and natural person is guaranteed the right to peaceful enjoyment of possessions (Bubnjak, 2019). The Protocol further states that no one can be deprived of property, except in the public interest and under conditions provided by law and general principles of international law. However, the ECHR does not contain the concept of property and therefore assumes that the rights protected by it should not be interpreted narrowly (Komnenić, 2017). Thus, thanks to the European Court of Human Rights, an autonomous concept of property was created – independent of those represented in national laws, but also broader than the concept of

property in the traditional sense based on Roman law (Komnenić, 2017, p. 66). In this context property refers not only to exclusive ownership of movable, tangible, and intangible things, but also to all rights or economic interests that have property value (Komnenić, 2017, p. 67). This primarily refers to the right to rent, compensation for damages, interest in running a business, obtained licences to perform a certain activity (*Tre Traktörer Aktiebolag v. Sweden*), the clientele created during one's long-term work (*Iatridis v. Greece*), as well as various corporate rights particularly affected by the government's restrictive measures during the pandemic (Komnenić, 2017, p. 67). However, the concept of property does not refer to lost profits, as pointed out in *Van der Mussele v. Belgium*. In contrast, by carrying out a certain activity, the expected increase in property constitutes property, according to Article 1 of Protocol 1 of the ECHR (*Pine Valley Developments v. Ireland*).

The right to peaceful enjoyment of possessions is of general nature and implies two rules — no one can be deprived of property by actions or decisions that are illegal and not undertaken in order to protect the public interest: governments exercise control of the use of property under certain conditions. Therefore, in matters concerning enjoyment of possessions all government interference must rest on a certain legal basis. Hence, the necessity of applying any restrictive measures is decided by the governments themselves, but under the supervision of the European Court of Human Rights in order to establish a balance between the need to comply with the provisions of the ECHR and the socio-economic conditions in the respective countries (Komnenić, 2017).

The European Court of Human Rights mostly considers cases of direct expropriation as deprivation of possession; occasionally, the court also considers a set of measures that have a significant impact on property and can consequently be equated with deprivation (Braithwaite, Harby & Miletić, 2020, p. 129). The restrictions of a more lenient nature fall under property control cases, including changes in market conditions, rent control systems and suspension of eviction orders for tenants who have stopped paying rent, all of which were relevant during the pandemic (*Pine Valley Developments v. Ireland*).

## 2. Examining the validity of restrictive measures

The circumstances during the pandemic invite the examination of the validity of the restrictive measures taken by the state. In accordance with the ECHR, this primarily refers to the conditions of legality, legitimacy, as well as necessity in order to establish a balance between private and public interests, which must be fulfilled cumulatively in every case. This procedure will certainly enrich the practice of domestic and international courts in the future.

Legality does not only concern laws in the formal sense, but also the constitution, international treaties, and by-laws. Specifically, a state of emergency in Serbia was introduced based on Article 200 of the Constitution of the Republic of Serbia ("Official Gazette of the Republic of Serbia" No. 98/2006, 115/2021), which stipulates that due to a public danger threatening the survival of the state or citizens, there is a possibility of deviation from certain guaranteed human and minority rights. Because of the Assembly's inability to meet, the decision to declare a state of emergency was made by government decree, with the president's signature. Moreover, a number of decisions, decrees, decisions, orders, or conclusions of importance for citizens and legal entities that operate in conditions of public danger were made in Serbia throughout this period. Some of them refer to the restriction of use or deprivation of ownership rights, for which, according to the Constitution, adequate compensation follows and cannot be lower than the market rate (Article 58 of the Constitution of the Republic of Serbia).

The legitimacy of the measures taken in order to prevent the spread of the infection gives governments the possibility to make different decisions given the circumstances and according to their free assessment, such as: restricting businesses, temporarily assigning certain facilities designated for quarantine or prohibiting forced eviction of tenants due to late payment of rent. In such situations, the European Court of Human Rights gives governments a high degree of freedom in choosing measures and respects their assessments, unless they are clearly unfounded (Braithwaite et al., 2020).

To determine the necessity of the restrictive measures aimed at achieving the balance between individual and public interests, it is important to understand their duration and circumstances surrounding them. The European Court of Human Rights is not expected to call into question either the emergency response decisions of individual governments or the packages of economic measures they adopted, albeit the latter may result in the shutdown of business and subsequent loss of jobs. The Court is unlikely to rule in citizens' favour in such cases, especially if one was fired in accordance with the terms and conditions of an employment contract.

Obvious disproportionality in measures taken may exist in situations where certain groups of individuals have to shoulder excessive financial burdens, i.e., they are treated less favourably by the relevant authorities. Some examples include previous court rulings on the issue of rent control measures in Malta by which the government imposed a disproportionate financial burden on lessors (Braithwaite et al., 2020). In Serbia, where most retail facilities were closed during the pandemic, lessors came under heavy strain due to rent freezes. Subsidising rent payments, as was done in Kosovo, makes one alternative strategy that the government could have pursued. In fact, lessors of catering establishments in Serbia's temporarily closed shopping centres could plead unfavourable treatment, given that bars and restaurants outside of malls were allowed to work as per usual.

Permanent measures are much more likely to be deemed disproportionate than the temporary ones. During the course of the pandemic, as the number of COVID-19 cases fluctuated, many measures were being imposed, removed, and then reinstated, thus in such circumstances, time frames tend to be relative. Nevertheless, all individuals should be offered a formal assurance of their legal capacity to, at any given time, request that the legality, legitimacy, and necessity of each individual restriction be reassessed.

Assessing the necessity of a particular measure becomes especially important in regard to the confiscation of assets. The amount of compensation that must be awarded in the event of expropriation is an important factor in achieving a fair balance between the public and injured

party's interests. The implementation of certain measures of economic policy or achievement of a greater degree of economic justice (*Lithgow and Others v. The United Kingdom*) can sometimes justify lower-than-the-market-value compensation amounts (Komnenić, 2017). Dispossession of privately owned property without compensation is admissible only in exceptional circumstances, which make precedents in the practice of the European Court of Human Rights. Such was the case of *Jahn and Others v. Germany,* which involved specific political circumstances and land dispossession under the land reform following the reunification of Germany. Heirs to the parcels redistributed under the land reform had to farm the land prior to the adoption of new regulations, otherwise, the state was free to repossess it without any compensation. Still, extraordinary circumstances, such as those brought about by the COVID-19 pandemic and its preventative measures, have generally justified temporary restrictions on ownership rights. Expropriation with the aim of building COVID-19 hospitals – which were built extensively in prior years – can occur, but only with compensation that is in line with market conditions.

## 3. Instances of ownership rights restrictions during the COVID-19 pandemic and first court proceedings

As the pandemic progressed and the virus mutated, authorities around the world attempted to contain the spread of the new strains. This was done not only by means of imposing various restrictive measures and declaring states of emergency, but also through, either direct or indirect, restrictions on individual ownership rights. In Serbia, the *Decision on proclaiming COVID-19 disease caused by SARS-CoV-2 virus as infectious disease* was the basis for the ensuing restrictive measures ("Official Gazette of the Republic of Serbia", No. 23/2020). Thus, numerous hotels, motels, spa and health resorts, schools, sports facilities, as well as event halls and venues were adapted for those needs. In the UK, Former Manchester United players, Gary Neville and Ryan Giggs, as well as the Russian billionaire and Stamford Bridge Millenium Hotel owner, Roman Abramovich, all made their hotels available to the country's medical employees. There were also examples of governments

buying these types of facilities and transforming them, with minimal investment, into quarantine spaces. In the USA, such was the case with one of the motels that used to be part of a large Econo Lodge motel chain. Furthermore, luxurious and immensely profitable Asilomar Hotel & Conference Grounds in California was designated as a quarantine area for the infected passengers of the Grand Princess cruise ship, one of the first COVID-19 infection hotspots (Malenica, 2020).

During the state of emergency in Serbia, farmers faced major problems due to movement restrictions. Individuals with land divided by administrative lines were prevented from farming it and some even owned entire estates in neighbouring countries that suddenly became unreachable due to border closures. Problems arising from limits on freedom of movement during the curfew were solved quickly with the issuance of special permits. At one point, people over the age of 65 who lived in Serbia – this also included farmers and cattle breeders from Vojvodina – were prohibited from leaving their homes; all of this complicated the situation even further.

Due to the border closures, most people who owned real estate and sailing craft abroad were not able to access their property. International, regional, and even local trade in goods, labour, capital, and services was subjected to major limitations. Following the initial hurdles and lockdowns placed on numerous cities, regions, and countries, the situation gradually normalised.

The validity of restrictions on ownership rights was generally not questioned, as the strong spirit of solidarity unified people in the fight against the virus. Many property owners even temporarily renounced their ownership rights to protect the interests of society as a whole. Still, some disputes concerning the restrictions imposed did occur; one of the first was *Dodero v. Walton County*. A group of beachfront property owners in Walton County, Florida filed a lawsuit against the local authorities after an ordinance that temporarily forbids access to the beach behind their houses was passed. The plaintiffs claimed the county had violated both Florida's constitutional right to privacy and the Fifth Amendment to the United States Constitution, among other claims. The district court denied their motion and noted that the plaintiffs were not

the only ones who had had their rights limited during the pandemic, in fact, many business activities deemed non-essential by the state had to be temporarily suspended under the new circumstances. In addition, the court concluded that there was no violation of the right to privacy, as the situation in question was explicitly linked to individual ownership rights (Budak, 2019, Sjuggerud, 2020). The court further stated that whatever injury the plaintiffs might have suffered due to the temporary restrictions on beach/ocean access was negligible compared to the potential threats in the event of the spread of the infection. The district court's order provided no additional commentary regarding the plaintiffs' allegations.

In contrast, one Pennsylvania Supreme Court ruling included a detailed analysis of the effect of emergency epidemiological measures on property rights. In *Friends of Danny Devito v. Wolf*, four businesses and one entrepreneur filed a lawsuit against Pennsylvania Governor's order restricting all non-vital economic activities in order to reduce the spread of the virus. The plaintiffs claimed the government had acted contrary to the Pennsylvania Constitution and the Fifth Amendment to the United States Constitution by ordering a taking of their private property. The Supreme Court of Pennsylvania relied on two previous cases – *Tahoe-Sierra Press. Council, Inc. v. Tahoe Reg'l Planning Agency* and *Nat'l Amusements Inc. v. Borough of Palmyra* from 2002. and 2013. respectively – in support of its decision to reject the claim. According to the ruling, the plaintiffs failed to prove that a regulatory taking had, in fact, occurred. Furthermore, the court found that the governor's emergency order, which was limited to 90 days and revocable by the General Assembly at any time, seemed no different from the activities that police officers engage in during a crisis (Sjuggerud, 2020). This ruling was later challenged at the U.S. Supreme Court which denied the plaintiffs' appeal with a remark that in the absence of the government's confiscation of a specific asset, property owners will find it difficult to protect their rights when temporary measures aim to protect public interests (Sjuggerud, 2020).

In May 2021, the Paris Commercial Court ruled in favour of Stéphane Manigold, one of the most famous restauranteurs in France, after his insurer, AXA, refused to cover the losses incurred as a result of

a temporary government-mandated closure of restaurants and other non-essential businesses. The insurer was ordered to perform its part of the contract and pay Manigold two and a half months' worth of average monthly revenue, albeit he had asked for four. Subsequently, AXA put forward a proposal to pay most of its policyholder restaurants 20 percent of their average monthly income for the prior four months, on condition that they do not press charges. In contrast, American insurance companies are refusing to cover the business losses caused by government shutdown orders, as they do not deem the current pandemic foreseeable by their insurance policies.

## 4. Further interpretations of ownership rights restrictions

All the rulings mentioned will affect the subsequent court actions in cases of ownership rights restrictions due to various epidemiological measures. Whether there are grounds for damages is a key question that requires an individual assessment. Except for expropriation, which normally involves compensation, temporary restrictions on ownership rights caused by the adoption of public health measures are not expected to result in damages. Even though the temporary suspension of business activities leads to the loss of future income, which is regarded as property within the meaning of Protocol No. 1 to the ECHR and thus requires compensation, governments opted for offering incentives and financial assistance programs instead of awarding damages (Nekit, 2021).

The traditional view of private property law as sacrosanct can no longer be maintained. Split between protecting the public and private interests, property law is currently – considering the highly unpredictable new circumstances for all of humanity – undergoing a transformation. The pandemic and protection of public health have proven to be justifiable reasons for further re-examination of the significance, purpose, prospects, and validity of the temporarily imposed restrictions on property rights.

**References:**

Braithwaite, B., Harby, H., & Miletić, G. (2020). *COVID-19 i njegov uticaj na ljudska prava*, *Pregled relevantne prakse Evropskog suda za ljudska prava*. AIRE centar.

Bubnjak, A. (2019). Pravo na imovinu u kontekstu ljudskih prava sa posebnim osvrtom na praksu Evropskog suda za ljudska prava. *Socijalna politika 1*. 9–27.

Budak, A. (2019). Teorijski i praktični aspekti prava privatnosti sa osvrtom na praksu Evropskog suda za ljudska prava u digitalnom dobu. *CIVITAS 2.* 58–71.

*Cassar v. Malta*.

*Dodero v. Walton County*, No. 3:30-cv-05358-RV-HTC (N.D. Fla. Apr. 6, 2020).

*Friends of Danny Devito v. Wolf*, No. 68 MM 2020 (Penn. Apr. 3, 2020).

*Iatridis v. Greece*.

*Immobiliare Saffi v. Italy.*

Komnenić, D. (2017). *Pravo na mirno uživanje imovine u presudama i odlukama Evropskog suda za ljudska prava donetim u postupcima u kojima su bivše jugoslovenske republike bile odgovorne države*. Beograd: Doktorska disertacija, Pravni fakultet Univerziteta u Beogradu.

*Lithgow and others v. The United Kingdom.*

Malenica, B. (2020). *Arhitekturom protiv korone: Kako objekti širom sveta menjaju namenu*. Preuzeto 22. 06. 2021. sa: https://www.gradnja.rs/aritekturom-protiv-korone-kako-objekti-sirom-sveta-menjaju-namenu/.

Medić, D. (2020). Ograničenja prava svojine. *Godišnjak fakulteta pravnih nauka*, *10*. 21–34.

*Nat'l Amusements Inc. v. Borough of Palmyra*, 716 F.3d 57 (3d Cir. 2013).

Nekit, K. (2021). Restrictions of Private Property Right in Terms of the Covid-19 Pandemic: The Experience of the US, UK and Ukraine. *The Age of Human Rights Journal 16.* 263–277.

Nikolić, D. (2014). Apsolutnost prava svojine u francuskom pravu. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *4*. 85–101.

Nikolić, D., & Midorović, S. (2018). Savremena evropska pravna teorija o socijalnoj funkciji prava svojine: Nemačka doktrina. *Zbornik radova Pravnog fakulteta u Novom Sadu*, *1*. 65–78.

Osiguranik. com. *Francuski osguravači restoranima moraju pokriti gubitke uzrokovane pandemijom COVID-19* Preuzeto 30. 03. 2022. sa: https://www.osiguranik.com/blog/francuski-osiguravaci-restoranima-moraju-pokriti-gubitke-uzrokovane-pandemijom-covid-19/.

*Pine Valley Developments v. Ireland.*

Sjuggerud A. *The Real Estate and Covid*, *The Effect of COVID-19 Orders on Private Property Rights*. Preuzeto 05. 07. 2021. sa: https://www.shutts.com/assets/htmldocuments/5.7.2020_The%20Effect%20of%20COVID-19%20Orders%20on%20Private%20Property%20Rights.pdf.

Sporrong and Lönnroth *v. Sweden*.

Stern S. (2021). *Taking emergencies seriously*. *Urban Lawyer*. Preuzeto 05. 02. 2022. sa: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3632203.

*Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency* 535 U.S. 302 (2002).

*The Covid-19 crisis in the Western Balkans Economic Impact, Policy Responses, and Short-term Sustainable Solutions*. Preuzeto 17. 03. 2022. sa: https://www.oecd.org/south-east-europe/COVID-19-Crisis-Response-Western-Balkans.pdf.

*Tre Traktörer Aktiebolag v. Sweden*.

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## OGRANIČENJE PRAVA SVOJINE I NJENE FUNKCIJE U USLOVIMA PANDEMIJE COVID-19

**Rezime:** U radu su analizirani uticaj pojedinih restriktivnih mera u uslovima pandemije COVID-19 na institut prava svojine u kontekstu njegove transformacije od liberalnog koncepta do sve češćeg državnog intervencionizma i ograničavanje tri osnovna svojinska ovlašćenja, tj. držanje, korišćenje i raspolaganje. Shvatanje prava svojine, kao instituta koji ima socijalnu funkciju, bio je podsticaj da se sagleda kakve je sve nove uloge dobio u okolnostima pandemije. Takođe, autor ispituje, oslanjajući se na raniju praksu Evropskog suda za ljudska prava i najnovije presude američkih i francuskih sudova vezane za ograničenje prava svojine, kako su organi državne vlasti uredili ostvarivanje ovog prava u svrhu zaštite zdravlja i sprečavanja širenja zaraze.

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# IZAZOVI ODRŽIVOSTI JAVNOG DUGA REPUBLIKE SRBIJE U USLOVIMA PANDEMIJE COVID-19

**Apstrakt:** Naučna i stručna javnost već duže vreme vodi raspravu po pitanju uticaja javnog duga na privredni razvoj. Iako je kriza iz 2007. godine dodatno potencirala značaj problema zaduženosti privreda zemalja širom sveta, ovaj problem je postao aktuelniji s pojavom pandemije COVID-19 i naročito dobio na težini usled neizvesnosti dužine njenog trajanja. Upravo iz tog razloga ovaj rad ima za cilj da doprinese jasnijem razumevanju posledica krize izazvane pandemijom COVID-19 na javni dug Republike Srbije i da ukaže na razmere problema zaduženosti sa kojima se suočava srpska privreda, posebno u odnosu na zemlje Zapadnog Balkana. Osnovne metode koje su korišćene u radu – metode analize i sinteze, komparativni metod i metod generalizacije, prilagođene su navedenom cilju i specifičnosti predmeta istraživanja. Dobijeni rezultati istraživanja trasiraju smernice za prioritetne aktivnosti nadležnih državnih organa u pravcu smanjenja javnih rashoda sa ciljem ostvarivanja održivog kretanja javnog duga i stvaranja uslova za dinamiziranje tempa privrednog rasta.

**Ključne reči**: *pandemija COVID-19, održivost javnog duga, Republika Srbija.*

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## 1. Uvod

Već nekoliko decenija je javni dug konstantan izvor prihoda čiji osnovni cilj nije samo uspostavljanje budžetske ravnoteže, već i efikasno finansiranje ekonomske politike koju vodi vlada jedne države. Javni dug nastaje usled deficita u budžetu, pa država javnim zaduživanjem preuzima obavezu da vrati pozajmljena sredstva uz ugovorenu kamatu. On predstavlja i oblik nefiskalnog javnog prihoda, a projektuje se u finansijskim obavezama države, s jedne strane ugovorom o zajmu, a sa druge po osnovi zakonskih obaveza koje slede iz obaveza države prema domaćim ili stranim investitorima, prema drugim državama ili međunarodnim monetarnim institucijama.

Zemlje u razvoju imaju jasnu dinamiku javnog duga u odnosu na razvijene zemlje. U procesu privrednog razvoja, one se često nađu u situaciji u kojoj su nivoi javnog duga u pozitivnoj korelaciji s nivoima privrednog rasta. Naime, brža dinamika rasta omogućava kretanje ovih zemalja opadajućom putanjom duga pod uslovom da je akumulacija duga podržana pažljivo osmišljenom politikom i strategijom upravljanja javnim dugom. Javni dug, međutim, postaje neodrživ kada teret duga počne da raste, odnosno kada rast duga nadmaši rast prihoda, a servisiranje duga počne da prelazi preporučene nivoe praga.

Kriza javnog duga u jednoj nacionalnoj ekonomiji ne utiče negativno samo na javni sektor i efikasnost izvršavanja njegovih bazičnih funkcija u privredi, kao što su odbrana, bezbednost, pravosuđe, zdravstvo, socijalna zaštita i dr., već dovodi i do poremećaja ravnoteže i povećanja nestabilnosti privrede jedne zemlje. U uslovima visokog javnog duga dolazi do značajnog povećanja kamata u javnom i privatnom sektoru tako da lična potrošnja i investicije opadaju. U slučaju kada javni dug prevazilazi granicu održivosti dolazi do opadanja BDP-a 5–10% sa posledičnim efektom na rast nezaposlenosti. U takvim uslovima od suštinskog značaja je *ex ante* predviđanje krize javnog duga i blagovremeno preduzimanje mera za njeno rešavanje (Arsić, 2012, str. 114). Da bi se izbegla ovakva situacija, neophodno je preduzimanje nekoliko mera. Prvo, uspešno smanjenje duga zahteva fiskalnu konsolidaciju i kombinovanu primenu mera ekonomske politike, koje će podržati privredni rast. Drugo, primena mera fiskalne konsolidacije trebalo bi da ima za

cilj eliminisanje strukturnih slabosti u privredi. Treće, nosioci ekonomske politike bi trebalo da budu svesni da je smanjenje javnog duga dugoročni problem koji zahteva primenu kombinovanih mera ekonomske politike.

Svetska finansijska i ekonomska kriza iz 2007. godine ostavila je u nasleđe javni dug na istorijski visokom nivou u gotovo svim zemljama, posebno u onim razvijenim, i to u razmerama koje do danas nisu registrovane. Imajući u vidu ekstremnu ozbiljnost krize, koju su mnogi nazvali „velikom recesijom", ovo nagomilavanje duga delovalo je kao amortizer za proizvodnju kroz rad automatskih stabilizatora, za troškove nastale stabilizacijom finansijskog sektora i fiskalne stimulativne mere koje su preduzete na početku krize. Dok su se odnosi duga generalno smanjili nakon krize, oni su i dalje ostali na visokim nivoima u nekim zemljama. Međutim, pandemija COVID-19, koja se javila početkom 2020. godine, za globalnu ekonomiju je predstavljala nešto drugačiji, ali ozbiljniji šok. Usled primene mera „zaključavanja" sredinom marta, realni BDP je zabeležio rekordan pad gotovo u svim zemljama sveta u prvom kvartalu 2020. Fiskalne pozicije su bile snažno pogođene krizom kako kroz automatske stabilizatore tako i kroz diskrecione fiskalne mere. Ova značajna podrška fiskalne politike, zajedno sa merama monetarne politike, bila je neophodna kako bi se ublažili negativni ekonomski efekti krize izazvane pandemijom COVID-19.

Imajući u vidu da je pitanje javnog duga višedecenijski problem s kojim se suočava privreda Republike Srbije i uzimajući u obzir razmere aktuelne krize izazvane pandemijom COVID-19, predmet istraživanja ovog rada je analiza stanja i dinamike kretanja javnog duga u prethodnom periodu s posebnim osvrtom na 2020–2021. godinu. Rad je usmeren na pružanje odgovora na sledeće istraživačko pitanje: u kojoj meri je pandemija COVID-19 doprinela pogoršanju stanja javnog duga Republike Srbije u odnosu na period pre krize?

Ostvarivanje osnovnog cilja istraživanja izvršeno je primenom metoda analize i sinteze, komparativnog metoda i metoda generalizacije. Ključnu informacionu osnovu istraživanja čine podaci iz relevantnih domaćih baza podataka (Ministarstvo finansija Republike Srbije) i međunarodno uporedivih baza podataka (Međunarodni monetarni fond, EUROSTAT i *Trading Economics*).

U skladu sa postavljenim predmetom i ciljem istraživanja, ovaj rad, pored uvodnih razmatranja, čine sledeće celine: prvi deo se odnosi na razmatranje problema zaduženosti i utvrđivanje granica održivog nivoa zaduživanja; problematika javnog duga u uslovima pandemije COVID-19 analizirana je u drugom delu rada, a nakon ukazivanja na dinamiku kretanja javnog duga u Republici Srbiji u prethodnom periodu, izvršena je sinteza zaključnih razmatranja do kojih se došlo istraživanjem navedenog problema.

## 2. Održivost javnog duga

Potreba za zaduživanjem proizilazi iz bazične makroekonomske jednačine, gde je agregatna proizvodnja u zemlji manja od agregatne potrošnje. Zbog unutrašnje neravnoteže, koja rezultira povećanjem potražnje za inostranim dobrima, dolazi do pojave deficita spoljnotrgovinskog bilansa. Spoljnotrgovinski deficit dovodi do smanjenja priliva deviza od izvoza, što se negativno reflektuje i na budžetski deficit. Unutrašnje zaduživanje smanjuje likvidnost privrede i dovodi do efekta istiskivanja privatnih investicija, rasta kamatnih stopa zbog veće tražnje za novcem, smanjenja nivoa dohotka, što dovodi do recesije. Pored zaduživanja na domaćem tržištu, zaduživanje se može vršiti i u inostranstvu, čime se formira spoljna zaduženost koja je ostvariva ukoliko se zemlja percipira kao visoko kredibilan dužnik koji u budućnosti može uredno servisirati svoje obaveze. Zaduživanje nije svojstveno zemljama u razvoju, već razvijenim zemljama čiji osnovni cilj nije finansiranje nezaposlenosti, inflacije, budžetskog deficita i slično, već je to uobičajena praksa u savremenim uslovima. Zaduženost se pojavljuje kao potreba za finansijskim sredstvima usled jaza između javnih prihoda i javnih rashoda, prethodnog neefektivnog zaduživanja, povećanog ulaganja u javni sektor, infrastrukturu itd.

Brojni istraživači potvrđuju postojanje pozitivne veze između veličine spoljnog duga i privrednog razvoja. Rezultati empirijskih istraživanja pokazuju da ukoliko spoljni dug pređe kritičnu granicu dolazi do efektuiranja negativnog uticaja na investicije, na nivo međunarodne konkurentnosti, na stabilnost finansijskih tržišta i dinamiku privredne

aktivnosti. Nemoguće je, međutim, utvrditi granicu zaduživanja koja je primenljiva na sve nacionalne ekonomije jer različite nacionalne ekonomije različito podnose teret zaduživanja. Neke doživljavaju krizu pri veoma malom procentu učešća javnog i spoljnog duga u bruto domaćem proizvodu, dok druge funkcionišu s učešćem javnog duga i iznad visine bruto domaćeg proizvoda. Granice održivosti zaduživanja se ne mogu tačno odrediti, ali su one dostignute onog momenta kada su ugroženi ciljevi makroekonomske politike. Drugim rečima, održivost zaduživanja nije ostvarena sve dok javni rashodi, koji se finansiraju zaduživanjem, povećavaju stepen iskorišćenosti i podižu kvalitet proizvodnog kapaciteta privrede (Despotović, Cvetković, & Veličković, 2010).

Nivo održivosti javnog duga u velikoj je meri determinisan stepenom privrednog razvoja i karakterom ekonomske politike koju vodi vlada jedne zemlje. Javni dug zavisi od kretanja brojnih varijabli, njihovog nivoa i dinamike, ali i od neizvesnosti u njihovom kretanju (primarni fiskalni deficit, stopa privrednog rasta, kamatna stopa i devizni kurs). Osim toga, održivost javnog duga je endogena varijabla koja zavisi od fiskalne politike, pa je u uslovima visokog javnog duga najvažnija kredibilna fiskalna konsolidacija.

Problematika održivosti zaduživanja, s kojom su bile suočene zemlje u razvoju u prošlosti, podstakla je neke razvijene zemlje da u saradnji sa Svetskom bankom i Međunarodnim monetarnim fondom preduzmu određene mere, čijom realizacijom bi se obezbedio izlazak pomenutih zemalja iz zone prekomerne zaduženosti. Razvijene zemlje, dakle, sprovode konstantan nadzor nad nedovoljno razvijenim zemljama kako ne bi došlo do nagomilavanja i neodrživosti duga i kako bi se podstakao priliv kapitala u ove zemlje.

Međunarodni monetarni fond je razvio jedan okvir za analizu održivosti javnog i spoljnog duga, kao instrument za sprečavanje nastanka i za otklanjanje dužničke krize. Ovaj okvir čine dve komplementarne komponente koje uključuju (Janković & Stanišić, 2015, str. 267) analizu održivosti ukupnog javnog duga i analizu održivosti ukupnog spoljnog duga. Svaka od ovih komponenti sadrži u sebi osnovni scenario koji je sastavljen od niza makroekonomskih projekcija koje čine politike usvojene od strane vlade s jasno utvrđenim pretpostavkama i parametrima, i niz testova osetljivosti primenljivih na datom osnovnom scenariju. Kre-

tanjem indikatora duga i stres testovima omogućava se procena ranjivosti zemalja na krizu plaćanja. Dobijeni rezultati se moraju proceniti na osnovu relevantnih i za svaku zemlju svojstvenih okolnosti, uzimajući u obzir posebne karakteristike duga date zemlje. Zbog tih specifičnosti napravljena su dva okvira – jedan koji se odnosi na zemlje s niskim dohotkom i drugi za tržišno orijentisane ekonomije.

Osnovni cilj prvog okvira jeste da se pruži podrška ovim zemljama pri donošenju odluka o pozajmljivanju na način koji odgovara njihovim potrebama za sredstvima, uzimajući u obzir njihovu sadašnju i buduću sposobnost servisiranja duga. Ovaj okvir obezbeđuje procenu rizika od pojave prezaduženosti, kako bi se preduzele adekvatne i blagovremene mere.

Izvedena analiza održivosti duga, na osnovu ovog okvira, sastoji se od (Janković & Stanišić, 2015, str. 266): standardizovanih analiza koje unapred procenjuju dug i dinamiku njegovog servisiranja pod osnovnim scenarijom i kretanja pomoću mogućih šokova; procene održivosti duga u odnosu na pragove zaduženosti određenih zemalja koji zavise od kvaliteta politika i institucija i preporučene strategije zaduživanja koja ograničava rizike problema zaduženosti.

Tabela 1. *Pragovi održivosti duga prema okviru održivosti duga (DSF – Debt Sustainability Framework) Svetske banke i Međunarodnog monetarnog fonda*

| **Kvalitet ekonomskih politika** | **Sadašnja vrednost duga kao % od** | | | **Servisiranje spoljnog duga kao % od** | |
|---|---|---|---|---|---|
| | Izvoz | BDP | Budžetski prihod | Izvoz | Budžetski prihod |
| **Nizak** | 100 | 30 | 200 | 15 | 25 |
| **Srednji** | 150 | 40 | 250 | 20 | 30 |
| **Visok** | 200 | 50 | 300 | 25 | 35 |

Izvor: Internationaly Monetary Fund (2022a). The Debt Sustainability Framework for Low-Income Countries. Retrieved from https://www.imf.org/external/pubs/ft/dsa/lic.htm

Prema ovom okviru, koncipiran je stav da država s niskim dohotkom a boljim ekonomskim politikama i institucijama može izdržati veći nivo spoljnog duga, te se zemlje, po osnovu kvaliteta politike, klasifikuju u tri kategorije: nizak, srednji i visok kvalitet politike. Takođe, ovaj okvir utvrđuje tri praga za svaki indikator zaduženosti (nivo izvoza, bruto domaćeg proizvoda i prihoda). Visoki pragovi odgovaraju visokom nivou ekonomskih politika, što je i logično budući da zemlje sa visokim kredibilitetom ekonomske politike mogu imati veće vrednosti pokazatelja zaduženosti u odnosu na zemlje sa neefikasnom ekonomskom politikom.

Na osnovu pragova održivosti (Tabela 1), rizik prezaduženosti se može klasifikovati u četiri kategorije:

1) Nizak rizik – svi indikatori su daleko ispod pragova zaduženosti za određene zemlje;
2) Umeren rizik – osnovni scenario ne ukazuje na prekoračenje, ali prilikom stres testiranja dolazi do prekoračenja pragova zaduženosti;
3) Visok rizik – dolazi do prekoračenja pragova zaduženosti pri osnovnom scenariju, ali i pogoršanja stanja pri stres testiranju i
4) Problem prezaduženosti – javlja se kada dođe do značajnog prekoračenja zaduženosti koje neprekidno traje.

Međutim, nije redak slučaj da indikatori daju različite rezultate, što nameće potrebu da se pristupi pažljivoj interpretaciji i proceni stanja duga posmatrane zemlje.

Postoje različiti pristupi u analizi održivosti spoljnog duga, koji daju važne informacije kreatorima ekonomske politike (Dragutinović, 2012, str. 13). Ekonometrijski pristup se koristi prilikom testiranja vremenskih serija, odnosno testiranja javnih prihoda, rashoda, fiskalnih rezultata i drugih veličina kako bi se utvrdila njihova stacionarnost ili kointegracija. Računovodstveni pristup se koristi pri izračunavanju primarnog fiskalnog rezultata, koji je neophodan za stablilizaciju učešća javnog duga u bruto domaćem proizvodu. Vrednost neophodnog prilagođavanja predstavlja razliku između primarnog fiskalnog rezultata, koji je neophodan za stabilizaciju duga, i stvarnog ili projektovanog primarnog fiskalnog rezultata. Makroekonomski pristup koristi ekonometrijske modele za procenu ravnotežne zavisnosti između fiskalnog re-

zultata i niza objašnjavajućih varijabli. Korišćenjem projekcija ključnih objašnjavajućih varijabli moguće je izračunati normu fiskalnog rezultata za pojedinačnu zemlju u budućnosti.

## 3. Problematika javnog duga u uslovima pandemije COVID-19

Uvećanje razvojnih mogućnosti van okvira domaće akumulacije putem deficita u razmeni, koji je finansijski pokriven zaduživanjem u inostranstvu, ekonomski je opravdano ukoliko se tako stečena sredstva ekonomski efikasno upotrebljavaju. Drugim rečima, pomoću njih treba ubrzati privredni rast do onoga nivoa koji omogućava oslobađanje jedne nacionalne ekonomije od daljeg zaduživanja u inostranstvu i podstaći strukturne transformacije u privredi sa ciljem jačanja izvozne sposobnosti privrede kako bi se obezbedila sredstva za vraćanje dugova i kamate. Ukoliko se kapital iz eksternih izvora koristi u neproduktivne svrhe, privredni rast će izostati, a time i mogućnosti za otplatu duga. Visina spoljnog duga predstavlja značajan indikator fiskalne i ekonomske stabilnosti države tako da pitanje upravljanja javnim dugom predstavlja veoma važno pitanje razvoja jedne privrede.

„Rastući dugovi u uslovima ekonomske i finansijske liberalizacije i velikog naduvavanja 'monetarnog balona' u svetu krajem XX i početkom XXI veka, posebno u poslednje tri decenije, dovode do znatnih makroekonomskih problema i ograničavanja ekonomskog rasta i razvoja. To je izraženije u zemljama koje spoljno i ukupno zaduživanje koriste za potrebe potrošnje, umesto u produktivne investicije i razvoj i u onim zemljama koje imaju veću otplatu duga u odnosu na prirast bruto domaćeg proizvoda" (Šojić, 2019, str. 36).

Na porast zaduživanja utiču i krizne situacije i to ne samo ekonomske (kao što je bila svetska finansijska i ekonomska kriza), već i zdravstvene prirode (aktuelna pandemija COVID-19). „Pandemija virusa COVID-19 predstavljala je veliki i neočekivani egzogeni šok koji je početkom 2020. godine uveo privrede gotovo svih zemalja u svetu u stanje recesije" (Petrović-Ranđelović & Radukić, 2021, str. 160). Ozbiljne ekonomske i društvene posledice pandemije nastale su interakcijom šokova

na strani ponude (pad proizvodnje i investicija, ograničene mogućnosti nabavke faktora proizvodnje) i šoka na strani tražnje (pad tražnje usled neizvesnosti, opadanja prihoda domaćinstava i njihove kupovne moći). U takvim uslovima došlo je do opadanja globalnih trgovinskih i investicionih tokova, depresiranja cena robe, pogoršanja eksterne pozicije ekonomija širom sveta i pojave globalne recesije.

Pandemija zapravo predstavlja zdravstveni šok koji je inicirao šok na strani ponude i šok na strani tražnje umanjujući pritom mogućnosti za realizaciju ekonomskih aktivnosti i postavljajući ograničenja za razvoj ekonomija širom sveta. Neizvesnost u pogledu realizacije ekonomskih aktivnosti nametnula je nove izazove pred kreatore ekonomske politike, koji su, suočeni sa krizom bez presedana u ekonomskoj istoriji, preduzeli mere za stabilizaciju uslova poslovanja i pružanja podrške za oporavak privreda od ovog zdravstvenog šoka. „Po prvi put nakon Velike depresije razvijene i ekonomije u nastajanju su se našle u recesiji 2020. godine. Danas, sve više dominira uverenje da su razmere ove krize, koje se manifestuju u paralisanju ekonomske aktivnosti, visokoj stopi nezaposlenosti i sve većem nivou javnog duga, mnogo šire i dublje od Globalne finansijske krize (2008–2009)" (Schilirò, 2020). Upravo iz tog razloga su vlade zemalja širom sveta u veoma kratkom roku preduzele značajne fiskalne, monetarne i finansijske mere, odnosno nešto drugačiji set mera ekonomske politike koji zbog jedinstvenog karaktera ovog zdravstvenog šoka nije baziran na primeni dosad poznatih rešenja. Ovo naročito iz razloga jer je reč o pandemiji koja nije zahvatila samo zemlje sa niskim/srednjim dohotkom, već čitav svet u uslovima visokog stepena integracije privreda u svetsku privredu i držanja kamatnih stopa na istorijskom minimumu, što je značajno olakšalo prelivanje negativnih efekata na globalne mreže proizvodnje i lance snabdevanja. Carlsson-Szlezak et al. (2020), u svom istraživanju mogućnosti oporavka od krize izazvane pandemijom COVID-19 kroz koncept „geometrije šoka", identifikovali su tri scenarija ekonomskog oporavka. Prema prvom – najoptimističnijem scenariju (oblik slova V), agregatna proizvodnja se brzo oporavlja i vraća na nivo pre krize. Međutim, prema drugom, put oporavka se kreće u obliku slova U, pri čemu autput brzo opada, ali se ne vraća na nivo pre krize. Prema trećem putu (u obliku slova L), autput opada i stope rasta nastavljaju da opadaju, pri čemu se jaz između

autputa pre i nakon krize produbljuje. Upravo se na početku pandemije smatralo da će se privreda kretati u obliku slova V. Međutim, s povećanjem broja zaraženih došlo je do velikog pritiska na zdravstvene sisteme mnogih zemalja, što je već bio pokazatelj suočavanja s veoma teškim ekonomskim posledicama pandemije i najtežim scenarijima koji bi pogodili ekonomije širom sveta.

Za razliku od prethodnih kriza, naročito svetske finansijske i ekonomske krize iz 2007. godine, centralne banke su odmah reagovale kako bi se sprečila recesija, ali i kako bi se obezbedila održivost javnog duga. Procenu održivosti javnog duga izvršili su Briseno & Perote (2020) na primeru zemalja evrozone koje su u poslednje dve decenije bile suočene sa tri velike krize: hipotekarnom krizom, krizom javnog duga i krizom izazvanom pandemijom COVID-19. Oni su pronašli da je pandemija COVID-19 uticala da zemlje evrozone suočene s negativnim stopama privrednog rasta i visokom stopom nezaposlenosti povećavaju javne dugove do onog nivoa koji se ne može smatrati održivim. Stoga su reforme u evropskim sistemima penzijskog osiguranja i osiguranja za slučaj nezaposlenosti neophodne kako bi se obezbedila održivost javnog duga usred pandemije COVID-19. Osim toga, iako visok nivo javnog duga može smanjiti stopu privrednog rasta, Butkus et al. (2021) su pronašli da statistički negativan marginalni efekat duga na rast počinje da se ispoljava na nižim vrednostima odnosa duga prema BDP-u kada je troškovni multiplikator niži i obratno. U osnovi, interventnim merama fiskalne, monetarne i makroprudencijalne politike značajno je ublažen pad proizvodnje usled krize izazvane pandemijom COVID-19.

Prema Kightley & Jędrzejowicz (2021), dinamika javnog duga zavisi od dve ključne varijable – primarnog bilansa države i razlike između prosečne efektivne kamatne stope na javni dug i rasta nominalnog BDP-a (r – g). U slučaju negativne razlike između r i g, nulti primarni suficit će na kraju dovesti do pada odnosa duga prema BDP-u, bez obzira na njegovu inicijalnu veličinu. Drugi način da se predstave implikacije jednačine dinamike duga jeste pretpostavka da će u uslovima postojanja negativne razlike između r i g bilo koja veličina primarnog deficita rezultirati konačnim odnosom duga prema BDP-u. Osim toga, pod pretpostavkom da razlika između r i g ostaje negativna, ne samo da izostaju fiskalni troškovi za veći javni dug, već su i troškovi blagostanja

niži nego što se obično pretpostavlja, zbog smanjenja graničnog proizvoda kapitala.

Niža ili negativna razlika između r i g može sprečiti dalje povećanje koeficijenta duga, ali i dovesti do smanjenja duga. Ako je razlika između r i g negativna, onda zemlja s većim koeficijentom duga, kako bi stabilizovala dug, zapravo može ostvariti veći primarni deficit od manje zadužene zemlje. Međutim, kada je reč o smanjenju duga, da bi dug prema BDP-u opao za jedan procentni poen, primarni suficit uvek mora biti za jedan procentni poen veći od njegovog nivoa za stabilizaciju duga. Značajno smanjenje javnog duga sa sadašnjih nivoa zahtevalo bi ostvarivanje značajnih primarnih viškova tokom nekoliko godina, čak i ako je razlika između r i g povoljna.

Pitanje je: kakve su implikacije niskih kamatnih stopa na fiskalnu održivost, odnosno da li će u takvom okruženju fiskalna prilagođavanja biti skuplja? Ako su kamatne stope isuviše niske i nema prostora za njihovo dalje snižavanje, onda monetarna politika ne igra značajnu ulogu u smanjenju javnog duga. Ovo iz razloga što kamatne stope olakšavaju održavanje visokih stopa javnog duga i teže ih smanjuju. Usled toga, u uslovima krize izazvane pandemijom COVID-19 i u svetu niskih kamatnih stopa, fiskalna politika bi trebalo da pokaže veću efektivnost u neutralisanju negativnih efekata krize na privrede zemalja širom sveta.

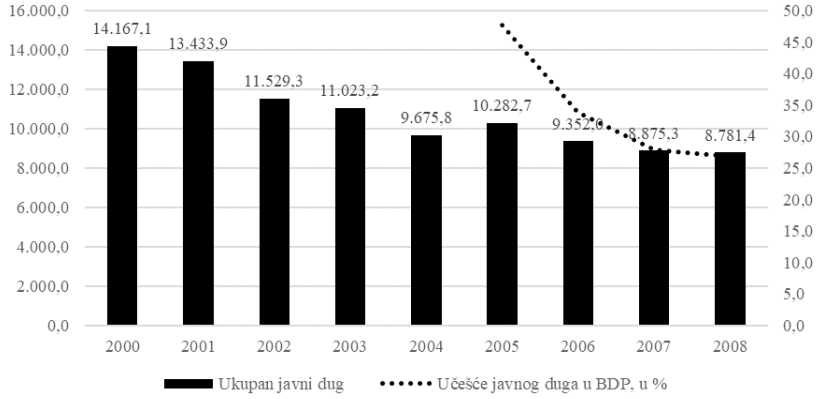
Sa ciljem ublažavanja negativnih ekonomskih posledica pandemije, većina zemalja je već u prvom tromesečju 2020. godine primenila kombinovani set mera ekonomske politike i to poreske politike, direktnih podsticaja (davanja) iz budžeta i mera za očuvanje likvidnosti. U Republici Srbiji, mere podrške privredi u iznosu od 675,9 milijardi dinara uvedene su kroz tri paketa (Marjanović i dr., n.d. ): prvi paket mera obuhvatao je sve tri navedene grupe pomoći u iznosu od 608,3 milijardi dinara; drugi paket mera je predstavljao kombinaciju mera poreske politike i mera direktnih davanja u iznosu od 66 milijardi dinara i treći paket mera je bio sektorskog karaktera budući da je podrška bila namenjena preduzećima koja posluju u sektoru turizma i on je, po svojoj veličini, bio najmanji (1,6 milijardi dinara).

## 4. Analiza dinamike kretanja javnog duga Republike Srbije u prethodnom periodu

Ne ulazeći dublje u analizu rezultata primenjenih mera ekonomske politike u periodu od 2001. godine, kada su preduzeti značajni napori u pravcu realizacije sveobuhvatnog programa ekonomskih reformi, do pojave prvih efekata pandemije COVID-19, može se izneti generalni stav da su postignuti relativno zadovoljavajući rezultati u eliminisanju ekonomskih ograničenja koja su narušavala razvojnu viziju srpske privrede (makroekonomska stabilnost, stabilna inflacija, rast stope zaposlenosti…). Relativno zadovoljavajuća makroekonomska performansa srpske privrede, ostvarena u prethodnom periodu, predstavljala je dobru osnovu za ulazak u zonu COVID-19 krize sa mnogo manjim ekonomskim i socijalnim troškovima prilagođavanja novonastalnim uslovima.

Posmatrajući dinamiku kretanja javnog duga Republike Srbije, jasno se mogu izdvojiti dva perioda. U prvom, koji je trajao od 2000. do 2008. godine (Grafikon 1), došlo je do drastičnog smanjenja javnog duga – sa 14,2 milijarde evra na 8,8 milijardi evra, usled „otpisa 66% duga prema Pariskom klubu i 62% prema Londonskom klubu. Isto tako, vraćanje dugova stranim poveriocima i vraćanje 1,3 milijardi evra po osnovu devizne štednje i domaćih dugova imali su uticaja na smanjenje njegovog nivoa. Tada budžetski deficit nije bio naročito naglašen, jer su prihodi od privatizacije bili dominantna kategorija u punjenju budžeta Republike Srbije kao posledica intenzivnog sprovođenja tranzicionog programa liberalizacije ekonomskih tokova“ (Kalaš et al. 2016, str. 25).

Grafikon 1. Kretanje javnog duga Republike Srbije u periodu od 2000. do 2008. godine, ukupno i u % od BDP

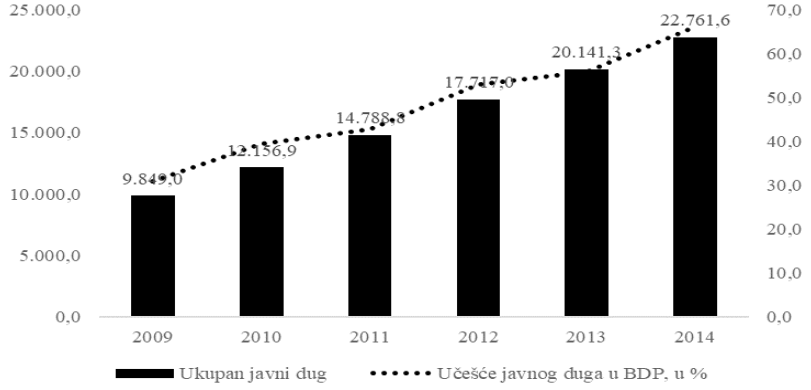



Izvor: Republika Srbija, Ministarstvo finansija (2022). Tabela 5. Javni dug Republike Srbije u periodu od 2000. godine do 31. 5. 2022., 5. jul 2022. godine. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

Drugi period se može okarakterisati kao period u kom kretanje stanja javnog duga prolazi kroz uzlaznu i silaznu fazu u svojoj dinamici i to kretanje se može posmatrati kroz tri faze.

U prvoj fazi, od 2009. do 2014. godine (Grafikon 2), primetno je naglo povećanje javnog duga – sa 9,9 milijardi evra na 22,8 milijardi evra, ali i više nego dvostruko povećanje njegovog udela u BDP-u (sa 30,9% u 2009. na 66,2% u 2014. godini) usled manifestovanja negativnih efekata svetske finansijske i ekonomske krize na privredu Republike Srbije (usporavanje privredne aktivnosti i opadanje rasta BDP-a) i delovanja internih ograničavajućih faktora. Analizirajući prezentovane podatke, moglo bi se uočiti da se, uprkos povećanju prihoda od privatizacije državnih i društvenih preduzeća, u periodu od 2000. do 2014. godine javni dug povećavao brže od realne ekonomske aktivnosti. Naročito je nivo javnog duga više nego udvostručen u 2014. godini u odnosu na 2008. godinu, odnosno zabeleženo je povećanje za 22,7% prosečno godišnje.

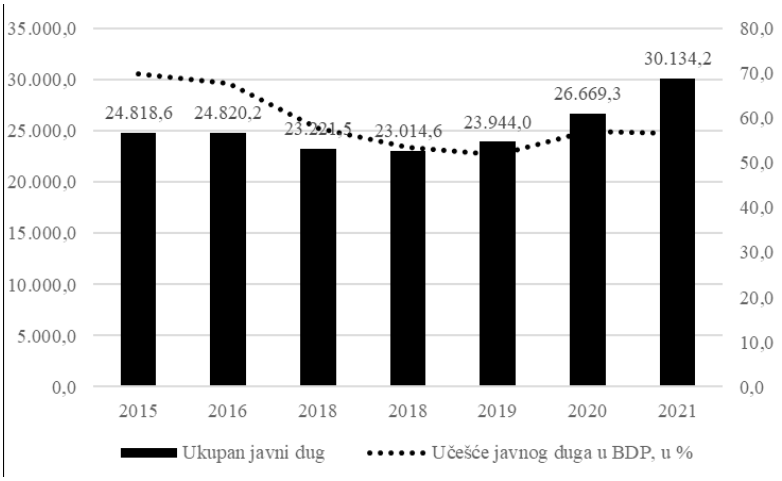
Grafikon 2. Kretanje javnog duga Republike Srbije u periodu od 2009. do 2014. godine, ukupno i u % od BDP




Izvor: Republika Srbija, Ministarstvo finansija (2022). Tabela 5. Javni dug Republike Srbije u periodu od 2000. godine do 31. 5. 2022., 5. jul 2022. godine. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

U drugoj fazi, od 2015. do 2019. godine (Grafikon 3), dolazi do oporavka srpske privrede usled primene mera fiskalne konsolidacije, koje su inicirale trend smanjenja fiskalnog deficita (sa 3,5% u 2015. na 0,2% u 2019. godini) (Republika Srbija, Ministarstvo finansija, 2022), kao i do smanjenja javnog duga kako u apsolutnom iznosu tako i u odnosu na BDP (sa 24,8 milijardi evra na 24 milijarde evra; sa 70% u 2015. na 51,9% u 2019. godini, respektivno).

Grafikon 3. Kretanje javnog duga Republike Srbije u periodu od 2015. do 2021. godine, ukupno i u % od BDP




Izvor: Republika Srbija, Ministarstvo finansija (2022). Tabela 5. Javni dug Republike Srbije u periodu od 2000. godine do 31.5.2022., 5. jul 2022. godine. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

Treća faza, koja je u toku i koja se vezuje za početak pandemije COVID-19, najneizvesnija je i to ne samo po periodu trajanja, već i po razmerama posledica koje ostavlja. „Sa aspekta sadašnje vremenske distance, odnosno u momentu kada pandemija i dalje traje i kada su još uvek neizvesne prognoze ne samo u pogledu dužine trajanja, već i njenog intenziteta, ne mogu se sa sigurnošću iznositi procene o uticaju aktuelne pandemije na nacionalnu ekonomiju“ (Petrović-Ranđelović & Radukić, 2021, str. 160–161).

Pandemija je uslovila značajnu kontrakciju globalne ekonomske aktivnosti. Ekonomske posledice pandemije po privredu Republike Srbije ogledaju se u pogoršanju kretanja ključnih makroekonomskih pokazatelja, kao što su: pad proizvodnje, zaustavljanje i pad spoljnoekonomske aktivnosti, povećanje budžetskog deficita i javnog duga itd. Međutim, u poređenju sa ostalim zemljama Zapadnog Balkana (Albanija, Bosna i Hercegovina, Crna Gora i Severna Makedonija – ZB4) i zemljama članicama Evropske unije, pad privredne aktivnosti u COVID-19 2020.

godini u iznosu od 1% komparativno je manji (-7,0% i -5,9%, prosek, respektivno) (International Monetary Fund, 2022b) usled dobre startne pozicije, strukturnih karakteristika srpske privrede i preduzetih mera podrške privredi u borbi protiv krize.

Tabela 3. *Kretanje unutrašnjeg i spoljnog javnog duga Republike Srbije tokom 2000–2021. u milijardama evra*

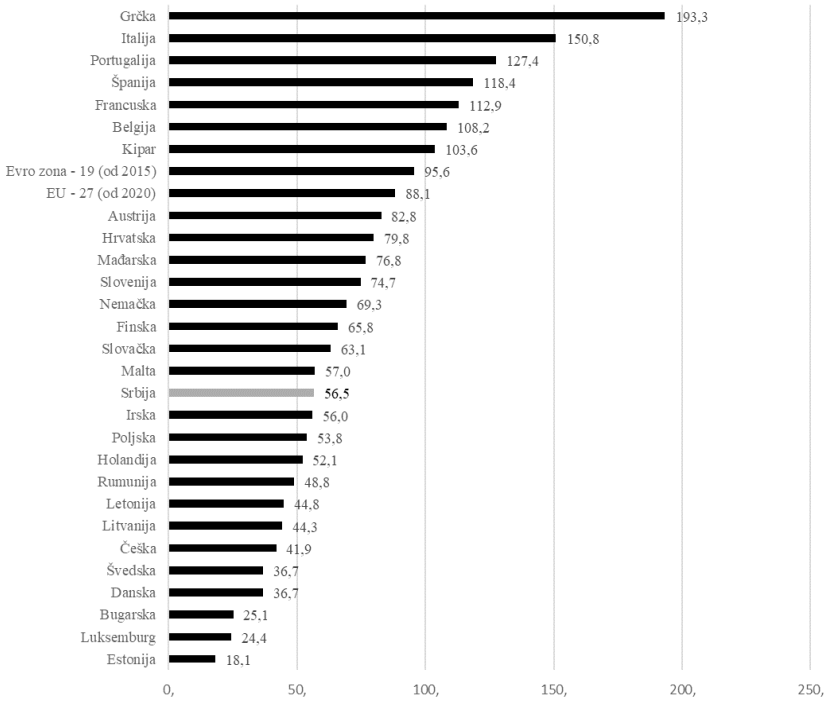
| | Unutrašnji javni dug | Spoljni javni dug | Udeo spoljnog javnog duga u ukupnom javnom dugu u % |
|---|---|---|---|
| 2000 | 4,1 | 10,0 | 71,0 |
| 2001 | 3,8 | 9,5 | 71,2 |
| 2002 | 4,1 | 7,2 | 62,7 |
| 2003 | 4,2 | 6,5 | 59,5 |
| 2004 | 4,0 | 5,2 | 54,4 |
| 2005 | 4,2 | 5,3 | 52,1 |
| 2006 | 3,8 | 4,7 | 50,7 |
| 2007 | 3,4 | 4,6 | 52,0 |
| 2008 | 3,1 | 4,6 | 53,4 |
| 2009 | 4,0 | 4,4 | 44,7 |
| 2010 | 4,5 | 5,8 | 48,3 |
| 2011 | 5,4 | 7,2 | 48,9 |
| 2012 | 6,4 | 8,6 | 48,6 |
| 2013 | 7,0 | 10,2 | 50,8 |
| 2014 | 8,2 | 11,9 | 52,6 |
| 2015 | 9,0 | 13,3 | 53,8 |
| 2016 | 8,7 | 13,9 | 56,0 |
| 2017 | 9,0 | 12,3 | 53,2 |
| 2018 | 9,4 | 12,0 | 52,4 |
| 2019 | 9,8 | 12,6 | 52,7 |
| 2020 COVID-19 | 11,2 | 14,0 | 52,6 |
| 2021 COVID-19 | 11,3 | 17,4 | 57,7 |

Izvor: Republika Srbija, Ministarstvo finansija (2022). Tabela 5. Javni dug Republike Srbije u periodu od 2000. godine do 31. 5. 2022., 5. jul 2022. godine. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

Primena „mera u vidu subvencija privredi i stanovništvu, poreskih odlaganja, smanjenja referentnih kamatnih stopa centralnih banaka, ekspanzivne monetarne politike, politike 'jeftinog novca', kao i državne pomoći najugroženijim sektorima ugostiteljstva, saobraćaja i turizma, doprinela je produbljivanju budžetskih deficita i rastu javnih dugova zemalja širom sveta" (Đorđević et al., 2021, str. 69). Tako je početkom krize izazvane pandemijom COVID-19 budžetski deficit zemalja Evropske unije povećan sa 0,6% BDP-a u 2019. godini na 6,8% BDP-a u 2020. godini (EUROSTAT, 2022), dok je u zemljama Zapadnog Balkana u proseku povećan sa 0,7% BDP-a u 2019. godini na 7,7% BDP-a u 2020. godini (Proračun autora na osnovu podataka: Trading Economics, 2022). Povećanje budžetskog deficita u Republici Srbiji u 2020. godini u odnosu na 2019. godinu (-8,3% BDP, 0,2% BDP, respektivno) veće je od proseka regiona Zapadnog Balkana (7,7% BDP u 2020. godini). Najveće povećanje budžetskog deficita u regionu u 2020. godini zabeleženo je u Crnoj Gori (sa 2% BDP-a u 2019. na 10,1% BDP-a u 2020. godini), a najmanje u Bosni i Hercegovini (5,3% BDP) (Proračun autora na osnovu podataka: Trading Economics, 2022). Tokom 2021. godine nastavljene su negativne tendencije u kretanju državnog budžeta u Republici Srbiji (4,6% BDP-a), kao i u svim posmatranim zemljama (Evropska unija - 4,6% BDP; Albanija 4,8% BDP, Bosna i Hercegovina 0,3% BDP, Severna Makedonija 5,4% BDP).

Neposredna reakcija nosioca ekonomske politike, naročito primena mera ekspanzivne fiskalne politike u cilju zaustavljanja pada ekonomske aktivnosti i održanja stope privrednog rasta, dovela je do naglog povećanja javnog duga u gotovo svim zemljama sveta. Javni dug Republike Srbije povećan je sa 23,9 milijardi evra u 2019. godini na 26,6 milijardi evra u 2020. i 30,1 milijardu evra u 2021. godini (Grafikon 3). Takvo povećanje nivoa javnog duga posledica je brojnih fiskalnih i monetarnih prilagođavanja srpske privrede uslovima krize koju je izazvala pandemija COVID-19. Relativno povećanje nivoa javnog duga u kriznim godinama u iznosu od 57% i 56,5% u BDP-u precizniji je indikator dubine krize sa kojom se suočava srpska privreda u poslednje dve godine.

Grafikon 4. Učešće javnog duga u BDP-u (u%) u zemljama članicama Evropske unije i u Republici Srbiji 2021.




Izvor: EUROSTAT (2022) Retrieved from https://ec.europa.eu/eurostat/data/database

Posmatrajući strukturu javnog duga, uočava se da je u čitavom analiziranom periodu, od 2000. do 2021. godine, spoljni javni dug bio veći od unutrašnjeg javnog duga (Tabela 3). Naročito je to bio slučaj na kraju 2021. godine kada je spoljni javni dug iznosio 17,4 milijardi evra ili 57,7% ukupnog javnog duga, a unutrašnji javni dug 11,3 milijardi evra ili 37,6% ukupnog javnog duga, što potvrđuje negativan uticaj pandemije na strukturu javnog duga Republike Srbije.

Stanje javnog duga Republike Srbije može se posmatrati i prema njegovoj valutnoj strukturi. Tako je, prema podacima Uprave za javni dug (2021, p. 3), učešće javnog duga u stranoj valuti na kraju decembra 2021. godine iznosilo 71,5%, pri čemu dominantno učešće zauzima

zaduživanje u evrima (57,7%), zatim u dinarima (28,5%), te američkim dolarima (10,8%), dok zaduživanje u ostalim stranim valutama iznosi 0,8%. Primetno je značajno povećanje učešća duga u domaćoj valuti u odnosu na period pre krize izazvane pandemijom COVID-19, što je posledica težnje da se smanji izloženost privrede valutnom riziku emisijom hartija od vrednosti u domaćoj valuti.

Tabela 4. *Učešće javnog duga u BDP-u (u %) u zemljama Zapadnog Balkana, 2000–2021.*

| | Albanija | Bosna i Hercegovina | Crna Gora | Severna Makedonija | Srbija | Prosek regiona |
|---|---|---|---|---|---|---|
| 2000. | 63,7 | 34,6 | n/a | 45,5 | 224,7 | 135,1 |
| 2001. | 60,6 | 35,2 | n/a | 45,2 | 106,3 | 75,8 |
| 2002. | 64,1 | 31,1 | 76,7 | 40,4 | 76,1 | 58,3 |
| 2003. | 60,2 | 27,6 | 40,8 | 36,4 | 71,7 | 54,1 |
| 2004. | 57,4 | 25,4 | 45,3 | 34,5 | 62,1 | 48,3 |
| 2005. | 58,2 | 25,5 | 38,5 | 36,6 | 51,3 | 44,0 |
| 2006. | 56,6 | 21,2 | 36,6 | 30,5 | 37,9 | 34,2 |
| 2007. | 53,5 | 18,7 | 31,7 | 23,5 | 31,2 | 27,4 |
| 2008. | 55,1 | 30,8 | 34,1 | 20,6 | 30,5 | 25,6 |
| 2009. | 59,6 | 35 | 43,6 | 23,7 | 33,9 | 28,8 |
| 2010. | 57,7 | 40,8 | 45 | 24,2 | 41,2 | 32,7 |
| 2011. | 59,4 | 39,5 | 48,5 | 27,7 | 43,9 | 35,8 |
| 2012. | 62,1 | 42,2 | 56,8 | 33,6 | 54,4 | 44,0 |
| 2013. | 70,3 | 42,4 | 58,6 | 33,9 | 57,6 | 45,8 |
| 2014. | 71,9 | 45,8 | 63,3 | 38 | 67,5 | 52,8 |
| 2015. | 73,7 | 45,5 | 68,7 | 38 | 71,2 | 54,6 |
| 2016. | 73,3 | 44 | 66,3 | 39,8 | 68,7 | 54,3 |
| 2017. | 71,8 | 37,9 | 66,2 | 39,3 | 58,6 | 49,0 |
| 2018. | 69,4 | 34,2 | 71,8 | 40,4 | 54,4 | 47,4 |
| 2019. | 67,2 | 32,5 | 78,7 | 40,4 | 52,7 | 46,6 |
| 2020. | 75,9 | 36,5 | 107,3 | 51,8 | 57,8 | 54,8 |
| 2021. | 74,2 | 36,5 | 86,7 | 53,2 | 57,1 | 55,2 |
| Prosek | 64,4 | 34,7 | 58,3 | 36,2 | 64,1 | 50,2 |

Izvor: International Monetary Fund (2022b). World Economic Outlook Database, April 2022. Retrieved from https://www.imf.org/en/Publications/WEO/weo-database/2022/April

O stanju javnog duga Republike Srbije ne mogu se donositi precizne ocene ukoliko se ne sagleda pozicija Republike Srbije u odnosu na zemlje članice Evropske unije i zemlje Zapadnog Balkana. Tako je učešće javnog duga u BDP-u Republike Srbije u 2021. godini za 36,6 procentualnih poena niže u odnosu na prosek EU-27 (Grafikon 4). Međutim, u poređenju sa zemljama u okruženju, poput Rumunije i Bugarske (48,8% i 25,1%, respektivno), relativno učešće javnog duga je na znatno višem nivou. To naročito iz razloga što je „granica visoke zaduženosti u Srbiji niža nego u razvijenim zemljama, zbog lošijeg kreditnog rejtinga" (Bakić, 2020, str. 185).

Na osnovu podataka iz Tabele 4. moglo bi se zaključiti da je najveće prosečno učešće javnog duga u BDP-u u čitavom posmatranom periodu zabeleženo u Albaniji i Republici Srbiji (64%, 3% i 64,1%, respektivno). U Albaniji je ostvareno najveće učešće javnog duga u BDP-u u COVID-19 2021. godini (75%), a najmanje u 2007. godini u iznosu od 53,5. Najveće učešće javnog duga u BDP-u u Republici Srbiji zabeleženo je na početku posmatranog perioda (224,7%), a najmanje 2008. godine (30,5%). Takođe, primetno je da je u čitavom posmatranom periodu najmanje prosečno učešće javnog duga u BDP-u ostvareno u Bosni i Hercegovini (34,7%). Osim toga, najveće učešće javnog duga u BDP-u Bosne i Hercegovine ostvareno je 2014. godine (45,8%), dok je najmanja vrednost ovog pokazatelja zabeležena u 2007. godini (18,7%). U Crnoj Gori i Severnoj Makedoniji prosečno učešće javnog duga u BDP-u u posmatranom periodu iznosilo je 58,3% i 36,2%, respektivno, dok je najveće učešće javnog duga u BDP-u u Crnoj Gori ostvareno u COVID-19 2020. godini u iznosu od 107,3%.

Tabela 5. *Rangiranje zemalja Zapadnog Balkana prema indikatoru – učešće javnog duga u BDP-u (u %), 2000–2021.*

| | Albanija | Bosna i Hercegovina | Crna Gora | Severna Makedonija | Srbija |
|---|---|---|---|---|---|
| 2000. | 2 | 4 | n/a | 3 | 1 |
| 2001. | 2 | 4 | n/a | 3 | 1 |
| 2002. | 3 | 5 | 1 | 4 | 2 |
| 2003. | 2 | 5 | 3 | 4 | 1 |
| 2004. | 2 | 5 | 3 | 4 | 1 |
| 2005. | 1 | 5 | 3 | 4 | 2 |
| 2006. | 1 | 5 | 3 | 4 | 2 |
| 2007. | 1 | 5 | 2 | 4 | 3 |
| 2008. | 1 | 3 | 2 | 5 | 4 |
| 2009. | 1 | 4 | 2 | 5 | 3 |
| 2010. | 1 | 4 | 2 | 5 | 3 |
| 2011. | 1 | 4 | 2 | 5 | 3 |
| 2012. | 1 | 4 | 2 | 5 | 3 |
| 2013. | 1 | 4 | 2 | 5 | 3 |
| 2014. | 1 | 4 | 3 | 5 | 2 |
| 2015. | 1 | 4 | 3 | 5 | 2 |
| 2016. | 1 | 4 | 3 | 5 | 2 |
| 2017. | 1 | 5 | 2 | 4 | 3 |
| 2018. | 2 | 5 | 1 | 4 | 3 |
| 2019. | 2 | 5 | 1 | 4 | 3 |
| 2020. | 2 | 5 | 1 | 4 | 3 |
| 2021. | 2 | 5 | 1 | 4 | 3 |

Izvor: Sopstveni proračun autora na osnovu podataka iz Tabele 4.

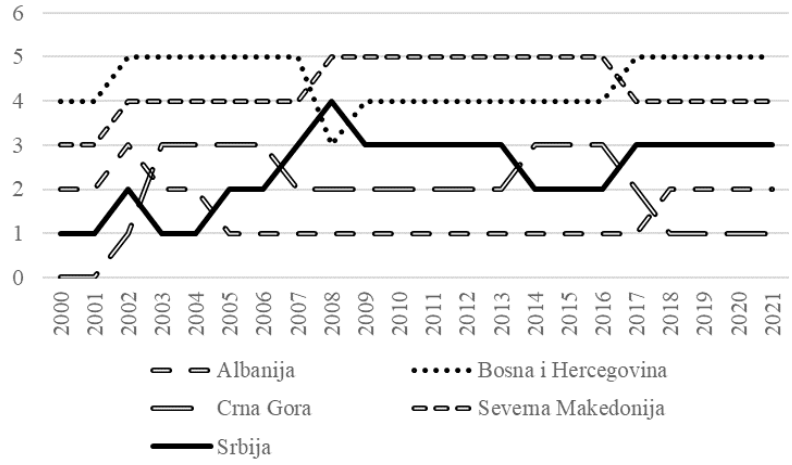
Primetno je, takođe, da u periodu od 2006. do 2008. godine prosečno učešće javnog duga u BDP-u zemalja regiona pokazuje pozitivne tendencije nastale kao posledica efektuiranja rezultata početnih reformskih koraka. Usled usporavanja privredne dinamike pod uticajem svetske finansijske i ekonomske krize 2009. godine prosečno učešće javnog duga u BDP-u zemalja regiona beleži tendenciju rasta sve do 2016. godine kada dolazi do silaznog trenda u dinamici kretanja relativne zaduženosti zemalja regiona. Primetno je da je prosečna zaduženost Albanije,

Crne Gore i Republike Srbije (64,4%, 58,3% i 64,1%, respektivno) u celom posmatranom periodu iznad proseka regiona u celini (50,2%).

U cilju jasnijeg razumevanja problematike zaduživanja i preciznijeg određivanja mesta Republike Srbije među posmatranim zemljama Zapadnog Balkana izvršeno je rangiranje zemalja regiona u posmatranom periodu (Tabela 5).

Grafički prikaz (Grafikon 5) kretanja učešća javnog duga u BDP-u zemalja regiona omogućava donošenje precizne ocene o stanju javnog duga Republike Srbije. Moglo bi se uočiti da je u čitavom posmatranom periodu Republika Srbija držala u proseku treću poziciju prema visini učešća javnog duga u BDP-u, što ukazuje na potencijalne probleme u pogledu održivosti zaduživanja Republike Srbije u narednom periodu.

Grafikon 5. Rangiranje zemalja Zapadnog Balkana prema indikatoru – učešće javnog duga u BDP-u (u %), 2000–2021.




Izvor: Sopstveni grafički prikaz autora na osnovu podataka iz Tabele 5.

## 5. Zaključak

Kriza izazvana pandemijom COVID-19 smatra se najozbiljnijom (prema preduzetim merama) i najtežom (prema pojavnim manifestacijama) nakon Velike depresije 30-ih godina XX veka i sa još uvek neizvesnim posledicama. U odnosu na prethodne, ova kriza, nazvana krizom velikog „zaključavanja", nosi posebna obeležja budući da je karakterišu nagli i istovremeni šokovi na strani agregatne ponude i tražnje. Primena mera zaključavanja, koja se dešavala gotovo istovremeno u celom svetu, imala je za posledicu čitav niz negativnih efekata na sve sektore globalne ekonomije. S padom agregatne tražnje došlo je do narušavanja globalnih lanaca trgovine, pada proizvodnje, zaposlenosti, investicija i produktivnosti globalne ekonomije.

Pandemija je s višestrukim negativnim posledicama na ključne makroekonomske agregate, posebno na stanje javnog duga, ozbiljno narušila stabilnost privreda svih zemalja u svetu. Sa povećanjem javnog duga, koje je usledilo nakon primena mera ekonomske politike a radi stvaranja stabilnih uslova poslovanja i oporavka privreda od zdravstvenog šoka, povećana je i neizvesnost u ostvarivanju kratkoročnih ciljeva ekonomske politike, pune zaposlenosti, stabilnosti cena i ravnoteže platnog bilansa.

Nivo javnog duga je održiv ukoliko je vlada u stanju da podmiri sve svoje tekuće i buduće obaveze plaćanja i ukoliko je takvo zaduživanje u skladu sa fiskalnom potrošnjom i planovima u pogledu fiskalnog deficita. Javni dug je održiv ukoliko su sredstva stečena na takav ekonomski način efikasno upotrebljena za podsticanje privrednog rasta i jačanje potencijalnog proizvodnog kapaciteta privrede koji će biti namenjen izvozu.

Stanje i struktura javnog duga predstavljaju indikatore efikasnosti funkcionisanja jedne privrede i umnogome određuju buduću dinamiku privrednog rasta i razvoja. Problem zaduženosti sa kojim se suočava srpska privreda predstavlja u osnovi dugoročan, višedecenijski problem koji vuče svoje korene još iz perioda postojanja Socijalističke Federativne Republike Jugoslavije (SFRJ). Rezultati izvršene analize stanja javnog duga Republike Srbije potvrđuju neujednačenu dinamiku

kretanja javnog duga u posmatranom periodu (2000–2021). Naime, zahvaljujući pozitivnim rezultatima u realizaciji reformskih procesa, sve do 2008. godine nivo javnog duga beležio je tendenciju opadanja tako da je u 2008. godini smanjen za oko 38% u odnosu na 2000. godinu. S eskalacijom svetske finansijske i ekonomske krize dolazi do pogoršanja ključnih makroekonomskih pokazatelja stanja srpske privrede (pad BDP-a i zaposlenosti, pad industrijske proizvodnje, pad investicija), ali i izlaska javnog duga iz zone pozitivnih kretanja i više nego dvostrukog povećanja učešća javnog duga u BDP-u. Rast javnog duga usporen je primenom mera fiskalne konsolidacije tokom 2014. godine, pa se u periodu 2015–2019. beleže stabilna kretanja nivoa javnog duga i relativno zadovoljavajuće učešće javnog duga u BDP-u.

Pojava pandemije COVID-19 znatno je pogoršala stanje javnih finansija i usled hitnosti mera za oporavak privrede uslovila povećanje javnog duga u 2020. i 2021. godini za oko 11% i 21%, respektivno, u odnosu na 2019. godinu. Osim toga, rezultati izvršene analize pokazuju da je zaduženost srpske privrede niža od proseka zemalja članica Evropske unije, osim uporedivih zemalja Rumunije i Bugarske, dok je u odnosu na zemlje Zapadnog Balkana stanje javnog duga Republike Srbije neodrživo, budući da je u čitavom posmatranom periodu Republika Srbija zauzimala treće mesto po pitanju zaduženosti. U faktore koji su uslovili negativne tendencije u kretanju javnog duga tokom krizne 2020. i 2021. godine spadaju: nivo budžetskog deficita; dodatne potrebe za finansiranjem i otplata dospelog duga. Rezultati istraživanja pokazuju da je značajno povećanje budžetskog deficita u Republici Srbiji u 2020. godini, kao jedno od najčešće primenjivanih političkih rešenja da se prevaziđu problemi izazvani krizom usled pandemije COVID-19, uslovilo povećanje javnog duga.

Na osnovu svega navedenog, moglo bi se zaključiti da iako politika koja doprinosi povećanju javnog duga u cilju dinamiziranja tempa privrednog rasta može biti efikasna na kratak rok, veći odnos duga prema BDP-u može delimično ili u potpunosti da neutrališe efekte fiskalnog stimulansa u srednjem roku i uspori oporavak od pandemije. Imajući u vidu gornju granicu učešća javnog duga u BDP-u od 60%, koja je propisana mastrihtskim kriterijumom, u narednom srednjeročnom periodu je neophodno preduzeti mere za postepenu stabilizaciju javnih finansija

i smanjenje javnih rashoda kako bi se nivo javnog duga vratio u okvire pozitivnih i održivih kretanja, ali i kako se ne bi narušile perspektive za ostvarivanje dinamičnog privrednog rasta. Procene su da će se nivo budžetskog deficita smanjiti sa aktuelnih 4,6% učešća u BDP-u na 0,7% BDP-a do 2023. godine, što će usloviti smanjenje učešća javnog duga u BDP-u na 54,1% u 2023. godini. Međutim, sasvim je izvesno da će kriza izazvana pandemijom COVID-19 dugoročno imati negativne posledice na kretanje svih ključnih makroekonomskih agregata, što ovaj egzogeni šok za privredu Republike Srbije, ali i globalnu ekonomiju, svrstava u najgori poremećaj u ekonomskoj istoriji.

## Literatura


Arsić, M., Nojković, A., Ranđelović, S., & Mićković S. (2012). *Strukturalni fiskalni deficit i dinamika javnog duga Srbije*. Beograd: Centar za izdavačku delatnost Ekonomski fakultet Univerziteta u Beogradu.

Bakić, S. (2020). Analiza kretanja javnog duga Republike Srbije u periodu 2008–2018. *CIVITAS*, *10*(1), 180–193.

Briceño, H.R., & Perote, J. (2020). Determinants of the public debt in the Eurozone and its sustainability amid the COVID-19 pandemic. *Sustainability 12(*16), 6456. doi.org/10.3390/su12166456

Butkus, M., Cibulskiene, D., Garsviene, L., & Seputiene, J. (2021). The heterogeneous public debt–Growth relationship: The role of the expenditure multiplier. *Sustainability 13* (9), 4602. doi.org/10.3390/su13094602

Carlsson-Szlezak, Philipp, Reeves, M., & Swartz, P. (2020). Understanding the economic shock of coronavirus. *Harvard Business Review*. Retrieved from https://hbr.org/2020/03/understanding-the-economic-shock-of-coronavirus

Despotović, D., Cvetković, D., & Veličković, D. (2010). Održivost spoljnog duga Srbije. *Ekonomika*, specijalni broj. Retrived from https://www.ekonomika.org.rs/sr/ekonomika_casopis.html.

Dragutinović, D. (2012). *Fiskalna politika, javni (i spoljni) dug i fiskalna stabilnost: Izazovi Evropskih integracija*. Beograd: Službeni glasnik.

Đorđević, M., Đurović Todorović, J., Ristić Cakić, M. (2021). Fiscal implications of the world crisis caused by the COVID 19 virus pandemic. *Novi Ekonomist 15* (1), 66–74.

EUROSTAT (2022). Retrieved from https://ec.europa.eu/eurostat/data/database

Internationaly Monetary Fund (2022a). *The Debt Sustainability Framework for Low-Income Countries*. Retrieved from https://www.imf.org/external/pubs/ft/dsa/lic.htm

International Monetary Fund (2022b). World Economic Outlook Database, April 2022. Retrieved from https://www.imf.org/en/Publications/WEO/weo-database/2022/April

Janković, N., & Stanišić N. (2015). Problem održivosti spoljnog duga Srbije. In V. Lekovic (Ed.), *Institucionalne promene kao determinanta privrednog razvoja Srbije* pp. 261–279. Kragujevac: Ekonomski fakultet Univerziteta u Kragujevcu.

Kalaš, B., Stameski, N., & Dreč, L. (2016). Perspektive javnog duga u Srbiji. *Finansije*, 1–6, 21–34. Retrieved from https://mfin.gov.rs/upload/media/2QzsOK_6017e2938453d.pdf

Kightley, M., & Jędrzejowicz, T. (2021). Macroeconomic policy response to the Covid-19 shock. Retrieved from https://www.bis.org/publ/bppdf/bispap122_r.pdf

Marjanović, D., & Đukić, M. (n.d.) Ekonomske mere za ublažavanje posledica COVID-19. Retrieved from http://ebooks.ien.bg.ac.rs/1490/1/5.%20marjanovic%2C%20djukic.pdf

Petrović-Ranđelović, M., & Radukić, S. (2021). Izazovi makroekonomske stabilnosti privrede Republike Srbije u uslovima pandemije korona virusa. In P. Veselinović & M. Kostić (Eds.), *Institucionalne promene kao determinanta privrednog razvoja Republike Srbije* pp. 149–173. Kragujevac: Ekonomski fakultet Univerziteta u Kragujevcu.

Republika Srbija, Ministarstvo finansija (2022). Tabela 5. Javni dug Republike Srbije u periodu od 2000. godine do 31. 5. 2022., 5. jul 2022. godine. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

Republika Srbija, Ministarstvo finansija, Uprava za javni dug (2021). *Analiza javnog duga i duga opšte države*. Beograd. Retrieved from http://javnidug.gov.rs/static/uploads/Mesecni%20izvestaj%20Uprave%20za%20javni%20dug%20-%20CIR%20Decembar%202021%20final.pdf

Schilirò, D. (2020). COVID-19 crisis and the public debt issue: The case of Italy. *MPRA Paper* No. 103997. Retrieved from https://mpra.ub.uni-muenchen.de/103997/1/MPRA_paper_103997.pdf

Trading Economics (2022). Retrieved from https://tradingeconomics.com/forecast/government-budget

Šojić, M. (2019). Dug i ekonomski razvoj. In V. Vukotić, et al. (Eds.), *Dug i (ne) razvoj* pp. 36–54. Beograd: Institut društvenih nauka, Centar za ekonomska istraživanja.

# PUBLIC DEBT SUSTAINABILITY CHALLENGES IN THE REPUBLIC OF SERBIA DURING THE COVID-19 PANDEMIC

**Abstract**: The scientific and professional public has been debating the impact of public debt on economic development for a long time. Although the 2007 crisis further highlighted the importance of the debt problem of the economies around the world, this problem became more relevant with the emergence of the COVID-19 pandemic and has become particularly prominent due to the uncertainty of its duration. For this very reason this paper aims to contribute to a clearer understanding of the consequences stemming from the crisis caused by the COVID-19 pandemic regarding the public debt of the Republic of Serbia. To indicate the extent of the indebtedness problem that is affecting the Serbian economy, especially compared to the countries of the Western Balkans. The primary methods used in the paper –analysis and synthesis, comparative method, and method of generalisation – were adapted to the stated goal and the the research subject. The obtained results suggest guidelines for the authorities' priority activities with the aim of reducing public expenditure so that sustainable dynamics of the public debt can be achieved and conditions for improving the dynamics of economic growth can be met.

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**Keywords**: COVID-19 pandemic, public debt sustainability, Republic of Serbia.

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## 1. Introduction

For several decades, public debt has been a constant source of income, the main goal of which is not only the establishment of a budget balance but also the efficient financing of the economic policy led by the government of a country. Public debt is a result of a budget deficit, so the state, through public borrowing, takes the responsibility of returning the borrowed funds with the agreed interest. It also represents a form of non-fiscal public income, and it is projected in the financial obligations of the state, on the one hand through the loan agreement, and on the other hand, based on the legal obligations which come from the obligations of the state towards domestic or foreign investors, towards other countries or international monetary institutions.

Developing countries have precise dynamics of public debt compared to developed countries. In the process of economic development, they often find themselves in a situation where the levels of public debt are positively correlated with the levels of economic growth.

The faster growth dynamics enable the changes of these countries along a downward path of debt, provided that the accumulation of debt is supported by a carefully designed policy and strategy of public debt management. Public debt, however, becomes unsustainable when the debt burden begins to grow, that is, when debt growth exceeds income growth and debt servicing begins to exceed recommended threshold levels.

A public debt crisis in a national economy does not only negatively affect the public sector and the efficiency of performing its essential functions in the economy, such as defence, security, justice, health, social protection, etc., but also leads to a disruption of the balance and an increase in the instability of a country's economy. In cases of high public debt, there is a significant increase in interest rates in the public and private sectors, so personal consumption and investments are in decline. In the case when the public debt exceeds the limit of sustainability, the GDP decreases by 5-10%, with the consequent effect on the growth of unemployment. In such conditions, it is essential to predict the public debt crisis ex-ante and take timely measures to solve it (Arsić, 2012, p. 114). To avoid this situation, it is necessary to take several measures. First, successful debt reduction requires fiscal consolidation

and the combined application of economic policy measures, which will support economic growth. Second, the implementation of fiscal consolidation measures should aim at eliminating structural weaknesses in the economy. Third, economic policymakers should be aware that reducing public debt is a long-term problem that requires the application of combined economic policy measures.

The global financial and economic crisis of 2007 left a legacy of public debt at a historically high level in almost all countries, especially in the developed ones, on a scale that has not been registered to date. Given the extreme severity of the crisis, which many have called the "Great Recession", this accumulation of debt acted as a shock absorber for production through the operation of automatic stabilisers for the costs incurred by the stabilisation of the financial sector and the fiscal stimulus measures taken at the beginning of the crisis. While debt ratios have generally declined since the crisis, they remain at high levels in some countries. However, the COVID-19 pandemic, which occurred at the beginning of 2020, represented a somewhat different but more severe shock to the global economy. Due to the implementation of "lockdown" measures in mid-March, real GDP made a record decline in almost all countries of the world in the first quarter of 2020. Fiscal positions were strongly affected by the crisis both through automatic stabilisers and discretionary fiscal measures. This significant fiscal policy support, together with monetary policy measures, was necessary to mitigate the negative economic effects of the crisis caused by the COVID-19 pandemic.

Bearing in mind that the issue of public debt is a multi-decade problem faced by the economy of the Republic of Serbia and considering the scale of the current crisis caused by the COVID-19 pandemic, the research subject of this paper is the analysis of the state and dynamics of public debt in the previous period with reference to 2020 -2021. The paper aims to provide an answer to the following research question: to what extent did the COVID-19 pandemic contribute to the deterioration of the state of the public debt of the Republic of Serbia compared to the period before the crisis?

Achieving the main objective of the research was carried out using the methods of analysis and synthesis, comparative methods, and gene-

ralisation methods. The key research information base consists of data from relevant Serbian databases (Ministry of Finance of the Republic of Serbia) and internationally comparable databases (International Monetary Fund, EUROSTAT, and Trading Economics).

In accordance with the set subject and goal of the research, this paper, in addition to the introductory considerations, consists of the following units: the first part refers to the consideration of the problem of indebtedness and defining the limit of the sustainable level of indebtedness; the problem of public debt in the conditions of the COVID-19 pandemic was analysed in the second part of the paper, and after pointing out the dynamics of public debt in the Republic of Serbia in the previous period, a synthesis of the concluding considerations that were reached by researching the aforementioned problem was made.

## 2. Sustainability of public debt

The need for borrowing arises from the basic macroeconomic equation, where a country's aggregate production is lower than its aggregate consumption. Due to the internal imbalance, which results in an increase in the demand for foreign goods, a deficit in the foreign trade balance occurs. The foreign trade deficit leads to a decrease in the inflow of foreign currency from exports, which has a negative impact on the budget deficit. Internal borrowing reduces the liquidity of the economy and leads to the effect of crowding out private investments, increasing interest rates due to greater demand for money, and reducing income levels, which leads to recession. In addition to borrowing on the domestic market, borrowing can also be done abroad, which creates external indebtedness that is achievable if the country is perceived as a highly credible debtor that can adequately service its obligations in the future. Borrowing is not common for developing countries. It is common for developed countries whose primary goal is not to finance unemployment, inflation, budget deficit, and the like. It is a regular practice for developed countries in modern conditions. Indebtedness appears as a need for financial resources due to the gap between public revenues and public expenditures, previous ineffective borrowing, increased investment in the public sector, infrastructure, etc.

Numerous researchers confirm the existence of a positive relationship between the size of external debt and economic development. The results of empirical research show that if the external debt exceeds the critical limit, it will have a negative impact on investments, the level of international competitiveness, the stability of financial markets, and the dynamics of economic activity. It is impossible, however, to establish a borrowing limit that is applicable to all national economies because different national economies bear the burden of borrowing differently. Some are experiencing a crisis with a tiny percentage of public and external debt in the gross domestic product, while others are functioning with a share of public debt that exceeds the level of the gross domestic product. The limits of borrowing sustainability cannot be determined precisely, but they are reached at the moment when the goals of macroeconomic policy are in danger. In other words, the sustainability of borrowing has not been achieved until public expenditures, which are financed by borrowing, increase the degree of utilisation and raise the quality of the production capacity of the economy (Despotović, Cvetković, & Veličković, 2010).

The level of sustainability of public debt is primarily determined by the level of economic development and the character of the economic policy pursued by the government of a country. Public debt depends on the changes of numerous variables, their level, and dynamics, but also on uncertainty in their change (primary fiscal deficit, rate of economic growth, interest rate, and exchange rate). In addition, the sustainability of public debt is an endogenous variable that depends on fiscal policy, so in conditions of high public debt, credible fiscal consolidation is the most important.

The problem of debt sustainability, which developing countries faced in the past, encouraged some developed countries to take specific measures in cooperation with the World Bank and the International Monetary Fund, the implementation of which would ensure the exit of the mentioned countries from the zone of excessive indebtedness. Developed countries, therefore, carry out constant supervision over underdeveloped countries in order to prevent the accumulation and unsustainability of debt and to encourage the inflow of capital to these countries.

The International Monetary Fund has developed a framework for analysing the sustainability of public and external debt as an instrument to prevent the occurrence of and eliminate the debt crisis. This framework consists of two complementary components that include (Janković & Stanišić, 2015, p. 267) the sustainability analysis of the total public debt and the sustainability analysis of the total external debt.

Each of these components contains a base scenario that is composed of a series of macroeconomic projections that make up the policies adopted by the government with clearly established assumptions and parameters and a series of sensitivity tests applicable to the given base scenario. The change of debt indicators and stress tests enables the assessment of countries' vulnerability to payment crises. The obtained results must be evaluated on the basis of relevant and country-specific circumstances, taking into account the specific characteristics of the country's debt. Due to these specificities, two frameworks were created - one for low-income countries and the other for market-oriented economies.

The main objective of the first framework is to support these countries in making borrowing decisions in a way that suits their funding needs, considering their current and future debt servicing capability. This framework provides a risk assessment of over-indebtedness in order to take adequate and timely measures.

The performed analysis of debt sustainability, based on this framework, consists of (Janković & Stanišić, 2015, p. 266): standardised analyses that pre-assess the debt and the dynamics of its servicing under the base scenario and changes using possible shocks; debt sustainability assessments in relation to debt thresholds of specific countries that depend on the quality of policies and institutions and a recommended borrowing strategy that limits the risks of debt problems.

Table 1. *Debt sustainability thresholds according to the Debt Sustainability Framework (DSF) of the World Bank and the International Monetary Fund*

| **Quality of economic policies** | **Present value of debt as a % of** | | | **External debt servicing as a % of** | |
|---|---|---|---|---|---|
| | Export | GDP | Budget income | Export | Budget income |
| **Low** | 100 | 30 | 200 | 15 | 25 |
| **Medium** | 150 | 40 | 250 | 20 | 30 |
| **High** | 200 | 50 | 300 | 25 | 35 |

Source: International Monetary Fund (2022a). The Debt Sustainability Framework for Low-Income Countries. Retrieved from https://www.imf.org/external/pubs/ft/dsa/lic.htm

According to this framework, the position is conceived that a country with a low income and better economic policies and institutions can withstand a higher level of external debt, and these countries, based on the quality of the policy, are classified into three categories: low, medium and high quality of the policy. Also, this framework establishes three thresholds for each indebtedness indicator (level of exports, gross domestic product, and income). High thresholds correspond to a high level of economic policies, which is logical since countries with high credibility of economic policies can have higher values of debt indicators compared to countries with ineffective economic policies.

Based on sustainability thresholds (Table 1), the risk of over-indebtedness can be classified into four categories:

1) **Low risk** – all indicators are far below debt thresholds for certain countries.
2) **Moderate risk** – the base scenario does not indicate an overdraft, but during the stress testing, the indebtedness thresholds are exceeded.
3) **High risk** - debt thresholds are exceeded in the base scenario, but also a worsening of the situation during stress testing and

4) **The problem of over-indebtedness** - occurs when there is a significant overdraft of debt that lasts continuously.

However, it is not a rare case that the indicators give different results, which calls for careful interpretation and assessment of the observed country's state of debt.

There are different approaches to analysing the sustainability of external debt, which provide essential information to economic policymakers (Dragutinović, 2012, p. 13). The econometric approach is used when testing time series, which is, testing public revenues, expenditures, fiscal results, and other quantities in order to determine their stationarity or cointegration. The accounting approach is used when calculating the primary fiscal result, which is necessary to stabilise the share of public debt in the gross domestic product. The value of the necessary adjustment represents the difference between the primary fiscal result, which is necessary for debt stabilisation, and the actual or projected primary fiscal result. The macroeconomic approach uses econometric models to estimate the equilibrium dependence between the fiscal result and a series of explanatory variables. Using projections of key explanatory variables, it is possible to calculate the norm of fiscal result for an individual country in the future.

## 3. The public debt issue in the context of the COVID-19 pandemic

Increasing development opportunities outside the domestic accumulation framework and through the exchange deficit (financially covered by external debt) is economically justified if the funds acquired are used in respect to economic efficiency. In other words, the funds should be used to accelerate national economic growth to the level that prevents further borrowing, as well as to encourage its structural transformations with the aim of strengthening the economy's export capacity, in order to provide funds for repaying debts and interest. If the external sources capital is used for non-productive purposes, economic growth and chances for debt repayment will decrease. The amount of external debt is a significant indicator of the fiscal and economic stability of a country; hence the issue of public debt management is a very important issue for the development of an economy.

Growing debts in the conditions of economic and financial liberalisation, accompanied by the global inflation of the 'monetary bubble' (most prominent during the last three decades) lead to significant macroeconomic problems and limit economic growth and development. This is evident in countries that use external and total debt for consumption purposes, instead of productive investments and development, as well as in those countries that have a higher debt repayment compared to the increase in gross domestic product (Šojić, 2019, p. 36).

The increase in borrowing is additionally influenced by crisis situations (e.g., the global financial crisis followed by the Great Recession) but can also be different in nature and related to health concerns, such as the current COVID-19 pandemic. The COVID-19 pandemic was an unexpected exogenous shock that brought most of the world's economies into a state of recession at the beginning of 2020 (Petrović-Ranđelović & Radukić, 2021, p. 160). Serious economic and social consequences of the pandemic were caused by shock interactions on the supply side (decline in production and investment, limited opportunities to purchase production factors) and on the demand side (decline in demand due to uncertainty, decline in household income and purchasing power). In such conditions, there was a decline in flows of global trade and investment, a depreciation of commodity prices, a deterioration of economies' external position and the emergence of a global recession.

The pandemic represents a health shock that initiates a shock on the supply side and a shock on the demand side, thereby reducing opportunities for the realisation of economic activities and setting limits for the development of economies worldwide. Faced with an unprecedented crisis in economic history, uncertainty regarding the realisation of economic activities imposed new challenges on economic policy makers, who took measures to stabilise business conditions and provide support for economic recovery. "For the first time since the Great Depression, both advanced and emerging market economies will be in recession in 2020. Today, there is a common awareness that the scale of this crisis, with related economic paralysis, high unemployment and rising debt, appears much wider and deeper than the global financial crisis of 2008-2009" (Schilirò, 2020). Precisely for this reason, governments around

the world have taken significant fiscal, monetary and financial measures in a very short period, i.e., a slightly different set of economic policy measures which, due to the unique nature of this health shock, is not based on the application of previously known solutions. Doing this was important because the COVID-19 pandemic has not only affected low/middle income countries, but rather the entire world. A high degree of economies' integration into the world economy and the act of keeping interest rates at a historic low significantly facilitated the spillover of negative effects on global production networks and supply chains. In their study of economic recovery chances Carlsson-Szlezak et al. (2020) identified three scenarios through the concept of "shock geometry". According to the most optimistic, V-shaped, scenario — aggregate production quickly recovers and returns to the pre-crisis level. However, according to the second scenario, the recovery path is U-shaped, with output falling rapidly but not returning to pre-crisis levels. The third, L-shaped, path shows output declining and growth rates continuing to decline, with the gap between pre- and post-crisis output widening. At the very beginning of the pandemic, the general opinion was that the economies would move in a V-shaped path, but with the increase in the number of infected people, there was a great pressure on countries' health systems, which indicated immense economic consequences and the most difficult scenarios that would hit economies around the world.

Unlike the global financial crisis and the Great Recession of 2007, central banks reacted immediately to prevent recession, but also to ensure the sustainability of public debt. The public debt sustainability assessment was carried out by Briseno and Perote (2020) on the example of the Eurozone countries which were faced with three major crises in the last two decades: the mortgage crisis, the public debt crisis and the crisis caused by the COVID-19 pandemic. They found that the COVID-19 pandemic had caused Eurozone countries facing negative economic growth rates and high unemployment to increase their public debts to levels that cannot be considered sustainable. Reforms in Europe's pension and unemployment insurance systems are therefore necessary to ensure the sustainability of public debt amid the COVID-19 pandemic. In addition, although a high level of public debt may reduce the rate of economic growth, Butkus et al. (2021) found that the statistically nega-

tive marginal effect debt has on growth begins to manifest itself at lower values of the debt-to-GDP ratio when the cost multiplier is lower and vice versa. Essentially, fiscal, monetary and macroprudential policy intervention measures significantly mitigated the drop in production due to the crisis caused by the COVID-19 pandemic.

According to Kightley and Jędrzejowicz (2021) the dynamics of public debt depend on two key variables - the country's primary balance and the difference between the average effective interest rate on public debt and nominal GDP growth (r - g). In the case of a negative difference between r and g, a zero primary surplus will eventually lead to a fall in the debt-to-GDP ratio, regardless of its initial size. Another way to present the implications of the debt dynamics equation is to assume that under conditions of existence of a negative difference between r and g, any size of the primary deficit will result in a final debt-to-GDP ratio. Moreover, assuming that the difference between r and g remains negative, not only will the fiscal costs of higher public debt stay absent, but the welfare costs will also be lower than usual due to the reduction in the marginal product of capital.

A lower or negative difference between r and g can prevent a further increase in the debt ratio, but also lead to a reduction in debt. If the difference between r and g is negative, a country with a higher debt ratio can actually run a larger primary deficit than a less indebted country, in order to stabilise its debt. However, when it comes to debt reduction, the primary surplus must always be one percentage point higher than its debt stabilisation level, for debt-to-GDP to fall by one percentage point. A significant reduction in public debt from current levels would require running substantial primary surpluses over several years, even if the difference between r and g is favourable.

The question remains: what are the implications of low interest rates on fiscal sustainability, that is, will fiscal adjustments be more expensive in such circumstances? If interest rates are too low and there is no room to lower them further, monetary policy does not play a significant role in reducing public debt (interest rates facilitate maintaining high public debt rates and make it harder to reduce them). Consequently, in the context of the COVID-19 pandemic and in a world of low interest rates,

fiscal policy should show greater effectiveness in neutralising negative effects the crisis has on economies worldwide.

With the aim of mitigating negative economic consequences of the pandemic in the first quarter of 2020, most countries applied a combined set of economic and tax policy measures, direct incentives (allowances) from the budget, along with measures preserving liquidity. Republic of Serbia introduced measures totalling RSD 675.9 billion through three packages (Marjanović et al., n.d.): the first package included all three groups of assistance in the amount of RSD 608.3 billion; the second package represented a combination of tax policy measures and measures of direct payment in the sum of RSD 66 billion; the third package was of a sectoral nature since the support was intended for companies operating in the tourism sector and it was the smallest in terms of size (RSD 1.6 billion).

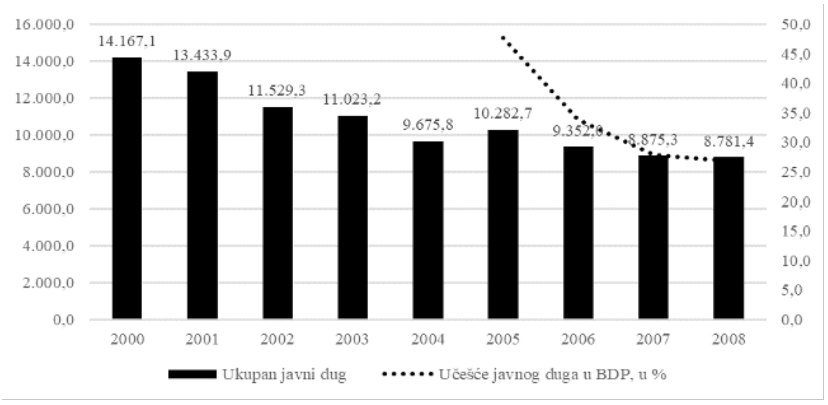
## 4. Analysis of Serbia's public debt dynamics in the COVID-19 pandemic context

In 2001 significant efforts were made towards the realisation of a comprehensive program of economic reforms and certain economic policy measures were applied. Without further analysing the results, it can be concluded that until the appearance of the first COVID-19 effects, relatively satisfactory results were achieved in the elimination of economic restrictions that undermined the plans Serbia had for its economy (macroeconomic stability, stable inflation, growth in the employment rate...). The relatively satisfactory macroeconomic performance of the Serbian economy achieved in the previous period, represented a good basis for entering the COVID-19 crisis zone with much lower economic and social costs of adapting to the new conditions.

Observing the dynamics of Serbia's public debt, two periods can be clearly distinguished. In the period from 2001 to 2008 (Chart 1) there was a drastic reduction in public debt — from EUR 14.2 billion to EUR 8.8 billion, due to the 66% write-off of the debt towards the Paris Club and a 62% write-off towards the London Club. Likewise, paying debts to foreign creditors, along with paying EUR 1.3 billion on the basis of

foreign currency savings and domestic debts, both had an impact on reducing public debt levels. Intensively implementing the transitional program aimed at liberating economic flows, consequently led to revenues from privatisation being a dominant category in filling Serbia's budget, while its deficit was not particularly emphasised (Kalaš et al. 2016, p. 25).

Chart 1. *Serbia's public debt dynamics, in total and in % of GDP, 2000-2008*



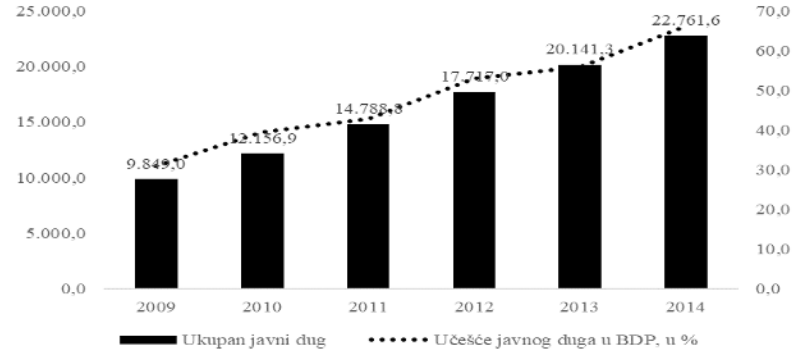

Source: Republic of Serbia, Ministry of Finance (2022). Table 5. Republic of Serbia's public debt in the period from 2000 to 31 May 2022, 5 July 2022. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

The second period is characterised by the public debt going through an ascending and descending phase in its dynamics, which can be observed through three phases.

In the phase from 2009 to 2014 (Chart 2), a sharp increase in public debt was noticeable — from EUR 9.9 billion to EUR 22.8 billion. Its GDP share was more than doubled (from 30.9% in 2009 to 66.2% in 2014) due to the negative effects of the global financial crisis and the Great Recession manifesting on Serbia's economy (slow economic activity and declining GDP growth), as well as due to internal limiting factors. Despite the privatisation of state-owned and social enterprises

leading to increase in income, in the period from 2000 to 2014, public debt increased faster than real economic activity. In particular, the level of public debt more than doubled in 2014 compared to 2008, i.e., an average increase of 22.7% was recorded per year.

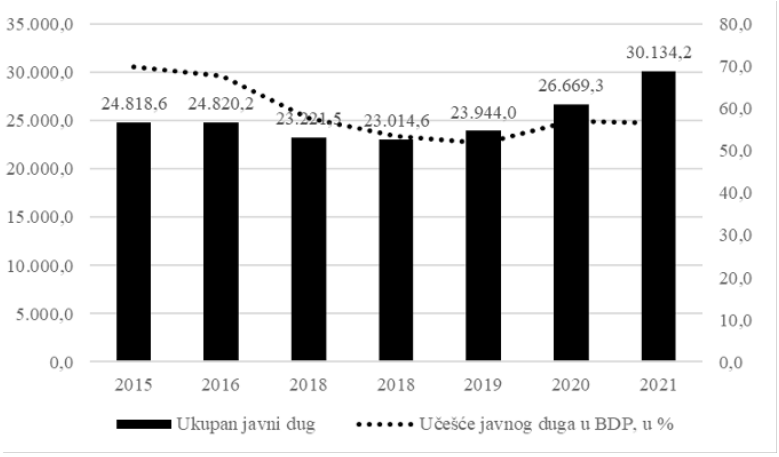
Chart 2. *Serbia's public debt dynamics, in total and in % of GDP, 2009-2014*




Source: Republic of Serbia, Ministry of Finance (2022). Table 5. Republic of Serbia's public debt in the period from 2000 to 31 May 2022, 5 July 2022. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

In the second phase, from 2015 to 2019 (Chart 3), the Serbian economy recovered due to the implementation of fiscal consolidation measures, which initiated the trend of fiscal deficit reduction (from 3.5% in 2015 to 0.2% in 2019), as well as to the reduction of public debt both in absolute amount and in relation to GDP (from EUR 24.8 billion to EUR 24 billion; from 70% in 2015 to 51.9 % in 2019, respectively) (Republic of Serbia, Ministry of Finance, 2022).

Chart 3. *Serbia's public debt dynamics, in total and in % of GDP, 2015-2021*




Source: Republic of Serbia, Ministry of Finance (2022). Table 5. Republic of Serbia's public debt in the period from 2000 to May 31, 2022, July 5, 2022. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

The third and ongoing phase pertaining to the beginning of the pandemic is also the most uncertain one – both in terms of its duration and the extent of its consequences. According to Petrović-Ranđelović and Radukić, from the current frame of reference – while the pandemic is still in progress and both its duration and magnitude are impossible to accurately predict – no reliable estimates can be given concerning the impact of the current crisis on the national economy (2021, pp. 160–161).

The COVID-19 pandemic brought about a significant decline in global economic activity. The impact on Serbia's economy was reflected in the deterioration of key macroeconomic indicators – a decline in production; decline in and cessation of foreign trade; increase in the budget deficit and public debt, etc. However, a 1% drop in the country's economic activity during the pandemic in 2020 was relatively small in comparison to the EU member states and the WB4 (Albania, Bosnia and Herzegovina, Montenegro, and North Macedonia), which suffered drops of 5.9% and 7.0% on average, respectively (International Mone-

tary Fund, 2022b). This was due to a good starting position, structural characteristics of the Serbian economy, and measures taken to limit the economic impact of the pandemic.

Table 3. *Changes in internal and external public debt of Serbia, 2000-2021*

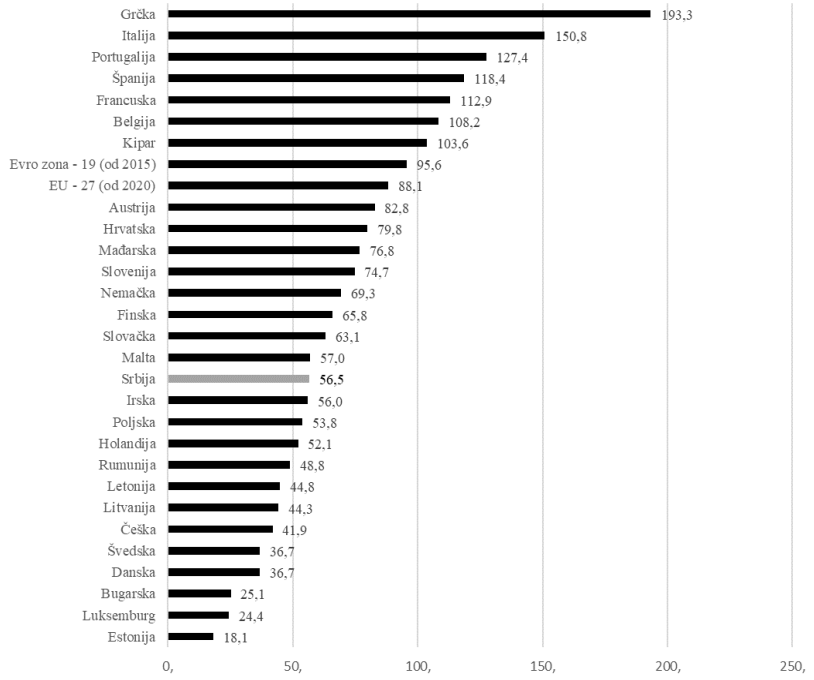
| | Internal public debt (bn EUR) | External public debt (bn EUR) | Share of external debt in total public debt (%) |
|---|---|---|---|
| 2000 | 4,1 | 10,0 | 71,0 |
| 2001 | 3,8 | 9,5 | 71,2 |
| 2002 | 4,1 | 7,2 | 62,7 |
| 2003 | 4,2 | 6,5 | 59,5 |
| 2004 | 4,0 | 5,2 | 54,4 |
| 2005 | 4,2 | 5,3 | 52,1 |
| 2006 | 3,8 | 4,7 | 50,7 |
| 2007 | 3,4 | 4,6 | 52,0 |
| 2008 | 3,1 | 4,6 | 53,4 |
| 2009 | 4,0 | 4,4 | 44,7 |
| 2010 | 4,5 | 5,8 | 48,3 |
| 2011 | 5,4 | 7,2 | 48,9 |
| 2012 | 6,4 | 8,6 | 48,6 |
| 2013 | 7,0 | 10,2 | 50,8 |
| 2014 | 8,2 | 11,9 | 52,6 |
| 2015 | 9,0 | 13,3 | 53,8 |
| 2016 | 8,7 | 13,9 | 56,0 |
| 2017 | 9,0 | 12,3 | 53,2 |
| 2018 | 9,4 | 12,0 | 52,4 |
| 2019 | 9,8 | 12,6 | 52,7 |
| 2020 COVID-19 | 11,2 | 14,0 | 52,6 |
| 2021 COVID-19 | 11,3 | 17,4 | 57,7 |

Source: Republic of Serbia, Ministry of Finance (2022), Table 5. Public debt of the Republic of Serbia in the period of 2000-2022-05-31, July 5, 2023. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

The application of "measures in the form of subsidies to the economy and the population, tax delays, reduction of reference interest rates of central banks, expansionary monetary policy, 'cheap money' policy, as well as the state aid to the most vulnerable sectors in the hospitality, transport and tourism, contributed to deepening budget deficits and growth in public debts of the countries around the world" (Đorđević et al., 2021, p. 69). For instance, at the beginning of the crisis, the budget deficit of the EU states widened from 0.6% of GDP in 2019 to 6.8% of GDP in 2020 (EUROSTAT, 2022); similarly, the budget deficit of the Western Balkan (WB) countries was on average running at 0.7% of GDP in 2019 and 7.7% of GDP in 2020 (Authors' calculations based on data retrieved from Trading Economics, 2022). The rise in Serbia's budget deficit in 2020 compared to 2019 (-8.3% of GDP and 0.2% of GDP, respectively) was higher than the WB average (7.7% of GDP in 2020). In 2020, Montenegro recorded the most dramatic increase in the budget deficit in the entire region (from 2% of GDP in 2019 to 10.1% of GDP in 2020), while Bosnia and Herzegovina's budget deficit was the lowest (5.3% of GDP) (Authors' calculations based on data retrieved from Trading Economics, 2022). Throughout the course of 2021, this downward trend continued both in Serbia (4.6% of GDP) and elsewhere (European Union – 4.6% of GDP; Albania 4.8% of GDP, Bosnia and Herzegovina 0.3% of GDP, North Macedonia 5.4% of GDP).

Economic policymakers' immediate reactions – namely the expansionary fiscal policy measures aimed at halting the decline in economic activity and maintaining the rate of economic growth – caused a sharp increase in public debt in virtually every country in the world. Serbia's public debt increased from EUR 23.9 billion in 2019 to EUR 26.6 billion in 2020 and then to 30.1 EUR billion in 2021 (Chart 3). This increase stemmed from numerous fiscal and monetary adjustments to the Serbian economy in response to pandemic circumstances. A more reliable indicator of the severity of the crisis is a relative increase in Serbia's public debt levels to 57% and 56.5% of GDP over the last two years.

Chart 4. Debt-to-GDP ratio (in %) in the EU member states and Serbia in 2021.




Source: EUROSTAT (2022) Retrieved from https://ec.europa.eu/eurostat/data/database

The structure of public debt shows that external public debt was higher than internal throughout the entire period between 2000 and 2021 (Table 3). This was particularly the case at the end of 2021 when external public debt amounted to EUR 17.4 billion, or 57.7% of total public debt; in the same year, internal public debt totaled EUR 11.3 billion, or 37.6% of total public debt. Indeed, these data confirm that the structure of Serbia's public debt was adversely impacted by the pandemic.

The state of Serbia's public debt can also be analysed in relation to its currency structure. According to data obtained from the Public Debt Administration (2021, p. 3), the share of outstanding public debt denominated in foreign currencies at the end of December 2021 was 71.5%. The largest portion of total public debt consisted of borrowings in euros (57.7%), followed by dinars (57.7%), then US dollars (10.8%), and finally borrowings in other currencies (0.8%). In comparison with the

pre-crisis period, a significant increase in the share of debt in the domestic currency could be observed. This was due to attempts at reducing the exposure of the domestic economy to foreign currency risk through the issuance of domestic currency securities.

Table 4. *Debt-to-GDP ratio (in %) in the countries of the Western Balkans, 2000–2021.*

| | Albania | Bosnia and Herzegovina | Monte-negro | North Macedonia | Serbia | Region average |
|---|---|---|---|---|---|---|
| 2000. | 63,7 | 34,6 | n/a | 45,5 | 224,7 | 135,1 |
| 2001. | 60,6 | 35,2 | n/a | 45,2 | 106,3 | 75,8 |
| 2002. | 64,1 | 31,1 | 76,7 | 40,4 | 76,1 | 58,3 |
| 2003. | 60,2 | 27,6 | 40,8 | 36,4 | 71,7 | 54,1 |
| 2004. | 57,4 | 25,4 | 45,3 | 34,5 | 62,1 | 48,3 |
| 2005. | 58,2 | 25,5 | 38,5 | 36,6 | 51,3 | 44,0 |
| 2006. | 56,6 | 21,2 | 36,6 | 30,5 | 37,9 | 34,2 |
| 2007. | 53,5 | 18,7 | 31,7 | 23,5 | 31,2 | 27,4 |
| 2008. | 55,1 | 30,8 | 34,1 | 20,6 | 30,5 | 25,6 |
| 2009. | 59,6 | 35 | 43,6 | 23,7 | 33,9 | 28,8 |
| 2010. | 57,7 | 40,8 | 45 | 24,2 | 41,2 | 32,7 |
| 2011. | 59,4 | 39,5 | 48,5 | 27,7 | 43,9 | 35,8 |
| 2012. | 62,1 | 42,2 | 56,8 | 33,6 | 54,4 | 44,0 |
| 2013. | 70,3 | 42,4 | 58,6 | 33,9 | 57,6 | 45,8 |
| 2014. | 71,9 | 45,8 | 63,3 | 38 | 67,5 | 52,8 |
| 2015. | 73,7 | 45,5 | 68,7 | 38 | 71,2 | 54,6 |
| 2016. | 73,3 | 44 | 66,3 | 39,8 | 68,7 | 54,3 |
| 2017. | 71,8 | 37,9 | 66,2 | 39,3 | 58,6 | 49,0 |
| 2018. | 69,4 | 34,2 | 71,8 | 40,4 | 54,4 | 47,4 |
| 2019. | 67,2 | 32,5 | 78,7 | 40,4 | 52,7 | 46,6 |
| 2020. | 75,9 | 36,5 | 107,3 | 51,8 | 57,8 | 54,8 |
| 2021. | 74,2 | 36,5 | 86,7 | 53,2 | 57,1 | 55,2 |
| Prosek | 64,4 | 34,7 | 58,3 | 36,2 | 64,1 | 50,2 |

Source: International Monetary Fund (2022b). World Economic Outlook Database, April 2022. Retrieved from https://www.imf.org/en/Publications/WEO/weo-database/2022/April

To create an accurate assessment of the condition of Serbia's public debt, the country's position must be considered in relation to the EU member states and WB countries. Serbia's debt-to-GDP ratio for 2021 was 36.6 percentage points lower than the EU-27 average (Chart 4). However, in comparison with the neighbouring countries, such as Romania and Bulgaria (48.8% and 25.1%, respectively), Serbia's relative debt-to-GDP ratio was much higher. This was chiefly due to Serbia's relatively low debt ceiling compared to developed economies, owing to the country's poorer credit rating.

Data in Table 4 show that for the entire period analysed, the highest average values of debt-to-GDP ratio were recorded in Albania and Serbia (64.4% and 64.1%, respectively). In the case of Albania, the highest debt-to-GDP ratio was observed during the pandemic in 2021 (75%) and the lowest in 2007 (53.5%). Serbia's debt-to-GDP ratio was at its highest at the beginning of the period in question (224.7%), while its lowest value was recorded in 2008 (30.5%). For the same period, the lowest average debt-to-GDP ratio (34.7%) was recorded in Bosnia and Herzegovina. Furthermore, Bosnia and Herzegovina's highest debt-to-GDP ratio was observed in 2014 (45.8%), while this indicator reached its lowest value in 2007 (18.7). During the same time period, the average values of the debt-to-GDP ratio in Montenegro and North Macedonia were 58.3% and 36.2% respectively; while Montenegro recorded its highest debt-to-GDP ratio of 107.3% during the pandemic in 2020.

Table 5. *WB countries ranking according to the debt-to-GDP ratio indicator (in %), 2000–2021.*

| | Albania | Bosnia and Herzegovina | Montenegro | North Macedonia | Serbia |
|---|---|---|---|---|---|
| 2000. | 2 | 4 | n/a | 3 | 1 |
| 2001. | 2 | 4 | n/a | 3 | 1 |
| 2002. | 3 | 5 | 1 | 4 | 2 |
| 2003. | 2 | 5 | 3 | 4 | 1 |
| 2004. | 2 | 5 | 3 | 4 | 1 |
| 2005. | 1 | 5 | 3 | 4 | 2 |
| 2006. | 1 | 5 | 3 | 4 | 2 |
| 2007. | 1 | 5 | 2 | 4 | 3 |
| 2008. | 1 | 3 | 2 | 5 | 4 |
| 2009. | 1 | 4 | 2 | 5 | 3 |
| 2010. | 1 | 4 | 2 | 5 | 3 |
| 2011. | 1 | 4 | 2 | 5 | 3 |
| 2012. | 1 | 4 | 2 | 5 | 3 |
| 2013. | 1 | 4 | 2 | 5 | 3 |
| 2014. | 1 | 4 | 3 | 5 | 2 |
| 2015. | 1 | 4 | 3 | 5 | 2 |
| 2016. | 1 | 4 | 3 | 5 | 2 |
| 2017. | 1 | 5 | 2 | 4 | 3 |
| 2018. | 2 | 5 | 1 | 4 | 3 |
| 2019. | 2 | 5 | 1 | 4 | 3 |
| 2020. | 2 | 5 | 1 | 4 | 3 |
| 2021. | 2 | 5 | 1 | 4 | 3 |

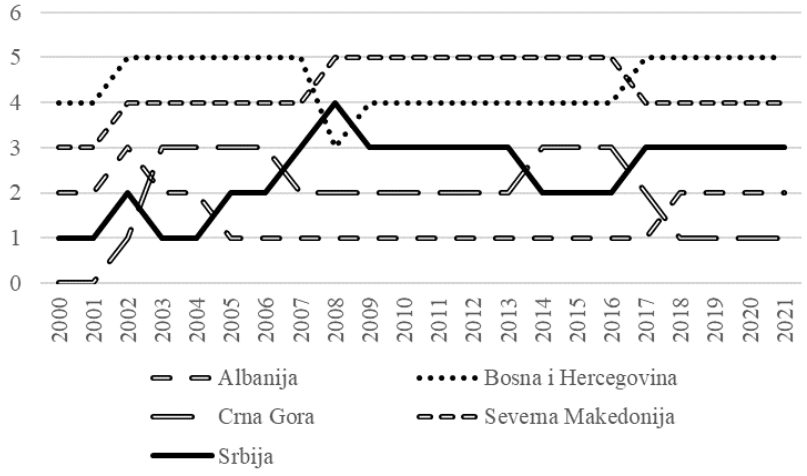
Source: Authors' calculations based on data presented in Table 4.

The average debt-to-GDP ratio was improving during the time between 2006 and 2008, as a result of initial reform steps having been put into effect. Then, due to the economic slowdown arising from the global financial and economic crisis in 2009, the region's average debt-to-GDP ratio started showing an upward trend which lasted until 2016, which is when trends in relative indebtedness of the WB countries re-

versed again. The average indebtedness levels of Albania, Montenegro, and Serbia (64.4%, 58.3%, and 64.1%, respectively) remained above the region's average (50.2%) within the entire period in question. In order to broaden the understanding of the indebtedness issue and to position Serbia more precisely relative to other WB countries, a country ranking concerning the same time interval has been conducted (Table 5).

Graphical representation (Chart 5) of changes in the debt-to-GDP ratio for the WB region enables one to make an accurate assessment of the state of Serbia's public debt. During the entire period, Serbia's average debt-to-GDP ratio was the third highest in the region, which highlights potential problems in the country's debt sustainability in the coming period.

Chart 5. WB countries ranking according to the debt-to-GDP ratio indicator (in %), 2000–2021.




Source: Author's graphic presentation based on data presented in Table 5.

## 5. Conclusion

The COVID-19 crisis is considered the gravest (in terms of measures taken) and hardest (in terms of how it manifested itself) one after the Great Depression of the 1930s and its long-term effects are still uncertain. Compared to the previous crises, the 'Great Lockdown' is characterised by sudden and simultaneous shocks in both aggregate supply and demand. Lockdown measures, which were being applied virtually simultaneously across the globe, struck all sectors of the global economy with a series of harmful effects. With a decline in aggregate demand, global supply chain disruptions ensued – together with a fall in production, employment, investment, and productivity of the global economy.

The pandemic has had numerous damaging effects on key macroeconomic aggregates, namely the state of public debt, and has undermined the stability of all world economies. The economic policy measures aimed at fostering stable business conditions and recovering the economy from the shock caused public debt to increase. This further led to rising uncertainty over the attainment of short-term economic policy goals, full employment, price stability, and balance of payments equilibrium.

The level of a country's public debt is sustainable if the government is able to meet all of its current and future payment obligations and if such indebtedness is consistent with fiscal spending and fiscal deficit plans. Public debt is also considered sustainable if the funds generated in such a way are used to stimulate economic growth and the potential (export-oriented) productive capacity of the economy.

The state and structure of public debt are the indicators showing how efficiently an economy functions and are instrumental in determining the future dynamics of economic growth and development. The indebtedness of Serbia's economy is fundamentally a long-term issue that can be traced back to the time of the Socialist Federal Republic of Yugoslavia (SFRY). The analysis of the state of Serbia's public debt confirms uneven public debt dynamics during the period analysed (2000-2021). Reform processes of the early 2000s led to a decline in the level of public debt; this trend continued until 2008 when the level of public debt was

about 38% lower than it was in 2000. Then, the onset of the global financial and economic crisis caused key macroeconomic indicators of the state of Serbia's economy to deteriorate (a decline in GDP, employment, industrial production, and investment). This crisis also led to a reversal of a positive trend in public debt changes and more than doubled the increase in the debt-to-GDP ratio. Fiscal adjustment measures implemented in 2014 finally delayed further increases in public debt; thus the period between 2015 and 2019 saw steady trends in the level of public debt and a relatively favourable debt-to-GDP ratio.

The urgency of economic recovery measures following the outbreak of the COVID-19 pandemic caused significant deterioration in public finances and increases in public debt in 2020 and 2021 by about 11% and 21% respectively in relation to 2019. Besides, the analysis performed shows the indebtedness of the Serbian economy to be below the EU average, with the exception of two comparable economies – Romania and Bulgaria. On the other hand, compared to other WB countries the state of Serbia's public debt seems unsustainable considering the country's ranking as third most indebted within the period analysed. Causative factors behind negative trends in public debt levels during the 2020/2021 crisis include the budget deficit level, further needs for debt financing, and debt repayment. Increasing a country's budget deficit is one of the most frequently implemented political solutions for dealing with the current crisis; the results show that a considerable increase in Serbia's budget deficit that occurred in 2020 caused the country's public debt to rise.

Based on everything above-mentioned, we conclude that even though the policy of increasing public debt in order to improve economic dynamics may be effective in the short term, a higher debt-to-GDP ratio can partially or completely counteract the fiscal stimulus effects in the medium term and delay the recovery from the pandemic. With the upper limit on the debt-to-GDP ratio prescribed by the Maastricht criteria (60%) in mind, it is essential that measures for the gradual stabilisation of public finances and reduction of public expenditure be adopted in the coming medium-term period; this will not damage the prospects of achieving dynamic economic growth and it should reverse current trends in public debt levels (by making them positive and su-

stainable). We estimate that the budget deficit level will decrease from the current value of 4.6% to 0.7% of GDP by 2023, which will result in the debt-to-GDP ratio dropping to 54.1%. However, the COVID-19 crisis will inevitably have a negative long-term impact on changes in all the key macroeconomic aggregates. This exogenous shock is, thus, the worst disruption in economic history.

**References:**

Arsić, M., Nojković, A., Ranđelović, S., & Mićković S. (2012). *Strukturalni fiskalni deficit i dinamika javnog duga Srbije*. Beograd: Centar za izdavačku delatnost Ekonomski fakultet Univerziteta u Beogradu.

Bakić, S. (2020). Analiza kretanja javnog duga Republike Srbije u periodu 2008–2018. *CIVITAS*, *10*(1), 180–193.

Briceño, H.R., & Perote, J. (2020). Determinants of the public debt in the Eurozone and its sustainability amid the COVID-19 pandemic. *Sustainability 12(*16), 6456. doi.org/10.3390/su12166456

Butkus, M., Cibulskiene, D., Garsviene, L., & Seputiene, J. (2021). The heterogeneous public debt–Growth relationship: The role of the expenditure multiplier. *Sustainability 13* (9), 4602. doi.org/10.3390/su13094602

Carlsson-Szlezak, Philipp, Reeves, M., & Swartz, P. (2020). Understanding the economic shock of coronavirus. *Harvard Business Review*. Retrieved from https://hbr.org/2020/03/understanding-the-economic-shock-of-coronavirus

Despotović, D., Cvetković, D., & Veličković, D. (2010). Održivost spoljnog duga Srbije. *Ekonomika*, specijalni broj. Retrived from https://www.ekonomika.org.rs/sr/ekonomika_casopis.html.

Dragutinović, D. (2012). *Fiskalna politika, javni (i spoljni) dug i fiskalna stabilnost: Izazovi Evropskih integracija*. Beograd: Službeni glasnik.

Đorđević, M., Đurović Todorović, J., Ristić Cakić, M. (2021). Fiscal implications of the world crisis caused by the COVID 19 virus pandemic. *Novi Ekonomist 15* (1), 66–74.

EUROSTAT (2022). Retrieved from https://ec.europa.eu/eurostat/data/database

Internationaly Monetary Fund (2022a). *The Debt Sustainability Framework for Low-Income Countries*. Retrieved from https://www.imf.org/external/pubs/ft/dsa/lic.htm

International Monetary Fund (2022b). World Economic Outlook Database, April 2022. Retrieved from https://www.imf.org/en/Publications/WEO/weo-database/2022/April

Janković, N., & Stanišić N. (2015). Problem održivosti spoljnog duga Srbije. In V. Lekovic (Ed.), *Institucionalne promene kao determinanta privrednog razvoja Srbije* pp. 261–279. Kragujevac: Ekonomski fakultet Univerziteta u Kragujevcu.

Kalaš, B., Stameski, N., & Dreč, L. (2016). Perspektive javnog duga u Srbiji. *Finansije*, 1–6, 21–34. Retrieved from https://mfin.gov.rs/upload/media/2QzsOK_6017e2938453d.pdf

Kightley, M., & Jędrzejowicz, T. (2021). Macroeconomic policy response to the Covid-19 shock. Retrieved from https://www.bis.org/publ/bppdf/bispap122_r.pdf

Marjanović, D., & Đukić, M. (n.d.) Ekonomske mere za ublažavanje posledica COVID-19. Retrieved from http://ebooks.ien.bg.ac.rs/1490/1/5.%20marjanovic%2C%20djukic.pdf

Petrović-Ranđelović, M., & Radukić, S. (2021). Izazovi makroekonomske stabilnosti privrede Republike Srbije u uslovima pandemije korona virusa. In P. Veselinović & M. Kostić (Eds.), *Institucionalne promene kao determinanta privrednog razvoja Republike Srbije* pp. 149–173. Kragujevac: Ekonomski fakultet Univerziteta u Kragujevcu.

Republika Srbija, Ministarstvo finansija (2022). Tabela 5. Javni dug Republike Srbije u periodu od 2000. godine do 31. 5. 2022., 5. jul 2022. godine. Retrieved from https://mfin.gov.rs/dokumenti2/makroekonomski-i-fiskalni-podaci

Republika Srbija, Ministarstvo finansija, Uprava za javni dug (2021). *Analiza javnog duga i duga opšte države*. Beograd. Retrieved from http://javnidug.gov.rs/static/uploads/Mesecni%20izvestaj%20Uprave%20za%20javni%20dug%20-%20CIR%20Decembar%202021%20final.pdf

Schilirò, D. (2020). COVID-19 crisis and the public debt issue: The case of Italy. *MPRA Paper* No. 103997. Retrieved from https://mpra.ub.uni-muenchen.de/103997/1/MPRA_paper_103997.pdf

Trading Economics (2022). Retrieved from https://tradingeconomics.com/forecast/government-budget

Šojić, M. (2019). Dug i ekonomski razvoj. In V. Vukotić, et al. (Eds.), *Dug i (ne)razvoj* pp. 36–54. Beograd: Institut društvenih nauka, Centar za ekonomska istraživanja.

# IZAZOVI ODRŽIVOSTI JAVNOG DUGA REPUBLIKE SRBIJE U USLOVIMA PANDEMIJE COVID-19

**Apstrakt:** Naučna i stručna javnost već duže vreme vodi raspravu po pitanju uticaja javnog duga na privredni razvoj. Iako je kriza iz 2007. godine dodatno potencirala značaj problema zaduženosti privreda zemalja širom sveta, ovaj problem je postao aktuelniji s pojavom pandemije COVID-19 i naročito dobio na težini usled neizvesnosti dužine njenog trajanja. Upravo iz tog razloga ovaj rad ima za cilj da doprinese jasnijem razumevanju posledica krize izazvane pandemijom COVID-19 na javni dug Republike Srbije i da ukaže na razmere problema zaduženosti sa kojima se suočava srpska privreda, posebno u odnosu na zemlje Zapadnog Balkana. Osnovne metode koje su korišćene u radu – metode analize i sinteze, komparativni metod i metod generalizacije, prilagođene su navedenom cilju i specifičnosti predmeta istraživanja. Dobijeni rezultati istraživanja trasiraju smernice za prioritetne aktivnosti nadležnih državnih organa u pravcu smanjenja javnih rashoda sa ciljem ostvarivanja održivog kretanja javnog duga i stvaranja uslova za dinamiziranje tempa privrednog rasta.

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# RAZVRGNUĆE SUVLASNIČKE ZAJEDNICE

**Rezime**: Suvlasnička zajednica je imovinska zajednica u kojoj suvlasnike povezuju imovinski interesi. Kada imovinski interesi prestanu da postoje, suvlasnici se odlučuju na razvrgnuće suvlasničke zajednice. Razvrgnuće suvlasničke zajednice moguće je na osnovu sporazuma suvlasnika ili u sudskom postupku. Saglasnost suvlasnika, odnosno jednoglasnost o načinu deobe često nije dovoljna da bi se izvršila fizička deoba stvari. Suvlasnici su često primorani da pravo na razvrgnuće suvlasničke zajednice ostvaruju u sudskom postupku. Cilj ovog rada jeste analiza osnovnih karakteristika suvlasničke zajednice u Republici Srbiji i uporednopravno, uz poseban osvrt na pitanje razvrgnuća suvlasničke zajednice i probleme na koje suvlasnici nailaze kada sporazumno (vansudski) nastoje da izvrše fizičku deobu i postanu isključivi vlasnici dela nepokretnosti.

**Ključne reči**: *susvojina, razvrgnuće suvlasničke zajednice, parcelacija građevinskog zemljišta.*

## 1. Uvod

Susvojina postoji kada dva ili više lica u svojstvu suvlasnika imaju pravo svojine na istoj stvari, a deo svakog od njih određen je srazmerno prema celini. Prema preovlađujućem mišljenju u pravnoj teoriji, među suvlasnicima je podeljeno pravo svojine, a ne sama stvar (Stanković & Orlić, 1996, str. 144). Pravo svojine dva ili više lica na jednoj nepodeljenoj stvari predstavlja složenu svojinsku zajednicu (Cvetić, 2018, str.

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1521). Složenost susvojine podrazumeva, s jedne strane, individualno pravo na udeo, a s druge strane, zajedništvo u vršenju svojinskopravnih ovlašćenja na stvari, osim u pogledu prava raspolaganja (mogućnost otuđenja ili opterećenja udela), koje je vezano isključivo za suvlasnički udeo. Ono može nastati voljom suvlasnika, kao što je to slučaj kod kupoprodaje (i svakog drugog pravnog posla), ali i protiv volje suvlasnika, ukoliko dođe do spajanja stvari, prerade i u drugim slučajevima. U pravu Republike Srbije suvlasništvo je regulisano Zakonom o osnovama svojinskopravnih odnosa – ZOSPO (2005), članovima 13–17. Imajući u vidu činjenicu da suvlasništvo gotovo uvek predstavlja izvor sukoba (lat. *Communio est mater rixarum*), suvlasnici imaju mogućnost da izvrše deobu stvari i napuste suvlasničku zajednicu. U praksi često nastaju sporovi između suvlasnika jer među njima ne postoji sporazum o uslovima deobe. Stoga se pitanje razvrgnuća suvlasničke zajednice uglavnom rešava na sudu. Međutim, zanimljiv slučaj u praksi ukazao nam je na činjenicu da se suvlasnici u Republici Srbiji moraju obratiti sudu radi raskidanja suvlasničke zajednice čak i ako među njima nema spora o načinu deobe i suvlasničkim odnosima. Zašto organi uprave odbijaju da potvrde projekat parcelacije i upućuju stranke da za razvrgnuće suvlasničke zajednice ishoduju rešenje o deobi u vanparničnom postupku, videćemo nakon ukazivanja na najvažnija pitanja suvlasništva u austrijskom, nemačkom i srpskom pravu.

## 2. O suvlasničkoj zajednici i deobi stvari između suvlasnika u najvažnijim kodifikacijama građanskog prava

Susvojina (suvlasništvo) predmet je regulisanja najznačajnijih kodifikacija građanskog prava još od XIX veka. Veliki građanski zakonici sadrže odredbe o pojmu suvlasništva i načinu deobe stvari nad kojom postoji susvojina. Iako se u savremenom pravu pravi razlika između susvojine i zajedničke svojine, te se suvlasnici razlikuju od zajedničara po opredeljenosti udela u periodu trajanja složene svojinske zajednice, veliki građanski zakonici suvlasnike nazivaju zajedničarima ili zajedničkim vlasnicima. Ovaj termin se delimično koristi i u srpskom pozitivnom pravu, što primećujemo u članu 141 Zakona o vanparničnom postupku – ZVP (2022).

Austrijski građanski zakonik (nem. *Allgemeines bürgerliches Gesetzbuch*) suvlasništvo pominje u članu 361, dok detaljnije odredbe o ovoj složenoj imovinskoj zajednici grupiše u *Poglavlje šesnaesto,* koje se bavi imovinskim zajednicama. U ovom poglavlju se koristi izraz „zajednica" (nem. *Gemeinschaft*). Austrijski građanski zakonik (AGZ) bio je osnova za izradu Srpskog građanskog zakonika (SGZ) iz 1844. godine. Kako navodi Nikolić (2011), „Jovan Hadžić je knezu Aleksandru 1842. godine, umesto nacrta originalnog kodeksa zasnovanog na tradiciji i duhu srpskog naroda, predao tekst koji je u osnovi predstavljao skraćenu i donekle izmenjenu verziju Austrijskog građanskog zakonika iz 1811. godine. Hadžić je spajao pojedine odredbe, a neke je u potpunosti izostavio. Zahvaljujući tome, uspeo je da 1.502 paragrafa Austrijskog građanskog zakonika svede na 950" (str. 319). Ipak, odredbe o suvlasništvu nisu unete u SGZ. U SGZ se samo u članu 215 pominje suvlasništvo, a pomenuta odredba glasi: „Stvar jedna pokretna ili nepokretna može i nekolicini prinadležati, i onda se oni na celu stvar odnose kao jedno lice. I pravo njihovo biva pravo zajedničko, ako nije kome od njih osobita čest naznačena, koja isključivo njemu i prinadleži." Zanimljivo je da je Opštim imovinskim zakonikom za Crnu Goru iz 1888. godine suvlasništvo detaljno uređeno kroz sedam članova (103–109). U članu 103 govorilo se o pravu na slobodno uživanje zajedničke stvari u granicama svog dela, kao i o pravu da se prema svom suvlasničkom delu snose tereti i troškovi koji nastaju povodom stvari. U slučaju redovnog upravljanja stvarju, bilo je predviđeno da će odluke donositi većina koja se „broji ne po glavama nego po dijelovima" (član 104). Kod poslova koji izlaze iz okvira redovnog upravljanja bilo je potrebno da svi suvlasnici na to pristanu (član 105). Kada neko od suvlasnika ne bi hteo da snosi svoj deo troškova potrebnih za izdržavanje stvari, morao je da ostalim suvlasnicima nadoknadi sve što su zbog toga potrošili. Ako to nije bilo moguće, suvlasnici su mogli da traže sudsku zabranu raspolaganja delom dohotka tog suvlasnika od zajedničke stvari ili da traže od suda da se deo tog suvlasnika proda na javnoj prodaji, pa da se iz te sume novca dug namiri, pri čemu se time ne može ograničiti ničije pravo preče kupovine (član 106). Članom 107 bilo je predviđeno da prilikom prodaje suvlasničkog dela ostali suvlasnici imaju pravo preče kupovine. Ako se stvar može podeliti, a vrednost joj se time ne umanjuje, svaki suvlasnik

mogao je da traži da se stvar podeli i da mu se njegov deo stvarno preda. Ovakva podela bila je moguća u svako doba, osim u nevreme (član 108). Ako se stvar ne može podeliti na stvarne delove, jer bi na taj način propala ili se oštetila, bilo je predviđeno da će sud odlučiti da li će „dobro ostati jednome ili nekolicini suvlasnika koji ponude višu cijenu, a da se ostali tim novcem namire; ili će se dio onoga koji traži diobu prodati i njemu novac dati, a ostali suvlasnici ostati među se u pređašnjoj vezi; ili će se, napokon, cijela zajednička stvar javno prodati, pa izvađeni otuda novac prema dijelovima podijeliti" (član 109). Danas AGZ i ZOSPO na sličan način uređuju pitanje suvlasništva. Navedene sličnosti ogledaju se u sledećem:

a) *Pravilo o jednakim suvlasničkim udelima*

Shodno članu 13 st. 1 ZOSPO, kada više lica imaju pravo susvojine na nepodeljenoj stvari, deo svakog od njih (idealni deo) određen je srazmerno, prema celini. Prema čl. 13 st. 2 ZOSPO, „ako suvlasnički delovi nisu određeni, pretpostavlja se da su jednaki". S druge strane, odredbom AGZ, pretpostavka o jednakim suvlasničkim delovima ustanovljena je u svrhu podele zajedničke koristi koja potiče od zajedničke stvari, kao i preuzimanja obaveza koje nastaju po osnovu zajedničke stvari. Dakle, prema članu 839 AGZ, u slučaju podele koristi i obaveza, koji potiču od zajedničke stvari, smatra se da su suvlasnički delovi jednaki, a ko tvrdi suprotno, to mora i da dokaže;

b) *Zajedničko upravljanje nepodeljenom stvari*

Shodno članu 15 st. 1 ZOSPO, suvlasnici imaju pravo da zajednički upravljaju stvarima u susvojini. U slučaju redovnog upravljanja stvarju, potrebna je većina glasova koja se određuje po veličini suvlasničkog udela. Isto pravilo predviđeno je i u srpskom i u austrijskom pravu (član 15 st. 2 ZOSPO i čl. 833 AGZ). Međutim, u slučaju preduzimanja poslova koji izlaze iz okvira redovnog upravljanja, prema pravu Republike Srbije, odnosno članu 15 stav 4 ZOSPO, potrebna je saglasnost svih suvlasnika. S druge strane, prema AGZ, u slučaju predlaganja tzv. važnih izmena ne mora da se postigne saglasnost svih suvlasnika. Ukoliko pojedini suvlasnici u toj situaciji budu nadglasani, shodno članu 834 AGZ,

mogu zahtevati osiguranje za eventualnu buduću štetu ili, ako im se to uskrati, mogu zahtevati da istupe iz zajednice. Tek ako suvlasnik ne želi da istupi iz zajednice ili bi to istupanje bilo u nevreme, sud će odlučiti da li treba dopustiti takvu izmenu (član 835 AGZ). U Republici Srbiji, u svim slučajevima redovnog upravljanja u kojima nije moguće postići saglasnost suvlasnika a preduzimanje posla je neophodno za redovno održavanje stvari, odlučiće sud (član 15 st. 3 ZOSPO). Mogućnost imenovanja jednog lica koje će vršiti upravljanje stvarju predviđena je i u srpskom i u austrijskom pravu (član 15 st. 5 ZOSPO i član 836 AGZ);

c) *Pravo na zalaganje i prodaju suvlasničkog udela*

Suvlasnik ima pravo da stvar drži i koristi srazmerno svom udelu. Takođe, suvlasnik ima pravo da založi i otuđi svoj suvlasnički udeo pod uslovom da time ne vređa prava ostalih suvlasnika. AGZ predviđa mogućnost zalaganja suvlasničkog udela, kao i mogućnost ostavljanja suvlasničkog udela u nasledstvo, što nije posebno naglašeno u ZOSPO. Mogućnost otuđenja suvlasničkog udela prodajom postoji i prema srpskom i prema austrijskom pravu. Ovo pravo može biti privremeno suspendovano ukoliko se suvlasnik obavezao da će određeni vremenski period ostati u zajednici. ZOSPO, za slučaj prodaje, članom 14 stav 3 ustanovljava pravo preče kupovine u korist ostalih suvlasnika, o čemu AGZ nema relevantnih odredbi;

d) *Pravo na razvrgnuće suvlasničke zajednice*

Suvlasnička zajednica s vremenom može prestati da postoji. Deoba može biti izvršena sporazumno ili uz pomoć suda (član 16 st. 4 ZOSPO i čl. 841 AGZ), pri čemu AGZ preferira vansudsku deobu (Maganić, 2008, str. 12). Vansudska deoba temelji se na privatnopravnom sporazumu suvlasnika koji omogućava strankama izbor načina razvrgnuća koji se u sudskom postupku ne bi mogao ostvariti (Maganić, 2008, str. 13). Mogli bismo zaključiti da sporazum o razvrgnuću suvlasničke zajednice, koji postoji u austrijskom pravu, predstavlja alternativu sprovođenja razvrgnuća u parničnom, odnosno vanparničnom postupku. Pravo na deobu stvari suvlasnik ne može tražiti u nevreme ili kada bi to bilo na štetu trećih lica (član 16 st. 1 ZOSPO i čl. 847 AGZ). Smatra se da bi za-

htev za razvrgnuće bio na štetu trećih lica ako bi se zanemarila starosna dob suvlasnika (npr. kada bi se radilo o maloletniku ili licu visoke starosne dobi povezane s bolešću) ili se ne bi uzele u obzir preteće finansijske teškoće u oblasti poreskog prava (Maganić, 2008, str. 9);

e) *Zadržavanje stvarnih prava na tuđoj stvari nakon izvršene deobe*

Shodno članu 847 AGZ, izvršena deoba ne bi smela da ima uticaj na vršenje založnih prava, službenosti i drugih stvarnih prava koja pripadaju trećem licu. Dok je u AGZ ovo pravilo naglašeno, u pravu Republike Srbije ne postoji odredba koja posebno garantuje zaštitu stvarnih prava na tuđoj stvari nakon izvršene deobe stvari nad kojom postoji suvlasništvo. Međutim, pravna teorija ukazuje na značaj rešavanja ovog pitanja, te odluku o ustanovljavanju stvarnih službenosti nakon izvršene deobe prepušta sudu. Stoga, „ako dođe do fizičke deobe nepokretnosti koja predstavlja povlasno dobro, stvarne službenosti i dalje postoje i to u korist svih delova […]", a „ako dođe do fizičke deobe nepokretnosti koja predstavlja poslužno dobro, stvarna službenost i dalje opterećuje sve delove nepokretnosti" (Stanković & Orlić, 1996, str. 161), osim ako posle deobe sopstvenik poslužnog dobra vrši službenost samo na određenim delovima poslužnog dobra. Tada „sopstvenici ostalih delova mogu tražiti da službenost prestane u pogledu njihovih delova" (Stanković & Orlić, 1996, str. 161).

Ako uporedimo odredbe Nemačkog građanskog zakonika (nem. *Bürgerliches Gezetzbuh*) –NGZ s odredbama sadržanim u ZOSPO koje se odnose na suvlasničku zajednicu, pri čemu se „u Nemačkoj suvlasništvo kao vlasništvo više lica na fizički nepodeljenoj stvari može pojaviti u obliku zajednice na delove ili u obliku zajedničkog vlasništva" (Maganić, 2008, str. 17), sličnosti bi bile u sledećem:

a) *Pravilo o jednakim suvlasničkim udelima*

Slično odredbi iz čl. 13 st. 2 ZOSPO, prema nemačkom pravu, odnosno članu 742 NGZ, „u slučaju sumnje pretpostavlja se da suvlasnici imaju jednake delove";

b) *Pravo na korišćenje zajedničke stvari*

Suvlasnik ima pravo da stvar koristi zajedno sa ostalim suvlasnicima srazmerno svom delu, pri čemu ne sme da povređuje prava ostalih suvlasnika. Ova odredba u istom obliku (prema ZOSPO: „drži i koristi") postoji i u srpskom i u nemačkom pravu (član 14 st. 1 ZOSPO i član 743 st. 2 NGZ);

c) *Zajedničko upravljanje nepodeljenom stvari*

Upravljanje zajedničkom stvarju je zajednička obaveza suvlasnika. Ako se radi o preduzimanju poslova koji spadaju u okvir redovnog upravljanja, i prema ZOSPO i prema NGZ, dovoljno je da se o tome saglasi većina suvlasnika. Većina glasova se određuje prema veličini suvlasničkog dela (član 15 st. 2 ZOSPO i član 745 st. 1 NGZ). Prema nemačkom pravu, svaki suvlasnik ima pravo da preduzme mere za očuvanje stvari i bez saglasnosti ostalih suvlasnika (član 744 st. 2 NGZ).

d) *Pravo na prodaju suvlasničkog udela*

Svaki suvlasnik može da proda svoj suvlasnički deo i na taj način da napusti suvlasničku zajednicu. Ovu mogućnost suvlasnicima garantuje i srpsko i nemačko pravo (član 14 st. 2 ZOSPO i član 747 NGZ).

e) *Obaveza suvlasnika da snose troškove korišćenja, upravljanja i održavanja stvari i ostale terete koji se odnose na celu stvar*

Ova obaveza ustanovljena je na teret suvlasnika i u srpskom i u nemačkom pravu (član 15 st. 6 ZOSPO i član 748 NGZ). Suvlasnici imaju obavezu da snose troškove korišćenja, upravljanja i održavanja stvari i ostale terete koji se odnose na celu stvar srazmerno veličini svojih delova;

f) *Pravo na razvrgnuće suvlasničke zajednice*

Razvrgnuće (raskidanje) suvlasničke zajednice predviđeno je u članu 749 NGZ, prema kome svaki suvlasnik može uvek zahtevati razvrgnuće suvlasničke zajednice. Razlika u odnosu na srpsko (a videli smo i austrijsko) pravo ogleda se u činjenici da pravo na raskidanje suvlasničke zajednice može biti isključeno sporazumom ne samo privremeno, nego

i trajno, uz izuzetak da se čak i u toj situaciji može zahtevati ako postoji opravdan razlog (član 749 st. 2 NGZ). Ako fizička deoba stvari nije moguća, izvršiće se prodaja stvari. NGZ ne pominje ulogu suda u odlučivanju o prodaji stvari, kao što je to slučaj u srpskom pravu (v. član 753 NGZ i član 16 st. 5 ZOSPO).

## 3. Razvrgnuće (raskidanje) suvlasničke zajednice u srpskom pravu

Kada suvlasnici zbog neslaganja ili iz čisto imovinskih razloga ne žele više da ostanu u suvlasničkoj zajednici, sa aspekta prava im je dozvoljeno da izvrše deobu. U sudskoj praksi usvojen je stav da „niko ne može biti zadržan u suvlasničkoj zajednici protivno svojoj volji jer je reč o preobražajnom pravu na osnovu kojeg svaki od suvlasnika ima pravo da zahteva i dobije promenu postojećeg stanja [...] sa ciljem da prestane suvlasnička zajednica koja je postojala do deobe“ (Rešenje Višeg suda u Subotici, Gž 284/2016(1) od 15. 07. 2016. godine). Primoravanje suvlasnika na „trajnu suvlasničku zajednicu“ nije u duhu pozitivnog prava, kao ni sudske prakse, posmatrano čak decenijama unazad. Iz Odluke Saveznog vrhovnog suda, Rev. 666/60 od 29. oktobra 1960. godine može se videti da „obaveza na trajnu suvlasničku zajednicu ne postoji i to pravo na deobu suvlasničke zajednice ne podleže zastarelosti“ (Stanković & Orlić, 1996, str. 158). Prema pravu Republike Srbije, odnosno članu 16 st. 1 ZOSPO, suspendovanje ovog prava dozvoljeno je privremeno ukoliko jedan od suvlasnika deobu zahteva u nevreme, do sticanja uslova za deobu koja se može izvršiti bez prouzrokovanja štete drugim suvlasnicima, kao i ukoliko su se suvlasnici odrekli svog prava da zahtevaju deobu određeni vremenski period, nakon čijeg isteka mogu ponovo da zahtevaju deobu. Prema stavu 3 istog člana, ništav je ugovor kojim se suvlasnik trajno odriče prava na deobu stvari. Zahtevom za razvrgnuće suvlasnici, kao imaoci prava na „idealnom delu“ na nepodeljenoj stvari, zahtevaju da postanu isključivi vlasnici na „realnom delu“ stvari.

### 3.1. **Razvrgnuće suvlasničke zajednice na osnovu sporazuma suvlasnika**

Deoba stvari se može tražiti uvek i svaki od suvlasnika na to ima pravo. Sporazum treba da postoji ne samo o vršenju deobe, nego i o načinu deobe. Da bi se deoba stvari okončala sporazumom suvlasnika, među suvlasnicima mora da postoji jednoglasnost u pogledu načina deobe. Ukoliko sporazum ne može da se postigne, o načinu deobe odlučuje sud (vid. čl. 16 st. 4 ZOSPO).

Posmatrano uporednopravno, razvrgnuće suvlasničke zajednice na osnovu sporazuma stranaka uvek ima prioritet u odnosu na razvrgnuće suvlasničke zajednice u sudskom postupku. Razlike u pogledu sporazumnog prestanka suvlasničke zajednice ogledaju se u formi pravnog akta na osnovu kog se sporazum realizuje. Prema austrijskom i nemačkom pravu, sporazum o razvrgnuću suvlasničke zajednice ne mora biti sastavljen u određenoj formi, dok u hrvatskom pravu sporazum o razvrgnuću suvlasničke zajednice nekretnina mora biti u pisanoj formi, ali u slučaju da je formalno nevaljan ugovor izvršen proizvodiće pravne posledice (Maganić, 2008, str. 13, 23, 30). Prema sudskoj praksi u Republici Srbiji, kod razvrgnuća suvlasničke zajednice na osnovu sporazuma dovoljno je da suvlasnici postignu usmeni sporazum o fizičkoj deobi nepokretnosti suvlasnika jer „za deobu imovine (deobu na fizičke delove tako da svaki od suvlasnika postane vlasnik realnog dela) ne traži se posebna forma, tako da je dozvoljena i usmena forma“ (Rešenje Apelacionog suda u Nišu, Gž 1347/18 od 13. 11. 2018. godine). Važno je da između sporazumnih strana ne postoji spor ni u pogledu veličine udela ni u pogledu faktičkog stanja. Stoga bi u ovom slučaju bilo necelishodno, ali i shodno pravu Republike Srbije, odnosno čl. 16 st. 4 ZOSPO nepotrebno zahtevati od sporazumnih strana da upućuju zahtev za razvrgnuće suvlasničke zajednice nadležnom sudu.

Postoji nekoliko načina deobe. Obično se sprovodi fizička ili naturalna deoba, kada suvlasnici stvar fizički podele, odnosno civilna deoba (deoba po vrednosti), kada suvlasnici odlučuju da stvar prodaju a dobijenu vrednost podele srazmerno veličini udela (Stanković & Orlić, 1996, str. 159). Moguća je i deoba isplatom udela, kada stvar pripadne jednom suvlasniku koji onda ima obavezu da isplati ostale (Stanković & Orlić, 1996, str. 159). Treći način bi bila deoba uz doplatu, koja se primenjuje

kada prilikom fizičke deobe deo stvari koji treba da pripadne jednom suvlasniku ne odgovara vrednosti njegovog udela, pa mu se daje razlika u novcu (Stanković & Orlić, 1996, str. 159). U svim navedenim situacijama, ukoliko među suvlasnicima postoji jednoglasnost, nema potrebe da se stranke obraćaju sudu radi deobe stvari nad kojom postoji suvlasništvo.

### 3.2. **Razvrgnuće suvlasničke zajednice u sudskom postupku**

Ukoliko je fizička deoba nemoguća ili je moguća samo uz znatno smanjenje vrednosti stvari, prema pravu Republike Srbije, o deobi će odlučiti sud. U tom slučaju, sud će odlučiti da se deoba izvrši prodajom stvari (vid. čl. 16 st. 5 ZOSPO). O deobi sud odlučuje u vanparničnom postupku i to samo kada je među suvlasnicima (u duhu ZVP „zajedničarima") sporan „način deobe zajedničkih stvari ili imovine". Potreba za odlučivanjem o deobi od strane suda nastaje i kada među suvlasnicima postoji spor o predmetu deobe i suvlasničkim odnosima. U tim slučajevima, potrebno je da se donese sudska odluka u parničnom postupku. Dodatno, „ako sud, postupajući po predlogu, utvrdi da je među zajedničarima sporno pravo na stvari koje su predmet deobe ili pravo na imovinu, udeo u zajedničkim stvarima, odnosno imovini ili je sporno koje stvari, odnosno prava ulaze u zajedničku imovinu, prekinuće postupak i uputiti predlagača da u određenom roku pokrene parnicu" (vid. čl. 150 st. 1 ZVP). Ukoliko među suvlasnicima nema spora ni o jednoj od navedenih okolnosti, onda nema potrebe za sudskim odlučivanjem o razvrgnuću suvlasničke zajednice ni u parničnom ni u vanparničnom postupku.

### 3.3. **Rešenje o deobi umesto potvrđivanja projekta parcelacije – mogućnost ili obaveza?**

U praksi se, međutim, radi promene zemljišnoknjižnog stanja u slučaju razvrgnuća suvlasničke zajednice zahteva posedovanje rešenja o deobi, koje treba da bude ishodovano u vanparničnom postupku, iako bi potvrđivanje projekta parcelacije u upravnom postupku suštinski imalo isti efekat. Prednosti razvrgnuća suvlasničke zajednice potvrđivanjem projekta parcelacije, odnosno preparcelacije su višestruke. Pre

svega, suvlasnici mnogo brže i uz manje troškova napuštaju suvlasničku zajednicu i postaju isključivi vlasnici na svom delu nepokretnosti. Obavezivanje stranaka da se obraćaju vanparničnom sudu u situaciji kada među suvlasnicima nema spora ni o jednoj okolnosti koja zahteva sudsko odlučivanje smatramo nepotrebnim. Zakonska mogućnost ne bi trebalo da se nameće strankama kao obaveza.

## 4. Parcelacija, odnosno preparcelacija građevinske parcele za potrebe razvrgnuća suvlasničke zajednice

Prema Pravilniku o opštim pravilima za parcelaciju, regulaciju i izgradnju (2015), parcelacija, odnosno preparcelacija je postupak formiranja građevinskih parcela deobom ili spajanjem celih ili delova građevinskih parcela (vid. čl. 4). Zakon o planiranju i izgradnji (ZPI) iz 2021. godine građevinsku parcelu definiše kao „deo građevinskog zemljišta, sa pristupom javnoj saobraćajnoj površini, koja je izgrađena ili planom predviđena za izgradnju koja se definiše koordinatama prelomnih tačaka u državnoj projekciji" (čl. 2 st. 1 tač. 20). Kako građevinsko zemljište, shodno čl. 84 st. 1 ZPI, može biti u svim oblicima svojine (privatna, javna i zadružna), u ovom radu se analiziraju praktični problemi u vezi sa suvlasničkom zajednicom na nepokretnosti koja je u celosti u privatnoj svojini.

Pravni osnov za nastanak susvojine na građevinskoj parceli može biti ugovor o kupoprodaji, ugovor o poklonu, ugovor o razmeni i dr. Uz odgovarajući pravni osnov, za nastanak susvojine na građevinskoj parceli potreban je i upis u zemljišne knjige, kao relevantan način sticanja. Sticanje susvojine pravnim poslom podrazumeva zajedničko ulaganje određenog novca radi sticanja prava svojine na stvari, ali suvlasnik se može postati i kupovinom određenog idealnog dela od suvlasnika pri čemu novi suvlasnik stupa na mesto ranijeg suvlasnika u ovoj složenoj svojinskoj zajednici. Svojstvo suvlasnika se može steći i održajem, „ako jedno lice kupi suvlasnički udeo (ili na drugi način stekne zakonitu državinu), a prilikom kupovine nije znalo niti je moglo znati da lice od koga kupuje udeo nije suvlasnik i ako uz to protekne rok koji je potreban za održaj takve stvari" (Stanković & Orlić, 1996, str. 157). Suvlasnik u već postojećoj suvlasničkoj zajedinici može postati treće lice ukoliko

jedan od suvlasnika iz pomenute zajednice ne iskoristi svoje zakonom garantovano pravo preče kupovine. Iako, istorijski posmatrano, pravo preče kupovine suvlasnika nije bilo priznavano suvlasnicima (Stanković & Orlić, 1996, str. 146–149), danas je u srpskom pravu pravo preče kupovine suvlasnika prihvaćen institut koji je detaljno regulisan članovima 5–10. Zakona o prometu nepokretnosti (2015).

ZPI, članom 65 st. 1 i 2, omogućava vlasnicima katastarskih parcela da na većem broju katastarskih parcela obrazuju jednu ili više građevinskih parcela na osnovu projekta preparcelacije, kao i da na jednoj katastarskoj parceli obrazuju veći broj građevinskih parcela koje se mogu deliti parcelacijom do minimuma utvrđenog primenom pravila o parcelaciji ili ukrupniti preparcelacijom, a prema planiranoj ili postojećoj izgrađenosti, odnosno planiranoj ili postojećoj nameni građevinske parcele, na osnovu projekta parcelacije. Da bi utvrdili mere i granice novoformiranih građevinskih parcela, suvlasnici iniciraju izradu projekta parcelacije katastarske parcele kod ovlašćenog privrednog društva, odnosno drugog pravnog lica ili preduzetnika koje je upisano u odgovarajući registar (obično biro za projektovanje). Sastavni deo projekta parcelacije, odnosno preparcelacije je i projekat geodetskog obeležavanja. Izradom projekta parcelacije, odnosno preparcelacije rukovodi odgovorni urbanista arhitektonske struke (vid. čl. 65 st. 3 ZPI).

Građevinske parcele koje se parcelacijom obrazuju na jednoj katastarskoj parceli moraju da ispunjavaju uslove utvrđene u planskom dokumentu, a ukoliko planski dokument nije donet – uslove predviđene Pravilnikom o opštim pravilima za parcelaciju, regulaciju i izgradnju (2015). To su uslovi o minimalnoj površini građevinske parcele, o pristupu javnoj saobraćajnoj površini, visini i udaljenju objekata, koji su propisani planskim dokumentom za tu zonu. Ukoliko je projekat parcelacije, odnosno preparcelacije urađen u skladu sa važećim planskim dokumentom, odnosno Pravilnikom o opštim pravilima za parcelaciju, regulaciju i izgradnju, takav projekat će potvrditi organ jedinice lokalne samouprave nadležan za poslove urbanizma u roku od deset dana. U suprotnom će podnosiocu zahteva dostaviti obaveštenje u kojem će obrazložiti zbog čega projekat nije potvrđen. Podnosilac zahteva može podneti prigovor na navedeno obaveštenje opštinskom, odnosno gradskom veću u roku od tri dana od dana dostavljanja (vid. čl. 65 st. 4–6 ZPI).

Parcelaciju, kao i preparcelaciju, na osnovu zahteva, sprovodi organ nadležan za poslove državnog premera i katastra. Uslov za sprovođenje promene u nadležnom katastru jeste da je projekat parcelacije, odnosno preparcelacije potvrđen od strane organa nadležnog za poslove urbanizma jedinice lokalne samouprave o čemu je potrebno podneti dokaz (rešenje). Osim navedenog dokaza podnosi se i dokaz o rešenim imovinsko-pravnim odnosima za sve katastarske parcele (čl. 66 st. 2 ZPI). Kao prilozi zahtevu za sprovođenje promene nastale parcelacijom, preparcelacijom ili ispravkom granica katastarskih parcela, Republički geodetski zavod (2021) zahteva da se dostave i izjava geodetske organizacije o prihvatanju izvršenja geodetskih radova na terenu, elaborat geodetskih radova, koji je izradila i overila ovlašćena geodetska organizacija, i zapisnik o izvršenom uviđaju na terenu koji je potpisan od strane podnosioca zahteva i imalaca pravnog interesa.

Po primljenom zahtevu za sprovođenje preparcelacije, odnosno parcelacije, organ nadležan za poslove državnog premera i katastra donosi rešenje o formiranju katastarske/ih parcele/a. Primerak rešenja dostavlja se i nadležnom organu koji je potvrdio projekat preparcelacije, odnosno parcelacije. Na pomenuto rešenje može se izjaviti žalba u roku od osam dana od dana dostavljanja rešenja. Pravosnažno rešenje o formiranju katastarske/ih parcele/a organ nadležan za poslove državnog premera i katastra dostavlja i poreskoj upravi na teritoriji na kojoj se nalazi predmetna nepokretnost (vid. čl. 66 st. 4–7 ZPI).

Ukoliko nisu ispunjeni uslovi utvrđeni planskim dokumentom, odnosno Pravilnikom o opštim pravilima za parcelaciju, regulaciju i izgradnju organ jedinice lokalne samouprave nadležan za poslove urbanizma, u obaveštenju koje dostavlja podnosiocu zahteva, obrazložiće zbog čega projekat nije potvrđen. Međutim, prema pravu Republike Srbije, odnosno članu 106 st. 6 ZPI, prilikom izrade projekta parcelacije za potrebe razvrgnuća suvlasničke zajednice u sudskom postupku ne moraju da se primenjuju navedeni uslovi, odnosno odredbe o minimalnoj površini građevinske parcele, o pristupu javnoj saobraćajnoj površini, visini i udaljenju objekata, koji su propisani planskim dokumentom za tu zonu. Postavlja se pitanje: da li se navedeni uslovi moraju primenjivati ukoliko se parcelacija, odnosno preparcelacija građevinske parcele sprovodi za potrebe razvrgnuća suvlasničke zajednice na osnovu spo-

razuma stranaka (vansudski)? U teoriji postoji stav da je svaka parcelacija za potrebe razvrgnuća suvlasničke zajednice dozvoljena nasuprot planskim dokumentima (Petrović, 2019, str. 214). Kako se postupak za razvrgnuće suvlasničke zajednice kod nadležnog suda pokreće samo ukoliko između suvlasnika ne može da se postigne saglasnost za formiranje katastarske parcele (jednoglasnost), tumačenjem po analogiji ista odredba Zakona može se primeniti i na razvrgnuće suvlasničke zajednice sporazumno (vansudski).

Posebno bi se moglo analizirati pitanje pristupa javnoj saobraćajnoj površini, kao jedan od uslova za potvrđivanje projekta parcelacije. U skladu sa odrebama Pravilnika o opštim pravilima za parcelaciju, regulaciju i izgradnju, građevinska parcela mora da ima izlaz na javnu saobraćajnu površinu, u skladu sa rangom i pravilima za najmanju dozvoljenu širinu pojasa regulacije po vrstama ulica: 1) sabirne ulice – 10,00 m; 2) stambene ulice – 8,00 m; 3) saobraćajnice u seoskim naseljima – 7,00 m; 4) kolski prolazi – 5,00 m; 5) privatni prolazi – 2,50 m (vid. čl. 14 st. 3). Prema članu 32 st. 2, širina privatnog prolaza za parcele koje nemaju direktan pristup javnoj saobraćajnoj površini ne može biti manja od 2,50 m, što govori u prilog činjenici da građevinske parcele ne moraju da imaju direktan pristup javnoj saobraćajnoj površini, iako se u praksi od podnosilaca zahteva za potvrđivanje projekta parcelacije to uglavnom zahteva. Takođe, u praksi se ustanovljeno pravo prolaza pešice i vozilom preko poslužnog dobra u korist parcele koja je predmet parcelacije, kao povlasnog dobra, ne tumači u smislu „pristupa javnoj saobraćajnoj površini", te se u tim slučajevima uskraćuje potvrđivanje projekta parcelacije od strane organa nadležnog za poslove urbanizma jedinice lokalne samouprave, što takođe ne bi trebalo da bude pravilo.

## 5. **Zaključak**

Susvojina je imovinska zajednica u kojoj suvlasnike povezuju imovinski interesi. Kada imovinski interesi više ne postoje, suvlasnik ima pravo da zahteva deobu u svako doba osim u nevreme i ovo pravo suvlasnika ne zastareva. Stav sudske prakse je da niko ne može biti zadržan u suvlasničkoj zajednici protivno svojoj volji. Međutim, suvlasnici se če-

sto primoravaju da ostanu u suvlasničkoj zajednici ukoliko ne žele da se obrate sudu, premda postoji volja da tu zajednicu napuste deobom stvari i saglasnost u pogledu načina deobe, veličine udela i faktičkog stanja.

Razvrgnuće suvlasničke zajednice moguće je na osnovu sporazuma suvlasnika ili u sudskom postupku. Fizička deoba stvari sporazumom suvlasnika trebalo bi da ima prioritet. Tek ako se suvlasnici ne mogu sporazumeti o načinu deobe, odluku bi trebalo da donese sud. Međutim, u praksi se stranke nepotrebno upućuju da pravo na razvrgnuće suvlasničke zajednice ostvare u sudskom postupku, što posebno nema svrhu u situaciji kada postoji mogućnost da potvrđivanjem projekta parcelacije od strane organa uprave na jednostavniji i efikasniji način dođu do cilja.

S druge strane, ako se uzmu u obzir uslovi koje postojeća građevinska parcela treba da ispuni da bi se potvrdio projekat parcelacije, može se analizirati da li organ nadležan za poslove urbanizma jedinice lokalne samouprave treba da ima ovlašćenje da zahteva da parcele koje nastaju parcelacijom ispunjavaju navedene uslove, ako time onemogućava suvlasnike da iskoriste svoje pravo na razvrgnuće suvlasničke zajednice. Insistiranjem na strogom ispunjavanju uslova obesmišljava se pravilo da niko ne može biti zadržan u suvlasničkoj zajednici protivno svojoj volji. Kako je zakonodavstvom Republike Srbije predviđeno da za projekat parcelacije za potrebe razvrgnuća suvlasničke zajednice u sudskom postupku nije potrebno ispuniti uslove koji su potrebni u drugim slučajevima, trebalo bi isti kriterijum primeniti i kada se zahteva potvrđivanje projekta parcelacije za potrebe razvrgnuća suvlasničke zajednice, kao rezultat sporazuma stranaka (vansudski).

## Literatura

Grupa autora (2021). *Zbirka sentenci iz građanskog prava i građanskog procesnog prava* (Knjiga 4). Beograd: Službeni glasnik.

Cvetić, R. (2018). O opravdanosti zakonskog prava preče kupovine suvlasnika nepokretnosti. *Zbornik radova Pravnog fakulteta u Novom Sadu, 4*, 1521–1532.

Lazić, M. (2011). Pretvorba (transformacija) prava na nekretninama u društvenom vlasništvu i Republici Srbiji. *Zbornik Pravnog fakulteta u Rijeci, 1*, 215–237.

Maganić, A. (2008). Razvrgnuće suvlasničke zajednice. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 1,* 1–41.

Maganić, A. (2010). Parcelacija i razvrgnuće suvlasništva poljoprivrednog zemljišta. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 1,* 175–201.

Nikolić, D. (2011). Dva veka Austrijskog građanskog zakonika (1811–2011). doi: 10.2298/ZMSDN1135113N.

Petrović, N. (2019). *Komentar Zakona o planiranju i izgradnji sa Novelama iz 2019. godine, sudskom praksom, primerima ugovora i prilogom*. Beograd: Poslovni biro.

Republički geodetski zavod (2021). *Promena nastala parcelacijom, preparcelacijom ili ispravkom granica katastarskih parcela.* Preuzeto 19. 10. 2021, sa www.rgz.gov.rs/usluge/usluge-katastra-nepokretnosti/promena-nastala-parcelacijom-preparcelacijom-ili-ispravkom-granica-katastarskih-parcela.

Rešenje Višeg suda u Subotici, Gž 284/2016(1) od 15. 07. 2016. godine. Paragraf.lex.

Rešenje Apelacionog suda u Nišu, Gž 1347/18 od 13. 11. 2018. godine. Paragraf.lex.

Stanković, O. & Orlić, M. (1996). *Stvarno pravo* (9. izd.). Beograd: Nomos.

**Propisi**

Austrijski građanski zakonik (nem. *Allgemeines bürgerliches Gesetzbuch*). https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10001622/ABGB%2c%20Fassung%20vom%2021.02.2022.pdf

Nemački građanski zakonik (nem. *Bürgerliches Gezetzbuh*). BGB - nichtamtliches Inhaltsverzeichnis (gesetze-im-internet.de)

Opšti imovinski zakonik za Crnu Goru. https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/privatno-pravo/crna-gora/Opsti_imovinski_zakonik_CG.pdf

Pravilnik o opštim pravilima za parcelaciju, regulaciju i izgradnju („Službeni glasnik RS“, br. 22/2015). https://www.paragraf.rs/propisi/pravilnik_o_opstim_pravilima_za_parcelaciju_regulaciju_i_izgradnju.html

Srpski građanski zakonik. https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/privatno-pravo/srbija/Srpski_gradjanski_zakonik_1844.pdf

Zakon o planiranju i izgradnji („Sl. glasnik RS“, br. 72/2009, 81/2009 - ispr., 64/2010 - odluka US, 24/2011, 121/2012, 42/2013 - odluka US, 50/2013 - odluka US, 98/2013 - odluka US, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019 - dr. zakon, 9/2020 i 52/2021). https://www.paragraf.rs/propisi/zakon_o_planiranju_i_izgradnji.html

Zakon o prometu nepokretnosti („Sl. glasnik RS“, br. 93/2014, 121/2014 i 6/2015). https://www.paragraf.rs/propisi/zakon_o_prometu_nepokretnosti.html

Zakon o vanparničnom postupku („Sl. glasnik SRS“, br. 25/82 i 48/88 i „Sl. glasnik RS“, br. 46/95 - dr. zakon, 18/2005 - dr. zakon, 85/2012, 45/2013 - dr. zakon, 55/2014, 6/2015, 106/2015 - dr. zakon i 14/2022). https://www.paragraf.rs/propisi/zakon_o_vanparnicnom_postupku.html

Zakon o osnovama svojinskopravnih odnosa („Sl. list SFRJ“, br. 6/80 i 36/90, „Sl. list SRJ“, br. 29/96 i „Sl. glasnik RS“, br. 115/2005 - dr. zakon). https://www.paragraf.rs/propisi/zakon_o_osnovama_svojinskopravnih_odnosa.html

## DISSOLUTION OF CO-OWNERSHIP IN SERBIAN LAW

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# DISSOLUTION OF CO-OWNERSHIP IN SERBIAN LAW

**Abstract:** Co-ownership of property is a community in which co-owners are linked by property interests. When the property interests cease to exist, the co-owners can decide to dissolve the co-ownership. Co-ownership dissolution can occur by mutual agreement of the co-owners or in court proceedings. The consent of the co-owners or their agreement upon the method of division, is often not enough to carry out the partition by physical division. Co-owners often have to exercise the right to dissolve the co-ownership in court proceedings. The aim of this paper is to examine the basic features of co-ownership in Serbian legislation and comparative legislation, focusing on the issue of co-ownership dissolution and the problems that co-owners encounter when seeking to carry out a partition by physical division via a settlement before trial and become the sole owners of a part of real estate.

**Key words**: co-ownership, dissolution of co-ownership, building land partition

## 1. Introduction

Co-ownership exists when two or more persons hold the right of ownership to the same property, and the part of each of them is determined in proportion to the whole. The prevailing opinion in legal theory is that it is the right of ownership is divided among the co-own-

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ers, not property itself (Stanković & Orlić, 1996, p. 144). The right of ownership of two or more persons to one undivided thing represents a complex community of ownership (Cvetić, 2018, p. 1521). The complexity of co-ownership implies, on the one hand, an individual right to a share, and on the other hand, a commonality in the exercise of ownership rights over property, except for the right of disposal (possibility of selling or pledging the share), which is related exclusively to the co-ownership share. The disposal may occur with the co-owner's consent, in case of sales or any other legal business transaction, but also against the co-owner's will, if there is a merger of property, processing, etc. In the Serbian legislation, co-ownership is regulated by the Law on Basis of Ownership and Proprietary Relations (Serbian, *Zakon o osnovama svojinskopravnih odnosa* – "ZOSPO" (2005)), Articles 13-17. Since co-ownership is almost always a source of conflict (Lat. *Communio est mater rixarum*), co-owners may divide property and dissolve co-ownership. In practice, legal disputes often arise between co-owners because they cannot agree on the conditions of partition. Therefore, the issue of co-ownership dissolution is usually resolved by legal action. However, an interesting case in practice has shown that co-owners in the Republic of Serbia must go to court in order to dissolve their co-ownership, even if they agree about the method of division and co-ownership relations. In the following sections, we will compare the most important features of co-ownership in Austrian, German and Serbian law and then investigate the reasons why the authorities refuse to confirm the partition by physical division and encourage the parties to settle a Partition action prior to trial.

## 2. Co-Ownership and Property Division in Major Civil Codes

Since the 19th century, co-ownership has been the subject of the most significant codifications of civil law. Most major civil codes contain provisions on the concept of co-ownership and the method of division of jointly owned property. Although modern legislation makes a distinction between co-ownership and joint ownership, and co-owners are distinguished from joint owners by the share proportion owned,

major civil codes refer to co-owners as joint owners. This term is also sometimes used in Serbian positive law, as seen in Article 141 of the Law on Non-Litigation Procedure (Serbian, *Zakon o vanparničnom postupku* (ZVP (2022)).

The Austrian Civil Code (German: *Allgemeines Bürgerliches Gesetzbuch*) mentions co-ownership in Article 361, while more detailed provisions on this complex property community are grouped in Chapter Sixteen, which deals with property communities. The term "community" (German: *Gemeinschaft*) is used in this chapter. The Austrian Civil Code (Serbian: *Austrijski građanski zakonik* ("AGZ")) was the basis for drafting the 1844 Serbian Civil Code (Serbian: *Srpski građanski zakonik* ("SGZ"). As Nikolić (2011) states, "In 1842, instead of a draft of the original code based on the tradition and spirit of the Serbian people, Jovan Hadžić presented Prince Aleksandar with a text that was essentially a shortened and somewhat modified version of the 1811 Austrian Civil Code. Hadžić combined some provisions, leaving others out altogether. Thus, he managed to reduce the 1,502 paragraphs of the Austrian Civil Code to 950" (p. 319). However, the provisions on co-ownership were not included in the SGZ. Co-ownership is only mentioned in Article 215 of the Civil Code, and the provision reads: "One movable or immovable property can belong to several people, and then they are referred to as one person. And their right becomes a joint right, if no one of them has a special honour designated, which belongs exclusively to him."

Interestingly, the 1888 General Property Code for Montenegro regulates co-ownership in detail through seven articles (103-109). Article 103 was related to the right to freely enjoy the joint property within the limits of one's share, as well as the right to bear the burdens and costs arising from the property according to one's co-ownership share. In the case of regular management of property, decisions would be made by the majority "counted not by heads but by shares" (Article 104). In the case of affairs beyond the scope of regular management, it was necessary for all co-owners to agree to it (Article 105). If one of the co-owners did not want to bear his/her share of the costs needed to maintain property, they had to compensate the other co-owners for the resources spent. If this was not possible, the co-owners could ask for a court injunction to

dispose of a share of that co-owner's income from the joint property or ask the court to sell a share of that co-owner at a public sale, so that the debt is settled from that sum of money, whereby cannot limit anyone's right of pre-emption (Article 106). Article 107 stipulated that during the sale of the co-owned share, the other co-owners have the right of first refusal. If the property can be divided, and its value is not reduced, each co-owner could request that the property be divided and that their share be given to them. This kind of partition was possible at any time, except during the time when such division may cause a damage to other co-owners (Article 108). If the property could not be partitioned physically, because it would be damaged or destroyed, the court would decide whether "the property will remain for one or several co-owners who offer a higher price, and the rest will settle with that money; or the share of the one requesting partition will be sold and the money will be given to him, and the other co-owners will remain so; or, finally, the joint property as a whole will be publicly sold, and the money will be divided according to the shares" (Article 109). Today both the AGZ and ZOSPO acts regulate the issue of co-ownership in a similar manner. The similarities can be observed in the following:

*a) Rule on equal co-ownership shares*

Pursuant to ZOSPO Article 13 para. 1, when several persons shall have the right of co-ownership over an undivided property, each person's part is defined as a proportionate share of ownership in comparison with the entirety (ideal share). According to ZOSPO Art. 13 para. 2, "if co-ownership share is not defined, it shall be presumed that they are equal". On the other hand, by the AGZ provision, the presumption of equal co-ownership shares was established for the purpose of dividing the common benefit that comes from the joint property, as well as assuming the obligations that arise from joint ownership. Therefore, according to AGZ Article 839, in the case of division of benefits and obligations originating from co-ownership of property, the co-ownership shares are considered to be equal, and whoever claims the opposite must also prove it.

*b) Joint management of an undivided property*

Pursuant to ZOSPO Article 15 para. 1, the co-owners shall have the right to joint management of a property. In the case of regular management, a majority of votes is required, which is determined by the size of the co-ownership share. The same rule applies to both Serbian and Austrian law (Article 15 para. 2 ZOSPO and Article 833 AGZ). However, in the case of activities beyond the scope of regular management, according to the Serbian law, i.e., ZOSPO Article 15 para. 4, the consent of all co-owners is required. On the other hand, AGZ states that the so-called important do not have to be agreed upon by all co-owners. If individual co-owners are outvoted, according to AGZ Article 834, they can demand insurance for possible future damage or, if they are denied this, they can demand to withdraw from the agreement. Only if the co-owner does not want to withdraw from the agreement or that withdrawal would be untimely, the court will decide whether such a change should be allowed (AGZ Article 835). In the Republic of Serbia, in all cases of regular management, if the consent required is not reached, where the management is necessary for regular maintenance of the property, the court shall decide on the matter (ZOSPO Article 15 paragraph 3). The possibility of co-owners entrusting the management of a property with a third person is provided for in both Serbian and Austrian law (ZOSPO Article 15 para. 5 and Article 836 AGZ).

*c) Right to pledge and sell the co-ownership share*

The co-owner has the right to possess and use the property in proportion to his/her share. Also, the co-owner has the right to pledge and sell his/her co-ownership share, without infringing the rights of other co-owners. AGZ allows the possibility of pledging or bequeathing the co-ownership share, which is not referenced in ZOSPO. The possibility of selling the co-ownership share exists both under Serbian and Austrian law. This right can be temporarily suspended if the co-owner is legally bound to the co-ownership agreement for a certain period of time. In case of sale, ZOSPO Article 14 para. 3, establishes the right of pre-emption in favor of the other co-owners, which AGZ does not reference.

*d) Right to dissolve co-ownership*

In the case of cessation of co-ownership, the partition of property can be done by mutual agreement or with the help of the court (ZOSPO Article 16 para. 4 and AGZ Article 841). AGZ recommends an out-of-court partition settlement (Maganić, 2008, p. 12). The out-of-court division is based on the private law agreement of the co-owners, which enables the parties to choose a method of distribution that could not be achieved in court proceedings (Maganić, 2008, p. 13). We can conclude that the agreement on the dissolution of co-ownership, which exists in Austrian law, is an alternative to the dissolution in a civil lawsuit or non-litigation procedure. The co-owner cannot claim the right to divide property during the time when such division may cause a damage to other co-owners or when it would be to the detriment of third parties (ZOSPO Article 16 para. 1 and AGZ Article 847). It is considered that the request for dissolution would be to the detriment of third parties if the co-owner's age was disregarded (e.g., in the case of a minor or a person of advanced age associated with an illness) or if imminent financial difficulties related to taxation were not taken into account (Maganić, 2008, p. 9).

*e) Retention of real rights on another's property after partition*

Pursuant to AGZ Article 847, the division performed should not have an impact on the exercise of lien rights, easement and other real rights belonging to a third party. While this is explicitly stated in AGZ, there is no provision in Serbian legislation that serves as a guarantee of the protection of real rights on another's property after the division of the property over which there is co-ownership. Theoretical findings indicate that solving this issue is important, but the decision on the easements after the partition is left to the court. Therefore, "if there is a physical division of immovable that represents privileged property, real easement still exists for the benefit of all parts [...]", and "if there is a physical division of real estate, real easements still encumber all parts of the immovable property" (Stanković & Orlić, 1996, p. 161), unless after division the owner of the property under easement exercises easement only on certain parts of the property. Then "the owners of the other parts can request that the easement cessation with regard to their parts" (Stanković & Orlić, 1996, p. 161).

Comparing the provisions of the German Civil Code (German: *Bürgerliches Gezetzbuch*) – "NGZ") with the ZOSPO provisions relating to co-ownership, where "in Germany, co-ownership as the ownership of several persons on a physically undivided thing can occur in the form of a community in parts or in form of joint ownership" (Maganić, 2008, p. 17), there are following similarities:

a) *Rule on equal co-ownership shares*

Similar to the provision from ZOSPO Article 13 para. 2, according to German law, i.e., NGZ Article 742, "in case of doubt, it is assumed that co-owners have equal shares".

b) *Right to use joint property*

The co-owner has the right to use the thing together with the other co-owners in proportion to his/her share, while he/she must not infringe the rights of the other co-owners. This provision in the same form (according to ZOSPO: "possess and use") exists in both Serbian and German law (ZOSPO Article 14 para. 1 and NGZ Article 743 para. 2).

c) *Joint management of undivided property*

Management of the common thing is a joint responsibility of the co-owners. If it is about undertaking work that falls within the framework of regular management, both according to ZOSPO and according to NGZ, it is enough that the majority of the co-owners agree on it. The majority of votes is determined according to the size of the co-owner's share (ZOSPO Article 15 para. 2 and NGZ Article 745 para.1). According to German law, each co-owner has the right to take measures to preserve things even without the consent of the other co-owners (NGZ Article 744 para. 2).

*d) Right to sell the co-ownership share*

Each co-owner can sell his/her co-ownership share and thereby dissolve the co-ownership. This possibility is guaranteed to co-owners by both Serbian and German law (ZOSPO Article 14 para. 2 and NGZ Article 747).

e) *Obligation of the co-owners to bear the costs of use, management and maintenance of the thing and other encumbrances related to the entire thing*

This obligation is imposed on co-owners in both Serbian and German law (ZOSPO Article 15 para. 6 and NGZ Article 748). Co-owners have the obligation to bear the costs of using, managing and maintaining property and other encumbrances related to the entire property in proportion to the size of their parts.

f) *Right to dissolve co-ownership*

The dissolution (termination) of the co-ownership is referenced in NGZ Article 749, according to which each co-owner can always request the dissolution of co-ownership. Unlike in Serbian and Austrian law, the right to terminate co-ownership can be waived by mutual agreement not only temporarily, but also permanently, with the exception that even in that case co-owners can request dissolution if there is a justified reason (NGZ Article 749 para. 2). If the physical division of the item is not possible, the item will be sold. NGZ does not mention the role of the court in deciding on the sale of things, as is the case in Serbian law (see NGZ Article 753 and ZOSPO Article 16 para. 5).

## 3. Dissolution (termination) of co-ownership community in Serbian law

When co-owners no longer wish to remain in the co-ownership community due to disagreements or for property reasons, they are legally allowed to divide. In judicial practice, it is held that "no one can be kept in the co-ownership community against their will, because it is a question of conversion right, on the basis of which each of the co-owners has the right to request and receive a change in the existing situation [...] with the aim of ending the co-ownership community that existed until the partition" (Decision of the High Court in Subotica, 284/2016(1) dated 07/15/2016). Forcing co-owners to a "permanent co-ownership community" has not been in the spirit of positive law, as well as judicial practice, for several decades. Decision of the Federal Supreme Court,

Rev. 666/60 of October 29, 1960, states that "the obligation to a permanent co-ownership community does not exist and the right to divide the co-ownership community is not subject to statute of limitations" (Stanković & Orlić, 1996, p. 158). According to Serbian law, i.e., Article 16 para. 1 ZOSPO, the suspension of this right is temporarily allowed if one of the co-owners requests a partition in an untimely manner, until the conditions for the partition are met, which can be carried out without causing damage to the other co-owners, as well as if the co-owners have waived their right to request a partition for a certain period, after which they may again demand division. According to Article 16 para. 3, the contract whereby a co-owner permanently waived his/her right to division of a thing shall be considered null and void. With the request for dissolution, the co-owners, as holders of rights to the ideal share of the undivided thing, demand to become the exclusive owners of the real share.

### 3.1. **Dissolution of co-ownership based on the co-owners' agreement**

The division of things can always be requested and each of the co-owners has the right to do so. There should be an agreement not only on the division, but also on the method of division. In order for the division of property to end with the agreement of the co-owners, there must be unanimity among the co-owners regarding the method of division. If an agreement cannot be reached, the court decides on the method of division (see ZOSPO Art. 16 para. 4).

Observed in comparative law, the dissolution of co-ownership based on the agreement of the parties always has priority over the dissolution in court proceedings. The differences regarding the agreed termination of the co-ownership are reflected in the form of the legal act on the basis of which the agreement is implemented. According to Austrian and German law, the agreement on the dissolution of the co-ownership community does not have to be drawn up in a certain form, while in Croatian law the agreement on the dissolution of the co-ownership community of real estate must be in writing, but if a formally invalid contract is executed, it will produce legal consequences (Maganić, 2008,

pp. 13, 23, 30). According to the Serbian judicial practice, for dissolution of co-ownership based on mutual agreement, it is sufficient for the co-owners to reach an oral agreement on the physical division of the co-owners' immovable property because "for the division of property (division into physical parts so that each of the co-owners becomes the owner of the real part) no special form is required, so oral agreement is also allowed" (Decision of the Appellate Court in Nis, 1347/18 of 11/13/2018). It is important that there is no dispute between the parties to the agreement, neither regarding the size of the share nor regarding the factual situation. Therefore, in this case it would be unnecessary, but also in accordance with ZOSPO Article 16 para. 4, to require the parties to the agreement to submit a request for dissolution of co-ownership to the court.

There are several methods of division. Physical or natural division is usually carried out, when the co-owners physically divide the thing, i.e., civil division (division by value), when the co-owners decide to sell the thing and divide the obtained value in proportion to the size of the share (Stanković & Orlić, 1996, p. 159). It is also possible to divide by payment of shares, when the thing belongs to one co-owner who then has the obligation to pay the others (Stanković & Orlić, 1996, p. 159). The third way would be division with an additional payment, which is applied when, during the physical division, the part of the thing that should belong to one co-owner does not correspond to the value of his share, so he is given the difference in money (Stanković & Orlić, 1996, p. 159). In all the above-mentioned situations, if there is unanimity among the co-owners, there is no need for the parties to go to court for the division of the property over which there is co-ownership.

### 3.2. **Dissolution of co-ownership in court**

If physical division is impossible or possible only with a significant depreciation of the property, according to the law of the Republic of Serbia, the court will decide on the division. In that case, the court will decide that the division should be executed by selling the property (see ZOSPO Article 16 para. 5). The court decides on the division in

a non-litigation procedure, and only when the "method of division of common things or property" is disputed among the co-owners (called joint owners in ZVP). The need for a court decision on the division also arises when there is a dispute between the co-owners about the subject of the division and co-ownership relations. In those cases, it is necessary to make a court decision in civil proceedings. Additionally, "if the court, acting according to the proposal, determines that the right to things that are the subject of division or the right to property, a share in common things, that is, property, or it is disputed which things, that is, rights are part of the common property, is disputed between the co-owners, it will stop the proceedings and instruct the proposer to initiate litigation within a certain period" (see ZVP Art. 150 para. 1). If there is no dispute between the co-owners about any of the above-mentioned circumstances, then there is no need for a court decision on the dissolution of co-ownership, either in litigation or in non-litigation proceedings.

### 3.3. **Partition decision instead of the confirmation of parcellation – possibility or obligation?**

In practice, however, in order to change the land registry status in the event of dissolution of co-ownership, possession of a partition decision is required, which should be obtained in a non-litigation procedure, although the confirmation of the subdivision project in the administrative procedure would essentially have the same effect. There are multiple advantages to disbanding co-ownership by confirming the project of subdivision, i.e., pre-parcellation. First of all, co-owners can terminate co-ownership much faster and with less costs and become sole owners of their part of the real estate. We consider it unnecessary to oblige the parties to go to a non-litigation court in a situation where there is no dispute between the co-owners about any circumstance that requires a court decision. The legal possibility should not be imposed on the parties as an obligation.

## 4. Parcellation or pre-parcellation of building plots for the purpose of co-ownership dissolution

According to the Rulebook on general rules for parcellation, regulation and construction (2015), parcellation, i.e., pre-parcellation, is the process of forming building lots by dividing or joining all or parts of building lots (see Article 4). The 2021 Law on Planning and Construction (Serbian: *Zakon o planiranju i izgradnji*, "ZPI") defines a building plot as "a part of construction land, with access to a public traffic area, which has been built or is planned for construction, which is defined by the coordinates of the turning points in the state projection" (Art. 2 para. 1 item 20). As construction land, according to ZPI Art. 84 para. 1, can be in all forms of ownership (private, public and cooperative), this paper examines practical problems related to co-ownership of real estate that is entirely privately owned.

The legal basis for co-ownership on a building plot can be a purchase agreement, a gift agreement, an exchange agreement, etc. In addition to the appropriate legal basis, for the creation of co-ownership on a construction plot, registration in the land register is also required, as a relevant method of acquisition. Acquiring co-ownership through a legal transaction implies the joint investment of a certain amount of money in order to acquire ownership rights to things, but persons can also become co-owners by purchasing an ideal share from a previous co-owner, whereby the new co-owner takes the place of the previous co-owner in this relationship. The property of co-owner can be acquired and maintained, "if one person buys a co-owner share (or acquires legal ownership in another way), and at the time of purchase did not know and could not have known that the person from whom he buys the share is not a co-owner, and if at the same time the period that is needed to maintain such things" (Stanković & Orlić, 1996, p. 157). A co-owner in an already existing co-ownership community can become a third party if one of the co-owners does not use his legally guaranteed right of pre-emption. Although, historically, the right of pre-emption of co-owners was not recognized by co-owners (Stanković & Orlić, 1996, pp. 146–149), today in Serbian law, the right of pre-emption of co-owners is an accepted institute, which is regulated in detail in Articles 5–10 of the Law on Real Estate Transactions (2015).

According to Article 65 para. 1 and 2 ZPI, the owners of cadastral plots are allowed to establish one or more construction plots on several cadastral plots based on the pre-parcellation project, as well as to establish several building plots on one cadastral plot that can be divided by subdivision up to the minimum determined by the rules on subdivision or consolidated by sub parcellation. This should be in line with the planned or existing construction, i.e., the planned or existing purpose of the building plot, based on the subdivision project. In order to determine the dimensions and boundaries of the newly formed construction plots, the co-owners initiate the development of a cadastral plot subdivision project at an authorized company, i.e., another legal entity or entrepreneur registered in the appropriate register (usually a design bureau). The geodetic marking project is an integral part of the subdivision project, i.e., pre-parcellation. The preparation of the subdivision project is managed by the urban architecture professional in charge (see ZPI Article 65 para. 3).

Building plots that are formed by subdivision on one cadastral plot must meet the conditions established in the planning document. If the planning document has not been adopted, the conditions stipulated in the Rulebook on general rules for subdivision, regulation, and construction (2015) will apply. These are the conditions on the minimum area of the construction plot, on access to the public traffic area, the height and distance of the buildings, which are prescribed by the planning document for that zone. If the project of parcellation, i.e., pre-parcellation, is done in accordance with the valid planning document, i.e. the Rulebook on general rules for parcellation, regulation and construction, such a project will be confirmed by the authority of the local self-government unit responsible for urban planning within ten days. Otherwise, they will provide the applicant with a notice explaining why the project was not approved. The applicant can submit an objection to the said notification to the municipal or city council within three days from the day of delivery (see ZPI Art. 65 para. 4-6).

Parcellation and pre-parcellation, based on requests, is carried out by the authority responsible for state surveying and cadastre affairs. The condition for the implementation of the change in the competent cadas-

tre is that the project of parcellation, or pre-parcellation, has been confirmed by the body responsible for urban planning of the local self-government unit, for which proof (decision) must be submitted. In addition, proof of resolved property-legal relations for all cadastral parcels is also submitted (ZPI Art. 66 para. 2). As appendices to the request for the implementation of changes resulting from parcellation, re-parcellation or correction of the boundaries of cadastral parcels, the National Geodetic Institute (2021) requires the submission of the statement of the geodetic organization on the acceptance of the execution of geodetic works in the field, the elaboration of the geodetic works, prepared and certified by the authorized geodetic organization , and the record of the field inspection that was signed by the applicant and the holder of legal interest.

Upon receiving a request for the implementation of pre-parcellation or parcellation, the authority responsible for state survey and cadastre issues a decision on the formation of cadastral parcel(s). A copy of the decision is also submitted to the competent authority that confirmed the pre-parcellation project, i.e., the subdivision. An appeal can be filed against the mentioned decision within eight days from the date of delivery of the decision. The authority responsible for the state survey and cadastre submits the legally binding decision on the formation of the cadastral plot(s) to the tax administration in the territory where the subject immovable property is located (see ZPI Article 66, para. 4-7).

If the conditions stipulated by the planning document, i.e., the Rulebook on general rules for subdivision, regulation and construction, are not met, the authority of the local self-government unit responsible for urban planning, in the notice delivered to the applicant, will explain why the project was not approved. However, according to ZPI Article 106 para. 6, when creating a subdivision project for the purposes of disbanding the co-ownership community in court proceedings, the stated conditions, i.e. the provisions on the minimum area of the construction plot, on access to the public traffic area, the height and distance of the buildings, which are prescribed by the planning document for that zone, do not have to be applied. The question arises: do the mentioned conditions have to be applied if parcellation pre-parcellation of the building plot is carried out for the purposes of breaking up co-ownership based

on the agreement of the parties (out of court)? In theory, there is an opinion that any subdivision for the purpose of breaking up co-ownership is allowed against planning documents (Petrović, 2019, p. 214). As the procedure for the dissolution of co-ownership is initiated by the competent court only if the co-owners cannot agree on the formation of the cadastral parcel (unanimity), by analogy the same provision can be applied to the dissolution of co-ownership by mutual agreement (out of court).

The issue of access to the public traffic surface could be analyzed in particular, as one of the conditions for confirming the subdivision project. In accordance with the provisions of the Rulebook on general rules for subdivision, regulation and construction, the building plot must have an exit to the public traffic area, in accordance with the rank and rules for the smallest permitted width of the regulation zone by type of streets: 1) collector streets - 10.00 m; 2) residential streets – 8.00 m; 3) roads in rural settlements - 7.00 m; 4) car passages - 5.00 m; 5) private passages - 2.50 m (see Art. 14, para. 3). According to Article 32 para. 2, the width of the private passage for plots that do not have direct access to the public traffic surface cannot be less than 2.50 m, which supports the fact that construction plots do not have to have direct access to the public traffic surface, although in practice applicants for approval of the subdivision project generally requires it. Also, in practice, the established right of passage on foot and by vehicle over the servient property in favour of the parcel that is the subject of subdivision, as a privileged property, is not interpreted in the sense of "access to the public traffic surface", and in those cases, confirmation of the subdivision project by the competent authority is denied. for urban planning affairs of the local self-government unit, which also should not be the rule.

## 5. Conclusion

Co-ownership is a property community in which co-owners are connected by property interests. When the property interests no longer exist, the co-owner has the right to demand a partition at any time except during the time when such division may cause a damage to other co-owners. This right does not fall under the statute of limitations. The

position of judicial practice is that no one can be kept in a co-ownership community against their will. However, the co-owners are often forced to stay in the co-ownership community if they do not want to go to court, although there is a will to leave the community by division of things and agreement regarding the method of division, the size of the share and the factual situation.

Dissolution of the co-ownership community is possible based on the agreement of the co-owners or in court proceedings. Physical division of things by co-owner agreement should have priority. Only if the co-owners cannot agree on the method of division, the decision should be made by the court. However, in practice, the parties are unnecessarily instructed to exercise the right to dissolve the co-ownership community in court proceedings, which is especially pointless in a situation where there is a possibility that by confirming the subdivision project by the administrative authorities, they can reach the goal in a simpler and more efficient way.

On the other hand, if we take into account the conditions that the existing building plot must fulfil in order to confirm the subdivision project, it may be questionable whether the authority responsible for urban planning affairs of the local self-government unit should have the authority to demand that the parcels created by subdivision fulfil the above conditions, if it prevents the co-owners from exercising their right to dissolve the co-ownership community. By insisting on strict fulfilment of the conditions, the rule that no one can be kept in the co-ownership community against their will is rendered meaningless. As the legislation of the Republic of Serbia stipulates that for the subdivision project for the purposes of dissolution of the co-ownership community in court proceedings it is not necessary to fulfil the conditions that are required in other cases, the same criteria should be applied when the confirmation of the subdivision project for the purposes of dissolution of the co-ownership community is required, as a result of the agreement parties (out of court).

## References

Grupa autora (2021). *Zbirka sentenci iz građanskog prava i građanskog procesnog prava* (Knjiga 4). Beograd: Službeni glasnik.

Cvetić, R. (2018). O opravdanosti zakonskog prava preče kupovine suvlasnika nepokretnosti. *Zbornik radova Pravnog fakulteta u Novom Sadu, 4*, 1521–1532.

Lazić, M. (2011). Pretvorba (transformacija) prava na nekretninama u društvenom vlasništvu u

Republici Srbiji. *Zbornik Pravnog fakulteta u Rijeci, 1*, 215–237.

Maganić, A. (2008). Razvrgnuće suvlasničke zajednice. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 1,* 1–41.

Maganić, A. (2010). Parcelacija i razvrgnuće suvlasništva poljoprivrednog zemljišta. *Zbornik Pravnog fakulteta Sveučilišta u Rijeci, 1,* 175–201.

Nikolić, D. (2011). Dva veka Austrijskog građanskog zakonika (1811–2011). doi: 10.2298/ZMSDN1135113N.

Petrović, N. (2019). *Komentar Zakona o planiranju i izgradnji sa Novelama iz 2019. godine, sudskom praksom, primerima ugovora i prilogom*. Beograd: Poslovni biro.

Republički geodetski zavod [National Geodetic Institute] (2021). *Promena nastala parcelacijom, preparcelacijom ili ispravkom granica katastarskih parcela.* Downloaded 19/10/2021 www.rgz.gov.rs/usluge/usluge-katastra-nepokretnosti/promena-nastala-parcelacijom-preparcelacijom-ili-ispravkom-granica-katastarskih-parcela.

Decision of the High Court in Subotica, 284/2016(1) dtd 15/07/2016 Paragraf.lex.

Decision of the Appellate Court in Nis, 1347/18 of 11/13/2018 Paragraf.lex.

Stanković, O. & Orlić, M. (1996). *Stvarno pravo* (9. izd.). Beograd: Nomos.

### Acts and Regulations

Austrian Civil Code (*Allgemeines* bürgerliches Gesetzbuch). https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10001622/ABGB%2c%20Fassung%20vom%2021.02.2022.pdf

German Civil Code (*Bürgerliches Gezetzbuch*). BGB - nichtamtliches Inhaltsverzeichnis (gesetze-im-internet.de)

Opšti imovinski zakonik za Crnu Goru [General Property Code for Montenegro]. https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/privatno-pravo/crna-gora/Opsti_imovinski_zakonik_CG.pdf

Pravilnik o opštim pravilima za parcelaciju, regulaciju i izgradnju [Rulebook on general rules for parcellation, regulation and construction] („Službeni glasnik RS“, br. 22/2015). https://www.paragraf.rs/propisi/pravilnik_o_opstim_pravilima_za_parcelaciju_regulaciju_i_izgradnju.html

Srpski građanski zakonik [Serbian Civil Code] https://www.harmonius.org/sr/pravni-izvori/jugoistocna-evropa/privatno-pravo/srbija/Srpski_gradjanski_zakonik_1844.pdf

Zakon o planiranju i izgradnji [Law on Planning and Construction] („Sl. glasnik RS“, br. 72/2009, 81/2009 - ispr., 64/2010 - odluka US, 24/2011, 121/2012, 42/2013 - odluka US, 50/2013 - odluka US, 98/2013 - odluka US, 132/2014, 145/2014, 83/2018, 31/2019, 37/2019 - dr. zakon, 9/2020 i 52/2021). https://www.paragraf.rs/propisi/zakon_o_planiranju_i_izgradnji.html

Zakon o prometu nepokretnosti [Law on Real Estate Transactions] („Sl. glasnik RS“, br. 93/2014, 121/2014 i 6/2015). https://www.paragraf.rs/propisi/zakon_o_prometu_nepokretnosti.html

Zakon o vanparničnom postupku [Law on Non-Litigation Procedure] („Sl. glasnik SRS“, br. 25/82 i 48/88 i „Sl. glasnik RS“, br. 46/95 - dr. zakon, 18/2005 - dr. zakon, 85/2012, 45/2013 - dr. zakon, 55/2014, 6/2015, 106/2015 - dr. zakon i 14/2022). https://www.paragraf.rs/propisi/zakon_o_vanparnicnom_postupku.html

Zakon o osnovama svojinskopravnih odnosa [Law on Basis of Ownership and Proprietary Relations] („Sl. list SFRJ“, br. 6/80 i 36/90, „Sl. list SRJ“, br. 29/96 i „Sl. glasnik RS“, br. 115/2005 - dr. zakon). https://www.paragraf.rs/propisi/zakon_o_osnovama_svojinskopravnih_odnosa.html

## RAZVRGNUĆE SUVLASNIČKE ZAJEDNICE

**Rezime**: Suvlasnička zajednica je imovinska zajednica u kojoj suvlasnike povezuju imovinski interesi. Kada imovinski interesi prestanu da postoje, suvlasnici se odlučuju na razvrgnuće suvlasničke zajednice. Razvrgnuće suvlasničke zajednice moguće je na osnovu sporazuma suvlasnika ili u sudskom postupku. Saglasnost suvlasnika, odnosno jednoglasnost o načinu deobe često nije dovoljna da bi se izvršila fizička deoba stvari. Suvlasnici su često primorani da pravo na razvrgnuće suvlasničke zajednice ostvaruju u sudskom postupku. Cilj ovog rada jeste analiza osnovnih karakteristika suvlasničke zajednice u Republici Srbiji i uporednopravno, uz poseban osvrt na pitanje razvrgnuća suvlasničke zajednice i probleme na koje suvlasnici nailaze kada sporazumno (vansudski) nastoje da izvrše fizičku deobu i postanu isključivi vlasnici dela nepokretnosti.

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# KRIVIČNOPRAVNA ZAŠTITA ZAROBLJENIKA I NJIHOV POLOŽAJ KROZ ISTORIJU

**Rezime:** Status zarobljenika u ratu i njihov položaj nakon porobljavanja privlači pažnju humanog dela čovečanstva. Kroz istoriju nailazimo na raznovrsne primere položaja porobljenih, odnosno zarobljenih koji su umnogome odražavali interese porobilaca. U cilju sprečavanja ratnih zločina i zločina protiv čovečnosti, koji utiču na položaj civila i ratnih zarobljenika, u oružanim sukobima postoje pravila ratovanja. Uprkos postojanju ovih pravila, istorija je pokazala da su ratovi obeleženi zločinima protiv čovečanosti, tj. da su obilovali masovnim ubijanjima civila i zarobljenika, razaranjima, pljačkanjima i porobljavanjima. U radu je prikazan položaj porobljenika kroz istoriju, a putem komparativnog metoda analizirane su konvencije, povelje i zakonski propisi međunarodnog humanitarnog i međunarodnog krivičnog prava kojima su inkriminisani ratni zločini, zločini protiv čovečnosti i ropski odnos, a sve u cilju poboljšanja položaja zarobljenika.

**Ključne reči:** *ratni zločin, zločin protiv čovečnosti, porobljenik, zarobljenik, porobilac.*

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## 1. Uvod

Porobljavanje je pojam koji je poznat i u međunarodnom krivičnom, međunarodnom humanitarnom i međunarodnom javnom pravu. Ako se porobljavanje posmatra kao ropstvo, onda se može smatrati jednim od prvih zločina prepoznatim sa stanovišta međunarodnog prava. Porobljavanje, odnosno radnja stavljanja u ropski položaj, stanje ropstva i položaj porobljenika sreću se u jedinstvenom rezultatu koji se svodi na oduzimanje slobode pojedincu. Savremeno pravo ga prepoznaje i kroz termin *zarobljavanje*, odnosno manifestovanje prava vlasništva nad pojedincem.

Ovaj rad se fokusira na položaj zarobljenika sa naglaskom na zaštitu civila i ratnih zarobljenika u vremenima neprijateljstava kroz određenja međunarodnih krivičnih dela. Podeljen je na sledeće delove. Najpre se govori o položaju porobljenika kroz istoriju, zatim o položaju Srba – ratnih zarobljenika u dvadesetom veku, a koji je u suprotnosti sa odredbama Haške konvencije. U poslednjem segmentu je reč o krivičnopravnoj zaštiti civila u međunarodnim oružanim sukobima, koja je sadržana u konvencijama i poveljama, zatim o normativnoj uređenosti međunarodnih krivičnih dela, kao što su zločin protiv čovečnosti i ratni zločin, ali i normiranju krivičnog dela zasnivanje ropskog odnosa u Krivičnom zakoniku Republike Srbije. U radu je na sveobuhvatan način prikazan pojam porobljenika kroz istoriju, zatim položaj zarobljenika u dvadesetom veku koji se primoravaju na prisilan i težak rad, što ih skoro izjednačava sa porobljenicima. Cilj ovog rada je da se ukaže na neophodnost potrebe za krivičnopravnom zaštitom zarobljenika i odgovornosti za istu.

## 2. Metod

U radu su, kao osnovni metodi, primenjeni istorijski i istraživački i to o propisima i praksi od najstarijeg doba do danas, a koji određuju položaj zarobljenih u slučaju rata. Dalje, u radu je korišćen i komparativni metod za analizu zakonskih propisa kojima se izlažu prava čoveka i propisa koji određuju elemente krivičnih dela kako na nacionalnom, tako i na međunarodnom nivou. U radu je, osim istorijskog i krivičnopravnog

pristupa, prisutan i moralni aspekt kojim se nastoji da se promovišu etičke vrednosti. Očekivani doprinos ove analize jeste unapređeno razumevanje položaja zarobljenika kroz istoriju i shvatanje neophodnosti i važnosti zaštite njihovog položaja pomoću humanitarnog i krivičnog prava.

## 3. Materijali

Materijali analizirani u ovom radu su zakonski propisi: Krivični zakonik Republike Srbije, Ženevska konvencija za poboljšanje položaja ranjenika i bolesnika u oružanim snagama u ratu (I Ženevska konvencija), Ženevska konvencija za poboljšanje položaja ranjenika, bolesnika i brodolomaca oružanih snaga na moru (II Ženevska konvencija), Ženevska konvencija o postupanju sa ratnim zarobljenicima (III Ženevska konvencija), Ženevska konvencija o zaštiti građanskih lica za vreme rata (IV Ženevska konvencija), Dopunski protokol uz Ženevske konvencije o zaštiti žrtava međunarodnih oružanih sukoba (Protokol I) i Dopunski protokol o zaštiti žrtava nemeđunarodnih oružanih sukoba (Protokol II), Rimski statut Međunarodnog krivičnog suda, Zakon br. 10 Kontrolnog saveta, Konvencija o ropstvu iz 1926. godine i Dopunska konvencija o ukidanju ropstva, trgovine robljem i institucija i prakse slične ropstvu 1956. godine. Pored navednih propisa, koji su dostupni i na internetu, za izradu ovog rada korišćeni su i primeri iz prakse. U cilju zadovoljenja istorijskog aspekta položaja porobljenika, analizirani su i istorijski izvori i zakoni.

## 4. Rezultat

Predloženi metodi istraživanja – komparativna analiza zakona i konvencija i istorijski metod pokazali su se adekvatnim s obzirom da su, na osnovu prikaza odnosa porobljenik – porobilac kroz istoriju i analize elemenata međunarodnih krivičnih dela – uzroka porobljavanja, utvrđeni položaj porobljenika/zarobljenika i različiti interesi porobioca, pre svih politički i ekonomski. Dobijeni rezultati imaju za cilj unapređenje zaštite položaja zarobljenika i inkriminisanje međunarodnih krivičnih dela.

## 5. Diskusija

### 5.1. Istorijski pregled odnosa porobljenik – porobilac

Ratovima stvorene države i nacije od drevnih vremena do danas promovišu stvaranje specifičnog odnosa porobilac – porobljenik. Podređeni položaj, koji proizilazi iz tog odnosa, konstituiše nov položaj u društvu, odnosno svaki starosedelac na osvojenoj teritoriji postaje porobljenik, a život porobljenika u velikoj meri zavisi od volje porobilaca. Mesto porobljenog u socijalnom životu novog društva prevashodno je zavisilo od porobilaca, konkretno od njihovog ophođenja i postupanja prema porobljenima. U najranijoj istoriji čovečanstva nije postojao odnos porobilac – porobljenik, već su prilikom ratovanja čitava plemena bivala istrebljena i izbrisana sa lica Zemlje, što u savremenom pravu ukazuje na genocid (Jovanović & Atanasovska Cvetković, 2021). Kroz istoriju nailazimo na primere gde je porobljenima negirano svako pravo na život do njihovog pretvaranja u robove, pa do primera gde imaju izvesne povlastice u novostvorenim odnosima u društvu, premda im društveni položaj ostaje u statusu roba ili skoro roba, odnosno pripadnika slobodnog stanovništva.

Ako izjednačimo položaj porobljenika sa položajem robova, onda ukazujemo na činjenicu da su izvori ropstva u velikim sistemima (pa makar to bili i početni oblici prvih država) osvajački ratovi. Prve robovlasničke države, u istoriji poznate i kao istočne despotije, bile su blaže, kada je reč o položaju porobljenika, u odnosu na moćni Rim. Pretpostavka je da su porobioci imali jasnu svest o dobrobiti socijalnog mira za funkcionisanje države i o opasnosti koja bi mogla nastati kroz društvene nemire i potencijalni rat koji bi pokrenuli porobljeni usled nezadovoljstva sopstvenim položajem.

U turbulentnoj istoriji Egipta zabeležen je primer u kom je vojskovođa poštedeo život zarobljenom umesto da ga ubije (Stanojević, 2003). Na taj način je zarobljeni postao porobljenik (rob) i stekao izvesna prava u društvu. Na osnovu ovakvog egipatskog stava ka porobljenicima (robovima), možemo zaključiti da je postojao jedan prilično human odnos. Naime, egipatski porobilac je porobljenicima dozvoljavao da imaju porodice, da ženidbom sa slobodnom ženom steknu slobodu, kao i da

imaju ograničenu poslovnu i pravnu sposobnost, što nas navodi na zaključak da su im izvesni poslovi u privredi bili dozvoljeni. Stava smo da se sve ovo može posmatrati i kao početak razvoja humanog postupanja prema porobljenicima i njihovih prava.

Nesvakidašnja istorija Mesopotamije, naročito u doba Vavilona i velikog Hamurabija, pretočena u Hamurabijev zakonik (Vajs, 1969; Stanimirović, 2011), takođe prezentuje začetak humanitarnog postupanja porobioca prema robovima poistovećenim s porobljenicima. Osvajački ratovi čine da porobljeno stanovništvo (stranci i rezidentno stanovništvo osvojenih teritorija) pripadne društvenom sloju robova, čija su prava ograničena, ali ne i nepostojeća. U vavilonskom društvu, saglasno članu 175 Hamurabijevog zakonika, dozvoljavani su brakovi porobljenih s pripadnicima slobodnog sloja ljudi a njihovom potomstvu status slobodnih ljudi ukoliko je potomčeva majka bila pripadnik slobodnog sloja vavilonskog društva. U istom članu robu se propisuje pravo na ženidbu sa ženom pripadnicom slobodnog sloja vavilonskog društva. Hamurabijevim zakonikom se porobljenima, koji su se bavili zanatstvom i trgovinom, davalo pravo ućešća u poslovnom životu Vavilona, konkretno pravo na zaključivanje poslovnih ugovora. Otkupljivanje slobode porobljenika tokom razvoja vavilonske istorije možemo smatrati humanim ponašanjem porobioca. Humanitarno ponašanje porobilaca, tj. apsilaca, kako ih Hamurabi naziva, u Vavilonu, može se čak ogledati i u utvrđenom društvenom pravilu uvrštenom u Hamurabijev zakonik – u zabrani ubijanja apsenika batinama ili rđavom postupanju s apsenikom. Čin je bio sankcionisan ubistvom apsiočevog sina (čl. 116, Hamurabijev zakonik).

U istoriji čovečanstva može se detektovati još jedan primer humanog postupanja prema porobljenicima. Reč je o antičkoj državi Sparti. Osvajanjem Lakonije, Dorci su uspeli da pokore starosedelačko stanovništvo. Starosedelačkom porobljenom stanovništvu iz perifernih krajeva Sparte, Perijecima, dat je status slobodnih stanovnika kroz bavljenje trgovinom i zanatstvom unutar granica Sparte i zadržavanje vlasništva nad sopstvenom zemljom (posed). Pravo na posed bilo je uslovljeno plaćanjem tribjuta (rente) i obavezom služenja u spartanskoj vojsci kao pešaka s teškim vojnim naoružanjem (holpiti). Iako je ovo pravo bilo uslovljeno, ne smemo negirati dozvoljeno pravo porobljenika. Pret-

postavlja se da su imali i lokalnu samoupravu praćenu budnim okom porobilaca (Gardner & Jevons, 1895, str. 423). Porobljeno starosedelačko stanovništvo u Sparti činio je još jedan društveni sloj – Heloti. Oni su bili robovi u spartanskom društvu, najnižiji društveni sloj i najbliži srednjovekovnim kmetovima. Nad njima su postupanja porobljivača imala izvesnu humanu nit koja se ogledala u datom pravu na zasnivanje porodice, pravu da imaju svoj novac i izvesnu vlast nad dobrima, kao što je posedovanje oruđa za obradu zemlje.

Osvajanjem atinskog polisa, starosedeoci postaju robovi, a u zavisnosti od toga da li su robovi bili državni i privatni vladalo je i različito ophođenje prema njima. Privatni robovi su svoj postojeći status roba upotpunjavali statusom privatnog, nakon što bi bili kupljeni, što nam ukazuje na jedan „miks" ropstva. Iako je država obezbedila pravo azila (način bežanja u hram) za privatne robove usled lošeg gospodarevog postupanja prema njima, privatni porobljenici su se nalazili u težem položaju nego državni. Bilo je zabranjeno loše postupanje prema privatnim robovima, njihovo zlostavljanje ili ubistvo od strane gospodara. Privatni robovi su se čak mogli obratiti sudu sa zahtevom da budu prodati drugom gospodaru. Način postupanja i humani odnos razlikovao se prema privatnim i državnim robovima. Porobljivač (država) je državnim robovima dozvoljavao pravo na brak, osnivanje porodice, pravo svojine na pokretnim stvarima, čak i mogućnost da imaju svoje robove. Humanitarno postupanje može se prepoznati i u činjenici da su državni robovi bili deo državničkog službeništva, da su primali naknadu za svoj rad, bilo im je obezbeđeno mesto življenja (kuća), hrana i odeća, u osnovi, imali su poslovnu i pravnu sposobnost (Kurtović, 1987).

Grandiozni Rim, od malog grada države do najmoćnije i teritorijalno velike imperije, nastao je kao rezultat velikih pohoda i osvajačkih ratova. Pokušaćemo da sumiramo impozantnu istoriju Rima, te da prepoznamo specifičan odnos porobilac/porobljeni i eventualno humanitarno ponašanje porobilaca. Teritorija Rima se nakon punskih ratova vođenih između Rima (Rimske republike) i Kartagine u periodu 264–146. godine pre nove ere proširila, a samim tim je porastao i broj porobljenika koji je u rimsko društvo integrisan u statusu roba. Imajući u vidu Gajevu podelu ljudstva na slobodne ili robove (*Et quindem summa divisio de iure personarum haec est, quod omnes homines aut liberi*

*sunt aut servi* (Gaj, Institucije 1,9)), status roba u rimskom društvu bio je zasnovan na prisili, iako je među zatečenim stanovništvom na osvojenim i porobljenim teritorijama bilo obrazovanog sveta. U početku je rob bio u nezavidnoj situaciji (Deretić, 2011), što potvrđuje mogućnost gospodara da ubije svoga roba bez naročitih posledica. Odnos prema porobljenicima menjao se sa širenjem teritorije u periodu Rimske republike i nailaženjem na obrazovano stanovništvo. Osim što su imali gospodara i što je njihova sudbina bila u direktnoj vezi sa njegovom voljom, robovi su živeli na gospodarevom imanju baveći se poljoprivredom na latifundijama, stvarajući tako sloj seoskih robova (*servus rustica*). Za razliku od njih, povoljniji položaj su imali gradski robovi (*servus urbana*). Oni su vodili domaćinstvo svog gospodara, pomagali mu, a oni obrazovani su imali mogućnost da budu gospodarevi čitači, sekretari, lekari (Bujuklić, 2010). Nesporno je da se kroz rimsku istoriju menjao položaj robova, kao i odnos porobilac – porobljenik, ali i da im je bio daleko nepovoljniji položaj nego što je to bio slučaj u atinskoj državi.

Srednji vek je pored snažnih vladara, uticaja crkve, stvaranja feudalnih država i vezivanja slobodnih seljaka za zemlju (Atanasovska Cvetković, 2021) zadržao tekovinu iz prethodnog vremena koja se odnosi na osvajačke ratove i odnos porobilac – porobljenik.

Novi vek, nova shvatanja o čovekovim pravima i Rusoovi stavovi izrečeni u delu „Contrat Social" čine da se stvaraju i nova poimanja odnosa porobilac – porobljenik, kao i porobljenika pripadnika manjinskog stanovništva osvojenih država. Tako ratovi, naročito ratovi novog doba (Prvi i Drugi svetski rat) nameću potrebu za zaštitom prava čoveka kao porobljenika. Pojava zaštite prava čoveka kao porobljenika može se pratiti i kroz istorijski razvoj vojnog prava u kom princip humanitarnosti postaje dominantan element kod suzdržavanja od preduzimanja izvesnih radnji prilikom ratovanja. Princip humanitarnosti je tvorevina novijeg datuma, a povezan je sa savremenim režimima i ljudskim pravima (Draper, 1988).

Odnose porobilac – porobljenik, te postupanja sa zarobljenicima sa ratom zahvaćenih područja nalazimo kako u najstarijim vremenima tako i u savremenom dobu. Oni su bili definisani putem običajnih ili pravnih normativa. Danas se ovi odnosi definišu međunarodnim pra-

vom, međunarodnim humanitarnim pravom, ljudskim pravima, a imaju jasan cilj – inkriminaciju međunarodnih krivičnih dela.

### 5.2. Položaj Srba kao zarobljenika u dvadesetom veku suprotno odredbama Haške konvencije

Dvadeseti vek karakterišu razvoj međunarodnog prava i zaštita ljudskih prava. Velika pažnja poklanja se žrtvama civilima i ratnim zarobljenicima. Ono što obeležava dvadeseti i početak dvadeset prvog veka jeste nedosledna primena međunarodnih dokumenata, što vodi nedostatku zaštite civila koji trpe direktne i indirektne posledice oružanog sukoba. Iako se međunarodnim pravom i to humanitarnim, ratnim i krivičnim nastoji da se održe mirni odnosi suprotstavljenih strana (Fabijanić Gagro & Jurašić, 2013), nailazimo na neslaganje i razilaženje u političkim i ekonomskim interesima, koji vode ka posledicama koje trpe civili i ratni zarobljenici.

Sa ciljem da se ratni sukobi humanizuju a ljudske patnje svedu na što manju moguću meru, godine 1907. doneta je Haška konvencija o zakonima i običajima rata na kopnu (Reisman & Antoniou, 1994). Haška konvencija je precizno određivala akcije okupatorskih snaga prema civilnom stanovništvu i ratnim zarobljenicima. Njenim drugim poglavljem određeno je da se zarobljenici nalaze pod vlašću neprijateljske vlade, ali ne i pojedinca ili jedinica koje su ih zarobile, što možemo tumačiti kao zabranu ropstva. Pomenutom konvencijom nalaže se humano postupanje prema zarobljenicima i regulišu razni aspekti života stanovništva, kao što su smeštaj, ishrana, oblačenje, rad, pitanje pošte i duhovni život. U tom periodu, naročito od početka Carinskog rata 1907. godine, vladajući krugovi u Beču su sa ciljem da zaštite svoje ekonomske interese nastojali da privredno nerazvijenu Srbiju potčine svom diktatu, da istovremeno onemoguće bilo kakvu srpsko-bugarsku saradnju i spreče jačanje srpske vojske. Poseban značaj za Austrougarsku imali su aneksija Bosne i Hercegovine 1908. godine i stvaranje „antisrpske atmosfere" tokom balkanskih ratova, što za posledicu ima, naročito nakon sarajevskog atentata i izbijanja Prvog svetskog rata, privremenu okupaciju delova Srbije i zločine u Mačvi, gde su ubijani ranjenici i civili, pljačkana i uništavana privatna imovina, čime se kršilo međunarodno

pravo. Položaj ratnih zarobljenika i civilnog stanovništva u ovom periodu obeležen je surovim postupanjem austrijskih vojnika prema njima, oduzimanjem fabrika, plenidbom hrane i stoke, oduzimanjem poljoprivrednog alata i opreme, skrnavljenjem obrazovnih i kulturnih ustanova i različitih oblicima denacionalizacije. Iako je zaštita tražena u Haškom zakoniku, Vlada Srbije je u cilju zaštite ratnih zarobljenika i civila zatvorenim u logorima Austrougarske, pružala pomoć preko humanitarnih organizacija i kroz misije neutralnih zemalja. Najveći broj srpskih ratnih zarobljenika, čak 154.631 nalazio se u logorima u Austrougarskoj, od kojih je oko 80.000 i umrlo. Nakon Cerske bitke najveći broj je bio smešten u logor u Estergomu.

Početkom Velikog rata položaj srpskih zarobljenika je bio izuzetno težak, budući da ih je 1914. bilo već oko 200.000. Kapaciteti u logorima, u koje su odvođeni, nisu bili dovoljni jer su mnogi u to vreme bili u izgradnji, pa su zarobljenici bili smeštani i po ograđenim ledinama, gladni, bez odeće i izmučeni od dugog pešačenja. Usled gladi, hladnoće, iscrpljenosti, tifusa i drugih bolesti broj zatvorenika se smanjio, te se procenjuje da ih je u 1915. godini bilo oko 45.000, a posle zime 1916/17. godine, prema proceni Nemačke, bilo je oko 174.000 zarobljenih i nestalih Srba. Pored pomenutih logora, Srbi su zatvarani i u Mađarskoj, gde se njihov položaj nije razlikovao u odnosu na druge logore. Položaj zarobljenika u Bugarskoj, gde su oficiri bili smešteni u logorima s podoficirima, nije se razlikovao od logora u Austrougarskoj. Nakon zarobljavanja, ratni zarobljenici odvođeni su u logore pešice, dok su ranjenici, u slučaju da je za to bilo uslova, transportovani kolima. Suprotno Haškoj konvenciji, koja propisuje samo oduzimanje oružja, vojnicima su oduzimani novac, časovnici, obuća i druge vredne stvari. Praksa kršenja Haške konvencije bila je prisutna i kod ostalih vojnika u Evropi. Ono po čemu se razlikuje položaj srpskih zarobljenika u odnosu na zarobljenike drugih narodnosti (Englezi, Francuzi) jeste slabije hranjenje i teže kažnjavanje. U logorima Bugarske, kao uostalom i u drugim logorima u ovom periodu, pored manjka prostora i hrane, bili su prisutni i loši higijenski uslovi koji su pogodovali širenju tifusa, dizenterije i malarije.

Tokom Drugog svetskog rata u logore su prisilno odvedeni milioni ratnih zarobljenika i civila. Logori su pravljeni blizu velikih i gusto naseljenih urbanih sredina s fokusom na područja s većinskim jevrej-

skim, poljskim i romskim stanovništvom, kao i u područjima stanovanja pristalica komunizma. U većini logora zatvorenici su bili prisiljeni da nose oznake u boji zavisno od kategorizacije. Crvene oznake nosile su pristalice komunizma i ostali politički zatvorenici, zeleni trougao nosili su kriminalci, roze boju homoseksualci, ljubičastu Jehovini svedoci, crnu osobe nesposobne za rad (invalidi, duševni bolesnici, beskućnici, prostitutke i dr.), žutu Jevreji i smeđu Romi. Veliki broj zatvorenika preminuo je u logorima usled preteranog rada, izgladnjivanja i zlostavljanja ili pak u toku transporta do logora zbog nedostataka hrane i vode i zbog nehumanih uslova u vagonima koji su prevashodno služili za prevoz stoke. Godine 1942. SS je izgradio mrežu logora smrti i u njima sprovodio sistematsko etničko čišćenje zatvorenika, koji su najčešće ubijani toksičnim gasovima.

Tokom Drugog svetskog rata više od 100.000 Jugoslovena je bilo u fašističkim koncentracionim logorima, zatvorima i mestima „slobodnog interniranja" u oko dve stotine mesta u Italiji (Milak, 1986). Položaj i uslovi zarobljenih razlikovao se od mesta do mesta, zavisno od toga da li su živeli u seoskim kućama ili u logorima. Novac koji su dobijali za kupovinu hrane bio je nedovoljan, bili su pod kontrolom karabinjera, imali su zabranu kretanja, bili su bez zdravstvene zaštite i zaliha odeće. Položaj zarobljenih u logorima i zatvorima bio je još teži, usled česte fizičke i psihičke torture. Brojni zatvorenici su umrli, naročito u logorima na severu Italije. Posle pada fašističke vlade i kapitulacije Italije, jugoslovenski zarobljenici su odvedeni u Nemačku, gde su takođe bili u zatočeništvu, a samo mali broj je uspeo da se oslobodi.

### 5.3. Propisi koji štite položaj zarobljenika

Današnja pravila, koja obuhvataju mere koje se preduzimaju u cilju obezbeđenja poštovanja međunarodnog humanitarnog prava, na koja se oslanjaju i odredbe međunarodnog ratnog prava i koja dodatno preciziraju odredbe međunarodnog krivičnog prava jesu Ženevske konvencije. One obavezuju države potpisnice i nedržavne aktere – strane u sukobu, na poštovanje humanitarnih principa prema neprijateljskim vojnicima i civilima za vreme ratnih sukoba. Odredbe međunarodnog ratnog i humanitarnog prava najvećim delom su kodifikovane u četiri

Ženevske konvencije o humanizaciji rata iz 1949. godine: Ženevska konvencija o poboljšanju položaja ranjenika i bolesnika u oružanim snagama u ratu (I Ženevska konvencija); Ženevska konvencija o poboljšanju položaja ranjenika, bolesnika i brodolomnika oružanih snaga na moru (II Ženevska konvencija); Ženevska konvencija o postupanju sa ratnim zarobljenicima (III Ženvska konvencija) i Ženevska konvencija o zaštiti građanskih lica za vreme rata (IV Ženevska konvencija). Navedenim dokumentima pridodati su i Dopunski protokol uz Ženevske konvencije o zaštiti žrtava međunarodnih oružanih sukoba (Protokol I) i Dopunski protokol uz Ženevske konvencije o zaštiti žrtava nemeđunarodnih oružanih sukoba (Protokol II). Dopunski protokoli (Protokol I, deo III i IV, glave I–V) dodatno regulišu pravila i običaje rata, čime su objedinjena pravila haškog ratnog prava i ženevskog humanitarnog prava. U cilju zaštite najvažnijih ljudskih vrednosti razvijaju se međunarodno krivično pravo i pravosuđe, što nas 1998. godine dovodi do donošenja Rimskog statuta koji potvrđuje da učinioci najtežih krivičnih dela, a koja se odnose na međunarodnu zajednicu kao celinu, naročito na genocid, zločin protiv čovečnosti i ratne zločine, ne smeju ostati nekažnjeni, te je potrebno osigurati njihov delotvoran progon preduzimanjem mera na nacionalnom nivou i podsticanjem međunarodne saradnje.

### *5.3.1. Ratni zločin*

Ženevske konvencije, Dopunski protokol I i II, statuti međunarodnih krivičnih sudova i nacionalna krivična zakonodavstva, ratni zločin definišu kao tešku povredu međunarodnog humanitarnog prava. Prema odredbama Rimskog statuta, ratni zločini obuhvataju postupke usmerene protiv lica ili imovine zaštićenih odredbama određene Ženevske konvencije iz 1949. i dva dopunska Protokola iz 1977. i iziskuju procesuiranje njihovih izvršilaca. Ovo predviđa i Krivični zakonik Republike Srbije. Član 4A III Ženevske konvencije o postupanju sa ratnim zarobljenicima definiše koja se sve lica mogu smatrati ratnim zarobljenicima. Između ostalih, to su: pripadnici oružanih snaga jedne strane u sukobu, kao i pripadnici milicija i dobrovoljačkih jedinica, koji ulaze u sastav tih oružanih snaga, pripadnici organizovanih pokreta otpora koji pripadaju jednoj strani u sukobu i koji dejstvuju izvan ili u okviru svoje

sopstvene teritorije. Dakle, objekat zaštite ovom konvencijom jeste ratni zarobljenik, u ovom slučaju borac, pripadnik oružanih snaga. S druge strane, Dopunski protokol II Ženevske konvencije o zaštiti žrtava nemeđunarodnih oružanih sukoba određuje da sve osobe koje ne učestvuju direktno ili su prestale da učestvuju u neprijateljstvima, bez obzira na to je li njihova sloboda ograničena ili nije, imaju pravo na poštovanje svoje ličnosti, svoje časti, svojih uverenja i svojih verskih obreda. Protokol ne spominje borce niti ratne zarobljenike, već pruža zaštitu onima koji učestvuju u neprijateljstvima, navodeći čovečno postupanje i zabranu nasilja protiv života, zdravlja i fizičkog ili mentalnog blagostanja osoba, naročito ubistvo i okrutno postupanje, kao što su sakaćenje ili bilo koji oblik telesne kazne (Fabijanić Gagro, 2008).

Određivanje statusa žrtve ratnih zločina podrazumeva primenu međunarodnog prava zbog blanketne norme. Dok nacionalni kazneni zakoni omogućavaju izbor između dva dela – ratnog zločina protiv civilnog stanovništva i ratnog zločina protiv ratnih zarobljenika, konačna kvalifikacija dela zavisi od ocene da li je sukob u konkretnom slučaju međunarodni ili nemeđunarodni (Sokanović, 2021). Pitanje statusa ratnih zarobljenika vezuje se za oružane sukobe, dok se u unutrašnjem (nemeđunarodnom) oružanom sukobu ne pojavljuje status ratnih zarobljenika, osim ako se strane u sukobu ne saglase da se taj status obezbedi licima lišenim slobode.

Lica koja, prema pravilima međunarodnog humanitarnog prava, uživaju pravo na zaštitu i poštovanje u oružanim sukobima ne smeju biti predmet napada, odnosno moraju biti zaštićena i sa njima se mora postupati čovečno i bez diskriminacije po bilo kom osnovu. Njih bismo mogli podeliti u dve kategorije: civile, tj. lica koja ne učestvuju direktno u ratnim dejstvima, uključujući izbeglice i interno raseljena lica i posebno zaštićene civile, odnosno žene, decu, stare, ranjenike, bolesnike, brodolomnike, vojno sanitetsko i versko osoblje, civilno ili vojno osoblje civilne zaštite i humanitarne radnike i lica koja više ne učestvuju u neprijateljskim dejstvima, kao što su ranjeni ili bolesni borci ili brodolomnici i ratni zarobljenici, konkretno lica koja ne preduzimaju neprijateljstva.

### *5.3.2. Zločin protiv čovečnosti*

U ljudskoj istoriji je evidentno postojanje elemenata zločina protiv čovečnosti i mnogo pre Nirnberga, u kom je došlo do prvih sudskih procesa u ovoj oblasti. Krivično delo zločin protiv čovečnosti direktan je proizvod kršenja principa humanosti i negacije čovečnosti. Zločini upereni protiv bilo kog civilnog stanovništva su zabranjeni, bez obzira na to da li je reč o međunarodnom ili nemeđunarodnom oružanom sukobu. Kada je u pitanju postojanje krivičnog dela zločin protiv civilnog stanovništva, u praksi se srećemo sa neprihvatanjem tvrdnje da se radnje usmerene protiv civilnog stanovništva preduzete u vreme kada nema oružanih borbi mogu kvalifikovati kao ratni zločini protiv civilnog stanovništva (Izvod iz obrazloženja presude, Predmet KŽ1 Po2 2/2013 Gnjilane, st. 11 par. 2.1.). Zločini protiv čovečnosti, tj. ubistvo, istrebljenje, porobljavanje, deportacija i ostala nečovečna dela izvršena pre ili tokom trajanja rata ili progon na političkoj, rasnoj ili verskoj osnovi u nadležnosti su međunarodnog krivičnog suda bez obzira da li su tim delima izvršene povrede i drugih zakona (član II (11) Zakona br. 10 Kontrolnog saveta).

Radnje koje se ubrajaju u ovo krivično delo, uprkos utvrđenim pravilima ratovanja, sugerišu na njihovu prisutnost u praksi, što nam ukazuje da i u savremenim uslovima ostaje nemilosrdno *Vae victis!* (*lat.* Teško pobeđenima!) (Ignjatović, 1998).

Između definicije zločina protiv čovečnosti sadržane u čl. 3 Statuta Međunarodnog krivičnog suda za Ruandu (u daljem tekstu: MKSR) i definicije u čl. 5 Statuta Međunarodnog krivičnog suda za bivšu Jugoslaviju (u daljem tekstu: MKSJ) postoje ključne razlike: postavljanje ili nepostavljanje uslova postojanja oružanog sukoba, diskriminatorske namere i određenje objekta napada. Član 5 MKSJ ne govori o napadu na civilno stanovništvo, kao „rasprostranjenom ili sistematskom", dok to član 3 MKSR čini. I pored pomenutog zakonskog određenja, MKSJ u praksi priznaje merilo koje određuje MKSR, kao uslov za zločine protiv čovečnosti. S obzirom na prirodu ovog krivičnog dela, u njemu učestvuje više učinilaca u okviru zajedničkog zločinačkog cilja, pa se delo sastoji od brojnih protivpravnih radnji, kao što su: ubistvo, istrebljenje, porobljavanje, deportacija ili prisilno premeštanje stanovništva, zatva-

ranje ili drugi oblici teškog lišenja slobode, mučenje, silovanje, seksualno ropstvo, prinudna prostitucija, prisilna trudnoća, prisilna sterilizacija, seksualno nasilje, progon, prisilan nestanak lica, aparthejd itd. Navedene radnje govore istovremeno o položaju civila kao žrtava rata. Takođe, o njihovom položaju govore i potencijalni ratni zločini kakvi su: sakaćenje, sprovođenje medicinskih ili naučnih eksperimenata na njima, uništenje i prisvajanje njihove imovine, nečovečno postupanje itd.

U određenju radnji izvršenja zločina protiv čovečnosti uočava se termin *porobljavanje*, koji označava stavljanje u ropski položaj i manifestaciju takvog stanja. Važno je pomenuti i konvencije na koje se pozivaju pojedinci, iako nisu preuzete kao izvor regulative o porobljavanju. To su Konvencija o ropstvu iz 1926. godine i Dopunska konvencija o ukidanju ropstva, trgovine robljem i ustanova i prakse slične ropstvu iz 1956. godine. O porobljavanju se govori i u drugim konvencijama iz oblasti ljudskih prava i humanitarnog prava. Pravilom 94, ropstvo i trgovina robljem zabranjeni su u svim oblicima (Henckaerst & Doswald, 2005). Rimski statut suštinski preuzima definiciju porobljavanja iz pomenutih konvencija. U stavu 2(c) čl. 7 ovog statuta navodi se da „porobljavanje znači vršenje pojedinačnih ili svih ovlašćenja koja proističu iz prava svojine nad nekim licem, a koja podrazumevaju vršenje ovih ovlašćenja u trgovini licima, posebno ženama i decom". Navodeći elemente zločina, čl. 7 u fusnoti 11 precizira da se pravo svojine ogleda u prodaji, kupovini, iznajmljivanju ili trampi lica ili ispoljavanju tih radnji nad njima i oduzimanju njihove slobode koje se može ogledati i u prisilnom radu ili na drugi način dovođenju osobe u status ropstva, kako ga definiše Dopunska konvencija iz 1956. godine.

Kroz praksu *ad hoc* tribunala nailazimo na slučajeve porobljavanja u kojima je zauzet stav da sama pozicija ropstva ne mora biti praćena drugim okrutnim ponašanjima. Primer je predmet „Foča" pred *ad hoc* tribunalom za bivšu Jugoslaviju u kojem je držanje lica u kući protiv njihove volje okarakterisano kao porobljavanje. Naime, određeni broj lica držan je u kući koja nije bila čuvana i zaključavana, ali se nalazila u neprijateljskom okruženju. Položaj ovih porobljenika bio je pogoršan zbog loših životnih uslova (nedostatka hrane), lošeg ophođenja i prisiljavanja na rad koji je podrazumevao kućne poslove. Pri sumiranju rada Tribunala, definicija i analiza porobljavanja dati u predmetu „Kunarac

i drugi" uzima se kao dominantna. U ovoj presudi porobljavanje predstavlja ispoljavanje prava vlasništva nad pojedinim licima kroz: kontrolu kretanja; kontrolu okoline boravišta; psihološku kontrolu; mere preduzete za sprečavanje i ometanje bekstva; pretnju upotrebe sile; zlostavljanje; okrutno postupanje i prisilan rad (Međunarodni krivični sud za bivšu Jugoslaviju, predmet „Kunarac i drugi", Presuda, februar 2001, par. 540). Ovakav vid zločina protiv čovečnosti, odnosno elementi ovog krivičnog dela nalaze svoju samostalnost i u krivičnom delu trgovine ljudima iako ima drugačije karakteristike od porobljavanja. Porobljavanje u okviru dela zločin protiv čovečnosti uzrok nalazi u sprovođenju plana ili politike države, dok je trgovina ljudima krivično delo čija funkcija leži u ostvarenju materijalne koristi. Ovakav stav ne možemo u potpunosti prihvatiti jer osnov porobljavanja leži i u materijalnom interesu porobioca.

### *5.3.3. Zasnivanje ropskog odnosa i prevoz lica u ropskom odnosu*

Međunarodnopravni osnov dela zasnivanje ropskog odnosa i prevoz lica u ropskom odnosu nalazimo u Berlinskom generalnom aktu o Kongu iz 1885. godine, u Londonskom kolektivnom ugovoru iz 1845. godine, u Berlinskom kolektivnom aktu iz 1890. godine, u Međunarodnoj konvenciji o uklanjanju ropstva iz 1926. godine i u njenoj dopuni zaključenoj u Ženevi 1956. godine. Federativna Narodna Republika Jugoslavija ratifikovala je ovu konvenciju 1958. godine, godinu dana nakon njenog stupanja na snagu. Pomenute konvencije definišu ropstvo kao stanje i položaj lica nad kojima se vrše ovlašćenja koja predstavljaju atribute prava svojine, pri čemu rob predstavlja pojedinca sa statusom svojine. Iz ovakve definicije ropstva proizilazi da ropstvo podrazumeva sledeće radnje izvršenja: stavljanje drugoga u ropski položaj; raspolaganje licima u ropskom odnosu, odnosno vršenje svojinskih ovlašćenja; trgovinu licima koja se nalaze u ropskom odnosu i njihov prevoz iz jedne zemlje u drugu; podsticanje drugoga da proda svoju slobodu ili slobodu lica koja izdržava ili o kojima se stara. Krivični zakonik Republike Srbije, u članovima koji se odnose na trgovinu ljudima i stavljanje u ropski položaj, predviđa kaznu i za dela koja su učinjena prema maloletnim licima. O položaju porobljenih govore radnje krivičnih dela sadržane u Krivičnom zakoniku, a koje se mogu sastojati od stavljanja

drugog u ropski položaj, od držanja u takvom položaju, od trgovine ljudima ili izvršenja, odnosno posredovanja u prodaji, predaji ili kupovini (Jovanović, 2022).

## 6. Odgovornosti za zaštitu

Očiglednost stradanja ljudi kroz istoriju direktno se stavlja u funkciju primene mera za zaštitu i sprečavanje daljeg stradanja (Focarelli, 2008). Savremeno međunarodno pravo obeleženo je korelacijom principa humanosti sa drugim principima, čime se iscrpljuje njihovo međusobno uobličavanje i ograničavanje. Princip humanosti deluje na princip suverenosti, što dovodi do nastanka novog principa – principa obaveze i odgovornosti da se pruži zaštita stanovništvu. Ovaj princip prati princip kolektivne odgovornosti iako međunarodno krivično pravo inkriminiše krivičnu odgovornost. Odgovornost države u praksi ostvarivana je samo kao individualna odgovornost njenih državljana. Sve dominantniji uticaj principa humanosti s početka dvadesetog veka dovodi do stvaranja teorije humanizovanog suvereniteta. Nastajanje ovog principa nalazimo u članu 38 Statuta Međunarodnog suda pravde upravo zbog potrebe davanja na značaju suverenitetu kao odgovornosti, a ne suverenitetu kao kontroli. Rezultat prihvatanja ovog koncepta jeste Rezolucija Generalne skupštine UN, čiji se sadržaj zasniva na principima odgovornosti za pružanje zaštite. Ova odgovornost, u stvari, predstavlja obavezu svake države da štiti svoje stanovništvo od zločina protiv čovečnosti, ratnih zločina i genocida, što podrazumeva dalje zaštitu od nehumanog porobljavanja i zarobljavanja. Rezolucija se, dakle, odnosi na prevenciju ovih zločina i njihovo procesuiranje. Rezolucijom su predviđeni i uspostavljanje odgovornosti Ujedinjenih nacija i upotreba humanitarnih sredstava.

Pitanje odgovornosti za zaštitu pojedinca od stradanja i odgovornosti države za teške povrede humanitarnih prava inkriminisane kao međunarodna krivična dela rešeno je sankcionisanjem pojedinaca. Ovakav pristup je pozitivan, ali ne i dovoljan, jer je pre svega važno da države pokažu odgovornost ne na način što će kazniti pojedince, već tako što će sprečiti stradanje, porobljavanje, zarobljavanje i sve druge nehumane radnje.

## 7. Zaključak

Nezavidan položaj zarobljenika, prisutan od samih začetaka ljudske civilizacije, menjao se kroz istoriju s tim da je uvek bio podređen interesima porobioca. Položaj porobljenika takođe se menjao u društvu od donekle povoljnog do oduzetih osnovnih prava, kakvo je, između ostalih, pravo na život.

Uprkos volji porobilaca, koja se kretala i do bespoštednog ubijanja i nečovečnog postupanja, istorijske okolnosti su ipak uticale da se utvrde bolji uslovi za porobljenike. Tome su, pre svega, doprinele konvencije i drugi zakonski normativi integrisani u nacionalna zakonodavstva. Zahvaljujući njima, koliko god da je „situacija" na terenu nehumana, savremeni svet pokušava da istakne važnost korektnog postupanja prema civilima, konkretno prema ženama, deci i starim licima.

Novi vek i menjanje pravila ratovanja povlače za sobom menjanje pravila postupanja prema zarobljenicima. Ona su konkretizovana kroz propise u oblasti međunarodnog humanitarnog prava, dok propisi u oblasti međunarodnog krivičnog prava imaju za cilj da se inkriminišu počionici dela kao što su ratni zločin, zločin protiv čovečnosti i stavljanje u ropski položaj.

### Literatura

Atanasovska Cvetković, A. (2021). Rimskiot emptio-venditio (Dogovor za kupoprodažba) vo Francuskiot Code Civile od 1804 godina. *Godišen zbornik, Praven fakultet, Univerzitet „Goce Delčev"*, Štip, vol. XI , br. 11, 34.

Bujuklić, Ž. (2010). *Forum Romanorum*. Beograd: Pravni fakultet Univerziteta u Beogradu, Centar za izdavaštvo i informisanje.

Deretić, N. (2011). Uporedna analiza: „Prava čoveka" u Rimskoj državi i savremena „ljudska prava". *Zbornik radova Pravnog fakulteta u Novom Sadu*, br. 3 (2011), 469–496.

Draper, G. I. A. D. (1988). Development of international humanitarian law. U: *International Dimensions of Humanitarian Law.* Dordrecht, Boston, London: Henry Durant Institute, Unesco, Martinus Nijhoff publishers, 67–90.

Fabijanić Gagro, S. (2008). Promjena kvalifikacije oružanog sukoba. *Zbornik radova Pravnog fakulteta Sveučilišta u Rijeci* 29 (2), 1067–1092.

Fabijanić Gagro, S., & Jurašić, B. (2013). Protection of civilians in modern ar-

med conflicts-international legal solutions in light of the development of new tendencies protection. *Zbornik radova Pravnog fakulteta u Splitu* vol. 50, no. 3, 615–641.

Focarelli, C. (2008). The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict and Security Law*, Vol. 13 (2), 191–213.

Gaj, *Institucije*. preveo: Stanojević, O. (1982). Beograd: Nolit.

Gardner, P., & Jevons, B. F. (1895). *A manual of Greek Antiquities.* London: Charles Griffin and company.

Henckaerst, J. M., & Doswald Beck, L. (2005). Usually international law, vol I. Cambridge: ICRC and Cambridge University Press.str 355.

Ignjatović, A. (1998). Krivičnopravna zaštita života, zdravlja i telesnog integriteta civilnog stanovništva u ratu. *Vojno delo*, 1998, vol. 50, br. 1, 92–106.

Jovanović, A. (2022). *Međunarodno krivično pravo*. Beograd: Visoka škola za poslovnu ekononiju i preduzetništvo.

Jovanović, A., & Atanasovska Cvetkovic, A. (2021). Genocid – krivično delo protiv čovečanstva zaštićeno međunarodnim pravom. *Iuridica Prima, 7-th International Scientific Conference*, Ohrid School of Law.

Kandić, Lj. (1988). *Odabrani izvori iz opšte istorije države i prava*. Beograd: Savremena administracija. Tekst Hamurabijevog zakonika: Lj. Kandić, Odabrani izvori iz opšte istorije države i prava. (Beograd: Savremena administracija, 1988), 34–62.

Kurtović, Š. (1987). *Opća historija države i prava*, I dio. Zagreb: Informator.

Milak, E. (1986). Yugoslavs in the concentration camps and prisons in fascistic Italy during the second world war. *Istorija 20.veka*, Institut za savremenu istoriju Beograd, br.1–2, str 155–172.

Reisman, W. M., & Antoniou, T. C. (1994). The Laws of War. U: Vintage Books (Edt.), New York. *A Comprehensive collection of primary documents on international laws governing armed conflict*. 150–152.

Sokanović, L. (2021). Ratni zločin protiv civilnog stanovništva VS. Ratni zločin protiv ratnih zarobljenika: ubojstvo Aleksandra Lave. *Godišnjak pravnih znanosti Hrvatske*, Vol. XII No. 1.175-205. doi: 10.32984/gafzt.12.1.9

Stanojević, O. (2003). Egipat – civilizacija i pravo. *Anali Pravnog fakulteta u Beogradu*, LI, br. 1–2, 158–172.

Stanimirović, V. (2011). Novi pogled na Hamurabijev zakonik (I deo). *Anali Pravnog fakulteta u Beogradu*, 1/2011, 133–159.

Stanimirović, V. (2011). Novi pogled na Hamurabijev zakonik (II deo). *Anali Pravnog fakulteta u Beogradu*, 2/2011, 91–121.

Rimski statut Međunarodnog krivičnog suda, Zakon o potvrđivanju Rimskog statuta međunarodnog krivičnog suda („Sl. list SRJ - Međunarodni ugovori", br. 5/2001), dostupno na: https://www.paragraf.rs/propisi/zakon-o-potvrdjivanju-rimskog-statuta-medjunarodnog-krivicnog-suda.html

Statut Međunarodni Krivični Tribunal za bivšu Jugoslaviju, dostupno na: https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_bcs.pdf

Statut Međunarodni Krivični Tribunal za Ruandu, Statute of the international tribunal for Rwanda, dostupno na: https://legal.un.org/avl/pdf/ha/ictr_EF.pdf

Ženevska konvencija o poboljšanju položaja ranjenika i bolesnika u oružanim snagama u ratu; Ženeva, 12. august 1949. godine (Prva konvencija), https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o poboljšanju položaja ranjenika, bolesnika i brodolomnika oružanih snaga na moru; Ženeva, 12. august 1949. godine (Druga konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o postupanju sa ratnim zarobljenicima; Ženeva, 12. august 1949. godine (Treća konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o zaštiti građanskih lica za vreme rata; Ženeva, 12. august 1949. godine (Četvrta konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunski protokol uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava međunarodnih oružanih sukoba (Protokol I); Ženeva, 8. jul 1977. godine, dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunski protokol uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava nemeđunarodnih oružanih sukoba (Protokol II); Ženeva, 8. jul 1977. godine, dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunska konvencija 1956, dostupno na: https://arhiva.mpravde.gov.rs/lt/articles/medjunarodne-aktivnosti-eu-integracije-i-projekti/medjunarodna-pravna-pomoc/multilateralni-ugovori.html

Krivični zakonik Republike Srbije („Sl. glasnik RS“, br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019), dostupno na: https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html

Zakon 10 kontrolnog saveta, CONTROL COUNCIL Law No. 10, dostupno na: https://www.legal-tools.org/doc/ffda62/pdf/

Predmet „KŽ1 Po2 2/2013“ Gnjilane, st. 11 par. 2.1., Bilten sudske prakse Apelacionog suda u Beogradu, br. 7/2015, Intermex, Beograd, Sudska praksa, dostupno na:

http://www.bg.ap.sud.rs/lt/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/

Međunarodni krivični tribunal za bivšu Jugoslaviju, predmet Kunarac i drugi, Presuda, februar 2001, par 540 dostupno na:

https://www.icty.org/x/cases/kunarac/acjug/bcs/kun-aj020612b.pdf

# LEGAL PROTECTION OF PRISONERS OF WAR: A HISTORICAL OVERVIEW

**Abstract:** The status of prisoners of war and their treatment post capture has always been of interest to the humane individuals. Throughout history, there are various examples of the treatment of the captives, which largely reflected the interests of their captors. In order to prevent war crimes and crimes against humanity, which affect the position of civilians and prisoners of war, there are rules and conventions in armed conflicts. Despite the existence of these rules, history has shown that crimes against humanity (e.g., mass killings of civilians and prisoners, devastation, looting and enslavement) are a regular occurrence in armed conflicts. The paper will examine the treatment of captives throughout history. This paper will also provide an analysis of the conventions, charters and legislation of international humanitarian and international criminal law, which incriminate war crimes, crimes against humanity, and slavery, with the aim of improving the treatment of prisoners of war.

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# LEGAL PROTECTION OF PRISONERS OF WAR: A HISTORICAL OVERVIEW

**Abstract:** The status of prisoners of war and their treatment post capture has always been of interest to the humane individuals. Throughout history, there are various examples of the treatment of the captives, which largely reflected the interests of their captors. In order to prevent war crimes and crimes against humanity, which affect the position of civilians and prisoners of war, there are rules and conventions in armed conflicts. Despite the existence of these rules, history has shown that crimes against humanity (e.g., mass killings of civilians and prisoners, devastation, looting and enslavement) are a regular occurrence in armed conflicts. The paper will examine the treatment of captives throughout history. This paper will also provide an analysis of the conventions, charters and legislation of international humanitarian and international criminal law, which incriminate war crimes, crimes against humanity, and slavery, with the aim of improving the treatment of prisoners of war.

**Key words:** war crime, crime against humanity, captive, prisoner of war, captor.

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## 1. Introduction

Captivity is a concept well-known in international criminal, international humanitarian and international public law. If captivity is seen as slavery, then it can be considered one of the first crimes recognized by the international law. Captivity, i.e., the act of enslavement, the state of slavery and the status of captive all amount to the restraint of individual liberty. In modern law, captivity also involves the right of ownership over an individual.

This paper focuses on the position of prisoners of war, with an emphasis on the protection of civilians and prisoners of war during armed conflicts in international criminal legislation. In first section, the authors discuss the position of captives throughout history. The next section deals with the treatment of Serbian prisoners of war in the twentieth century, which contradicts the provisions of the Hague Convention. The last section examines the criminal justice protection of civilians in international armed conflicts, contained in conventions and charters, the normative organization of international criminal acts, such as crimes against humanity and war crimes, and the crime of enslavement in the Criminal Code of the Republic of Serbia. The paper comprehensively discusses the concept of captive throughout history, and the position of prisoners of war in the twentieth century who were used as forced labour, making them equal to slaves. The aim of this paper is to stress the importance of lawful treatment and responsibility towards prisoners of war.

## 2. Methods

The methods used in the paper are historical and research methods, primarily on the legislation and practices in the treatment of prisoners of war from the ancient times to the present day. Furthermore, the authors used a comparative method for the analysis of legislation related to human rights and criminal codes at the national and international level. In addition to the historical and criminal law approach, the paper also includes a moral aspect that seeks to promote ethical values. The expected contribution of this analysis is an improved understanding of the

position of prisoners of war throughout history and an understanding of the necessity and importance of protecting their position by means of humanitarian and criminal law.

## 3. Corpus

The corpus of analysis comprises the following legislation: Criminal Code of the Republic of Serbia, the First Geneva Convention "for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field", the Second Geneva Convention "for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea", the Third Geneva Convention "relative to the Treatment of Prisoners of War", the Fourth Geneva Convention "relative to the Protection of Civilian Persons in Time of War", Amendment Protocol I relating to the Protection of Victims of International Armed Conflicts, Amendment Protocol II relating to the Protection of Victims of Non-International Armed Conflicts, the Rome Statute of the International Criminal Court, Control Council Law No. 10, the 1926 Slavery Convention, and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Besides the above legislation (available online), the authors used many examples. To analyse the historical aspects of the prisoners of war treatment, historical sources and legislation were used.

## 4. Results

The proposed research methods (comparative analysis of laws and conventions and the historical method) proved to be adequate. On the basis of the historical accounts of the captor – captive relationship and the analysis of the elements of international crimes and the causes of captivity, the authors have provided a comprehensive survey of the position of captives and identified the different interests of the captor, mostly political and economic. The research results aim to improve the treatment of prisoners and prosecute international crimes.

## 5. Discussion

### 5.1. Historical Overview of the Captive-Captor Relationship

From ancient times to the present, states and nations created by wars promote the creation of a specific relationship between the captor and captive. The subordinate position, which results from this relationship, constitutes a new social position: every native in the conquered territory becomes a captive, and the life of the captive largely depends on the will of the captor. The place of the enslaved in the social life of the new society primarily depended on the captors, specifically on their treatment and treatment of the enslaved. In the earliest history of humanity, there was no captor-captive relationship: in times of war, entire tribes were exterminated and wiped off the face of the Earth, which in modern law equals genocide (Jovanović & Atanasovska Cvetković, 2021). Throughout history, there are instances when the captives were denied any right unless they became slaves, on the one hand, and on the other hand, when they had certain privileges in the newly created relationships in society, although they remained slaves or almost slaves.

If we equate the position of the captive with the position of the slaves, then the sources of slavery in large systems (even if they were the initial forms of the first states) are wars of conquest. The first slaveholding states, also known in history as Eastern despotisms, were more lenient when it came to the position of slaves, compared to the mighty Rome. The assumption is that the enslaved had a clear awareness of the benefit of social peace for the functioning of the state and of the danger that could arise through social unrest and potential war that would be initiated by the enslaved due to dissatisfaction with their own position.

In the turbulent history of Egypt, there is a story of a general who spared the life of a captive instead of killing him (Stanojević, 2003). In this way, the captive became a slave and acquired certain rights in society. Based on this Egyptian attitude towards the enslaved, we can conclude that there was a fairly humane relationship. Namely, the Egyptian slaver allowed the slaves to have families, to gain freedom by marrying a free woman, as well as to have limited business and legal capacity, which leads us to the conclusion that certain jobs were allowed to them. This

can be seen as the beginning of the development of humane treatment of slaves and their rights.

The unusual history of Mesopotamia, especially the age of Babylon and the great Hammurabi, translated into Hammurabi's Code (Weiss, 1969; Stanimirović, 2011), also presents the beginning of the humanitarian treatment towards the slaves. Wars of conquest meant that the captive population (foreigners and residents of the conquered territories) became the social class of slaves, whose rights are limited, but not non-existent. In Babylonian society, according to Article 175 of the Code of Hammurabi, marriages of enslaved people with members of the free class of people were allowed, and their offspring had the status of free people if the mother was a member of the free class of Babylonian society. In the same article, a slave is prescribed the right to marry a woman belonging to the free class of Babylonian society. According to Hammurabi's code, enslaved people, who were engaged in crafts and trade, were given the right to participate in the business life of Babylon, specifically the right to conclude business contracts. We can consider the redemption of the slaves' freedom during the development of Babylonian history as a humane treatment of the slaves. Humanitarian conduct of captors can even seen in the established social rule included in Hammurabi's code: it was prohibited to beat captives to death or otherwise abuse them. These deeds were punished by killing the captor's son (Art. 116, Code of Hammurabi).

Another example of humane treatment of slaves can be found in the history of the ancient state of Sparta. By conquering Laconia, the Dorians succeeded in subduing the indigenous population. The indigenous enslaved population from the peripheral regions of Sparta, the Periecii, were given the status of free residents by engaging in trade and crafts within the borders of Sparta and retaining ownership of their own land (property). The right to possession was conditioned by the payment of tribute (rent) and the obligation to serve in the Spartan army as foot soldiers with heavy military weapons (holpite soldiers). Although this right was conditional, it cannot be denied that the enslaved population were granted some rights. It is assumed that they also had local self-government in some form, under the watchful eye of their captors (Gardner & Jevons, 1895, p. 423). The enslaved indigenous population in

Sparta was made up of another social class, the helots. They were slaves in Spartan society, constituting the lowest social class, closest to medieval serfs. Their treatment had some humane elements, such as the right to start a family, the right to own money and certain type of property, such as agricultural tools,

By conquering the Athenian polis, the natives became slaves, and depending on whether the slaves were state-owned or private, they were treated differently. Private slaves completed their existing slave status with the status of a private slave, after they were bought, resulting in a "mix" of slavery. Although the state did provide the right of asylum (escaping to the temple) for private slaves in case of abuse by their masters, private slaves were overall in a more difficult position than state slaves. It was forbidden for slave owners to mistreat, abuse or kill private slaves. Private slaves could even go to court with a request to be sold to another master. However, there were differences in the treatment of private and state slaves. The captives of the state had the right to marry, start a family, own movable property, even to have their own slaves. The humane elements of this treatment can be seen in the fact that state slaves were part of the civil service, received compensation for their work, and were provided with housing, food and clothing. In short, they had both business and legal capacity (Kurtović, 1987).

The magnificent Rome, which rose from a small city-state to the largest and mightiest empire of the known world, was created as a result of great campaigns and wars of conquest. Here we will try to summarize the rich history of Rome, and to recognise the specific relationship between the enslaver and the enslaved and possibly the humane treatment of the enslaved. After the Punic Wars between Rome (Roman Republic) and Carthage 264-146 BCE, the Roman territory expanded, and thus the number of slaves who were integrated into Roman society in the status of slaves also increased. Considering Gaius's division of humanity into free people and slaves (*Et quindem summa divisio de iure personarum haec est, quod omnes homines aut liberi sunt aut servi* (Gaius, Institutions 1,9)), the status of slaves in Roman society was based on coercion, although there were many educated individuals among the population found in the conquered and enslaved territories. In the beginning, the slave was in an unenviable situation (Deretić, 2011), illustrated by the

masters' ability to kill their slaves without any consequences. The attitude towards slaves changed with the expansion of the territory during the Roman Republic and the encounter with an educated population. Apart from the fact that they had a master and that their fate was directly related to his will, the slaves lived on the master's property engaged in agriculture on the latifundia, thus creating a class of rural slaves (*servus rustica*). In contrast to them, city slaves (*servus urbana*) had a more favourable position. They ran their master's household, helped him, and those who were educated had the opportunity to be the master's readers, secretaries, or doctors (Bujuklić, 2010). It is indisputable that the position of slaves changed throughout Roman history, as well as the relationship between the enslavers and the enslaved, but also that their position was far less favourable than it was in the Athenian state.

The Middle Ages, in addition to autocratic rulers, the influence of the church, the creation of feudal states and the binding of free peasants to the land (Atanasovska Cvetković, 2021), retained the legacy of the previous era, regarding the wars of conquest and the captor-captive relationship.

In the Modern Era, new insights into the concept of human rights and Rousseau's views in *Contrat Social* created a new understanding of the captor-captive relationship and the status of the enslaved minority population of conquered states. The armed conflicts, especially those in the 20th century (World War I and World War II) inspired the need to protect human rights of captives. The protection of human rights of captives can also be traced through the historical development of military law, in which the principle of humanitarianism becomes a dominant element in refraining from undertaking certain actions during warfare. The principle of humanitarianism is a recent creation, associated with modern regimes and human rights (Draper, 1988).

The captor-captive relationship and the treatment of prisoners in war-torn areas can be found both in ancient and in modern times. They were defined by customary or legal norms. Today, these relations are defined by international law, international humanitarian law, human rights, and have a clear aim – the incrimination of international criminal acts.

## 5.2. Serbian Soldiers as Prisoners of War in the 20th Century: Violations of the Hague Convention

The twentieth century is characterized by the development of international law and the protection of human rights, focusing on civilian victims and prisoners of war. At the turn of the twenty-first century, we witnessed the inconsistent application of international conventions, which leads to a lack of protection for civilians who suffer direct and indirect consequences of armed conflict. Although international laws (humanitarian law, military law and criminal law) strive to maintain peaceful relations between combatants (Fabijanić Gagro & Jurašić, 2013), there are many disagreements and divergences in political and economic interests, which lead to consequences suffered by civilians and prisoners of war.

In 1907, the Hague Convention on the Laws and Customs of War on Land was adopted with the aim to introduce a more humane aspect to armed conflicts and reduce human suffering as much as possible (Reisman & Antoniou, 1994). The Hague Convention set out precise regulations for the behaviour of the occupying forces towards the civilian population and prisoners of war. The second chapter stipulates that captives are in the power of the hostile government, but not of the individuals or corps that captured them, which can be understood as a prohibition of enslavement. The convention mandates the humane treatment of prisoners and regulates various aspects of the population's life, such as accommodation, food, clothing, work, mail and spiritual life. At about the same time, especially since the 1907 Customs War broke out, the Austro-Hungarian Empire tried to subjugate the economically underdeveloped Serbia, simultaneously prevent any Serbian-Bulgarian cooperation, and prevent the strengthening of the Serbian army. The annexation of Bosnia and Herzegovina in 1908 and the creation of an "anti-Serbian climate" during the Balkan wars were of special importance for Austria-Hungary. After the Sarajevo assassination and the outbreak of World War I, the Austro-Hungarian army occupied parts of northern Serbia (Mačva), where they killed the wounded and civilians, looted and destroyed private property, in violation of international laws and conventions. The Austro-Hungarian army abused the Serbian pri-

soners of war and the civilian population, confiscated production, agricultural tools and equipment, looted food and livestock, demolished educational and cultural institutions, and committed other violations. Although the Serbian government invoked the Hague Convention to protect prisoners of war and civilians imprisoned in the camps of Austria-Hungary, it was still forced to provide aid through humanitarian organizations and the missions of neutral countries. The largest number of Serbian prisoners of war, as many as 154,631, were in Austro-Hungarian camps, where around 80,000 died. After the Battle of Cer, most of them were interned in the Esztergom camp.

At the beginning of the Great War, the position of Serbian prisoners was extremely difficult; during 1914 their number rose to around 200,000. The capacities in the camps were not sufficient because many camps were under construction at the time, so the prisoners were also kept in fenced-in meadows, without warm clothing, starved and exhausted by the long hike. Due to hunger, cold, exhaustion, typhus and other diseases, the number of prisoners decreased. In 1915, there remained about 45,000, and after the winter of 1916/17, according to Germany's estimate, there were around 174,000 captured and missing Serbian prisoners. Serbian prisoners of war were also interned in Hungary, where the conditions were similar to the Austro-Hungarian camps. The position of prisoners in Bulgaria, where officers were housed in camps with non-commissioned officers, did not differ from the camps in Austria-Hungary. After the capture, the prisoners of war were taken to the camps on foot, while the wounded, if possible, were transported by car. Contrary to the Hague Convention, which stipulates only the confiscation of arms, money, watches, shoes, and other valuables were confiscated from the soldiers. The practice of violating the Hague Convention was widespread among other armies in Europe. Serbian prisoners had poorer diet and more severe punishments compared to prisoners of other nationalities (English, French). In the Bulgarian camps, and in other camps in this period, in addition to the lack of space and food, there were also poor hygienic conditions that favoured the spread of typhus, dysentery and malaria.

During World War II, millions of prisoners of war and civilians were forcibly taken to the camps. The camps were built near large and densely

populated urban areas with a focus on areas with large Jewish, Polish and Roma population, as well as in areas where there were supporters of communism. In most camps, prisoners were forced to wear colour markings depending on their categorization. Red flags were worn by communists and other political prisoners, green triangle by criminals, pink by homosexuals, purple by Jehovah's Witnesses, black by people unable to work (disabled, mentally ill, homeless, prostitutes, etc.), yellow by Jews and brown by Roma. A large number of prisoners died in the camps due to forced labour, starvation and abuse, or during transport to the camp due to lack of food and water and due to inhumane conditions in the wagons, which were primarily used to transport livestock. In 1942, the SS built a network of death camps and carried out systematic ethnic cleansing of prisoners, who were most often killed by toxic gas.

During World War II, more than 100,000 Yugoslavian prisoners of war were in fascist concentration camps, prisons and sites of free internment" in about two hundred towns across Italy (Milak, 1986). The position and conditions of the prisoners differed from place to place, depending on whether they lived in rural houses or in camps. The money they received for buying food was insufficient, and they were under the control of the carabinieri, confined, without health care and clothing supplies. The situation of prisoners in camps and prisons was even more difficult, due to frequent physical and psychological torture. Many prisoners died, especially in the camps in the north of Italy. After the fall of the fascist government and the capitulation of Italy, Yugoslav prisoners were taken to Germany, where they were also held captive, and only a small number managed to break free.

### 5.3. **Legislation Related to Prisoners of War**

The Geneva Conventions include measures taken in order to ensure respect for international humanitarian law, on which the provisions of the international law of war rely and which additionally specify the provisions of the international criminal law. They oblige the signatory states and non-state actors – parties in the conflict, to respect humanitarian principles towards enemy soldiers and civilians during wartime conflicts. The provisions of international war and humanitarian law are codi-

fied in the four Geneva Conventions on the Humanitarian Treatment in War from 1949: Geneva Convention on the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (the First Geneva Convention); Geneva Convention on the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (the Second Geneva Convention); Geneva Convention on the Treatment of Prisoners of War (the Third Geneva Convention) and Geneva Convention on the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). The Amendment Protocol to the Geneva Conventions on the Protection of Victims of International Armed Conflicts (Protocol I) and the Amendment Protocol to the Geneva Conventions on the Protection of Victims of Non-International Armed Conflicts (Protocol II) were added to the aforementioned documents. Amendment Protocols (Protocol I, Part III and IV, Chapters I–V) additionally regulate the rules and customs of war, thus unifying the rules of Hague law of war and Geneva humanitarian law. In order to protect the most important human values, international criminal law and justice are being developed, which led to the adoption of the 1998 Rome Statute, which confirms that the perpetrators of the most serious crimes, related to the international community, especially genocide, crimes against humanity and war crimes, must not remain unpunished, and it is necessary to ensure their effective prosecution by taking measures at the national level and encouraging international cooperation.

#### 5.3.1. *War Crime*

The Geneva Conventions, Amendment Protocols I and II, statutes of international criminal courts and national criminal legislation define a war crime as a serious violation of international humanitarian law. According to the provisions of the Rome Statute, war crimes include actions directed against persons or property protected by the provisions of the 1949 Geneva Conventions and the 1977 Amendment Protocols and require the prosecution of their perpetrators. The Criminal Code of the Republic of Serbia also provides for this. The Article 4A of the Third Geneva Convention on the Treatment of Prisoners of War defines which persons may be considered prisoners of war. Among others, these

are: members of the armed forces of one party to the conflict, as well as members of militias and volunteer units, who are part of those armed forces, members of organized resistance movements belonging to one party to the conflict and operating outside or within their own territory. Therefore, the object of protection by this convention is a prisoner of war, in this case a combatant, a member of the armed forces. On the other hand, Amendment Protocol II of the Geneva Convention for the Protection of Victims of Non-International Armed Conflicts determines that all persons who do not participate directly or have ceased to participate in hostilities, regardless of whether their freedom is limited or not, have the right to respect for their persons, their honor, their beliefs and their religious rituals. The Protocol does not mention combatants or prisoners of war, but provides protection for those participating in hostilities, stating humane treatment and the prohibition of violence against the life, health and physical or mental well-being of persons, especially murder and cruel treatment, such as mutilation or any form of corporal punishment (Fabijanić Gagro, 2008).

Determining the status of a victim of war crimes implies the application of international law due to the blanket norm. While national criminal laws allow a choice between two acts – a war crime against the civilian population and a war crime against prisoners of war – the eventual qualification of the act depends on the assessment of whether the conflict in the specific case is international or non-international (Sokanović, 2021). The issue of the status of prisoners of war is related to armed conflicts, while in an internal (non-international) armed conflict, the status of prisoners of war does not arise, unless the parties to the conflict agree to provide that status to persons deprived of their liberty.

Persons who, according to the rules of international humanitarian law, enjoy the right to protection and respect in armed conflicts must not be attacked. They must be protected and treated humanely and without discrimination on any basis. There are two categories: the first category are civilians, i.e., persons who do not participate directly in hostilities, including refugees and internally displaced persons and specially protected civilians, i.e. women, children, the elderly, the wounded, the sick, shipwrecked, military medical and religious personnel, civilian or military civil protection personnel and humanitarian workers. The se-

cond category are persons who no longer participate in hostilities, such as wounded or sick combatants, shipwrecked members of armed forces, and prisoners of war.

### 5.3.2. *Crime Against Humanity*

The elements of crimes against humanity have been evident long before the Nuremberg Trials, the first trials for this crime. The crime against humanity is a direct product of the violation of the principle of humanity and the negation of humanity. Crimes against any civilian population are prohibited, regardless of whether it is an international or non-international armed conflict. In practice, the claim that actions directed against the civilian population taken at a time when there is no armed conflict can be qualified as war crimes against the civilian population is often rejected (Excerpt from the explanation of the verdict, Case KŽ1 Po2 2/2013 Gnjilane, para. 11 and para. 2.1.). Crimes against humanity, such as killings, extermination, enslavement, deportation and other inhumane acts committed before or during war or persecution on political, racial or religious grounds are within the jurisdiction of the International Criminal Court, regardless of whether those acts were committed in violation of other laws (Article II (11) Act No. 10 of the Control Council).

Despite the established rules of warfare, such acts are widespread in practice, which shows us that even in modern times, the Latin saying *Vae victis!* (Woe to the vanquished!) continues to apply (Ignjatović, 1998).

There are some basic differences between the definition of crimes against humanity contained in Art. 3 of the Statute of the International Criminal Tribunal for Rwanda (hereinafter: ICTR) and definitions in Art. 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (hereinafter: ICTY): setting or not setting the conditions for the existence of an armed conflict, discriminatory intentions and determining the object of the attack. Article 5 of the ICTY does not categorise an attack on the civilian population as "widespread or systematic", while Article 3 of the ICTR does. In addition, the ICTY in

practice recognizes the criterion determined by the ICTR as a condition for crimes against humanity. Considering the nature of this crime, several perpetrators participate in it within the framework of a common criminal goal, so the crime consists of numerous illegal actions, such as: killing, extermination, enslavement, deportation or forced relocation of the population, imprisonment or other forms of severe deprivation freedom, torture, rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, sexual violence, persecution, enforced disappearance, apartheid, etc. These acts illustrate the treatment of civilian persons in war. Also, potential war crimes such as: mutilation, conducting medical or scientific experiments on prisoners, destruction and appropriation of their belongings, inhuman treatment, etc., illustrate the treatment of prisoners of war.

When determining what constitutes a crime against humanity, we find the term enslavement, which means being placed in a position of a slave. It is also important to mention the conventions invoked by individuals, although they were not adopted as legislation on enslavement. These are the 1926 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. Enslavement is also discussed in other conventions in the field of human rights and humanitarian law. By Rule 94, slavery and the slave trade are prohibited in all forms (Henckaerst & Doswald, 2005). The Rome Statute essentially takes over the definition of enslavement from the conventions. In paragraph 2(c) of Art. 7 of this statute states that "enslavement means the exercise of individual or all powers arising from property rights over a person, which implies the exercise of these powers in the trade of persons, especially women and children." Stating the elements of the crime, Art. 7 in footnote 11 specifies that the right to property is reflected in the sale, purchase, rental or barter of persons or the exercise of such actions against them and the deprivation of their freedom, which can also be reflected in forced labor or in another way bringing a person to the status of slavery, as defined by the 1956 Supplement convention.

Through the practice of *ad hoc* tribunals, we come across cases of enslavement in which the position is taken that the position of slavery itself does not have to be accompanied by other cruel behaviors. In the

"Foca" case before the *ad hoc* tribunal for the former Yugoslavia, keeping a person in a house against their will was characterized as enslavement. Namely, a certain number of persons were kept in a house that was not guarded and locked but was located in a hostile environment. The position of these enslaved people was worsened due to poor living conditions (lack of food), bad treatment and being forced to work which included housework. When summarizing the work of the Tribunal, the definition and analysis of enslavement given in the case "Kunarac and others" is taken as accurate. In this sentence, enslavement represents the manifestation of ownership rights over individual persons through movement control, control of the environment of residence, psychological control, measures taken to prevent and hinder escape, threat of use of force, abuse, cruel treatment and forced labour (International Criminal Tribunal for the former Yugoslavia, Case Kunarac and Others, Judgment, February 2001, par. 540). This kind of crime against humanity is similar to human trafficking even though it has different characteristics from enslavement. Enslavement is a crime against humanity, the cause of which is the implementation of a state plan or policy, while human trafficking is a crime perpetrated for financial benefit. We cannot fully accept this attitude because the basis of enslavement also lies in the financial interest of the enslaver.

### 5.3.3. *Enslavement and Transporting Enslaved Persons*

The international legal basis of the act of enslavement and transporting enslaved persons can be found in the 1885 Berlin General Act on the Congo, the 1845 London Collective Agreement, the 1890 Berlin Collective Act, and the 1926 International Convention on the Abolition of Slavery and in its supplement concluded in Geneva in 1956. The Federal People's Republic of Yugoslavia ratified this convention in 1958, one year after its entry into force. The aforementioned conventions define slavery as the state and position of persons over whom powers are exercised that represent the attributes of property rights, whereby a slave represents an individual with the status of property. From this definition of slavery, it follows that slavery implies the following acts: putting another in a position of slavery, disposal of persons in a servile

relationship, i.e. exercise of ownership powers, trafficking in persons in slavery and their transportation from one country to another, inducing another to sell his liberty or the liberty of a dependent or dependents. The Criminal Code of the Republic of Serbia, in the articles related to human trafficking and enslavement, stipulates punishment for acts committed against minors. The position of the enslaved is defined by the acts of criminal acts contained in the Criminal Code, which may consist of putting another in a position of slavery, of keeping them in such a position, of human trafficking or execution, i.e. mediation in the sale, delivery or purchase (Jovanović, 2022).

## 6. Responsibility to Provide Protection

The evident human suffering throughout history serves to incite and apply measures to protect and prevent further suffering (Focarelli, 2008). Contemporary international law is characterized by the correlation of the principle of humanity with other principles, which exhausts their mutual shaping and limitation. The principle of humanity acts on the principle of sovereignty, which leads to the emergence of a new principle – the principle of obligation and responsibility to provide protection to the population. This principle follows the principle of collective responsibility even though international criminal law criminalizes criminal responsibility. The responsibility of the state in practice was realized only as the individual responsibility of its citizens. The increasingly dominant influence of the principle of humanity from the beginning of the twentieth century led to the creation of the theory of humanized sovereignty. We find the emergence of this principle in Article 38 of the Statute of the International Court of Justice precisely because of the need to emphasize sovereignty as responsibility, not sovereignty as control. The result of accepting this concept is the Resolution of the UN General Assembly, the content of which is based on the principles of responsibility for providing protection. This responsibility, in fact, represents the obligation of every state to protect its population from crimes against humanity, war crimes and genocide, which implies further protection from inhumane enslavement and captivity. The resolution,

therefore, refers to the prevention of these crimes and their prosecution. The resolution provides for the establishment of the responsibility of the United Nations and the use of humanitarian funds.

The issue of responsibility for the protection of individuals from suffering and the responsibility of the state for serious violations of humanitarian rights incriminated as international crimes was resolved by sanctioning individuals. This approach is positive, but not sufficient, because it is first of all important that states show responsibility not by punishing individuals, but by preventing suffering, enslavement, captivity and all other inhumane acts.

## 7. Conclusion

The miserable position of prisoners, present from the very beginnings of human civilization, has changed throughout history, with the fact that it was always subordinated to the interests of the enslavers. The position of the captives also changed in the society from somewhat favourable to deprived of basic rights, such as, among others, the right to life.

Despite the will of the enslavers, which went as far as merciless killing and inhumane treatment, historical circumstances still influenced to establish better conditions for the enslaved. Conventions and other legal norms integrated into national legislation contributed to this. Thanks to them, no matter how inhumane the situation in the field is, the modern world tries to highlight the importance of correct treatment of civilians, specifically women, children, and the elderly.

The modern times and changes in the rules of warfare entail changes in the rules of treatment of prisoners. They are reflected in the legislation in the area of international humanitarian law, while regulations in the area of international criminal law aim to incriminate the perpetrators of acts such as war crimes, crimes against humanity and enslavement.

**References:**

Atanasovska Cvetković, A. (2021). Rimskiot emptio-venditio (Dogovor za kupoprodažba) vo Francuskiot Code Civile od 1804 godina. *Godišen zbornik, Praven fakultet, Univerzitet „Goce Delčev"*, Štip, vol. XI , br. 11, 34.

Bujuklić, Ž. (2010). *Forum Romanorum*. Beograd: Pravni fakultet Univerziteta u Beogradu, Centar za izdavaštvo i informisanje.

Deretić, N. (2011). Uporedna analiza: „Prava čoveka" u Rimskoj državi i savremena „ljudska prava". *Zbornik radova Pravnog fakulteta u Novom Sadu*, br. 3 (2011), 469–496.

Draper, G. I. A. D. (1988). Development of international humanitarian law. U: *International Dimensions of Humanitarian Law.* Dordrecht, Boston, London: Henry Durant Institute, Unesco, Martinus Nijhoff publishers, 67–90.

Fabijanić Gagro, S. (2008). Promjena kvalifikacije oružanog sukoba. *Zbornik radova Pravnog fakulteta Sveučilišta u Rijeci* 29 (2), 1067–1092.

Fabijanić Gagro, S., & Jurašić, B. (2013). Protection of civilians in modern armed conflicts-international legal solutions in light of the development of new tendencies protection. *Zbornik radova Pravnog fakulteta u Splitu* vol. 50, no. 3, 615–641.

Focarelli, C. (2008). The Responsibility to Protect Doctrine and Humanitarian Intervention: Too Many Ambiguities for a Working Doctrine, *Journal of Conflict and Security Law*, Vol. 13 (2), 191–213.

Gaj, *Institucije*. preveo: Stanojević, O. (1982). Beograd: Nolit.

Gardner, P., & Jevons, B. F. (1895). *A manual of Greek Antiquities.* London: Charles Griffin and company.

Henckaerst, J. M., & Doswald Beck, L. (2005). Usually international law, vol I. Cambridge: ICRC and Cambridge University Press.str 355.

Ignjatović, A. (1998). Krivičnopravna zaštita života, zdravlja i telesnog integriteta civilnog stanovništva u ratu. *Vojno delo*, 1998, vol. 50, br. 1, 92–106.

Jovanović, A. (2022). *Međunarodno krivično pravo*. Beograd: Visoka škola za poslovnu ekononiju i preduzetništvo.

Jovanović, A., & Atanasovska Cvetkovic, A. (2021). Genocid – krivično delo protiv čovečanstva zaštićeno međunarodnim pravom. *Iuridica Prima, 7-th International Scientific Conference*, Ohrid School of Law.

Kandić, Lj. (1988). *Odabrani izvori iz opšte istorije države i prava*. Beograd: Savremena administracija. Tekst Hamurabijevog zakonika: Lj. Kandić, Odabrani izvori iz opšte istorije države i prava. (Beograd: Savremena administracija, 1988), 34–62.

Kurtović, Š. (1987). *Opća historija države i prava*, I dio. Zagreb: Informator.

Milak, E. (1986). Yugoslavs in the concentration camps and prisons in fascistic Italy during the second world war. *Istorija 20.veka*, Institut za savremenu istoriju Beograd, br.1–2, str 155–172.

Reisman, W. M., & Antoniou, T. C. (1994). The Laws of War. U: Vintage Books (Edt.), New York. *A Comprehensive collection of primary documents on international laws governing armed conflict*. 150–152.

Sokanović, L. (2021). Ratni zločin protiv civilnog stanovništva VS. Ratni zločin protiv ratnih zarobljenika: ubojstvo Aleksandra Lave. *Godišnjak pravnih znanosti Hrvatske*, Vol. XII No. 1.175-205. doi: 10.32984/gafzt.12.1.9

Stanojević, O. (2003). Egipat – civilizacija i pravo. *Anali Pravnog fakulteta u Beogradu*, LI, br. 1–2, 158–172.

Stanimirović, V. (2011). Novi pogled na Hamurabijev zakonik (I deo). *Anali Pravnog fakulteta u Beogradu*, 1/2011, 133–159.

Stanimirović, V. (2011). Novi pogled na Hamurabijev zakonik (II deo). *Anali Pravnog fakulteta u Beogradu*, 2/2011, 91–121.

Rimski statut Međunarodnog krivičnog suda, Zakon o potvrđivanju Rimskog statuta međunarodnog krivičnog suda („Sl. list SRJ - Međunarodni ugovori", br. 5/2001), dostupno na: https://www.paragraf.rs/propisi/zakon-o-potvrdjivanju-rimskog-statuta-medjunarodnog-krivicnog-suda.html

Statut Međunarodni Krivični Tribunal za bivšu Jugoslaviju, dostupno na:
https://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_bcs.pdf

Statut Međunarodni Krivični Tribunal za Ruandu, Statute of the international tribunal for Rwanda, dostupno na: https://legal.un.org/avl/pdf/ha/ictr_EF.pdf

Ženevska konvencija o poboljšanju položaja ranjenika i bolesnika u oružanim snagama u ratu; Ženeva, 12. august 1949. godine (Prva konvencija), https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o poboljšanju položaja ranjenika, bolesnika i brodolomnika oružanih snaga na moru; Ženeva, 12. august 1949. godine (Druga konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o postupanju sa ratnim zarobljenicima; Ženeva, 12. august 1949. godine (Treća konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Ženevska konvencija o zaštiti građanskih lica za vreme rata; Ženeva, 12. august 1949. godine (Četvrta konvencija), dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunski protokol uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava međunarodnih oružanih sukoba (Protokol I); Ženeva, 8. jul 1977. godine, dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunski protokol uz Ženevske konvencije od 12. avgusta 1949. godine o zaštiti žrtava nemeđunarodnih oružanih sukoba (Protokol II); Ženeva, 8. jul 1977. godine, dostupno na: https://www.isac-fund.org/download/MHP-zbirka_2013.pdf

Dopunska konvencija 1956, dostupno na: https://arhiva.mpravde.gov.rs/lt/articles/medjunarodne-aktivnosti-eu-integracije-i-projekti/medjunarodna-pravna-pomoc/multilateralni-ugovori.html

Krivični zakonik Republike Srbije („Sl. glasnik RS", br. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019), dostupno na: https://www.paragraf.rs/propisi/krivicni-zakonik-2019.html

Zakon 10 kontrolnog saveta, CONTROL COUNCIL Law No. 10, dostupno na: https://www.legal-tools.org/doc/ffda62/pdf/

Predmet „KŽ1 Po2 2/2013" Gnjilane, st. 11 par. 2.1., Bilten sudske prakse Apelacionog suda u Beogradu, br. 7/2015, Intermex, Beograd, Sudska praksa, dostupno na:

http://www.bg.ap.sud.rs/lt/articles/sudska-praksa/pregled-sudske-prakse-apelacionog-suda-u-beogradu/

Međunarodni krivični tribunal za bivšu Jugoslaviju, predmet Kunarac i drugi, Presuda, februar 2001, par 540 dostupno na:

https://www.icty.org/x/cases/kunarac/acjug/bcs/kun-aj020612b.pdf

## KRIVIČNOPRAVNA ZAŠTITA ZAROBLJENIKA I NJIHOV POLOŽAJ KROZ ISTORIJU

**Rezime:** Status zarobljenika u ratu i njihov položaj nakon porobljavanja privlači pažnju humanog dela čovečanstva. Kroz istoriju nailazimo na raznovrsne primere položaja porobljenih, odnosno zarobljenih koji su umnogome odražavali interese porobilaca. U cilju sprečavanja ratnih zločina i zločina protiv čovečnosti, koji utiču na položaj civila i ratnih zarobljenika, u oružanim sukobima postoje pravila ratovanja. Uprkos postojanju ovih pravila, istorija je pokazala da su ratovi obeleženi zločinima protiv čovečanosti, tj. da su obilovali masovnim ubijanjima civila i zarobljenika, razaranjima, pljačkanjima i porobljavanjima. U radu je prikazan položaj porobljenika kroz istoriju, a putem komparativnog metoda analizirane su konvencije, povelje i zakonski propisi međunarodnog humanitarnog i međunarodnog krivičnog prava kojima su inkriminisani ratni zločini, zločini protiv čovečnosti i ropski odnos, a sve u cilju poboljšanja položaja zarobljenika.

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# STAV O VREDNOSTI TRETMANA OSUĐENIKA U PENALNIM USTANOVAMA NA PODRUČJU AP VOJVODINE: ANALIZA PODATAKA, IZAZOVI I PREPORUKE[4]

**Sažetak:** Položaj osuđenih lica u penalnim ustanovama nije samo pravno pitanje, već je odraz raspoloživih kapaciteta, materijalnih i ljudskih resursa, ali i spremnosti i opredeljenosti društva da stvori efikasne i efektivne moduse i sprovede adekvatan tretman prema osuđenicima u cilju ostvarivanja osnovne funkcije ovih ustanova, tj. resocijalizacije. Stoga su od nespornog značaja i naučni napori da se utvrde najadekvatniji načini za unapređivanje funkcionisanja penalnih ustanova kako bi se za osuđenike, u specifičnom okruženju i podrazumevajućim uslovima ograničenja sloboda, omogućio maksimalno moguć kvalitet života. U zadovoljavajućim uslovima izdržavanja zatvorske kazne stvorili bi se preduslovi za bolju implementaciju tretmana koji bi dao očekivane rezultate u procesu resocijalizacije, a time uticao i na smanjenje recidi-

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va. Osnovni cilj ovog istraživanja jeste definisanje faktora i mogućnosti predikcije resocijalizacije osuđenika (zavisna varijabla) u zatvorima na području AP Vojvodine. Rezultati rada pokazuju da je opšti stav osuđenika o tretmanu u zatvoru negativan. Od 27 posmatranih nezavisnih varijabli, istraživanje je pokazalo da najveća statistička značajnost postoji: 1) između kategorije vaspitnog tretmana i zadovoljstva uslovima i odnosima u ustanovi; 2) između vrste krivičnog dela i uspeha resocijalizacije. Niža statistička značajnost je zabeležena između zadovoljstva uslovima, orijentacije na pravednost, stepena samopoštovanja, emocionalne kompetentnosti i uspeha resocijalizacije.

**Ključne reči**: *penalne ustanove; osuđena lica; tretman; resocijalizacija; recidiv.*

## 1. Uvodno razmatranje

Uspešna resocijalizacija i reintegracija osuđenika u društvo nakon izdržavane zatvorske kazne predstavlja jedan od osnovnih ciljeva penalnog sistema u svim zemljama sveta. Uspešna resocijalizacija predstavlja bitan faktor koji utiče na smanjenje mogućnosti ponavljanja krivičnog dela i pojave recidiva. Sa druge strane, imajući u vidu specifičnosti osuđeničke populacije i mnogobrojne faktore koji utiču na uspešnost resocijalizacije, definisanje uticaja pojedinačnih faktora, koji mogu doprineti uspešnoj resocijalizaciji, svakako je poseban izazov.

Resocijalizacija je proces ponovnog uključivanja u društvo pojedinaca koji su prekršili pravne norme, a koji obuhvata čitav niz psiholoških, edukativnih, pravnih i organizacionih mera koje se sprovode tokom izdržavanja zatvorske kazne, kao i nakon izdržane kazne – posebno u slučaju primene instituta uslovnog otpusta i društveno korisnog rada. Primena programa postupanja (tretmana) u penalnim uslovima je kompleksan pravni i socijalni izazov, jer je osnovni problem ne samo kako definisati, već i kako obezbediti, ostvariti i realizovati preduslove, mehanizme i procedure koje utiču na to da se probudi, a potom i učvrsti spremnost osuđenih lica da postanu korisni članovi društva (Bobić, 2012).

Resocijalizacija u prvom redu obuhvata korekciju ličnosti osuđenika, što prevashodno podrazumeva prihvatanje odgovornosti za počinjeno krivično delo, jačanje samopoštovanja i poštovanja prema drugima. Uspešna resocijalizacija rezultira stvaranjem socijalno odgovornog bića koje prihvata socijalne, moralne i etičke norme ponašanja (Timofeeva, 2019).

Istraživanje osnovnih prediktora uspešne resocijalizacije, sprovedeno tokom 2020. godine, pokazalo je da se najveća pažnja mora usmeriti na: vrstu kazne; ličnost osuđenika; stepen opasnosti po društvo nakon otpusta; motive za počinjeno krivično delo i ponašanje osuđenika tokom izdržavanja kazne (Kalaur et al., 2020). Učestvovanje u organizovanim sportskim i socijalno-pedagoškim aktivnostima, pokazalo se, ima pozitivan uticaj na pozitivnu promenu ličnosti određenih osuđenih lica, kao važnu pretpostavku buduće resocijalizacije. Lične karakteristike osuđenika, veze koje postoje među osuđenicima i kvalitet odnosa između osuđenika i osoblja definisani su, takođe, kao bitan faktor uspešne resocijalizaje. U Ukrajini su, na primer, kao najvažniji faktori resocijalizacije izdvojeni psihološki profil osuđenika, odnosno aktivnosti na jačanju samopoštovanja (Lykhova, 2019). Sveobuhvatno istraživanje o faktorima koji utiču na smanjenje recidivizma u odabranim zatvorima u Nemačkoj iz 2020. godine takođe je ukazalo na značaj psihičkog stanja osuđenika, pri čemu je konstatovano da je recidivizam prepolovljen kod zatvorenika kojima je tokom odsluženja kazne na raspolaganju bila strukturisana psihoterapija uz pojačanu individualnu podršku zatvorskom osoblju (Thomas, 2019).

Problem koji otežava resocijalizaciju u savremenim uslovima i koji s vremenom postaje sve uočljiviji izazov za penalne ustanove i društvo u celini jeste povećan stepen rizika od radikalizacije u zatvorskim uslovima jer nakon odsluženja kazne pojedinci postaju članovi radikalnih i terorističkih grupa (Suryono, Domai and Wijaya, 2016).

Penološka istraživanja su sve češće usmerena na kvalitet svakodnevnih odnosa između zatvorenika i osoblja u kojima je indicirano da je „procedural justice“ (način donošenja odluka i saopštavanja procedura) veoma bitan, odnosno da tretman zatvorenika uz poštovanje njihovog dostojanstva i njihovu uključenost u proces donošenja odluka ima

ne samo na njih pozitivne efekte, već i na penalnu ustanovu (Schmidt, 2015).

Ipak, problematika uspešne resocijalizacije trebalo bi da postane frekventniji predmet naučnih i stručnih istraživanja, jer je broj osoba koje ponovo počine krivično delo (ili su višestruki povratnici) veoma visok, te predstavlja kompleksan bezbednosni, društveni i pravni problem kome se mora posvetiti dužna pažnja.

## 2. Sistem izvršenja krivičnih sankcija u Republici Srbiji

Sistem izvršenja krivičnih sankcija Republike Srbije obuhvata pozitivne pravne propise kojima je regulisan način njihovog izvršenja, zatim pozitivne propise koji se odnose na lica lišena slobode i metode, sredstva i mere u cilju resocijalizacije počinilaca krivičnih dela (Bošković & Bobić, 2022). Zakonom o izvršenju krivičnih sankcija Republike Srbije formirana je Uprava za izvršenje krivičnih sankcija, kao organ uprave u sastavu Ministarstva pravde Republike Srbije. Uprava organizuje, sprovodi i nadzire izvršenje: kazni zatvora; maloletničkog zatvora; kazne rada u javnom interesu; uslovne osude sa zaštitnim nadzorom; mera bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdravstvenoj ustanovi i obaveznog lečenja i čuvanja alkoholičara i narkomana i vaspitne mere upućivanja u vaspitno-popravni dom (Zakon o izvršenju krivičnih sankcija, 2019).

Sistem izvršenja krivičnih sankcija Republike Srbije ima ukupno 28 zavoda i to: deset kazneno-popravnih zavoda (KPZ), među kojima je KPZ za punoletne osobe ženskog pola i KPZ za maloletnike, šesnaest okružnih zatvora, specijalnu zatvorsku bolnicu u Beogradu i vaspitno-popravni dom u Kruševcu. U poslednjih nekoliko godina izgrađeni su novi, moderni objekti u skladu sa evropskim standardima za smeštaj lica lišenih slobode (KPZ Beograd, KPZ Pančevo…) i adaptirani postojeći zavodi tako da smeštajni kapaciteti odgovaraju broju lica koji u njima borave. Izvršenje krivičnih sankcija u Republici Srbiji je organizovano tako da se međusobno odvajaju osuđena, pritvorena i prekršajno kažnjena lica, lica po polu, kao i punoletna od maloletnih lica, kako je i predviđeno evropskim zatvorskim pravilima. Osnovni principi na koji-

ma se zasniva izvršenje krivičnih sankcija u Republici Srbiji su: princip zakonitosti, princip humanosti, princip individualizacije, princip skupnog izdržavanja kazne i princip postpenalnog prihvata (Marić & Bulatović, 2004). Tokom boravka u zavodima prema licima se dosledno primenjuju kako domaći tako i međunarodni pozitivni zakonski propisi, između ostalih: Evropska konvencija o ljudskim pravima, Evropska zatvorska pravila, Instanbulski protokol itd. Kontrolu rada zavoda u Srbiji i način postupanja prema licima lišenih slobode vrše odeljenje inspekcije, koje je formirano u okviru Uprave, i predstavnici međunarodnih organizacija koje su akreditovane za tu vrstu nadzora (Evropski komitet za sprečavanje torture, Helsinški odbor za ljudska prava, nevladine organizacije…). Oni imaju pravo da u svakom trenutku i bez najave posete zavod i izvrše kontrolu u skladu sa svojim ovlašćenjima. Veliku ulogu u doslednoj primeni pozitivnih zakonskih propisa u radu penalnih ustanova imaju i ombudsmani koji redovno posećuju zatvore u Srbiji. Ovakvi vidovi kontrole kaznenih ustanova doprineli su većoj transparentnosti u radu i poštovanju ljudskih prava tokom izdržavanja zatvorske kazne.

Zakonom o izvršenju krivičnih sankcija Republike Srbije propisano je da zavodi, prema stepenu obezbeđenja, mogu biti otvorenog, poluotvorenog, zatvorenog i zatvorenog tipa sa posebnim obezbeđenjem (Bošković & Radoman, 2002). U zavodima otvorenog tipa ne postoje fizičko-tehničke prepreke za bekstvo, dok u zavodima poluotvorenog tipa zaposleni u službi za obezbeđenje predstavlja osnovnu prepreku za bekstvo. U zavodima zatvorenog tipa, pored zaposlenih u službi za obezbeđenje postoje i druge fizičko-tehničke prepreke za sprečavanje bekstva, dok u zavodima zatvorenog tipa sa posebnim obezbeđenjem postoje fizičko-tehničke prepreke kojima se postiže najviši stepen obezbeđenja (Bobić, 2012).

U zatvorskom sistemu Republike Srbije postoje službe koje direktno ili indirektno učestvuju u tretmanu osuđenika: 1) Služba za tretman, 2) Služba za obezbeđenje, 3) Služba za obuku i upošljavanje, 4) Služba za zdravstvenu zaštitu, 5) Služba za opšte poslove. Za međusobnu koordinaciju svih službi tokom procesa resocijalizacije zadužena je Služba za tretman (Radoman, 2013).

## 3. Tretman osuđenika

U penološkoj teoriji i praksi često se upotrebljava termin tretman (franc. *Traîtement*) koji označava način postupanja u nekoj situaciji, ophođenje. U zatvorskom sistemu ovaj termin označava način postupanja prema osuđenim licima. Cilj tretmana jeste da se vaspitno-korektivnim metodama utiče na osuđeno lice da po izlasku iz zatvora ne pravi nova krivična dela. Sagledavajući statističke podatke, možemo uočiti da je na području Republike Srbije procenat recidiva izuzetno visok, te se na osnovu toga može postaviti pitanje: da li se u penalnim ustanovama primenjuje adekvatan program postupanja (tretman) prema osuđenicima? Ovde, međutim, treba imati na umu da na stepen recidiva ne utiče samo tretman u penalnim ustanovama, nego i niz drugih faktora koji egzistiraju u društvu na slobodi.

Glavni preduslovi za uspešnost tretmana zavise od želje i snage volje samih osuđenika, kao i od kvaliteta komunikacije između penitencijarnih zavoda i društva. Preduslov za uspeh tretmana jeste i dosledno sprovođenje nekih principa od kojih izdvajamo: 1) princip poverenja i poštovanja dostojanstva ličnosti; 2) princip poznavanja ličnosti; 3) princip svestranosti; 4) princip jedinstva vaspitnih uticaja; 5) princip aktivnog i svesnog učešća osuđenog u tretmanu (Radoman, 2013).

U uspehu tretmana u zatvorima na području Republike Srbije veliku ulogu ima i kategorizacija osuđenika u skladu sa vaspitnim grupama (otvoreno, poluotvoreno i zatvoreno odeljenje), koja se obavlja u prijemnom odeljenju, gde se vrši ispitivanje ličnosti osuđenog lica. U tom multidisciplinarnom pristupu učestvuju psiholozi, pedagozi, defektolozi, socijalni radnik i predstavnik službe za obezbeđenje (Bobić, 2012). U prijemnom odeljenju započinje proces individualizacije tretmana koji se potom nastavlja u vaspitnoj grupi primenom individualnog tretmana.

Penitencijarni sistem Republike Srbije predviđa da proces individualnog tretmana tokom izdržavanja zatvorske kazne prolazi kroz nekoliko faza. To su: 1) obavljanje prvog intervjua; 2) faza sačinjavanja ugovora; 3) faza individualizovanog tretmana; 4) direktivni i nedirektivni individualni tretman (Bošković, 2002).

Pored individualnog tretmana, u praksi se još primenjuju i: grupni tretman; obrazovni tretman; radno angažovanje kao oblik tretmana; tre-

tman kroz aktivnosti u slobodno vreme; tretman kroz slobodu veroispovesti; tretman stimulacije i samoinicijativni oblik tretmana (Bobić, 2012).

Velika pažnja u zatvorima se posvećuje i tretmanu koji obuhvata radno angažovanje jer osim što se radom usvajaju određene radne navike, osuđenik stiče i utisak samovrednovanja i osećaj pripadnosti grupi. Rad osuđenika mora biti svrsishodan i ne sme biti ponižavajući.

Da bi se realizovao tretman osuđenih lica koji se odnosi na obrazovanje, penalne ustanove u Srbiji sarađuju s ustanovama za obrazovanje odraslih, koje se nalaze u istoj sredini gde i ustanova. Stečeno uverenje o završenoj osnovnoj ili srednjoj školi izdaje se osuđenom licu i ne navodi se da je stečeno za vreme izdržavanja zatvorske kazne.

Tokom primene tretmana efekti pedagoškog rada su veoma važni jer se osuđenici u zatvorskoj sredini osećaju, naročito u početku, izgubljeno, odbačeno i bezvredno. Vaspitni tretman ima za cilj da otkloni prvenstveno taj osećaj, te da vrati poverenje osuđenika u sopstvenu snagu i društvo (Bošković, 2002). U zatvorskom sistemu Srbije naglasak se stavlja i na organizaciju slobodnog vremena koje, između ostalog, zavisi od strukture osuđenih lica, njihove zainteresovanosti za korišćenje slobodnog vremena, klasifikacione grupe, tipa ustanove gde osuđena lica izdržavaju kaznu i slično.

Praksa iz zatvora u Srbiji je pokazala da uspešnost resocijalizacije zavisi od tretmana koji se primenjuju prema osuđenim licima, kao i od sposobnosti i motivisanosti vaspitača da dosledno sprovedu predviđene tretmane. Takođe, u praktičnom radu sa prestupnicima tokom primene tretmana treba permanentno uvoditi nove metode i terapijske tehnike, uzimajući u obzir strukturu zatvoreničke populacije, osobine ličnosti zatvorenika, kao i stepen kriminalne strukturiranosti (Bošković & Bobić, 2022).

## 4. Metodologija istraživanja

Cilj ovog istraživanja jeste da se sagledaju stavovi osuđeničke populacije o tretmanu koji se prema njima primenjuje, te da se na osnovu tih pokazatelja preduzmu neophodne radnje kako bi se tretman, koji se prema njima primenjuje, podigao na viši nivo i dao bolje rezultate, u smislu bolje resocijalizacije tokom izdržavanja zatvorske kazne. Cilj

istraživanja možemo posmatrati sa naučnog i praktičnog aspekta. Naučni cilj ovog istraživanja jeste pre svega namera sagledavanja prirode (smera i intenziteta) povezanosti između posmatranih zavisnih, nezavisnih i intervencionih varijabli i njihovo objašnjenje na naučnom nivou. Praktični cilj istraživanja predstavlja nedvosmislenu nameru da podaci do kojih smo došli u istraživanju posluže nadležnim institucijama i menadžmentu zatvora za unapređenje prakse tretmana osuđenih lica, prvenstveno kroz davanje predloga praktičnih procedura poboljšanja pojedinih aspekata tretmana osuđenika kako bi se proces resocijalizacije uspešno sproveo.

Ispitivanje stavova osuđenika o tretmanu koji se prema njima primenjuje obavljeno je u penalnim ustanovama na području AP Vojvodine i to u: KPZ Sremska Mitrovica, KPZ Sombor, OZ Novi Sad, OZ Subotica, OZ Zrenjanin i OZ Pančevo.

Istraživanje je obavljeno tako što su osuđena punoletna lica, koja su u tom momentu izdržavala zatvorsku kaznu, dobrovoljno popunjavala anonimnu anketu izražavajući tako svoj stav o vrednosti tretmana koji se prema njima primenjuje.

U cilju dobijanja odgovora na konkretna istraživačka pitanja, bilo je neophodno sprovesti preliminarnu analizu podataka dobijenih iz istraživanja (deskriptivna statistika), koja podrazumeva izračunavanje opisnih statističkih pokazatelja. Opisni statistički pokazatelji treba da potvrde verodostojnost, normalnost rasporeda, da otkriju netipične tačke, što će direktno uticati na mogućnost konačnog izbora i primene predloženih statističkih metoda. Ispitivanje normalnosti raspodele obavljeno je putem Kolmogorov–Smirnov i Šapiro–Vilkov testova. Provera pouzdanosti merne skale izvršena je pomoću Kronbahovog koeficijenta alfa. Za jačinu korelacije među promenljivama korišćeni su Kajzer–Mejer–Olkinov test (KMO), kao pokazatelj adekvatnosti uzorka, i Bartletov test sferičnosti, a za utvrđivanje statističke značajnosti razlika korišćen je Man–Vitnijev U test, kao neparametarska alternativa t-testa nezavisnih uzoraka. Kruškal–Volisov test je korišćen za poređenje rezultata neprekidne promenljive za tri ili više grupa. Za analizu rangova varijabli korišćena je Spirmanova korelacija ranga, kao neparametarska alternativa Pirsonove korelacije.

Ocenu statističke značajnosti korigovanog koeficijenta determinacije prikazuje jednofaktorska analiza varijanse (ANOVA). Statistički softver koji je korišćen za obradu podataka je IBM SPSS verzija 21.

Anketiranje ispitanika sprovedeno je u periodu od 15. septembra do 24. decembra 2019. godine. Opšte karakteristike ispitanika definisane su na osnovu pet kriterijuma prikazanih u Tabeli 1.

*Tabela 1*. Opšte karakteristike ispitanika uključenih u uzorak (n = 286)

| Opšte karakteristike ispitanika | | Broj ispitanika (n) | Struktura (%) |
|---|---|---|---|
| Starost | Do 20 godina starosti | 7 | 2,6 |
| | 21–30 godina starosti | 84 | 30,7 |
| | 31–40 godina starosti | 113 | 41,2 |
| | 41–50 godina starosti | 70 | 25,5 |
| Ranija osuđivanost | Da | 180 | 63,4 |
| | Ne | 104 | 36,6 |
| Novi sudski postupci | Da | 86 | 30,6 |
| | Ne | 195 | 69,4 |
| Bračno stanje | Neoženjen | 88 | 31,4 |
| | Živi u vanbračnoj zajednici | 90 | 32,1 |
| | Oženjen | 60 | 21,4 |
| | Razveden | 39 | 13,9 |
| | Udovac | 3 | 1,1 |
| Obrazovanje | Nepotpuna osnovna škola | 32 | 11,4 |
| | Osnovna škola | 68 | 24,2 |
| | Nepotpuna srednja škola | 46 | 16,4 |
| | Srednja škola | 112 | 39,9 |
| | Fakultetsko obrazovanje | 23 | 8,2 |

Izvor: *Kalkulacija autora*

Osim navedenih parametara, posmatrani su i: radno iskustvo ispitanika pre dolaska u zatvor, radno angažovanje u ustanovi, krivično delo ispitanika, preduslovi za kriminogeno ponašanje, činjenica da li ispitanici imaju decu i kontakt sa porodicom, poseta crkvi, promena stava prema krivičnom delu, dužina kazne ispitanika, kategorija vaspitnog tretmana, definisanje osobe koja daje najveći doprinos u resocijalizaciji osuđenika, uključenje članova porodice, boravak u samici, kao deo tretmana nedozvoljenog ponašanja, spremnost na dodatno angažovanje radi unapređenja uslova za život i rad u ustanovi, spremnost na dodatno angažovanje radi dobijanja bolje klasifikacione grupe, spremnost na dodatno angažovanje radi obrazovanja i stručnog usavršavanja i upotreba psihoaktivnih supstanci.

## 5. Rezultati istraživanja

### 5.1. Frenkvencije odgovora ispitanika

U Tabeli 2. prikazane su frekvencije stavova ispitanika o vrednosti tretmana osuđenih lica koji se prema njima primenjuje.

T*abela 2.* Frekvencije stavova ispitanika o vrednosti tretmana osuđenih lica

| | Stavovi | Stepen slaganja (%) | | | | | Varijansa |
|---|---|---|---|---|---|---|---|
| | | Uopšte se ne slažem | Uglavnom se ne slažem | Nisam siguran | Uglavnom se slažem | Potpuno se slažem | |
| 1 | Osuđenici su oduševljani tretmanom od strane zaposlenih u ovoj ustanovi. | **43,8** | **9,4** | 22,5 | 13,4 | 10,9 | 2,040 |
| 2 | Osuđenici su mi najmanje pomogli da se prilagodim svako-dnevnom životu u ustanovi. | 31,7 | 16,1 | 16,1 | 18,6 | 17,5 | 2,259 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 3 | Sistem radnog angažovanja osuđenika je loš i treba ga menjati. | 19,9 | 7,7 | 16,6 | 14,8 | 41,0 | 2,429 |
| 4 | Komandiri imaju korektan odnos prema osuđenicima. | 8,7 | 8,3 | 11,2 | **25,6** | **46,2** | **1,686** |
| 5 | U ustanovi se pravi razlika među osuđenicima prema imovinskom stanju. | 28,2 | 8,4 | 27,1 | 12,5 | 23,8 | 2,296 |
| 6 | Stručni instruktori su zainteresovani da osuđenike osposobe za određene poslove. | 22,1 | 8,5 | 26,9 | 15,9 | 26,6 | 2,174 |
| 7 | Osobe koje rade sa osuđenicima nisu strpljive. | 25,0 | 14,3 | 25,4 | 12,5 | 22,8 | 2,184 |
| 8 | Prilikom klasifikacije ne drži se do obrazovanja osuđenika. | 18,4 | 8,1 | 31,6 | 12,5 | 29,4 | 2,055 |
| 9 | U ovoj ustanovi osuđenicima je omogućena sloboda veroispovesti. | 8,9 | 3,7 | 15,1 | **11,8** | **60,5** | 1,694 |
| 10 | O našim problemima uvek možemo otvoreno razgovarati sa vaspitačima. | 17,5 | 7,3 | 12,8 | 15,0 | 47,4 | 2,374 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 11 | Organizaciji slobodnih aktivnosti (sport, sekcije i sl.) ne posvećuje se zadovoljavajuća pažnja. | 22,9 | 6,3 | 20,3 | 13,6 | 36,9 | 2,474 |
| 12 | U ustanovi se pravi razlika u tretmanu osuđenika zavisno od vrste krivičnog dela. | 25,6 | 9,6 | 20,5 | 10,6 | 33,7 | **2,555** |
| 13 | Disciplinovano ponašanje i zalaganje osuđenika ne nagrađuje se adekvatno. | 19,4 | 9,7 | 19,4 | 13,1 | 38,4 | 2,378 |
| 14 | Uprava najčešće izlazi u susret našim opravdanim zahtevima i idejama. | 25,6 | 12,8 | 27,5 | 14,3 | 19,8 | 2,085 |
| 15 | U ovoj ustanovi osuđenicima nije dovoljno omogućeno da kroz različite edukativne programe stiču nova znanja/veštine. | 21,6 | 7,3 | 23,8 | 14,7 | 32,6 | 2,311 |
| 16 | Nakon primenjenog tretmana u ovoj ustanovi, najveći broj osuđenika izlazi na slobodu uspešno resocijaliziran. | **40,4** | **10,5** | 28,4 | 10,2 | 10,5 | 1,891 |

Izvor: *Kalkulacija autora*

Tabela 3. prikazuje frekvencije stavova ispitanika o pravednosti.

*Tabela 3.* Frekvencije stavova ispitanika prema orijentaciji na pravednost

| | Stavovi | Stepen slaganja (%) | | | | | Varijansa |
|---|---|---|---|---|---|---|---|
| | | Uopšte se ne slažem | Uglavnom se ne slažem | Nisam siguran | Uglavnom se slažem | Potpuno se slažem | |
| 1 | Mislim da je svet u kome živimo u osnovi pravedan. | **45,2** | **19,1** | 16,7 | 8,7 | 10,3 | 1,865 |
| 2 | Mislim da uopšteno zaslužujem ono što mi se događa u životu. | **25,3** | **20,5** | 24,1 | 14,4 | 15,7 | 1,932 |
| 3 | Drugi ljudi se uglavnom pošteno odnose prema meni. | 12,7 | 9,2 | 23,1 | 27,9 | 27,1 | 1,746 |
| 4 | Ono što posedujem u životu s pravom mi pripada. | 6,9 | 4,4 | 7,7 | **25,9** | **55,1** | **1,399** |
| 5 | Uveren sam da nepravde koje čovek trpi u životu bivaju kad-tad nadoknađene. | 8,4 | 4,4 | 24,8 | **22,0** | **40,4** | 1,556 |
| 6 | Mislim da ljudi nastoje biti pravedni kad donose važne odluke koje se tiču drugih ljudi. | 15,3 | 14,9 | 31,8 | 17,3 | 20,7 | 1,750 |
| 7 | Nepravde su u mom životu pre izuzetak nego pravilo. | 10,8 | 11,2 | 29,9 | 23,2 | 24,9 | 1,616 |
| 8 | Uveren sam da pravda uvek pobeđuje nad nepravdom. | 19,9 | 8,1 | 21,2 | 17,5 | 33,3 | **2,264** |
| 9 | Život je prema meni dosad bio pravedan. | 18,1 | 17,8 | 26,2 | 19,8 | 18,1 | 1,834 |

Izvor: *Kalkulacija autora*

Tabela 4. prikazuje frekvencije stavova ispitanika o zadovoljstvu uslovima i odnosima u ustanovi.

*Tabela 4.* Frekvencije stavova ispitanika o zadovoljstvu uslovima i odnosima u ustanovi

| | Stavovi | Stepen zadovoljstva (%) | | | | | Varijansa |
|---|---|---|---|---|---|---|---|
| | | Potpuno sam zado-voljan | Zado-voljan sam | I jesam i nisam | Nisam zado-voljan | Uopšte nisam zado-voljan | |
| 1 | Opštom situacijom u društvu i pravosuđu. | 8,0 | 8,1 | 19,7 | **19,3** | **44,9** | 1,673 |
| 2 | Opštim stanjem uslova i odnosa u ustanovi. | 8,8 | 16,8 | 27,5 | 19,1 | 27,8 | 1,668 |
| 3 | Vaspitačima. | 18,6 | 21,2 | 28,5 | 10,9 | 20,8 | 1,901 |
| 4 | Komandirima. | **24,1** | **30,7** | 25,9 | 8,4 | 10,9 | **1,562** |
| 5 | Instruktorima. | **23,6** | **27,2** | 28,9 | 6,9 | 13,4 | 1,663 |
| 6 | Upravom. | 16,7 | 23,4 | 26,8 | 13,4 | 19,7 | 1,830 |
| 7 | Ponašanjem osuđenika. | 12,6 | 18,6 | 34,6 | 15,6 | 18,6 | 1,589 |
| 8 | Ishranom u ustanovi. | 11,5 | 14,1 | 24,9 | 21,2 | 28,3 | 1,787 |
| 9 | Organizacijom korišćenja slobodnog vremena. | 13,0 | 21,0 | 27,2 | 15,6 | 23,2 | 1,800 |
| 10 | Smeštajem i higijenskim uslovima. | 12,6 | 21,9 | 23,0 | 12,6 | 29,9 | **1,987** |
| 11 | Naknadom koju dobijam za rad. | 9,7 | 15,6 | 23,0 | **12,7** | **39,0** | 1,927 |

Izvor: *Kalkulacija autora*

### 5.2. Pouzdanost mernih skala

Provera pouzdanosti merne skale vrši se pomoću Kronbahovog koeficijenta alfa, čija se vrednost kreće između 0 i 1. Ne preporučuje se prihvatanje pouzdanosti merne skale manje od 0,7. U Tabeli 5. prikazana je statistika pouzdanosti pojedinačnih skala.

*Tabela 5.* Statistika pouzdanosti mernih skala

| Skale | Kronbahova alfa | Kronbahova alfa zasnovana na standardizovanim stavkama | Broj varijabli |
|---|---|---|---|
| Stav o vrednosti tretmana osuđenih lica | ,556 | ,559 | 16 |
| Orijentacija na pravednost | ,770 | ,769 | 9 |
| Samopoštovanje | ,594 | ,602 | 10 |
| Zadovoljstvo uslovima i odnosima u ustanovi | ,882 | ,881 | 11 |
| Emocionalna kompetentnost | ,604 | ,619 | 14 |
| Resocijalizacija | ,814 | ,811 | 14 |

Izvor: *Kalkulacija autora*

Na osnovu rezultata provere pouzdanosti, najveću vrednost Kronbahovog koeficijenta alfa ima skala „Zadovoljstvo uslovima i odnosima u ustanovi“ (0,882), slede skala „Resocijalizacija“ (0,814), skala „Orijentacija na pravednost“ (0,770). Skale „Emocionalna kompetentnost“ (0,604), „Samopoštovanje“ (0,594) i „Stav o vrednosti tretmana osuđenih lica“ (0,556) imaju niži nivo pouzdanosti, ali će se prihvatiti zbog poređenja sa drugim sličnim istraživanjima.

Nakon utvrđivanja pouzdanosti mernih skala za pojedinačne varijable istraživanja, može se zaključiti da se rezultati pouzdanosti pojedinačnih varijabli ne razlikuju u značajnoj meri od rezultata pouzdanosti ukupnih skala.

Između stava o vrednosti tretmana i resocijalizacije osuđenika izračunata je neznatna pozitivna korelacija ($r = 0,041$), $n = 286$, koja nije statistički značajna. Između zadovoljstva uslovima i odnosima u ustanovi i resocijalizacije osuđenika izračunata je relativno slaba pozitivna korelacija ($r = 0,267$), $n = 286$, $p < 0,01$, pri čemu se zaključuje da povećano zadovoljstvo uslovima i odnosima u ustanovi rezultira boljom resocijalizacijom osuđenika. Da bi se izvršilo vrednovanje modela, utvrđen je koeficijent determinacije koji pokazuje koliki je deo varijanse jedne varijable objašnjen varijansom druge, tj. koliko je deo varijanse dve promenljive zajednički. Zadovoljstvo uslovima i odnosima u ustanovi objašnjava 7,13% varijanse resocijalizacije osuđenika, što je vrlo mali procenat objašnjene varijanse. Između orijentacije na pravednost i resocijalizacije osuđenika izračunata je relativno slaba pozitivna korelacija ($r = 0,247$), $n = 286$, $p < 0,01$, pri čemu se zaključuje da povećana orijentacija na pravednost rezultira boljom resocijalizacijom osuđenika.

Orijentacija na pravednost objašnjava 6,10% varijanse resocijalizacije osuđenika, što je vrlo mali procenat objašnjene varijanse. Između samopoštovanja i resocijalizacije osuđenika izračunata je neznatna pozitivna korelacija ($r = 0,177$), $n = 286$, $p < 0,01$, pri čemu se zaključuje da povećano samopoštovanje rezultira boljom resocijalizacijom osuđenika. Samopoštovanje objašnjava svega 3,13% varijanse resocijalizacije osuđenika. Između emocionalne kompetentnosti i resocijalizacije osuđenika izračunata je neznatna pozitivna korelacija ($r = 0,162$), $n = 286$, $p < 0,01$, pri čemu se zaključuje da povećana emocionalna kompetentnost rezultira boljom resocijalizacijom osuđenika. Emocionalna kompetentnost objašnjava svega 2,62% varijanse resocijalizacije osuđenika.

*Tabela 6.* ANOVA[a]

| Model | | Suma kvadrata odstupanja | Broj stepeni slobode | Ocena varijanse | Odnos varijansi (F) | Značajnost |
|---|---|---|---|---|---|---|
| Resocijalizacija osuđenika | Regresija | 17,737 | 5 | 3,547 | 10,639 | ,000[b] |
| | Rezidual | 93,364 | 280 | ,333 | | |
| | Ukupno | 111,101 | 285 | | | |

a. Zavisna varijabla: resocijalizacija osuđenika

b. Prediktori: stav o vrednosti tretmana, zadovoljstvo uslovima i odnosima u ustanovi i psihološke osobine osuđenika

Izvor: *Kalkulacija autora*

U Tabeli 6. izvršeno je vrednovanje pojedinačne varijable. Stav o vrednosti tretmana, zadovoljstvo uslovima i odnosima u ustanovi i psihološke osobine osuđenika (orijentacija na pravednost, samopoštovanje, emocionalna kompetentnost) daju značajan doprinos predviđanju resocijalizacije.

*Tabela 7.* Koeficijenti resocijalizacije osuđenika

| | Model | Standardizovani koeficijenti Beta | t | Značajnost | Koeficijenti korelacije | | | Statistika kolinearnosti | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | Korelacija nultog razreda | Parcijalna korelacija | Semiparcijalna korelacija | Neobjašnjeni deo varijanse | Faktor povećanja varijanse |
| **Resocijalizacija osuđenika** | Konstanta | | 3,843 | ,000 | | | | | |
| | Stav o vrednosti tretmana | -,042 | -,741 | ,459 | ,026 | -,044 | -,041 | ,919 | 1,088 |
| | Zadovoljstvo uslovima i odnosima u ustanovi | ,242 | 4,363 | **,000** | ,272 | ,252 | ,239 | ,977 | 1,023 |
| | Orijen-tacija na pravednost | ,137 | 2,362 | **,019** | ,183 | ,140 | ,129 | ,894 | 1,118 |
| | Samo-poštovanje | ,121 | 2,022 | **,044** | ,214 | ,120 | ,111 | ,834 | 1,199 |
| | Emocio-nalna kompe-tentnost | ,195 | 3,422 | **,001** | ,225 | ,200 | ,187 | ,920 | 1,087 |

Izvor: *Kalkulacija autora*

Za upoređivanje doprinosa svih nezavisnih promenljivih upotrebljen je standardizovani koeficijent (Beta). U ovom slučaju koeficijent beta za stav o vrednosti tretmana iznosi 0,042, za zadovoljstvo uslovima i odnosima u ustanovi iznosi 0,242, za orijentaciju na pravednost iznosi 0,137, za samopoštovanje iznosi 0,121, dok za emocionalnu kompetentnost iznosi 0,195. To istovremeno znači da zadovoljstvo uslovima i odnosima u ustanovi najviše doprinosi objašnjavanju resocijalizacije osuđenika kada se oduzme varijansa koju objašnjavaju ostale varijable. Može se konstatovati sledeće: ako se poveća uticaj zadovoljstva uslovima i odnosima u ustanovi za jedan, u proseku će se povećati i resocijalizacija osuđenika za 0,242.

S obzirom da se statistički značajnim smatra vrednost manja od 0,05 može se zaključiti da varijable zadovoljstvo uslovima i odnosima u ustanovi i psihološke osobine osuđenika (orijentacija na pravednost, samopoštovanje, emocionalna kompetentnost) daju značajan jedinstven doprinos predikciji zavisne varijable, tj. resocijalizaciji osuđenika, dok varijabla stav o vrednosti tretmana ne daje značajan jedinstven doprinos predikciji resocijalizacije osuđenika.

### 5.3. Osnovni rezultati, diskusija i preporuke

Istraživanje je dalo određene rezultate na osnovu kojih se mogu dati i određene preporuke. Definisan je, pre svega, odnos resocijalizacije osuđenika s osnovnim socijalno-statusnim karakteristikama, a kao osnovni rezultati izdvajaju se:

- Na osnovu analize dobijenih podataka, uočljivo je nezadovoljstvo osuđeničke populacije tretmanom koji se prema njima primenjuje;
- Analiza podataka dobijenih istraživanjem o povezanosti opšteg stava o vrednosti tretmana prema socijalno-statusnim karakteristikama osuđenika pokazala je da podjednak opšti stav o vrednosti tretmana osuđenih lica imaju ispitanici različite starosne dobi, bračnog statusa, obrazovnog nivoa, radnog iskustva, oni koji su ranije bili osuđivani i oni koji nisu bili ranije osuđivani, različitog počinjenog krivičnog dela i dužine kazne, kao i različite kategorije vaspitnog tretmana;

- Utvrđivanje statistički značajne razlike u zadovoljstvu uslovima i odnosima u ustanovi prema socijalno-statusnim karakteristikama pokazalo je da su osuđenici svih gorenavedenih kategorija podjednako zadovoljni uslovima i odnosima u ustanovi osim u kategoriji vaspitnog tretmana osuđenika – pri čemu je zadovoljstvo najizraženije kod osuđenika otvorenog vaspitnog tretmana;
- Utvrđivanje statistički značajne razlike u resocijalizaciji osuđenika prema socijalno-statusnim karakteristikama ispitanika dalo je rezultat da osuđenici podjednako percipiraju proces resocijalizacije; statistički značajna razlika utvrđena je kod ispitanika sa različitim krivičnim delom u odnosu na razlike u resocijalizaciji;
- Utvrđivanje povezanosti stava o vrednosti tretmana, zadovoljstva uslovima i odnosima u ustanovi i psiholoških osobina osuđenika sa resocijalizacijom pokazalo je da povećano zadovoljstvo uslovima i odnosima u ustanovi rezultira boljom resocijalizacijom osuđenika, da povećana orijentacija na pravednost rezultira boljom resocijalizacijom osuđenika, kao i da povećano samopoštovanje rezultira boljom resocijalizacijom osuđenika.
- Što se tiče uticaja stava o vrednosti tretmana, zadovoljstva uslovima i odnosima u ustanovi i psiholoških osobina osuđenika na resocijalizaciju utvrđeno je da varijable zadovoljstvo uslovima i odnosima u ustanovi i psihološke osobine osuđenika (orijentacija na pravednost, samopoštovanje, emocionalna kompetentnost) daju značajan jedinstven doprinos predikciji zavisne varijable, tj. resocijalizaciji osuđenika, dok varijabla stav o vrednosti tretmana ne daje značajan jedinstven doprinos predikciji resocijalizacije osuđenika.

Poboljšanje uslova izdržavanja kazne zatvora svakako podrazumeva napore da se u ustanovama obezbede adekvatni uslovi i mehanizmi pomoću kojih bi se tretman adekvatno primenjivao, što bi dovelo do uspešne resocijalizacije.

Preduslove uspešne resocijalizacije naročito je potrebno graditi preko planskih aktivnosti, koje u okviru vaspitnog tretmana uvažavaju po-

trebu adekvatnih mera definisanih u skladu sa sociološkim i psihološkim profilima osuđenih lica. Naime, rezultati ovog istraživanja su pokazali da je neophodno primeniti adekvatnu strategiju koja podrazumeva individualizovani pristup u procesu resocijalizacije osuđenika.

Društveni poredak u penalnim uslovima, kao i svaki poredak, podrazumeva poštovanje propisanih normi ponašanja i obrazaca ponašanja, koji obezbeđuju predvidljivost i time stabilnost funkcionisanja. Prihvatanje načina funkcionisanja poretka u penalnoj ustanovi ne može biti direktan pokazatelj pozitivnog toka procesa rehabilitacije, resocijalizacije i kranjeg cilja reintegracije zatvorenika u društvo iz jednostavnog razloga – jer je nametnut u prvom redu silom (nadzorom i kontrolom).

Rezultat istraživanja upućuje na potrebu da se u budućnosti sprovode planske mere na unapređenju uslova u penalnim ustanovama. Istraživanja pokazuju da uspostavljanje i gajenje dobrih porodičnih odnosa pomaže smanjenju i prevenciji recediva, da je podrška porodice i prijatelja (preko razvoja emotivnih i stabilnih odnosa) nakon puštanja na slobodu od bitnog značaja za proces reintegracije u zajednicu.

## 6. Zaključak

Osnovni cilj istraživanja izloženog u ovom radu jeste definisanje osnovnih prediktora za adekvatnu primenu programa postupanja (tretmana), što bi rezultiralo uspešnijom resocijalizacijom osuđenika i smanjenjem recidiva. Istraživanje je obavljeno anketiranjem 286 osuđenih lica, koja su u tom trenutku bila na izdržavanju zatvorske kazne u penalnim ustanovama na području AP Vojvodine. Rezultati istraživanja osnovnih prediktora uspešnosti resocijalizacije osuđenika pokazali su, pre svega, negativan stav osuđenika prema uslovima i odnosima u zatvorskim ustanovama i tretmanu koji se prema njima primenjuje. Navedeno se može tumačiti pretpostavkom da je lišenje slobode snažan preduslov za stvaranje visokog stepena nezadovoljstva usled prinudne izolacije od strane društva, nemogućnosti željene društvene komunikacije, osećaja marginalizacije, nametnutih ograničenja, osećaja urušenog digniteta, uskraćene mogućnosti ostvarivanja željenih ciljeva i upražnjavanja određenog životnog stila. Drugi razlog svakako može biti kvalitet

boravka u penalnim uslovima, zbog limitiranosti pre svega finansijskih resursa države, bez obzira na nastojanja i projektovane ciljeve društva koji mogu podrazumevati i visoke standarde.

Bitno je istaći da je neophodna adekvatna obuka i periodično stručno usavršavanje osoblja penalnih ustanova u vezi sa najboljim modusima, pristupima i problemima resocijalizacije osuđenika.

Rezultati istraživanja imaju kako praktični (širi društveni) tako i naučni značaj. Na osnovu njih, date su osnovne preporuke za unapređenje procedura i načina rada sa osuđenim licima sa ciljem uspešne resocijalizacije u društvo nakon odsluženja zatvorske kazne. Treba posebno istaći da su potrebna dalja istraživanja u pogledu detaljnije analize faktora koji su se u ovom istraživanju pokazali kao granično statistički značajni a sa ciljem razumevanja njihovih specifičnosti i definisanja načina za unapređenje primene tretmana prema osuđenim licima.

**Literatura:**


1. Bobić, A. (2012). *Društvene promene i zatvorska zajednica*. Novi Sad: Panos, Matica srpska.
2. Borislav, M., & Bulatović, I. (2004). *Sistem izvršenja krivičnih sankcija u Republici Srbiji*. Beograd: Udruženje penologa Srbije.
3. Bošković, M., & Bobić, A. (2022). *Kriminologija sa penologijom*. Banja Luka: Fakultet za bezbjednost i zaštitu, NUBL.
4. Bošković, M., & Radoman, M. (2002). *Penologija*. Univerzitet u Novom Sadu, Pravni fakultet.
5. Kalatur, M., Levchenko, Y., Myroniuk, T., Hrankina, V.I., & Huzenko, Y. (2020). Re-Socialization of Convicted Persons: Stages and Methods. *Journal of Legal, Ethical and Regulatory Issues*, 23(4): 1-9.
6. Lykhova, S., Semchuk, N., & Rybikova, H. (2019). Psychological well-being of prisoners as a factor in penitentiary reform. *International Journal of Applied Exercise Physiology*, 8(3): 341–351. DOI: 10.26655/IJAEP.2019.10.1
7. Fatić, A. (1995). *Kazna kao metafora*. Beograd: Službeni list SRJ, Novinsko-izdavačka ustanova.
8. Pavlićević, P. (2019). Radikalizacija u zatvoru, procena rizika i neki modeli odgovora. *Kultura polisa*, 16(40): 309-331. https://kpolisa.com/KP40/KP40_3-7Pavlicevic.pdf

9. Radoman, M. (2013). *Penologija i kazneno izvršno pravo.* Beograd: Udruženje pravnika Srbije.
10. Romashov, R. A., & Bryleva, E. A. (2019). Post-prison resocialization - myth or reality?. *Bulletin of St. Petersburg University*, 10(4): 827–835. https://doi.org/10.21638/spbu14.2019.414.
11. Suryono, S. A., Domai, T., & Wijaya, A. F. (2016). Implementation of Deradicalization Policy for Terrorism Prisoners: An Indonesian Experience. *International Journal of Management and Administrative Sciences*, 3(10): 1–30. https://www.ijmas.org/3-10/IJMAS-3904-2016.pdf.
12. Timofeeva, E. A. (2019). *Foreign Prison Experience Resocialization of Prisoners. 17th* International Scientific Conference "Problems of Enterprise Development: Theory and Practice", Volume 62, SHS Web of Conferences. https://doi.org/10.1051/shsconf/20196212004.
13. Thomas, M. (2019). Treatment of prisoners and prison personnel training in Germany. *International penitentiary journal*, 1(1): 46–52.
14. *Zakon o izvršenju krivičnih sankcija Republike Srbije* („Sl. glasnik RS" 55/2014 i 35/2019).

# EVALUATING THE TREATMENT OF CONVICTS IN PENAL INSTITUTIONS IN VOJVODINA: DATA ANALYSIS, CHALLENGES AND RECOMMENDATIONS

**Abstract**: The position of convicted persons in penal institutions is not only a legal issue. It is also a reflection of the available material and human resources, and the willingness and commitment of society to create efficient and effective modes of treatment and to implement them, in order to achieve the basic function of these institutions, i.e., resocialization. Research efforts in the field have focused on the ways to improve the functioning of penal institutions in order to provide the highest possible quality of life for convicts, in a specific environment and under restrictions. Serving the prison sentence in satisfactory conditions would ensure a better implementation of the treatment that would result in a better resocialization, thereby reducing recidivism. The aim of this research is to define the factors and the possibility of predicting the resocialization of convicts (dependent variable) in the prisons in the Autonomous Province of Vojvodina (AP Vojvodina). The results indicate that the general attitude of convicts towards prison treatment is negative. Of the 27 observed independent variables, the research showed that the greatest statistical significance exists: 1) between the category of educational treatment and satisfaction with conditions and relations in the institution; 2) between the type of crime and the success of resocialization. A lower statistical significance was observed between satisfaction with conditions, justice orientation, degree of self-esteem, emotional competence, and success of resocialization.

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**Abstract**: The position of convicted persons in penal institutions is not only a legal issue. It is also a reflection of the available material and human resources, and the willingness and commitment of society to create efficient and effective modes of treatment and to implement them, in order to achieve the basic function of these institutions, i.e., resocialization. Research efforts in the field have focused on the ways to improve the functioning of penal institutions in order to provide the highest possible quality of life for convicts, in a specific environment and under restrictions. Serving the prison sentence in satisfactory conditions would ensure a better implementation of the treatment that would result in a better resocialization, thereby reducing recidivism. The aim of this research is to define the factors and the possibility of predict-

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ing the resocialization of convicts (dependent variable) in the prisons in the Autonomous Province of Vojvodina (AP Vojvodina). The results indicate that the general attitude of convicts towards prison treatment is negative. Of the 27 observed independent variables, the research showed that the greatest statistical significance exists: 1) between the category of educational treatment and satisfaction with conditions and relations in the institution; 2) between the type of crime and the success of resocialization. A lower statistical significance was observed between satisfaction with conditions, justice orientation, degree of self-esteem, emotional competence, and success of resocialization.

**Key words**: *penal institutions; convicted persons; treatment; resocialization; recidivism.*

## 1. Introduction

Successful resocialization and reintegration of convicted persons after serving a prison sentence is one of the main aims of penal systems everywhere. Successful resocialization is an important factor that reduces the possibility of repeating a criminal offense, i.e., recidivism. On the other hand, with the specific nature of the convict population and the many factors that influence the success of resocialization, it is important to identify the influence of individual factors that can contribute to successful resocialization.

Resocialization is the process of reintegration into society of the individuals who have violated legal norms. It involves a set of psychological, educational, legal and organizational measures implemented during the prison sentence and after the sentence has been served – especially in the case of parole and community service. Implementing treatment programs in penal conditions is a complex legal and social challenge. The main issue is to identify, and then implement the mechanisms and processes that will awaken and strengthen the willingness of convicted persons to become useful members of society (Bobić, 2012). Resocialization primarily involves changing the convict's personality: encouraging the acceptance of responsibility for the crime, strengthening of

self-esteem and respect for others. Successful resocialization results in a socially responsible individual who accepts social, moral and ethical norms of behaviour (Timofeeva, 2019).

Research into the basic predictors of successful resocialization, conducted in 2020, showed the most important predictors to be sentence type, convict personality, degree of danger to society after release, motives for the offence and behaviour of convicts while serving their sentence (Kalaur et al., 2020). Participation in organized sports and educational activities has been shown to have a positive impact on the personality of some convicted persons, as an important assumption of future resocialization. Convicts' personality traits, convict-convict relationships, and the quality of the convict-staff relationships also make up important factors in successful resocialization. In Ukraine, for instance, the psychological profile of convicts, i.e., strengthening their self-esteem, was identified as the most important factor of resocialization (Lykhova, 2019). A comprehensive study on the factors that reduce recidivism, carried out in a number of German prisons in 2020, reinforced the importance of the convicts' mental state. The study found that recidivism was reduced by 50% among convicts who were provided structured psychotherapy during their sentence, while the prison staff were given additional individual counselling (Thomas, 2019).

Today the issue that hinders resocialization and presents a challenge for penal institutions and society as a whole is the growing risk of radicalization in prison, i.e., convicts joining radical and terrorist groups after serving the sentence (Suryono, Domai and Wijaya, 2016).

Penological research is increasingly focused on the quality of daily relations between convicts and staff. Research shows that procedural justice (the way of making decisions and communicating procedures) is very important, i.e., that the treatment of prisoners with respect for their dignity and their involvement in the decision-making process has positive effects not only on them, but also on the penal institution (Schmidt, 2015).

Nevertheless, more research should focus on the issue of successful resocialization, because the number of persons who reoffend (once or multiple times) is still very high. This is a complex security, social and legal challenge that must be given due attention.

## 2. Execution of criminal sanctions in the Republic of Serbia

The criminal sanctions execution system in the Republic of Serbia comprises positive legislation that regulates the manner of their execution, positive legislation that refers to persons deprived of liberty, as well as methods, means and measures for resocialization of criminal offenders (Bošković & Bobić, 2022). The Law on the Execution of Criminal Sanctions of the Republic of Serbia established the Administration for the Execution of Criminal Sanctions as an administrative body within the Ministry of Justice of the Republic of Serbia. The Administration organizes, implements and supervises the execution of prison sentences, juvenile prison sentences, community sentences, suspended sentences with protective supervision; security measures of compulsory psychiatric treatment and custody in a health facility, compulsory treatment and custody of persons with alcohol or drug addiction, and educational measures of referral to a correctional facility (Law on Execution of Criminal Sanctions, 2019).

The criminal justice system of the Republic of Serbia has a total of 28 facilities: ten penal and correctional institutions, consisting of a correctional facility for adult females and a correctional facility for minors, sixteen district prisons, a special prison hospital in Belgrade and an educational and correctional facility in Kruševac. In the past few years, new and modern facilities have been built in accordance with European standards for the accommodation of persons deprived of liberty (e.g., Belgrade and Pančevo penitentiaries). The existing facilities have been adapted to accommodate the number of convicts. In the Serbian criminal justice system, the individuals are separated by status (convicts, detainees, misdemeanour), by gender, and by age (adults and minors) as stipulated by European prison guidelines. The Serbian criminal justice system is based on the following principles: legality, humanity, individualization, collective punishment, and post-penal rehabilitation (Marić & Bulatović, 2004). During the imprisonment, both national and international positive legal regulations are consistently applied to individuals, such as the European Convention on Human Rights, the European Prison Rules, the Istanbul Protocol, etc. The functioning of the institution and the treatment of inmates can be reviewed by the Administration

inspection department and representatives of international organizations accredited for this type of supervision (European Committee for the Prevention of Torture, Helsinki Committee for Human Rights, or non-governmental organizations). They have the right to visit the facility at any time and without notice. Ombudsmen who regularly visit prisons in Serbia also play a major role in the consistent application of positive legal regulations in the work of penal institutions. This control of penal institutions has contributed to greater transparency and respect for human rights during the serving of a prison sentence.

The Law on the Execution of Criminal Sanctions stipulates that, according to the level of security, prisons can be of open, semi-open, closed, and closed type with special security (Bošković & Radoman, 2002). In open-type institutions, there are no physical and technical obstacles to escape, while in semi-open-type institutions, security employees represent the main obstacle to escape. In closed institutions, in addition to security personnel, there are other physical and technical obstacles to prevent escape, while in closed institutions with special security, there are physical and technical obstacles that achieve the highest level of security (Bobić, 2012).

In the Serbian prison system, there are various departments that directly or indirectly participate in the treatment of convicts: 1) Treatment, 2) Security, 3) Training and employment, 4) Health care, 5) General affairs. The Treatment Department is in charge of the coordination of all departments during the resocialization process (Radoman, 2013).

## 3. Treatment of Convicts

In penological theory and practice, the term treatment (French: *Traîtement*) is often used, which means a way of acting or behaviour in a certain situation. In the prison system, this term refers to the way in which convicted persons are treated. The goal of the treatment is to use educational and corrective methods to influence the convicts so that they do not reoffend after being released. The statistics show that the recidivism rate in the Republic of Serbia is extremely high. Thus, we might ask if an adequate treatment program is applied to convicts in penal institutions. Here, however, it should be borne in mind that the degree of

recidivism is not only influenced by treatment in penal institutions, but also by a number of other factors that exist in society at large.

The preconditions for the success of treatment depend on the desire and willpower of the convicts themselves, as well as on the quality of communication between penitentiary institutions and society. Another prerequisite for the success of the treatment is the consistent implementation of some principles, such as: 1) trust and respect for the dignity of the person; 2) knowing the personality; 3) versatility; 4) unity of educational influences; 5) the convict's active and conscious participation in the treatment (Radoman, 2013).

The classification of convicts according to educational groups (open, semi-open and closed department), plays a major role in the success of treatment in Serbian prisons. This takes place in the reception department, where the personality assessment of the convicted person is carried. Psychologists, pedagogues, special education teachers, a social worker and a representative of the security service participate in this multidisciplinary approach (Bobić, 2012). In the reception department, the process of individualization of treatment begins, which then continues in the educational group with the application of individual treatment.

The penitentiary system of the Republic of Serbia provides that the process of individual treatment during a prison sentence goes through several stages. These are: 1) conducting the first interview; 2) drawing up the contract; 3) individualized treatment; 4) directive and non-directive individual treatment (Bošković, 2002).

In addition to individual treatment, the following are also applied in practice: group treatment, educational treatment, employment as a form of treatment, treatment through leisure activities, treatment through freedom of religion, stimulation treatment and self-initiated form of treatment (Bobić, 2012).

The prisons also focus on the treatment that involves work, because in addition to adopting work habits, the convict also gains an impression of self-worth and a sense of belonging to a group. The convict's work must be purposeful and must not be humiliating.

In order to implement the treatment of convicted persons related to education, penal institutions in Serbia cooperate with institutions for adult education, which are located in the surrounding area. A certificate of completion of primary or secondary school is issued to a convicted person, not stating that it was acquired during a prison sentence.

The pedagogical treatment in prisons very important because convicts feel lost, rejected, and worthless, especially in the beginning. Educational treatment aims primarily to alleviate that feeling, and to restore the convict's confidence in their own strength and their trust in society (Bošković, 2002). In the Serbian prison system, leisure time management is an important aspect. Among other things, it depends on the structure of convicted persons, their interest in using free time, classification group, type of institution where convicted persons are serving their sentence, and so on.

The practice from Serbian prisons has shown that the success of resocialization depends on the treatment applied to convicted persons, as well as on the ability and motivation of educators to consistently implement the prescribed treatments. While working with offenders, new methods and therapeutic techniques should be continually introduced, taking into account the structure of the prison population, personality traits of prisoners, as well as the degree of criminal structure (Bošković & Bobić, 2022).

## 4. Methodology

The aim of the present research is (1) to examine the attitudes of the convict population towards the treatment they have received, and (2) based on the results, to take the necessary actions to improve the treatment and facilitate the resocialization while serving a prison sentence. The aim of the research can be viewed from a scientific and practical aspect. The scientific aspect is to examine the nature (direction and intensity) of the connection between the observed dependent, independent and intervention variables and to explain it. The practical aspect is to obtain data which can be useful to the authorities and prison management to improve the convicts' treatment, primarily by suggesting prac-

tical procedures for improving certain aspects of the treatment in order to successfully implement the resocialization process.

The research into the convicts' attitudes on the prison treatment was carried out in penal institutions on the Autonomous Province of Vojvodina territory, namely: KPZ Sremska Mitrovica, KPZ Sombor, OZ Novi Sad, OZ Subotica, OZ Zrenjanin and OZ Pančevo. The convicted adults voluntarily participated in an anonymous survey in which they assessed the value of the treatment.

To obtain answers to specific research questions, it was necessary to conduct a preliminary analysis of the data (descriptive statistics), i.e., calculate the descriptive statistical indicators. Descriptive statistical indicators should confirm the reliability and normality of the schedule, and to reveal atypical points, which will affect the possibility of the final choice and application of the proposed statistical methods. The normality of the distribution was tested using the Kolmogorov–Smirnov and Shapiro–Wilkov tests. The reliability of the measurement scale was checked using Cronbach's alpha coefficient. For the strength of correlation between variables, the Kaiser-Meyer-Olkin test (KMO) was used, as an indicator of sample adequacy, and Bartlett's sphericity test. The Mann-Whitney U test was used to determine the statistical significance of differences, as a non-parametric alternative to the t-test of independent samples. The Kruskal–Wallis's test was used to compare the results of a continuous variable for three or more groups. Spearman's rank correlation was used for the analysis of variable ranks, as a non-parametric alternative to Pearson's correlation.

The assessment of the statistical significance of the corrected determination coefficient is shown by a one-factor analysis of variance (ANOVA). The statistical software used for data processing was IBM SPSS 21. The survey of respondents was conducted from September 15 to December 24, 2019. The general characteristics of the respondents were defined based on the five criteria shown in Table 1.

*Table 1*. General Characteristics of Respondents in the Sample (n = 286)

| General characteristics of respondents | | Number of respondents (n) | Structure (%) |
|---|---|---|---|
| Age | Below 20 | 7 | 2,6 |
| | 21–30 | 84 | 30,7 |
| | 31–40 | 113 | 41,2 |
| | 41–50 | 70 | 25,5 |
| Previous convictions | Yes | 180 | 63,4 |
| | No | 104 | 36,6 |
| Current proceedings | Yes | 86 | 30,6 |
| | No | 195 | 69,4 |
| Marital status | Single | 88 | 31,4 |
| | Cohabitation | 90 | 32,1 |
| | Married | 60 | 21,4 |
| | Divorced | 39 | 13,9 |
| | Widowed | 3 | 1,1 |
| Education | Incomplete primary education | 32 | 11,4 |
| | Primary education | 68 | 24,2 |
| | Incomplete secondary education | 46 | 16,4 |
| | Secondary education | 112 | 39,9 |
| | Higher education | 23 | 8,2 |

Source: *Authors' Calculation*

The following parameters were also observed: respondents' work experience before imprisonment, work engagement in the institution, type of offence, prerequisites for criminal behaviour, having children and contact with family, attending church, change of attitude towards the offence, sentence length, the category of educational treatment,

identifying the person who contributes most to the convicts' resocialization, involvement of family members, solitary confinement as part of the treatment of prohibited behaviour, willingness to become involved in the efforts to improve living and working conditions in the institution, willingness to make an effort to obtain a better classification group, willingness to participate in education and professional development activities, and the use of psychoactive substances.

## 5. Results

### 5.1. Frequency of responses

Table 2 shows the frequency of respondents' attitudes and assessments of the convicts' treatment.

*Table 2.* Frequency of respondents' attitudes towards the convicts' treatment.

| | Statements Stronglydisagree | Degree (%) | | | | Variance | |
|---|---|---|---|---|---|---|---|
| | | Mostly disagree | Unsure | Mostly agree | Strongly agree | | |
| 1 | The inmates are delighted with how they are treated by the staff. | **43,8** | **9,4** | 22,5 | 13,4 | 10,9 | 2,040 |
| 2 | While adapting to the prison life, I had the least help from other convicts. | 31,7 | 16,1 | 16,1 | 18,6 | 17,5 | 2,259 |
| 3 | The prison work program is flawed and should be reformed. | 19,9 | 7,7 | 16,6 | 14,8 | 41,0 | 2,429 |
| 4 | The wardens treat the inmates fairly. | 8,7 | 8,3 | 11,2 | **25,6** | **46,2** | **1,686** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 5 | The material status of the inmates affects their treatment. | 28,2 | 8,4 | 27,1 | 12,5 | 23,8 | 2,296 |
| 6 | The instructors are invested in training the convicts to do different jobs. | 22,1 | 8,5 | 26,9 | 15,9 | 26,6 | 2,174 |
| 7 | The people who work with the inmates lack patience. | 25,0 | 14,3 | 25,4 | 12,5 | 22,8 | 2,184 |
| 8 | The academic background of convicts has no bearing on their classification. | 18,4 | 8,1 | 31,6 | 12,5 | 29,4 | 2,055 |
| 9 | The inmates are guaranteed the freedom of religion. | 8,9 | 3,7 | 15,1 | **11,8** | **60,5** | 1,694 |
| 10 | We can discuss our problems openly with our teachers. | 17,5 | 7,3 | 12,8 | 15,0 | 47,4 | 2,374 |
| 11 | Recreational activities (sports, courses, etc.) should be more organised. | 22,9 | 6,3 | 20,3 | 13,6 | 36,9 | 2,474 |
| 12 | The type of offence affects the treatment of inmates. | 25,6 | 9,6 | 20,5 | 10,6 | 33,7 | **2,555** |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 13 | The inmates' discipline and efforts are not adequately rewarded. | 19,4 | 9,7 | 19,4 | 13,1 | 38,4 | 2,378 |
| 14 | The prison management usually supports our valid requests and ideas. | 25,6 | 12,8 | 27,5 | 14,3 | 19,8 | 2,085 |
| 15 | The inmates should have more access to educational programs to acquire knowledge/skills. | 21,6 | 7,3 | 23,8 | 14,7 | 32,6 | 2,311 |
| 16 | After the treatment in this institution, most inmates are successfully resocialized upon release. | **40,4** | **10,5** | 28,4 | 10,2 | 10,5 | 1,891 |

Source: *Authors' Calculation*

Table 3 shows the frequency of respondents' attitudes towards justice.

*Table 3*. The frequency of respondents' attitudes towards justice orientation

| | Statements Strongly disagree | Degree (%) | | | | | Variance |
|---|---|---|---|---|---|---|---|
| | | Mostly disagree | Unsure | Mostly agree | Strongly agree | | |
| 1 | I think the world is essentially fair. | **45,2** | **19,1** | 16,7 | 8,7 | 10,3 | 1,865 |
| 2 | I think I generally deserve what I get in life. | **25,3** | **20,5** | 24,1 | 14,4 | 15,7 | 1,932 |
| 3 | Most people treat me fairly. | 12,7 | 9,2 | 23,1 | 27,9 | 27,1 | 1,746 |
| 4 | I have a just claim to what I own. | 6,9 | 4,4 | 7,7 | **25,9** | **55,1** | **1,399** |
| 5 | I believe that the injustice one has suffered will be repaid eventually. | 8,4 | 4,4 | 24,8 | **22,0** | **40,4** | 1,556 |
| 6 | I believe that people strive to be just when making important decisions that affect other people. | 15,3 | 14,9 | 31,8 | 17,3 | 20,7 | 1,750 |
| 7 | In my own life, injustice has been the exception, rather than the rule. | 10,8 | 11,2 | 29,9 | 23,2 | 24,9 | 1,616 |
| 8 | I believe that justice always prevails. | 19,9 | 8,1 | 21,2 | 17,5 | 33,3 | **2,264** |
| 9 | Life has treated me fairly. | 18,1 | 17,8 | 26,2 | 19,8 | 18,1 | 1,834 |

Source: *Authors' Calculation*

Table 4 shows the frequency of respondents' attitudes towards the prison conditions and relationships.

*Table 4.* The frequency of respondents' attitudes towards the prison conditions and relationships

| | Statements<br>Very satisfied | Degree (%) | | | | | Variance |
|---|---|---|---|---|---|---|---|
| | | Satisfied | Neither satisfied nor unsatisfied | Unsatisfied | Very unsatisfied | | |
| 1 | Social climate and the state of the judiciary. | 8,0 | 8,1 | 19,7 | **19,3** | **44,9** | 1,673 |
| 2 | The conditions and relationships in the institution. | 8,8 | 16,8 | 27,5 | 19,1 | 27,8 | 1,668 |
| 3 | Educators. | 18,6 | 21,2 | 28,5 | 10,9 | 20,8 | 1,901 |
| 4 | Guards. | **24,1** | **30,7** | 25,9 | 8,4 | 10,9 | **1,562** |
| 5 | Instructors. | **23,6** | **27,2** | 28,9 | 6,9 | 13,4 | 1,663 |
| 6 | Management. | 16,7 | 23,4 | 26,8 | 13,4 | 19,7 | 1,830 |
| 7 | Inmates' conduct. | 12,6 | 18,6 | 34,6 | 15,6 | 18,6 | 1,589 |
| 8 | Diet. | 11,5 | 14,1 | 24,9 | 21,2 | 28,3 | 1,787 |
| 9 | Recreational activities. | 13,0 | 21,0 | 27,2 | 15,6 | 23,2 | 1,800 |
| 10 | Facilities and hygiene. | 12,6 | 21,9 | 23,0 | 12,6 | 29,9 | **1,987** |
| 11 | Wages I can earn. | 9,7 | 15,6 | 23,0 | **12,7** | **39,0** | 1,927 |

Source: *Authors' Calculation*

### 5.2. **Rating Scales' Reliability**

The reliability of the rating scale is checked using Cronbach's alpha coefficient, the value ranging between 0 and 1. The reliability of the scale should not be less than 0.7. Table 5 shows the reliability statistics of individual scales.

*Table 5.* Reliability of rating scales

| Scales | Cronbach's alpha | Cronbach's alpha based on standardised items | Variables No. |
|---|---|---|---|
| Attitudes towards the convicts' treatment | ,556 | ,559 | 16 |
| Justice orientation | ,770 | ,769 | 9 |
| Self-esteem | ,594 | ,602 | 10 |
| Institution conditions and relationships satisfaction | ,882 | ,881 | 11 |
| Emotional competence | ,604 | ,619 | 14 |
| Resocialization | ,814 | ,811 | 14 |

Source: *Authors' Calculation*

Based on the results of the reliability check, the highest value of Cronbach's coefficient alpha is the scale institutional conditions and relationships satisfaction (0.882), followed by Resocialization (0.814) and Justice orientation (0.770). The scales Emotional competence (0.604), Self-esteem (0.594) and Attitudes towards the convicts' treatment (0.556) have a lower level of reliability but will be accepted due to comparison with similar studies.

Upon determining the reliability of the rating scales for the individual research variables, it can be concluded that the reliability results of the individual variables do not differ significantly from the reliability results of the overall scales.

The attitude towards the value of convicts' treatment and the resocialization show a slight positive correlation ($r = 0.041$), $n = 286$, which is not statistically significant. A relatively weak positive correlation ($r = 0.267$), $n = 286$, $p < 0.01$, exists between satisfaction with the conditions and relationships in the institution and the resocialization of the con-

victs. We can conclude that increased satisfaction with the conditions and relationships in the institution results in a better resocialization of the convicts. In order to evaluate the model, the determination coefficient was identified, which shows how much of the variance of one variable is explained by the variance of another, i.e., how much of the variance the two variables share. Satisfaction with the conditions and relationships in the institution explains 7.13% of the variance of the convict's resocialization, which is a very small percentage of the explained variance. A relatively weak positive correlation ($r = 0.247$), $n = 286$, $p < 0.01$, was calculated between justice orientation and resocialization of convicts. Therefore, increased justice orientation results in better resocialization of convicts.

Justice orientation explains 6.10% of the variance of convict resocialization, which is a very small percentage of the explained variance. Self-esteem and resocialization of convicts show a slight positive correlation ($r = 0.177$), $n = 286$, $p < 0.01$, which implies that increased self-esteem results in better resocialization of convicts. Self-esteem explains only 3.13% of the variance of convict resocialization. Emotional competence and resocialization of convicts show a slight positive correlation ($r = 0.162$), $n = 286$, $p < 0.01$, which implies increased emotional competence results in better resocialization of convicts. Emotional competence explains only 2.62% of the variance of convict resocialization.

*Table 6.* ANOVA[a]

| Model | | Sum of squared deviations | Freedom of degrees no. | Variance score | Variance ratio (F) | Significance |
|---|---|---|---|---|---|---|
| Resocialization | Regression | 17,737 | 5 | 3,547 | 10,639 | ,000[b] |
| | Residual | 93,364 | 280 | ,333 | | |
| | Total | 111,101 | 285 | | | |

a. Dependent variable: Convicts' resocialization

b. Predictors: Attitudes towards treatment, conditions and relationships satisfaction, convicts' psychological traits

Source: *Authors' Calculations*

Table 6 shows the evaluation of the individual variables. Attitudes towards treatment, conditions and relationships satisfaction, convicts' psychological traits (justice orientation, self-esteem, emotional competence) significantly contribute to the prediction of resocialization.

*Table 7.* Resocialization Coefficient

| | Model | Standardized beta coefficient | t | Significance Zero correlation | Correlation coefficients | | | Colinearity | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | Partial correlation | Semi-partial correlation | Unexplained variation | Increase variance factor | |
| **Resocialization of convicts** | Constant | | 3,843 | ,000 | | | | | |
| | Attitudes towards treatment | -,042 | -,741 | ,459 | ,026 | -,044 | -,041 | ,919 | 1,088 |
| | Institutional conditions and relationships satisfaction | ,242 | 4,363 | **,000** | ,272 | ,252 | ,239 | ,977 | 1,023 |
| | Justice orientation | ,137 | 2,362 | **,019** | ,183 | ,140 | ,129 | ,894 | 1,118 |
| | Self-esteem | ,121 | 2,022 | **,044** | ,214 | ,120 | ,111 | ,834 | 1,199 |
| | Emotional competence | ,195 | 3,422 | **,001** | ,225 | ,200 | ,187 | ,920 | 1,087 |

Source: *Authors' Calculations*

A standardized beta coefficient was used to compare the contribution of all independent variables. In this case, the beta coefficient for the attitude towards the value of treatment is 0.042, for satisfaction with the conditions and relations in the institution 0.242, for the orientation to justice 0.137, for self-esteem 0.121, and for emotional competence 0.195. Therefore, satisfaction with the conditions and relationships in the insti-

tution contributes the most to explaining the resocialization of convicts when the variance explained by the other variables is subtracted. We can conclude that if the satisfaction with conditions and relationships in the institution increases by one, on average, the resocialization of convicts will increase by 0.242.

Since less than 0.05 is considered statistically significant, it can be concluded that satisfaction with the conditions and relationships in the institution and convicts' psychological traits (justice orientation, self-esteem, emotional competence) contribute uniquely and significantly to the prediction of the dependent variable, i.e. resocialization of convicts, while the attitude towards the value of treatment does not contribute significantly to the prediction of resocialization of convicts.

### 5.3. **Results, Discussion and Recommendations**

The study results may serve as a basis for a number of recommendations. First of all, the relationship between the resocialization of convicts and the basic social-status characteristics was defined, and the following are the main results:

- Based on the analysis of the obtained data, the dissatisfaction of the convict population with the treatment they receive is evident.
- The analysis of the data obtained on the association of the general attitude towars the value of treatment and the social-status characteristics of convicts showed that respondents of different ages, marital status, educational level, work experience, and those who were previously convicted have the same general attitude towards the value of treatment of convicted persons as those respondents who have not been previously convicted, whose type of offence and length of sentence is different, and who belong to different categories of educational treatment.
- Determining a statistically significant difference in satisfaction with conditions and relations in the institution according to social-status characteristics showed that inmates of all the above-mentioned categories are equally satisfied with the conditions and relations in the

institution, except in the category of educational treatment of inmates – where satisfaction is most pronounced among inmates who receive open educational treatment.

• Determining a statistically significant difference in the resocialization of convicts according to the social-status characteristics of the respondents showed that convicts perceive the process of resocialization equally; a statistically significant difference was found in respondents with different criminal offenses in relation to differences in resocialization.

• Determining the relationship between the attitude about the value of treatment, satisfaction with conditions and relationships in the institution and the psychological characteristics of convicts with resocialization showed that increased satisfaction with conditions and relationships in the institution results in better resocialization of convicts, that increased orientation to justice results in better resocialization of convicts, and that increased self-esteem results in better resocialization of convicts.

• Regarding the influence of the attitude about the value of treatment, satisfaction with the conditions and relationships in the institution and the psychological characteristics of the inmates on resocialization, it was determined that the variables satisfaction with the conditions and relations in the institution and the psychological characteristics of the prisoners (orientation to justice, self-esteem, emotional competence) make a significant unique contribution prediction of the dependent variable, i.e. resocialization of convicts, while the variable attitude about the value of treatment does not make a significant unique contribution to the prediction of resocialization of convicts.

Improving the conditions of serving a prison sentence certainly implies efforts to provide adequate conditions and mechanisms in the institutions by means of which the treatment would be adequately applied, which would lead to successful resocialization.

The prerequisites for successful resocialization must be built through planned activities, which, within the framework of educational treatment, recognize the need for adequate measures defined in accord-

ance with the sociological and psychological profiles of convicted persons. The results of this research showed that it is necessary to apply an adequate strategy that implies an individualized approach in the process of resocialization of convicts.

Social order in penal conditions, like any order, implies respect for prescribed norms of behaviour and patterns of behaviour, which ensure predictability and thus stability of functioning. Acceptance of the functioning of the order in the penal institution cannot be a direct indicator of the positive course of the process of rehabilitation, resocialization, and the ultimate goal of the reintegration of convicts into society for a simple reason – it was imposed primarily by force (surveillance and control).

The result of the research indicates the need to implement planned measures to improve conditions in penal institutions in the future. The research shows that the establishment and cultivation of good family relationships helps to reduce and prevent recidivism, that the support of family and friends (through the development of emotional and stable relationships) after release is essential for the process of reintegration into the community.

## 6. Conclusion

The main aim of the present research is to define the basic predictors for the adequate application of the treatment program, which would result in a more successful resocialization of convicts and a reduction in recidivism. The research was carried out by surveying 286 convicted persons, who at that moment were serving prison sentences in penal institutions in the AP Vojvodina area. The results of the research on the basic predictors of the success of resocialization of convicts showed, first of all, the negative attitude of convicts towards the conditions and relations in prison institutions and the treatment applied to them. The above can be interpreted with the assumption that deprivation of liberty is a strong precondition for a high degree of dissatisfaction due to forced isolation by society, the impossibility of desired social communication, a feeling of marginalization, imposed restrictions, a sense of collapsed

dignity, denied the possibility of achieving the desired goals and practicing a certain lifestyle. Another reason can certainly be the quality of stay in penal conditions, due primarily to the limitation of the state's financial resources, regardless of the efforts and projected goals of society, which may include high standards.

It is important to stress that adequate training and periodic professional development of the staff of penal institutions is necessary in relation to the best modes, approaches, and problems of resocialization of convicts.

The research results have both practical (social) and scientific significance. The authors offered some recommendations for the improvement of procedures and ways of working with convicted persons with the aim of successful resocialization into society after serving the prison sentence. Further research is necessary, such as a more detailed analysis of the factors that were shown to be borderline statistically significant in this research, with the aim of understanding their features and defining ways to improve the application of treatment to convicted persons.

**References:**


1. Bobić, A. (2012). *Društvene promene i zatvorska zajednica*. Novi Sad: Panos, Matica srpska.
2. Borislav, M., & Bulatović, I. (2004). *Sistem izvršenja krivičnih sankcija u Republici Srbiji.* Beograd: Udruženje penologa Srbije.
3. Bošković, M., & Bobić, A. (2022). *Kriminologija sa penologijom*. Banja Luka: Fakultet za bezbjednost i zaštitu, NUBL.
4. Bošković, M., & Radoman, M. (2002). *Penologija.* Univerzitet u Novom Sadu, Pravni fakultet.
5. Kalatur, M., Levchenko, Y., Myroniuk, T., Hrankina, V.I., & Huzenko, Y. (2020). Re-Socialization of Convicted Persons: Stages and Methods. *Journal of Legal, Ethical and Regulatory Issues*, 23(4): 1-9.
6. Lykhova, S., Semchuk, N., & Rybikova, H. (2019). Psychological well-being of prisoners as a factor in penitentiary reform. *International Journal of Applied Exercise Physiology*, 8(3): 341–351. DOI: 10.26655/IJAEP.2019.10.1
7. Fatić, A. (1995). *Kazna kao metafora*. Beograd: Službeni list SRJ, Novinsko-izdavačka ustanova.
8. Pavlićević, P. (2019). Radikalizacija u zatvoru, procena rizika i neki modeli odgovora. *Kultura polisa*, 16(40): 309-331. https://kpolisa.com/KP40/KP40_3-7Pavlicevic.pdf
9. Radoman, M. (2013). *Penologija i kazneno izvršno pravo.* Beograd: Udruženje pravnika Srbije.
10. Romashov, R. A., & Bryleva, E. A. (2019). Post-prison resocialization - myth or reality?. *Bulletin of St. Petersburg University*, 10(4): 827–835. https://doi.org/10.21638/spbu14.2019.414.
11. Suryono, S. A., Domai, T., & Wijaya, A. F. (2016). Implementation of Deradicalization Policy for Terrorism Prisoners: An Indonesian Experience. *International Journal of Management and Administrative Sciences*, 3(10): 1–30. https://www.ijmas.org/3-10/IJMAS-3904-2016.pdf.
12. Timofeeva, E. A. (2019). *Foreign Prison Experience Resocialization of Prisoners. 17th* International Scientific Conference "Problems of Enterprise Development: Theory and Practice", Volume 62, SHS Web of Conferences. https://doi.org/10.1051/shsconf/20196212004.
13. Thomas, M. (2019). Treatment of prisoners and prison personnel training in Germany. *International penitentiary journal*, 1(1): 46–52.
14. *Zakon o izvršenju krivičnih sankcija Republike Srbije* („Sl. glasnik RS" 55/2014 i 35/2019).

# STAV O VREDNOSTI TRETMANA OSUĐENIKA U PENALNIM USTANOVAMA NA PODRUČJU AP VOJVODINE: ANALIZA PODATAKA, IZAZOVI I PREPORUKE

**Sažetak:** Položaj osuđenih lica u penalnim ustanovama nije samo pravno pitanje, već je odraz raspoloživih kapaciteta, materijalnih i ljudskih resursa, ali i spremnosti i opredeljenosti društva da stvori efikasne i efektivne moduse i sprovede adekvatan tretman prema osuđenicima u cilju ostvarivanja osnovne funkcije ovih ustanova, tj. resocijalizacije. Stoga su od nespornog značaja i naučni napori da se utvrde najadekvatniji načini za unapređivanje funkcionisanja penalnih ustanova kako bi se za osuđenike, u specifičnom okruženju i podrazumevajućim uslovima ograničenja sloboda, omogućio maksimalno moguć kvalitet života. U zadovoljavajućim uslovima izdržavanja zatvorske kazne stvorili bi se preduslovi za bolju implementaciju tretmana koji bi dao očekivane rezultate u procesu resocijalizacije, a time uticao i na smanjenje recidiva. Osnovni cilj ovog istraživanja jeste definisanje faktora i mogućnosti predikcije resocijalizacije osuđenika (zavisna varijabla) u zatvorima na području AP Vojvodine. Rezultati rada pokazuju da je opšti stav osuđenika o tretmanu u zatvoru negativan. Od 27 posmatranih nezavisnih varijabli, istraživanje je pokazalo da najveća statistička značajnost postoji: 1) između kategorije vaspitnog tretmana i zadovoljstva uslovima i odnosima u ustanovi; 2) između vrste krivičnog dela i uspeha resocijalizacije. Niža statistička značajnost je zabeležena između zadovoljstva uslovima, orijentacije na pravednost, stepena samopoštovanja, emocionalne kompetentnosti i uspeha resocijalizacije.

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# ZAVODSKE VASPITNE MERE U SISTEMU MALOLETNIČKIH KRIVIČNIH SANKCIJA

**Apstrakt:** Autor u radu ukazuje na specifičnosti zavodskih vaspitnih mera sa materijalnog aspekta. Iako primat u primeni imaju vaspitne mere vaninstitucionalnog karaktera, maloletnicima, prema kojima treba preduzeti trajnije mere vaspitanja, lečenja i osposobljavanja uz njihovo potpuno odvajanje od dotadašnje sredine radi vršenja pojačanog uticaja na takve maloletnike, sud izriče vaspitne mere zavodskog karaktera. Prema pozitivnom zakonodavstvu, razlikujemo tri takve mere: upućivanje u vaspitnu ustanovu, upućivanje u vaspitno-popravni dom i upućivanje u posebnu ustanovu za lečenje i osposobljavanje. Takođe, u radu su prikazani rezultati istraživanja o primeni zavodskih vaspitnih mera u sudskoj praksi Republike Srbije za period od 2010. do 2020. godine.

**Ključne reči:** *maloletnici, zavodske vaspitne mere, upućivanje, vaspitna ustanova, vaspitno-popravni dom, posebna ustanova za lečenje i osposobljavanje, sudska praksa.*

## 1. Uvod

Sistem krivičnih sankcija Republike Srbije prema maloletnim učiniocima krivičnih dela čine: 1) vaspitne mere; 2) mere bezbednosti i 3) kazna maloletničkog zatvora. Osim krivičnih sankcija, naše maloletničko krivično pravo predviđa i alternativne, diverzione mere u vidu vaspitnih naloga.

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Zavodske vaspitne mere predstavljaju najzahtevniju i najtežu vrstu vaspitnih mera. Izriču se maloletnicima, prema kojima treba preduzeti trajnije mere vaspitanja, lečenja i osposobljavanja uz njihovo potpuno odvajanje od dotadašnje sredine radi vršenja pojačanog uticaja na takve maloletnike. Radi ostvarenja ovih ciljeva, sud može da se opredeli za jednu od tri zavodske mere: upućivanje u vaspitnu ustanovu, upućivanje u vaspitno-popravni dom i upućivanje u posebnu ustanovu za lečenje i osposobljavanje.

Predmet ovog rada su položaj i uloga zavodskih vaspitnih mera u sistemu maloletničkih krivičnih sankcija, posmatrani s materijalnog aspekta. Rad se sastoji iz tri dela. Prvi deo rada sadrži opšti pregled i najvažnije karakteristike krivičnih sankcija predviđenih za maloletne učinioce krivičnih dela u Republici Srbiji. Drugi deo rada ukazuje na specifičnosti zavodskih vaspitnih mera pojedinačno i uslove za njihovo izricanje i trajanje, dok je u trećem – poslednjem delu analizirana primena zavodskih vaspitnih mera u sudskoj praksi Republike Srbije za period od 2010. do 2020. godine kroz sledeće delove: izrečene krivične sankcije prema maloletnicima prema vrsti krivičnih sankcija; zastupljenost izrečenih zavodskih vaspitnih mera u odnosu na mere upozorenja i usmeravanja i mere pojačanog nadzora; izrečene zavodske vaspitne mere u odnosu na kategorije mlađi i stariji maloletnici i izrečene zavodske mere prema vrsti zavodskih vaspitnih mera.

## 2. Krivične sankcije prema maloletnicima u pozitivnom pravu Republike Srbije

Donošenjem Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica („Sl. glasnik RS“, broj 85/2005), (dalje u tekstu: ZOMUKD), u Republici Srbiji je jednim sveobuhvatnim zakonskim tekstom s materijalnog, procesnog i izvršnog aspekta regulisan pravni položaj maloletnika kao učinilaca krivičnih dela, kao i krivičnopravna zaštita maloletnih lica koja se pojavljuju kao oštećeni, odnosno svedoci pojedinih krivičnih dela (Soković, 2009, str. 16–17). Na taj način je predviđen i poseban sistem krivičnih sankcija za maloletnike, različit od sistema sankcija predviđenih za punoletna lica. Ovaj sistem obuhvata tri vrste krivičnih sankcija:

a) vaspitne mere;
b) kaznu maloletničkog zatvora i
c) mere bezbednosti predviđene čl. 79 Krivičnog zakonika („Sl. glasnik RS", br. 85/2005, 88/2005 – ispr., 107/2005 – ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019), osim mere bezbednosti zabrane vršenja poziva, delatnosti ili dužnosti.

**Vaspitne mere** su osnovne i najčešće primenjivane krivične sankcije u sistemu društvenog reagovanja na kriminalitet maloletnika, koje se, uz ispunjenje određenih uslova (1) uzrast učinioca od 14 do 18 godina u vreme izvršenja krivičnog dela i 2) izvršenje protivpravnog dela koje je u zakonu predviđeno kao krivično delo (Dragojlović & Matijašević, 2013, str. 51)) mogu izreći maloletnicima, kao i mlađim punoletnim licima, dok su kao jedine krivične sankcije predviđene za mlađe maloletnike (Veković, 2017, str. 179). Imaju za cilj, s jedne strane, da suzbiju vršenje krivičnih dela kojima se povređuju ili ugrožavaju dobra ili vrednosti, dok, s druge strane, utiču na maloletne učinioce da razviju i jačaju ličnu odgovornost, usmeravajući pravilan razvoj ličnosti (Lazarević & Grubač, 2005, str. 31–32). Sadržina i priroda vaspitnih mera ukazuju na razlikovanje lakših i težih vaspitnih mera iz razloga postojanja principa postupnosti u njihovom izboru i primeni. Međutim, u teoriji krivičnog prava nameće se sporno pitanje podele na lakše i teže vaspitne mere, s obzirom na njihovu svrhu i prirodu (Blagić, 2021, str. 215).

Maloletnom učiniocu krivičnog dela mogu se izreći sledeće vaspitne mere, sistematizovane u tri grupe (ZOMUKD, član 11):

1) vaspitne mere upozorenja i usmeravanja – sudski ukor i posebne obaveze;
2) vaspitne mere pojačanog nadzora – pojačan nadzor od strane roditelja, usvojioca ili staraoca, pojačan nadzor u drugoj porodici, pojačan nadzor od strane organa starateljstva i pojačan nadzor uz dnevni boravak u odgovarajućoj ustanovi za vaspitanje i obrazovanje maloletnika;
3) zavodske vaspitne mere – upućivanje u vaspitnu ustanovu, upućivanje u vaspitno- popravni dom, upućivanje u posebnu ustanovu za lečenje i osposobljavanje.

Pri izboru vaspitne mere sud uzima u obzir sledeće okolnosti: uzrast i zrelost maloletnika, druga svojstva njegove ličnosti i stepen poremećaja u društvenom ponašanju; težinu krivičnog dela, pobude iz kojih je delo učinio; sredinu i prilike u kojima je živeo; ponašanje posle učinjenog krivičnog dela i posebno da li je sprečio ili pokušao da spreči nastupanje štetne posledice, naknadio ili pokušao da naknadi pričinjenu štetu; da li je prema maloletniku ranije bila izrečena krivična ili prekršajna sankcija, kao i sve druge okolnosti koje mogu biti od uticaja za izricanje one mere kojom će se najbolje postići svrha vaspitnih mera (ZOMUKD, član 12). Krivica maloletnika se ne pominje, već se zakonodavac opredelio za ličnost maloletnika u celini, kao okolnost koju treba uzeti u obzir, imajući u vidu već pomenute specifičnosti biopsihičkog i socijalnog razvoja koje su karakteristične za uzrast maloletnika (Ranđelović, 2018, str. 250–251).

Kod izricanja vaspitnih mera pojačanog nadzora i zavodskih vaspitnih mera sud određuje samo vrstu mere, ali ne i njeno trajanje, jer ne može unapred da zna koliko je vremena potrebno radi postizanja njihove svrhe. U cilju efikasnijeg ostvarenja svrhe vaspitnih mera, sudu je data mogućnost da bude aktivan u praćenju postignutih rezultata i uspeha u primeni ovih mera i da zavisno od toga obustavi njihovu dalju primenu (Jovašević, 2006, str. 1080). Iz istih razloga sud može izmeniti svoju raniju odluku o vaspitnoj meri – „revizibilitet" vaspitnih mera (Jovašević & Kostić, 2012, str. 404). U skladu sa tim, ako se posle donošenja odluke o izricanju posebne obaveze, mere pojačanog nadzora ili zavodske mere pojave okolnosti kojih nije bilo u vreme donošenja odluke ili se za njih nije znalo, a koje bi značajno uticale na izbor vaspitne mere, ili ako se odluka o izrečenoj meri ne može izvršiti usled odbijanja maloletnika ili roditelja, usvojioca ili staraoca da postupe po izrečenoj meri ili po nalogu onoga ko meru izvršava ili ako nastupe druge okolnosti predviđene zakonom a koje bi bile od uticaja na donošenje odluke, sud može obustaviti izvršenje izrečene mere ili pak izrečenu meru zameniti drugom takvom merom (ZOMUKD, član 24 stav 1).

Takođe, ove vaspitne mere mogu se zameniti drugom merom, kojom se može bolje postići svrha vaspitnih mera ili se izrečena mera može obustaviti od daljeg izvršenja, u skladu sa postignutim uspehom u vaspitanju, ali uz određena ograničenja i to: 1) izvršenje mere upućivanja u vaspitnu ustanovu ne može se obustaviti pre isteka roka od šest meseci,

a do isteka ovog roka može se zameniti merom pojačanog nadzora uz dnevni boravak u odgovarajućoj ustanovi za vaspitanje i obrazovanje maloletnika, merom upućivanja maloletnika u vaspitno-popravni dom ili u posebnu ustanovu za lečenje i osposobljavanje; 2) izvršenje mere upućivanja u vaspitno-popravni dom ne može se obustaviti pre isteka roka od šest meseci, a do isteka ovog roka može se zameniti merom upućivanja maloletnika u vaspitnu ustanovu ili u posebnu ustanovu za lečenje i osposobljavanje (ZOMUKD, član 24). Nakon isteka roka od šest meseci, vaspitne mere upućivanje u vaspitnu ustanovu i upućivanje u vaspitno-popravni dom mogu se, na osnovu postignutog uspeha u vaspitanju, zameniti nekom drugom vaspitnom merom, bez ograničenja, izuzev sudskim ukorom (Soković, 2009, str. 94).

Pod Zakonom predviđenim uslovima moguće je i ponovno odlučivanje o izrečenim vaspitnim merama (ZOMUKD, član 25). Tako, ako je od pravnosnažnosti odluke kojom je izrečena neka od mera posebnih obaveza ili mera pojačanog nadzora proteklo više od šest meseci ili ako je od pravnosnažnosti odluke kojom je izrečena zavodska vaspitna mera proteklo više od jedne godine, a izvršenje nije započeto, sud će ponovo ceniti potrebu izvršenja izrečene mere, pri čemu može da odluči da se ranije izrečena mera izvrši, ne izvrši ili da se zameni drugom merom.

**Kazna maloletničkog zatvora** se može izreći samo starijem maloletniku koji je učinio krivično delo za koje je zakonom propisana kazna zatvora teža od pet godina i to ako zbog visokog stepena krivice, prirode i težine krivičnog dela ne bi bilo opravdano izreći vaspitnu meru (ZOMUKD, član 28). To je jedina vrsta kazne u sistemu maloletničkih krivičnih sankcija i posebna kazna koja se sastoji u oduzimanju slobode kretanja starijem maloletnom učiniocu težeg krivičnog dela za u sudskoj odluci određeno vreme i njegovom smeštaju u određenu ustanovu (Stojanović & Perić, 1996, str. 51–55).

Opšti minimum kazne maloletničkog zatvora propisan zakonom je šest meseci, dok je opšti maksimum određen dvojako. Pravilo je da se ona ne izriče u trajanju dužem od pet godina. Međutim, za krivična dela za koja je zakonom propisana kazna zatvora dvadeset godina ili kazna doživotnog zatvora ili u slučaju sticaja najmanje dva krivična dela za koja je propisana kazna zatvora teža od deset godina, maloletnički za-

tvor se može izreći u trajanju od deset godina. Sud kaznu maloletničkog zatvora odmerava u granicama koje su zakonom propisane i pritom, s jedne strane, mora imati u vidu svrhu maloletničkog zatvora, a s druge strane, dužan je da uzme u obzir dve grupe okolnosti: 1) sve opšte okolnosti koje utiču na visinu kazne, poput stepena krivice, jačine povrede ili ugrožavanja zaštićenog dobra i 2) određene okolnosti koje mora posebno da ima u vidu, a gde spadaju: stepen zrelosti maloletnika i vreme koje je potrebno za vaspitanje i stručno usavršavanje (Škulić, 2011, str. 306).

U okviru opšte svrhe krivičnih sankcija (KZ, čl. 4 st. 2), svrha vaspitnih mera i maloletničkog zatvora jeste u tome da se nadzorom, pružanjem zaštite i pomoći, kao i obezbeđivanjem opšteg i stručnog osposobljavanja utiče na razvoj i jačanje lične odgovornosti maloletnika, na njegovo vaspitanje i pravilan razvoj njegove ličnosti kako bi se obezbedilo ponovno uključivanje maloletnika u društvenu zajednicu. Pored toga, svrha maloletničkog zatvora je vršenje pojačanog uticaja na maloletnog učinioca da ubuduće ne vrši krivična dela, kao i na druge maloletnike da ne vrše krivična dela (ZOMUKD, član 10). Odredbe ovog člana ukazuju na značajne specifičnosti svrhe vaspitnih mera i maloletničkog zatvora u odnosu na svrhu krivičnih sankcija koje se primenjuju prema punoletnim učiniocima. Prema tome, osnovni cilj primene krivičnih sankcija prema maloletnicima jeste razvoj i jačanje lične odgovornosti maloletnika, kao i vaspitanje i pravilan razvoj njegove ličnosti. To pokazuje da se svrha sastoji pre svega u specijalnoj prevenciji, odnosno u delovanju na maloletnika koji je već učinio krivično delo. Osim te zajedničke svrhe, svrha maloletničkog zatvora jeste i generalna prevencija, kao i pojačano delovanje na planu specijalne prevencije (Stojanović, 2019, str. 395).

Maloletnicima se mogu izreći i mere bezbednosti, osim mere zabrane vršenja poziva, delatnosti i dužnosti (KZ, član 79), ako im je izrečena vaspitna mera ili kazna maloletničkog zatvora. Od ovog osnovnog pravila postoje i određena odstupanja. Naime, mere bezbednosti obaveznog lečenja alkoholičara (KZ, član 84) i obaveznog lečenja narkomana (KZ, član 83) ne mogu se izreći uz mere upozorenja i usmeravanja. S druge strane, postoji fakultativna mogućnost da se mera bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdravstvenoj ustanovi (KZ, član 81) izrekne samostalno (Veković, 2017, str. 364–365).

## 3. Zavodske vaspitne mere

Intencija ZOMUKD jeste da se ciljevi vaspitnih mera, po mogućnosti, ostvare bez propratne stigmatizacije maloletnika i traumatičnih posledica primene instrumentarijuma krivične represije (Knežević, 2010, str. 61). Upravo zbog toga primat u primeni imaju mere vaninstitucionalnog karaktera. Ipak, ako je izvršenjem krivičnog dela izražena jasna kriminalna volja, a prisutna je i izuzetna vaspitna zapuštenost kod maloletnika, društvena reakcija se najčešće manifestuje kroz određivanje kontinuiranog institucionalnog tretmana (Matijašević & Dragojlović, 2013, str. 86).

Najteža vrsta vaspitnih mera jesu zavodske mere – mere institucionalnog tretmana (Petrović, Jovašević & Ferhatović, 2006, str. 371–394). Izriču se kada je prema maloletniku potrebno preduzeti trajnije mere vaspitanja, lečenja i osposobljavanja uz njegovo potpuno odvajanje od dotadašnje sredine, a radi vršenja pojačanog uticaja na maloletnika. Poseduju evidentne elemente retributivnosti jer podrazumevaju oduzimanje slobode kretanja i prinudno nalaganje određenog programa postupanja u posebnoj ustanovi (Soković & Bejatović, 2009, str. 86). Zavodske mere se izriču kao poslednje sredstvo i mogu trajati u zakonom određenim granicama samo onoliko vremena koliko je potrebno da bi se ostvarila svrha vaspitnih mera (ZOMUKD, član 11). Potreba za izricanjem zavodskih mera postoji kada je reč o maloletnim prestupnicima koji su toliko vaspitno zapušteni da mere pojačanog nadzora prema njima nisu dovoljno efikasno sredstvo za postizanje njihove resocijalizacije (Jovašević, 2011, str. 115).

### 3.1. Upućivanje u vaspitnu ustanovu

Upućivanje u vaspitnu ustanovu, kao najlakša zavodska vaspitna mera, izriče se kada maloletnika treba odvojiti od dotadašnje sredine i obezbediti mu pomoć i stalni nadzor od strane stručnih lica (ZOMUKD, član 20). Vaspitna zapuštenost i problemi u ponašanju maloletnika su takvi da samo odvajanje nije dovoljno. Za njega je još značajnije vršenje pojačanog uticaja putem pomoći i stalnog nadzora stručnih lica koje se ne može ostvariti bez upućivanja u specijalizovanu ustanovu (Soković, 2009, str. 86). To su ustanove opšteg tipa ili zavodi za vaspitanje omladine,

gde su smešteni i maloletnici koji nisu izvršili krivično delo, ali koji imaju određene poremećaje u ponašanju, kao što su vaspitna zapuštenost, predelinkventno ponašanje i slično (Radoman, 2021, str. 269). Ova ustanova treba da omogući smeštaj i zadovoljenje vaspitnih, zdravstvenih, obrazovnih, sportskih i drugih razvojnih potreba maloletnika. Smatra se da će boravak u takvoj ustanovi, uz stalni nadzor stručnih lica, pozitivno uticati na maloletne učinioce krivičnih dela (Mirić, 2021, str. 454).

Vaspitna mera upućivanje u vaspitnu ustanovu relativno je neodređenog trajanja. Pri izricanju, sud ne određuje vreme trajanja boravka u vaspitnoj ustanovi, nego o tome naknadno odlučuje pre svega na osnovu postignutog uspeha u vaspitanju. Ova mera može trajati minimalno šest meseci a maksimalno dve godine, s tim da postoji obaveza suda da svakih šest meseci razmatra da li postoji osnov za obustavu izvršenja mere ili za njenu zamenu drugom vaspitnom merom (ZOMUKD, član 20). Maloletnik u ovoj ustanovi može da ostane najduže do navršene dvadeset prve godine života.

U praksi postoje problemi u primeni ove mere (oko izbora ustanove, oko troškova, te neorganizovanog korišćenja slobodnog vremena maloletnika tokom letnjih meseci), jer se sve svelo na dve vaspitne ustanove i to na Zavod za vaspitanje dece i omladine u Beogradu i na Vaspitnu ustanovu u Nišu (Simonović, 2012, str. 302).

### 3.2. Upućivanje u vaspitno-popravni dom

Vaspitna mera upućivanje u vaspitno-popravni dom predstavlja najstrožu vrstu vaspitnih mera koja se može izreći maloletnim učiniocima krivičnih dela i graniči se s kaznom maloletničkog zatvora. Ovu meru sud izriče maloletniku prema kome, pored izdvajanja iz dotadašnje sredine, treba primeniti i pojačane mere nadzora i posebne stručne programe vaspitanja. Dakle, cilj primene ove zavodske mere je, pored izdvajanja maloletnika iz sredine u kojoj živi, i njegovo podvrgavanje trajnom postupku vaspitavanja u ustanovama koje su za to specijalno namenjene, opremljene i osposobljene (Lazarević & Grubač, 2005, str. 58).

Pri odlučivanju da li će izreći ovu najtežu vaspitnu meru, sud posebno uzima u obzir sledeće okolnosti: raniji život maloletnika, stepen

poremećaja ponašanja, težinu i prirodu učinjenog krivičnog dela i okolnost da je prema maloletniku ranije bila izrečena neka prekršajna ili krivična sankcija (ZOMUKD, čl. 21 st. 2). Navedene okolnosti mogu se podeliti u dve grupe – jedne su subjektivne prirode i odnose se na ličnost maloletnika, a druge su objektivne prirode i tiču se učinjenog krivičnog dela i imaju dvostruki cilj – da pruže potpunu sliku o maloletniku i o samom učinjenom krivičnom delu (Nikolić & Joksić, 2011, str. 166–168). Naime, sud mora da poseduje relevantne podatke o okolnostima subjektivne prirode, odnosno dokumenta o ranijem životu maloletnika, podatke o stepenu njegovog poremećaja u ponašanju, kao i o okolnostima da li je prema njemu već vođena neka vrsta postupka koja je rezultirala izricanjem krivične ili prekršajne sankcije (Skakavac, 2012, str. 153). U pogledu objektivnih okolnosti, odnosno učinjenog krivičnog dela, Zakon ne upućuje samo na težinu dela, kao što je to slučaj kod vaspitnih mera, nego i na prirodu dela. Tako krivična dela protiv života i tela ukazuju na to da je socijalizacija maloletnika u negativnom smeru poodmakla, te da je potrebno reagovati na primeren, institucionalan način. Nesumnjivo je i da recidivizam predstavlja okolnost koja može ishodovati upućivanjem maloletnika u vaspitno-popravni dom (Knežević, 2010, str. 66).

Kao i kod zavodske vaspitne mere upućivanja u vaspitnu ustanovu, propisano vremensko trajanje ima relativan karakter. U vaspitno-popravnom domu maloletnik ostaje najmanje šest meseci a najviše četiri godine. Sud pri izricanju ne određuje njeno trajanje, nego o tome naknadno odlučuje. U skladu sa tim postoji obaveza suda da svakih šest meseci razmatra da li postoje osnovi za obustavu izvršenja mere ili za njenu zamenu drugom vaspitnom merom (ZOMUKD, čl. 21 st. 3). Maloletnik u ovom domu može da ostane do navršene dvadeset treće godine.

Institut uslovnog otpusta zakonodavac je predvideo na istovetan način i za upućivanje u vaspitnu ustanovu i za upućivanje u vaspitno-popravni dom. Uslovi pod kojima se, ako su kumulativno ispunjeni, može primeniti uslovni otpust odnose se na protek vremena i postignut uspeh u vaspitanju. Stoga, maloletnika koji je u vaspitnoj ustanovi ili vaspitno-popravnom domu proveo najmanje šest meseci sud može uslovno otpustiti iz zavoda, odnosno ustanove, ako se na osnovu uspeha postignutog u vaspitanju može osnovano očekivati da on neće ubuduće vršiti krivična dela i da će se u sredini u kojoj bude živeo dobro vladati

(ZOMUKD, čl. 22 st. 1). Za vreme trajanja uslovnog otpusta sud može odlučiti da se prema maloletniku odredi neka mera pojačanog nadzora uz mogućnost primenjivanja jedne ili više odgovarajućih posebnih obaveza. Uslovni otpust traje najduže do isteka zakonskog roka upućivanja u vaspitnu ustanovu ili vaspitno-popravni dom ako pre toga sud nije obustavio izvršenje vaspitne mere ili je zamenio drugom merom.

Opozivanje uslovnog otpusta je uvek fakultativno i uslovljeno je lošim ponašanjem ili nepridržavanjem obaveza, uz određenu meru pojačanog nadzora. To će biti slučaj ako maloletnik za vreme trajanja uslovnog otpusta učini novo krivično delo ili ako određena mera pojačanog nadzora ne postiže svrhu ili ako maloletnik ne ispunjava posebne obaveze koje su mu određene uz meru pojačanog nadzora. Zakon, takođe, propisuje da se vreme provedeno na uslovnom otpustu ne uračunava u zakonsko trajanje izrečene vaspitne mere (ZOMUKD, čl. 22 st. 4).

### 3.3. Upućivanje u posebnu ustanovu za lečenje i osposobljavanje

Krivična dela mogu vršiti i maloletnici s određenim nedostacima koji imaju karakter psihofizičkih poremećaja. Stoga i vaspitni tretman ovih maloletnika mora biti specifičan. Imajući u vidu ovu činjenicu, kao i potrebu doslednog sprovođenja principa individualizacije tretmana maloletnih delinkvenata, naše maloletničko krivično zakonodavstvo predviđa zavodsku vaspitnu meru upućivanje u posebnu ustanovu za lečenje i osposobljavanje (Knežević, 2010, str. 67). Dakle, ova vaspitna mera izriče se maloletnicima ometenim u psihofizičkom razvoju (gluvi, slepi, gluvonemi, mentalno defektni i sl.) ili sa psihičkim poremećajima – psihičkim bolestima, neurozom i drugo (Bogojević, 2013, str. 55).

Dva su osnovna načina izricanja ove zavodske vaspitne mere:

1) fakultativni – umesto mere upućivanja u vaspitnu ustanovu ili vaspitno-popravni dom,
2) obligatorni – umesto mere bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdravstvenoj ustanovi.

Sudu, u prvom slučaju, stoji na raspolaganju fakultativna mogućnost da maloletniku, umesto upućivanja u vaspitnu ustanovu i upućivanja u vaspitno-popravni dom, odredi meru upućivanja u posebnu ustanovu za

lečenje i osposobljavanje, s obzirom na ometenost u psihofizičkom razvoju ili na postojanje psihičkih poremećaja (ZOMUKD, čl. 23 st. 1). U drugom slučaju, kada maloletniku treba izreći meru bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdravstvenoj ustanovi, ova zavodska vaspitna mera izriče se obavezno pod uslovom da se u posebnoj ustanovi za lečenje i osposobljavanje može obezbediti čuvanje i lečenje maloletnika i time postići svrha te mere bezbednosti (ZOMUKD, čl. 23 st. 2).

Trajanje zavodske mere upućivanja u posebnu ustanovu za lečenje i osposobljavanje zavisi od toga da li je ova mera izrečena umesto ostalih zavodskih vaspitnih mera ili umesto mere bezbednosti. U skladu sa tim, ukoliko je ova vaspitna mera izrečena umesto zavodske mere upućivanja u vaspitnu ustanovu i upućivanja u vaspitno-popravni dom, maloletnik u posebnoj ustanovi za lečenje i osposobljavanje može da ostane najviše tri godine s tim da sud svakih šest meseci razmatra da li postoje osnovi za obustavu izvršenja mere ili za njenu zamenu drugom merom (ZOMUKD, čl. 23 st. 3). Minimalno vreme boravka u ovoj ustanovi je šest meseci iz razloga što je to zakonski minimum trajanja vaspitnih mera umesto kojih se izriče mera upućivanja u posebnu ustanovu za lečenje i osposobljavanje (Soković, 2009, str. 90). Ako je ova vaspitna mera izrečena umesto mere bezbednosti, maloletnik u posebnoj ustanovi za lečenje i osposobljavanje ostaje dok je potrebno s tim da kada navrši dvadeset jednu godinu izvršenje mere se nastavlja u ustanovi u kojoj se izvršava mera bezbednosti obaveznog psihijatrijskog lečenja i čuvanja u zdravstvenoj ustanovi (ZOMUKD, čl. 23 st. 4). To je logična posledica činjenice da zavodska mera upućivanja u ustanovu za lečenje i osposobljavanje, kao supstitut mere bezbednosti medicinskog karaktera, deli i njenu sudbinu u pogledu trajanja (Knežević, 2010, str. 68).

Poseban problem u primeni predstavlja nemogućnost izvršenja vaspitne mere upućivanja u posebnu ustanovu za lečenje i osposobljavanje, imajući u vidu nepostojanje takve ustanove u Republici Srbiji. Nepostojanje ovakve ustanove sprečava efikasno izvršenje (a time i prevenira izricanje) ove vaspitne mere i u sadejstvu sa nepostojanjem posebnog odeljenja za maloletnike u okviru Specijalne zatvorske bolnice čini ovu kategoriju maloletnika sistemski nevidljivim (Karić i dr., 2021, str. 39).

## 4. Primena zavodskih vaspitnih mera u sudskoj praksi

U ovom radu analizirali smo vrste i mere izrečenih krivičnih sankcija prema maloletnicima u Republici Srbiji u periodu od 2010. do 2020. godine, a na osnovu zvaničnih statističkih pokazatelja Republičkog zavoda za statistiku Republike Srbije (Republički zavod za statistiku, br. 547/2012, str. 43–51; Republički zavod za statistiku, br. 559/2012, str. 45–53; Republički zavod za statistiku, br. 577/2013, str. 49–57; Republički zavod za statistiku, br. 589/2014, str. 49–57; Republički zavod za statistiku, br. 604/2015, str. 45–53; Republički zavod za statistiku, br. 618/2016, str. 45–53; Republički zavod za statistiku, br. 630/2017, str. 45–53; Republički zavod za statistiku, br. 641/2018, str. 45–53; Republički zavod za statistiku, br. 654/2019, str. 45–53; Republički zavod za statistiku, br. 666/2020, str. 45–53 i Republički zavod za statistiku, br. 678/2021, str. 45–53).

Ova analiza je podeljena u nekoliko delova:

a) izrečene krivične sankcije prema maloletnicima prema vrsti krivičnih sankcija (Tabela 1);
b) zastupljenost izrečenih zavodskih vaspitnih mera u odnosu na mere upozorenja i usmeravanja i mere pojačanog nadzora (Tabela 2);
c) izrečene zavodske vaspitne mere prema kategoriji mlađi i stariji maloletnici (Tabela 3) i
d) izrečene zavodske mere prema vrsti zavodskih vaspitnih mera (Tabela 4).

**Tabela 1.** Izrečene krivične sankcije prema maloletnicima u periodu 2010–2020. godine

| Godina | Ukupno maloletnika | Vaspitne mere | % | Kazna maloletničkog zatvora | % |
|---|---|---|---|---|---|
| **2010.** | 1640 | 1635 | 99,70 | 5 | 0,30 |
| **2011.** | 2290 | 2277 | 99,43 | 13 | 0,57 |
| **2012.** | 2302 | 2300 | 99,91 | 2 | 0,09 |
| **2013.** | 2648 | 2640 | 99,70 | 8 | 0,30 |
| **2014.** | 2034 | 2028 | 99,70 | 6 | 0,30 |
| **2015.** | 1926 | 1917 | 99,53 | 9 | 0,47 |
| **2016.** | 2032 | 2023 | 99,56 | 9 | 0,44 |
| **2017.** | 1633 | 1626 | 99,60 | 7 | 0,40 |
| **2018.** | 1548 | 1540 | 99,50 | 8 | 0,50 |
| **2019.** | 1676 | 1672 | 99,80 | 4 | 0,20 |
| **2020.** | 1239 | 1236 | 99,76 | 3 | 0,24 |

Na osnovu podataka u Tabeli 1. možemo zaključiti sledeće:

- Ukupan broj izrečenih krivičnih sankcija prema maloletnim učiniocima krivičnih dela pokazuje nejednaku raspodeljenost po posmatranim godinama. Počev od 2010. godine, kada je izrečeno 1640 krivičnih sankcija, uočava se trend rasta u narednih sedam godina (2011, 2012, 2013, 2014, 2015. i 2016. godine), a zatim pad u poslednje četiri godine posmatranog perioda (2017, 2018, 2019. i 2020. godine) i
- Primarni oblik reagovanja na maloletničko prestupništvo su vaspitne mere i taj broj procentualno iznosi više od 99%, dok se kazna maloletničkog zatvora izriče u manje od 1% slučajeva.

**Tabela 2.** Izrečene zavodske vaspitne mere u odnosu na mere upozorenja i usmeravanja i mere pojačanog nadzora u periodu 2010–2020. godine

| Godina | Ukupno vaspitne mere | Mere upozorenja i usmeravanja | Mere pojačanog nadzora | Zavodske vaspitne mere |
|---|---|---|---|---|
| **2010.** | 1635 | 747 | 829 | 59 |
| **2011.** | 2277 | 1014 | 1159 | 104 |
| **2012.** | 2300 | 995 | 1200 | 105 |
| **2013.** | 2640 | 1122 | 1377 | 141 |
| **2014.** | 2028 | 1004 | 935 | 89 |
| **2015.** | 1917 | 980 | 863 | 74 |
| **2016.** | 2023 | 1045 | 877 | 101 |
| **2017.** | 1626 | 850 | 701 | 75 |
| **2018.** | 1540 | 717 | 756 | 67 |
| **2019.** | 1672 | 785 | 787 | 100 |
| **2020.** | 1236 | 769 | 427 | 40 |

Na osnovu podataka navedenih u Tabeli 2. za posmatrani period možemo zaključiti:

- da se u odnosu na ostale vaspitne mere zavodske vaspitne mere izriču najređe;
- da se mere upozorenja i usmeravanja i mere pojačanog nadzora primarno izriču maloletnim učiniocima krivičnih dela, kao i da je taj broj višestruko veći u odnosu na zavodske vaspitne mere i
- da broj izrečenih zavodskih vaspitnih mera pokazuje nejednaku raspodeljenost. Naime, 2010. godine je izrečeno njih 59, te u godinama koje slede primećujemo njihov rast u odnosu na 2010. godinu da bi u toku 2020. godine taj broj iznosio 40, što ujedno predstavlja i najmanji broj izrečenih zavodskih vaspitnih mera. Najviše je izrečeno u toku 2013. godine i taj broj iznosi 141.

**Tabela 3.** Izrečene zavodske vaspitne mere prema kategoriji mlađi i stariji maloletnici u periodu 2010–2020. godine

| Godina | Ukupno zavodske vaspitne mere | Mlađi maloletnici | Stariji maloletnici |
|---|---|---|---|
| **2010.** | 59 | 34 | 25 |
| **2011.** | 104 | 60 | 44 |
| **2012.** | 105 | 52 | 53 |
| **2013.** | 141 | 64 | 77 |
| **2014.** | 89 | 35 | 54 |
| **2015.** | 74 | 38 | 36 |
| **2016.** | 101 | 50 | 51 |
| **2017.** | 75 | 36 | 39 |
| **2018.** | 67 | 41 | 26 |
| **2019.** | 100 | 52 | 48 |
| **2020.** | 40 | 21 | 19 |

Na osnovu podataka u Tabeli 3. za posmatrani period možemo zaključiti sledeće:

- od ukupnog broja izrečenih, zavodske vaspitne mere se češće izriču mlađim nego starijim maloletnicima;
- prema mlađim maloletnicima najmanje je izrečeno zavodskih vaspitnih mera tokom 2020. godine – 21, a najviše u toku 2013. godine i to ukupno 64;
- najmanji broj izrečenih zavodskih vaspitnih mera prema starijim maloletnicima je u toku 2020. godine i iznosi 19, dok ih je najviše zabeleženo 2013. godine, čak 77, što ujedno predstavlja i godinu kada je više izrečenih zavodskih vaspitnih mera prema starijim maloletnicima nego prema mlađim, ali i godinu sa najviše izrečenih vaspitnih mera institucionalnog karaktera uopšte.

**Tabela 4.** Izrečene zavodske vaspitne mere prema vrsti: upućivanje u vaspitnu ustanovu, upućivanje u vaspitno-popravni dom, upućivanje u posebnu ustanovu za lečenje i osposobljavanje u periodu 2010–2020. godine

| Godina | Ukupno zavodske vaspitne mere | Upućivanje u vaspitnu ustanovu | Upućivanje u vaspitno-popravni dom | Upućivanje u posebnu ustanovu za lečenje i osposobljavanje |
|---|---|---|---|---|
| **2010.** | 59 | 11 | 47 | 1 |
| **2011.** | 104 | 35 | 68 | 1 |
| **2012.** | 105 | 33 | 72 | - |
| **2013.** | 141 | 51 | 88 | 2 |
| **2014.** | 89 | 24 | 60 | 5 |
| **2015.** | 74 | 16 | 57 | 1 |
| **2016.** | 101 | 33 | 64 | 4 |
| **2017.** | 75 | 19 | 55 | 1 |
| **2018.** | 67 | 13 | 51 | 3 |
| **2019.** | 100 | 19 | 78 | 3 |
| **2020.** | 40 | 11 | 25 | 4 |

Na osnovu podataka iz Tabele 4. možemo zaključiti sledeće:

- od ukupnog broja izrečenih zavodskih vaspitnih mera u posmatranom periodu maloletnicima se najčešće izriče najteža vrsta – upućivanje u vaspitno-popravni dom, sledi upućivanje u vaspitnu ustanovu, dok se najređe izriče upućivanje u posebnu ustanovu za lečenje i osposobljavanje;
- najmanje izrečenih vaspitnih mera upućivanja u vaspitnu ustanovu, njih 11, bilo je tokom 2010. i 2020. godine, dok je najviše izrečenih 2013. godine – 51;
- najmanje upućivanja u vaspitno-popravni dom bilo je 2020. godine – 25, a najviše 2013. godine (88) kada je najviše izrečeno i mera upućivanja u vaspitnu ustanovu i
- upućivanje u posebnu ustanovu za lečenje i osposobljavanje je veoma retko. Ova mera nije nikome izrečena 2012. godine, a za ceo posmatrani period kreće se do maksimalnih pet izrečenih 2014. godine.

## 5. Zaključak

U sistemu krivičnih sankcija prema maloletnim učiniocima krivičnih dela, vaspitanje je pravilo, a kažnjavanje izuzetak. Stoga se maloletničko krivično pravo sve više okreće merama neinstitucionalnog karaktera u izvršenju krivičnih sankcija prema maloletnicima. Zavodske vaspitne mere ipak predstavljaju značajan faktor u borbi protiv maloletničkog kriminaliteta.

Analizirajući sudsku praksu u Republici Srbiji, možemo zaključiti da nejednaka raspodeljenost ukupnog broja izrečenih krivičnih sankcija prema maloletnim učiniocima krivičnih dela ukazuje da stopa maloletničkog kriminaliteta varira iz godine u godinu, te da je poslednjih godina primetan trend pada. Primaran oblik reagovanja na maloletničko prestupništvo predstavljaju vaspitne mere vaninstitucionalnog karaktera, dok nejednaka raspodeljenost broja izrečenih zavodskih vaspitnih mera dovodi do zaključka da se zavodske vaspitne mere, kao najteža vrsta vaspitnih mera, izriču u najmanjem broju i kao poslednje sredstvo pre nego što se maloletniku izrekne kazna maloletničkog zatvora, pa su stoga i ograničenog vremenskog trajanja sa naglašenom ulogom odgovarajućih specijalizovanih ustanova. Interesantno je da se mlađim maloletnicima češće izriču ove mere, što ostavlja prostor za dalje istraživanje u ovoj oblasti.

Maloletnicima se najčešće izriče najteža vrsta zavodskih vaspitnih mera – upućivanje u vaspitno-popravni dom, dok se kao eventualni nedostatak ove vrste vaspitnih mera može navesti činjenica da postoje problemi u primeni zavodskih mera upućivanja u vaspitnu ustanovu i upućivanja u posebnu ustanovu za lečenje i osposobljavanje.

### Literatura:

Blagić, D. (2021). Sistem mera i sankcija prema maloletnicima. Naučnoistraživački projekat „Pravni aspekti savremenih društvenih kretanja u Republici Srbiji". Kosovska Mitrovica: *Univerzitet u Prištini sa privremenih sedištem u Kosovskoj Mitrovici, Pravni fakultet*, str. 211–220.

Bogojević, R. (2013). Execution of Institucional Correctional Measures Imposed on Juvenile Perpetrators of Property Crime in The Positive Legislation of The Republic of Serbia. *Facta Universitatis – Law and Politics*, Vol. 11,

N°1. Niš: Faculty of Law, University of Niš, pp. 49–57.

Veković, V. V. (2017). Novi sistem krivičnih sankcija prema maloletnicima u Republici Srbiji, Zbornik radova „Nacionalno i međunarodno pravo – aktuelna pitanja i teme", Tom I. Kosovska Mitrovica: *Univerzitet u Prištini sa privremenih sedištem u Kosovskoj Mitrovici*, Pravni fakultet, str. 361–377.

Veković, V. (2017). Reform of Criminal Sanctions Systems in Juvenile Criminal Matters in Serbia, International Scientific Conference „Archibald Reiss Days", Tom II, Vol. II. Belgrade: *Academy of Criminalistic And Police Studies*, pp. 177–187.

Dragojlović, J., & Matijašević, J. (2013). Osnovna obeležja vaspitnih mera u Srbiji. *Pravo – teorija i praksa*, Vol. 30, broj 4–6. Novi Sad: Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe, str. 47–58.

Jovašević, D. (2011). *Maloletničko krivično pravo*. Centar za publikacije. Niš: Pravni fakultet.

Jovašević, D. (2006). Osnovne karakteristike novog maloletničkog krivičnog prava Republike Srbije, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 27, broj 2. Rijeka: *Pravni fakultet Sveučilišta u Rijeci*, str. 1055–1087.

Jovašević, D., & Kostić, M. (2012). *Politika suzbijanja kriminaliteta*. Niš: Pravni fakultet, Centar za publikacije.

Karić, T., Protić, S., Kolaković-Bojović, M., Paraušić, A., & Drndarević, N. (2021). Analiza uticaja primene Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u periodu od 2006. do 2020. godine. *Institut za kriminološka i sociološka istraživanja i Organizacijom za evropsku bezbednost i saradnju - Misija u Srbiji*, Beograd.

Knežević, S. S. (2010). *Maloletničko krivično pravo – materijalno, procesno i izvršno.* Centar za publikacije. Niš: Pravni fakultet.

Lazarević, Lj., & Grubač, M. (2005). Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica. Beograd: *Justinijan*.

Matijašević, J., & Dragojlović, J. (2013). Zavodske vaspitne mere u maloletničkom krivičnom pravu Srbije. *Bezbednost*, Vol. 55, broj 1. Beograd, str. 84–97.

Mirić, F. (2021). Vaspitna mera upućivanje u vaspitnu ustanovu u uporednom pravu, Zbornik radova sa šeste međunarodne naučne konferencije „Društvene devijacije – Unapređenje kvaliteta života djece i mladih". Banja Luka: *Centar modernih znanja*, str. 453–459.

Nikolić, Z., & Joksić, I. (2011). Maloletnička delinkvencija – socijalnopsihološki i krivičnopravni aspekti. Beograd: Institut za kriminološka i sociološka istraživanja.

Petrović, B., Jovašević, D., & Ferhatović, A. (2006). Izvršenje vaspitnih mjera. *Pravna riječ*, broj 7. Banja Luka, str. 371–394.

Radoman, M. (2021). *Penologija i kazneno izvršno pravo*. Beograd: Udruženje pravnika Srbije.

Ranđelović, V. (2018). Krivične sankcije koje se mogu izreći maloletnicima u pravu Republike Srbije i međunarodni standardi, Usklađivanje pravnog sistema Srbije sa standardima Evropske unije, Knjiga VI. Kragujevac: Pravni fakultet Univerziteta u Kragujevcu, Institut za pravne i društvene nauke, str. 247–261.

Simonović, S. (2012). Izvršenje vaspitnih mera i kazne maloletničkog zatvora, Maloletničko pravosuđe u Republici Srbiji – zbornik radova. Beograd: Centar za prava deteta, str. 300–304.

Skakavac, T. (2012). Zavodske vaspitne mere u zakonodavstvu Republike Srbije i Republike Srpske – vrste i karakteristike*, Godišnjak Pravnog fakulteta Istočno Sarajevo*, godina III, broj 1. Republika Srpska-BiH, str. 145–159.

Soković, S., & Bejatović, S. (2009). *Maloletničko krivično pravo*. Kragujevac: Pravni fakultet u Kragujevcu, Institut za pravne i društvene nauke.

Stojanović, Z. (2019). *Krivično pravo – opšti deo*. Beograd: Pravna knjiga.

Stojanović, Z., & Perić, O. (1996). *Komentar Krivičnog zakona Republike Srbije i Krivični zakon Crne Gore s objašnjenjima*. Beograd: Službeni list.

Škulić, M. (2011). *Maloletničko krivično parvo*. Beograd: Službeni glasnik.

**Pravni propisi:**

Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica („Službeni glasnik RS“ broj 85/2005).

Zakonik o krivičnom postupku („Službeni glasnik RS“ broj72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – odluka US i 62/2021 – odluka US).

Zakon o izvršenju krivičnih sankcija („Službeni glasnik RS“ broj 55/2014 i 35/2019).

Krivični zakonik („Službeni glasnik RS“ broj 85/2005, 88/2005 – ispr., 107/2005 – ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019).

**Internet izvori:**

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2010. BILTEN 547. *Republički zavod za statistiku*, Beograd, 2012. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2012/Pdf/G20125547.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2011. BILTEN 559. *Republički zavod za statistiku*, Beograd, 2012. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2012/Pdf/G20125559.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2012. BILTEN 577. *Republički zavod za statistiku*, Beograd, 2013. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2013/Pdf/G20135577.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2013. BILTEN 589. *Republički zavod za statistiku*, Beograd, 2014. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2014/Pdf/G20145589.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2014. BILTEN 604. *Republički zavod za statistiku*, Beograd, 2015. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2015/Pdf/G20155604.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2015. BILTEN 618. *Republički zavod za statistiku*, Beograd, 2016. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2016/Pdf/G20165618.pdf, 14.04.2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2016. BILTEN 630. *Republički zavod za statistiku*, Beograd, 2017. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2017/Pdf/G20175630.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2017. BILTEN 641. *Republički zavod za statistiku*, Beograd, 2018. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2018/Pdf/G20185641.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2018. BILTEN 654. *Republički zavod za statistiku*, Beograd, 2019. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2019/Pdf/G20195654.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2019. BILTEN 666. *Republički zavod za statistiku*, Beograd, 2020. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2020/Pdf/G20205666.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2020. BILTEN 678. *Republički zavod za statistiku*, Beograd, 2021. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2021/Pdf/G20215678.pdf, 14. 04. 2022.

# INSTITUTIONAL CORRECTIVE MEASURES IN THE JUVENILE CRIMINAL SANCTIONS SYSTEM

**Abstract.** The author examines the specific features of institutional corrective measures from the material perspective. Although implementing non-institutional reformatory measures does take precedence, the juveniles who require more permanent corrective measures, medical treatment, and training are sentenced to institutional corrective measures by the court. This is often accompanied by a complete separation from their current environment, in order to exert augmented influence on the juvenile persons. There are three measures in the positive legislation: referral to a reformatory institution, referral to a correctional facility and referral to a special institution for medical treatment and training. The paper includes research results on the application of institutional corrective measures in case law of the Republic of Serbia between 2010 and 2020.

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**Key words:** juveniles, institutional corrective measures, referral, reformatory institution, correctional facility, special institution for medical treatment and training, case law.

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## 1. Introduction

The system of criminal sanctions of the Republic of Serbia against juvenile offenders consists of 1) corrective measures; 2) security measures and 3) juvenile prison sentence. In addition to criminal sanctions, Serbian juvenile criminal law provides for alternative, diversionary measures in the form of corrective orders.

Institutional corrective measures represent the most demanding and the hardest type of correctional measures. They are imposed on juveniles whose condition requires more permanent corrective measures, treatment, and training along with complete separation from their current environment in order to exert augmented influence on such juveniles. In order to achieve these goals, the court can decide on one of three institutional measures: referral to a reformatory institution, referral to a correctional facility and referral to a special institution for medical treatment and training.

The subject of this paper is the position and role of institutional corrective measures in the system of juvenile criminal sanctions, viewed from the material aspect. The paper consists of three parts. The first part of the paper contains a general overview and the most important features of the criminal sanctions intended for juvenile offenders in the Republic of Serbia. The second part of the paper discusses the specific features of institutional corrective measures individually and the conditions of their imposition and duration. The third part examines the application of institutional corrective measures in the judicial case law of the Republic of Serbia from 2010 to 2020 through the following parts: imposed criminal sanctions against juveniles according to the type of criminal sanctions; representation of imposed institutional corrective measures relative to measures of warning and guidance, and measures of increased supervision; imposed institutional corrective measures relative to the categories of younger and older juveniles and imposed institutional measures according to the type of institutional corrective measures.

## 2. Criminal sanctions against juveniles in the positive law of the Republic of Serbia

The Law on Juvenile criminal offenders and criminal protection of juveniles ("Official Gazette of the Republic of Serbia", No. 85/2005), (hereinafter: ZOMUKD), is a comprehensive legal act from the material, procedural and executive aspect, which regulates the legal position of juveniles as perpetrators of criminal offences, as well as the criminal protection of juveniles who appear as victims, as well as witnesses of certain criminal offences (Soković, 2009, pp. 16-17). In this way, a special system of criminal sanctions for juveniles is provided, different from the system of sanctions intended for adults. This system includes three types of criminal sanctions:

a) corrective measures.
b) juvenile prison sentence.
c) security measures, stipulated by Article 79 of the Criminal Code ("Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 – cc., 107/2005 – cc., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019), except for the prohibition of making calls, business activities or duties.

**Corrective measures** are the basic and most frequently applied criminal sanctions in the system of social response to juvenile delinquency. If the following conditions are fulfilled, i.e., (1) the age of offender is from fourteen to eighteen years at the time of the criminal offence and (2) a perpetration of an unlawful act provided under the law as a criminal offence (Dragojlović & Matijašević, 2013, p. 51)) these measures may be imposed on juveniles, as well as younger adults, while they are the only criminal sanctions intended for younger juveniles (Veković, 2017, p. 179). The intention is, on one hand, to suppress the perpetration of criminal offences that damage or endanger goods or values, while on the other hand, they influence juvenile offenders to develop and strengthen personal responsibility, guiding proper personality development (Lazarević & Grubač, 2005, p. 31–32). The content and nature of corrective measures indicate a distinction between lighter and stricter corrective

measures due to the existence of the principle of gradualism in their selection and application. However, in the criminal law theory, the controversial question of division into lighter and harder corrective measures arises, regarding their purpose and nature (Blagić, 2021, p. 215).

The following corrective measures, systematized into three groups, can be imposed on a juvenile perpetrator of a criminal offense (ZOMUKD, art. 11):

1) corrective measures of warning and guidance: Court admonition and alternative sanctioning.

2) Measures of increased supervision: increased supervision by parents, adoptive parent or guardian, increased supervision in foster family, increased supervision by guardianship authority, increased supervision with daily attendance in relevant reformatory and educational institution for juveniles.

3) Institutional corrective measures: referral to reformatory institution, referral to correctional facility, referral to special institution for medical treatment and training.

When selecting the corrective measure, the court takes under deliberation following circumstances: the age and maturity of the juvenile, other aspects of his/her character and the degree of deviation in social behavior, gravity of the offence, motives for committing the offence, living circumstances and environment of the juvenile, his/her behavior following the perpetration of the offence, particularly whether he/she prevented or attempted to prevent occurrence of damaging results, compensated or attempted to compensate for the damage caused, whether the juvenile has any prior criminal or misdemeanor conviction, as well as all other relevant circumstances regarding imposition of such measure that would best serve to achieve the purpose of corrective measures (ZOMUKD, Art. 12). The guilt of juveniles is not mentioned, rather the legislator decided to take into an account the personality of juveniles, as a circumstance that should be considered, bearing in mind the already mentioned specificities of biopsychological and social development that are characteristic of the juvenile age group (Ranđelović, 2018, pp. 250–251).

When imposing corrective measures of increased supervision and institutional corrective measures, the court determines only the type of a measure, but not its duration, because it cannot know in advance how much time is needed to achieve their purpose. To achieve the purpose of corrective measures more effectively, the court is given an opportunity to be active in monitoring the results and success achieved in the application of these measures and to depending on this suspend their further application (Jovašević, 2006, p. 1080). For the same reasons, the court can change its earlier decision on corrective measures -"reversibility" of corrective measures (Jovašević & Kostić, 2012, p. 404). If after the sentencing (ordering a special requirement measure, increased supervision measure or institutional measure), circumstances arise that were not present or were not known at the time of the sentencing and which would significantly affect the choice of a corrective measure, or if the order cannot be enforced due to refusal of the juvenile or his parents, adoptive parent or guardian to comply with the ordered measure or instructions of the enforcing authority, or if other circumstances arise determined by the law which would have a bearing on the sentencing the court may suspend enforcement or substitute the ordered measure by another measure of the same kind (ZOMUKD, Art. 24 para. 1).

These corrective measures can be replaced by other measures, which can better serve to achieve the purpose of the corrective measures, or the imposed measure can be suspended from further execution, in accordance with the achieved success in correction, but with the following limitations: 1) enforcement of the measure of referral to a reformatory institution cannot be suspended prior to expiry of a six month period, but until expiry of this period it may be substituted by the measure of increased supervision with daily attendance in relevant juvenile corrective and educational institution, committal of juvenile to a correctional facility or special institution for medical treatment and training, 2) enforcement of the measure of a committal to a correctional facility may not be suspended prior to expiry of a six month period, and until the aforesaid period expires it may be substituted by referral of a juvenile to a reformatory institution or special institution for medical treatment and training (ZOMUKD, Art. 24). After the expiry of the period of six months, the corrective measures of referral to a reformatory institution

and referral to a correctional facility can, based on the achieved success in correction, be replaced by another corrective measure, without restrictions, except for a court admonition (Soković, 2009, p. 94).

Under the conditions stipulated by the law, it is also possible to reevaluate the imposed corrective measures (ZOMUKD, Art. 25). Thus, if more than six months have passed since the effective date of the sentencing ordering any alternative sanctioning measure or increased supervision measure, or if more than one year has passed since the effective date of the sentencing ordering an institutional corrective measure, and enforcement thereof has not commenced, the court shall reconsider the need to enforce the ordered measure. The court may decide to enforce, not to enforce or substitute the previously ordered measure by another measure.

Juvenile prison sentence may be imposed only on an older juvenile who committed a criminal offence punishable by imprisonment of over five years, if due to high degree of guilt, nature, and gravity of the offence a corrective measure would not be appropriate (ZOMUKD, Art. 28). It is the only type of sentence in the system of juvenile criminal sanctions as well as a special sentence that consists of depriving an older juvenile perpetrator of a serious criminal offense of his freedom of movement for a period specified in the court decision and placing him/her in a specific institution (Stojanović & Perić, 1996, pp. 51–55). The general minimum sentence of juvenile imprisonment prescribed by the law is six months, while the general maximum is determined in two ways. The rule is that it should not be imposed for more than five years. However, for criminal offenses for which the law prescribes a prison sentence of twenty years or life imprisonment, or in the case of a combination of at least two criminal offenses for which a prison sentence of more than ten years is prescribed, juvenile imprisonment can be imposed for ten years. The court determines the length of juvenile prison sentence within the constraints set forth under the law and on one hand keep in mind the purpose of juvenile prison sentence and on the other hand, it is obliged to take into account two groups of circumstances: 1) having regard to all circumstances affecting the length of the sentence such as the degree of guilt, severity of injury or endangerment of protected property and 2) certain circumstances that must be especially taken into account, which

include: the maturity of the juvenile and the time required for his correctional and for acquiring vocational skills (Škulić, 2011, p. 306).

Within the general purpose of criminal sanctions (CC, Art. 4 para. 2), the purpose of corrective measures and juvenile prison is to influence the development and strengthening of the personal responsibility of juveniles, along with his/her upbringing and the proper development of his/her personality through supervision, providing protection and assistance, as well as providing general and vocational training, in order to ensure the juvenile's reintegration into the society. Additionally, the purpose of juvenile detention is to administer intensified influence on the juvenile offender not to commit criminal offences in the future, and as deterrent to other juveniles not to commit criminal offences (ZOMUKD, art. 10). The provisions of this article indicate significant specificities of the purpose of corrective measures and juvenile prison in relation to the purpose of criminal sanctions applied to adult offenders. Therefore, the main aim of implementing criminal sanctions against juveniles is the development and strengthening of personal responsibility of juveniles, as well as the correctional and proper development of their personality. This shows that the purpose consists primarily of special prevention, that is in influencing a juvenile who has already committed a criminal offense. Apart from this common purpose, the purpose of juvenile prison is also general prevention, as well as increased action in the sphere of special prevention (Stojanović, 2019, p. 395).

Juvenile offenders may be sentenced to security measures, except for the prohibition of making calls, business activities or duties (CC, Art. 79), if they were sentenced to a corrective measure or a juvenile prison. There are certain deviations from this basic rule. Namely, the security measures of compulsory treatment of alcoholics (CC, Art. 84) and compulsory treatment of drug addicts (CC, Art. 83) cannot be imposed along with warning and guidance measures. On the other hand, there is an optional possibility to impose the security measure of mandatory psychiatric treatment and care in a health institution (CC, Art. 81) independently (Veković, 2017, pp. 364–365).

## 3. Institutional corrective measures

The intention of ZOMUKD is to achieve the goals of corrective measures, if possible, without the accompanying stigmatization of juveniles and the traumatic consequences of applying the instruments of criminal repression (Knežević, 2010, p. 61). This is precisely why measures of an extra-institutional nature take precedence in implementation. However, if a clear criminal intent is shown in the perpetration of a criminal offence, also an extraordinary upbringing neglect of a juvenile is present, social reaction is most often manifested through the imposition of continuous institutional treatment (Matijašević & Dragojlović, 2013, p. 86).

The strictest type of corrective measures are institutional measures - measures of institutional treatment (Petrović, Jovašević & Ferhatović, 2006, p. 371–394). They are imposed when it is necessary to implement more permanent corrective measures, medical treatment, and training on a juvenile, with his/her complete separation from the current environment, in order to exert augmented influence on the juveniles. They possess evident elements of retributivism ‑because they imply deprivation of freedom of movement and forced imposition of a certain program of treatment in a special institution (Soković & Bejatović, 2009, p. 86). Institutional measures are imposed as a last resort and may last, within the limits set forth under the law only as long as necessary to achieve the purpose of the corrective measures (ZOMUKD, art. 11). The need to impose institutional measures exists when it comes to juvenile offenders who have been so neglected in upbringing that the measures of increased supervision towards them are not effective enough means to achieve their resocialization (Jovašević, 2011, p. 115).

### 3.1. Referral to a reformatory institution

Referral to a reformatory institution, as the lightest institutional correctional measure, is imposed when a juvenile needs to be separated from the current environment and the assistance along with permanent supervision by qualified personnel must be provided (ZOMUKD, art. 20). Upbringing neglect and behavioral problems of juveniles are such that separation alone is not enough. For him/her, it is even more im-

portant to exert an increased influence through the help and constant supervision of qualified personnel, which cannot be achieved without referral to a specialized institution (Soković, 2009, p. 86). These are institutions of a general type or juvenile correctional facilities, where juveniles who have not committed a criminal offense, but who have certain behavioral disorders, such as upbringing neglect, pre-delinquent behavior and the like, are also committed (Radoman, 2021, p. 269). This institution should provide accommodation and provide for corrective, health, educational, sports and other developmental needs of minors. It is believed that a residence in such institution, with the constant supervision of qualified personnel, will have a positive effect on juvenile offenders (Mirić, 2021, p. 454).

The corrective measure of referral to a reformatory institution is relatively indefinite. When sentencing, the court does not determine the duration of the stay in the reformatory institution but decides on it later primarily based on the success achieved in behavioral reformation. This measure can last minimally six months to a maximum of two years, and every six months the court will reconsider whether grounds for suspension of enforcement of this measure or its substitution with another corrective measure exist. (ZOMUKD, art. 20). A juvenile referred to a reformatory institution may stay there until turning twenty-one years of age.

In practice, there are problems in the application of this measure (regarding the choice of the institution, the costs, and the unorganized use of free time of juveniles during the summer months), because everything came down to two reformatory institutions, namely the Institute for Education of Children and Youth in Belgrade and the Correctional Institution Niš (Simonović, 2012, p. 302).

### 3.2. Referral to a Correctional Facility

The corrective measure of referral to a correctional facility is the strictest type of correctional measures that juvenile offenders can be sentenced to and borders on the sentence of juvenile prison. This measure is imposed by the court on the juvenile who in addition to separation from the current environment, should also be subject to increased supervision measures and special professional corrective programs.

Therefore, in addition to separating the juvenile from the environment in which he/she lives, the goal of implementing this institutional measure is also subjecting him/her to a permanent process of correction in institutions that are specially designed, equipped and fitted out for this purpose (Lazarević & Grubač, 2005, p. 58).

In deliberating whether to impose this measure the Court particularly considers previous lifestyle of the juvenile, degree of behavioral disorder, gravity and nature of the committed criminal offence and previous criminal or misdemeanor records of the juvenile (ZOMUKD, art. 21 para. 2). The stated circumstances can be divided into two groups - one is of a subjective nature and refers to the personality of the juvenile, and the other is of an objective nature and is in regard to the committed criminal offence and has a double goal - to provide a complete picture of the juvenile and the committed criminal offence itself (Nikolić & Joksić, 2011, p. 166–168). Namely, the court must have relevant data on the circumstances of a subjective nature, i.e., documents on the juvenile's earlier life, data on the degree of his behavioral disorder, as well as on the circumstances regarding whether he has already been a subject to some kind of procedure that resulted in the imposition of a criminal or misdemeanor sanction (Skakavac, 2012, p. 153). Regarding the objective circumstances, i.e., the committed criminal offence, the law refers not only to the severity of the act, as is the case with corrective measures, but also to the nature of the act. Thus, criminal offences against life and body indicate that the socialization of juveniles has advanced in a negative direction, and that it is necessary to react in an appropriate, institutional maner. There is no doubt that recidivism is a circumstance that can result in the juvenile being sent to a correctional facility (Knežević, 2010, p. 66).

As with the institutional corrective measure of referral to a reformatory institution, the prescribed time duration has a relative character. The juvenile remains in the reformatory institution minimally six months to a maximum of four years. The court does not determine its duration when passing a sentence but decides on it afterwards. Accordingly, every six months the court reconsiders whether grounds for suspension of enforcement of this measure or its substitution with another corrective measure exist (ZOMUKD, art. 21 para. 3). A juvenile may remain in a correctional facility until twenty-three years of age.

The institution of probation was provided by the legislator in the same way for referral to a reformatory institution and for referral to a corrective facility. The conditions under which, if they are cumulatively met, probation can be applied relate to the passage of time and the achieved success in correction. Hence, the court may release on probation a juvenile who has spent a minimum of six months in a reformatory institution or corrective facility if according to success achieved in correction it may be reasonably expected that he will refrain from committing criminal offences in the future and will conform to good behavior in his future environment (ZOMUKD, art. 22 para. 1). During the period of probation, the court may order an increased supervision measure with possible inclusion of one or more appropriate special liabilities. Probation may have a maximum duration until expiry of the term of referral to reformatory institution or corrective facility if the court has not previously suspended enforcement of the corrective measure or substituted it by another.

Revocation of probation is always optional and is based on bad behavior or failure to comply with obligations, with certain measure of increased supervision. If the juvenile commits new criminal offence while on probation or if the ordered increased supervision measure does not achieve its objective or if the juvenile fails to fulfill appropriate special liabilities ordered along with the increased supervision measure, the court may revoke probation. The law also prescribes that time spent on probation is not accounted for as time of statutory duration of the ordered corrective measure (ZOMUKD, art. 22 para. 4).

### 3.3. Referral to a Special institution for Medical Treatment and Training

Criminal offences can also be committed by juveniles with certain disabilities that have the-characteristic of psychophysical disorders. Therefore, the corrective treatment of these juveniles must be specific. Bearing in mind this fact, as well as the need to consistently implement the principle of individualization of the treatment of juvenile delinquents, our juvenile criminal legislation provides for the institutional corrective measure of referral to a special institution for treatment and training

(Knežević, 2010, p. 67). Therefore, this corrective measure is imposed on juveniles with impaired psycho-physical development (deaf, blind, deaf-mute, mentally defective, etc.) or with psychological disorders - mental illnesses, neurosis, etc. (Bogojević, 2013, p. 55).

There are two basic ways of imposing this institutional corrective measure:

1) Optional - Instead of referral to a reformatory institution or corrective facility.
2) Mandatory - instead of mandatory psychiatric treatment and confinement to a health institution.

In the first case, the Court has facultative possibility to commit the juvenile with physical or mental disability to a special institution for medical treatment and training instead of referral to a reformatory institution or corrective facility (ZOMUKD, art. 23 para. 1). In the second case, when the juvenile is to be sentenced to the security measure of mandatory psychiatric treatment and confinement to a health institution, this institutional corrective measure is mandatory if confinement and treatment of a juvenile may be provided in a special institution for medical treatment and training and thus achieve the purpose of this security measure (ZOMUKD, art. 23 para. 2).

The duration of the institutional measure of referral to a special institution for medical treatment and training depends on whether this measure was imposed instead of other institutional corrective measures or instead of a security measure. Accordingly, if this corrective measure was imposed instead of the institutional measure of referral to a reformatory institution and referral to a corrective facility, the juvenile may remain in the institution for medical treatment and training for a maximum of three years, and the court shall reconsider the grounds for suspension of this measure or its substitution by another measure every six months (ZOMUKD, art. 23 para. 3). The minimum time length of residence in this institution is six months, since this is the minimum legal duration of corrective measures, instead of which the measure of referral to a special institution for medical treatment and training is imposed (Soković, 2009, p. 90). If this measure is ordered instead of a security measure, the juvenile remains in the special institution for medical

treatment and training as long as necessary, with the understanding that upon turning twenty-one years of age enforcement of the measure continues in an institution for enforcement of the security measure of mandatory treatment and confinement to a health institution (ZOMUKD, art. 23 para. 4). This is a logical consequence of the fact that the institutional measure of referral to an institution for medical treatment and training, as a substitute for a security measure of a medical nature, shares its fate in terms of duration (Knežević, 2010, p. 68).

A special problem in implementation is the impossibility of carrying out the corrective measure of referral to a special institution for medical treatment and training, bearing in mind the nonexistence of such an institution in the Republic of Serbia. The nonexistence of such institution prevents efficient execution (and thus prevents sentencing) of this corrective measure and, in conjunction with the nonexistence of a special department for juveniles within the Special Prison Hospital, makes this category of juveniles systemically invisible (Karić i et al., 2021, p. 39).

## 4. Application of institutional corrective measures in case law

In this paper, we have analyzed the types and measures of criminal sanctions imposed on juveniles in the Republic of Serbia in the period from 2010 to 2020, based on official statistical indicators of the Statistical Office of the Republic of Serbia (Statistical Office of the Republic of Serbia, no. 547/2012, p. 43–51; Statistical Office of the Republic of Serbia, no. 559/2012, p. 45–53; Statistical Office of the Republic of Serbia, no. 577/2013, p. 49–57; Statistical Office of the Republic of Serbia, no. 589/2014, p. 49–57; Statistical Office of the Republic of Serbia, no. 604/2015, p. 45–53; Statistical Office of the Republic of Serbia, no. 618/2016, p. 45–53; Statistical Office of the Republic of Serbia, no. 630/2017, p. 45–53; Statistical Office of the Republic of Serbia, no. 641/2018, p. 45–53; Statistical Office of the Republic of Serbia, no. 654/2019, p. 45–53; Statistical Office of the Republic of Serbia, no. 666/2020, p. 45–53 and Statistical Office of the Republic of Serbia, no. 678/2021, p. 45–53).

This analysis is divided into several sections:

a) Imposed criminal sanctions against juveniles according to the type of criminal sanctions (Table 1);
b) Representation of imposed institutional corrective measures in relation to measures of warning and guidance along with measures of increased supervision (Table 2);
c) Imposed institutional corrective measures according to the category of younger and older juveniles (Table 3) and
d) Imposed institutional measures according to the type of institutional corrective measures (Table 4).

**Table 1.** Imposed criminal sanctions against juveniles between 2010-2020

| Year | Total of juveniles | Corrective measures | % | Juvenile prison sentence | % |
|---|---|---|---|---|---|
| **2010** | 1640 | 1635 | 99,70 | 5 | 0,30 |
| **2011** | 2290 | 2277 | 99,43 | 13 | 0,57 |
| **2012** | 2302 | 2300 | 99,91 | 2 | 0,09 |
| **2013** | 2648 | 2640 | 99,70 | 8 | 0,30 |
| **2014** | 2034 | 2028 | 99,70 | 6 | 0,30 |
| **2015** | 1926 | 1917 | 99,53 | 9 | 0,47 |
| **2016** | 2032 | 2023 | 99,56 | 9 | 0,44 |
| **2017** | 1633 | 1626 | 99,60 | 7 | 0,40 |
| **2018** | 1548 | 1540 | 99,50 | 8 | 0,50 |
| **2019** | 1676 | 1672 | 99,80 | 4 | 0,20 |
| **2020** | 1239 | 1236 | 99,76 | 3 | 0,24 |

Based on the data in Table 1, we can conclude the following:

- The total number of imposed criminal sanctions against juvenile offenders shows an unequal distribution over the observed period. Beginning in 2010, when 1,640 criminal sanctions were imposed, an upward trend can be observed in the following seven years (2011, 2012, 2013, 2014, 2015 and 2016), followed by a decline in the last four years of the observed period (2017, 2018, 2019 and 2020) and

- The primary form of response to juvenile delinquency is corrective measures, the number of which exceeds 99%, while juvenile prison sentences are imposed in less than 1% of cases.

**Table 2.** Imposed institutional corrective measures in relation to warning and guidance measures and measures of increased supervision between 2010-2020

| Year | Total of corrective measures | Measures of warning and guidance | Measures of increased supervision | Institutional corrective measures |
|---|---|---|---|---|
| **2010** | 1635 | 747 | 829 | 59 |
| **2011** | 2277 | 1014 | 1159 | 104 |
| **2012** | 2300 | 995 | 1200 | 105 |
| **2013** | 2640 | 1122 | 1377 | 141 |
| **2014** | 2028 | 1004 | 935 | 89 |
| **2015** | 1917 | 980 | 863 | 74 |
| **2016** | 2023 | 1045 | 877 | 101 |
| **2017** | 1626 | 850 | 701 | 75 |
| **2018** | 1540 | 717 | 756 | 67 |
| **2019** | 1672 | 785 | 787 | 100 |
| **2020** | 1236 | 769 | 427 | 40 |

Based on the data listed in Table 2 for the observed period, we can conclude:

- that in relation to other corrective measures, institutional corrective measures are imposed the least often.
- that warning and guidance measures and measures of increased supervision are primarily imposed on juvenile offenders, as well as that this number is many times higher compared to institutional corrective measures and
- that the number of imposed institutional corrective measures shows unequal distribution. Namely, in 2010. 59 of them were imposed, and in the following years, we notice their growth compared to 2010. nonetheless in 2020. that number dropped to 40, which also represents the smallest number of imposed institutional corrective measures. The highest number was imposed in 2013 amounting to 141.

**Table 3.** Imposed institutional corrective measures according to the category of younger and older juveniles between 2010–2020

| Year | Total of institutional corrective measures | Younger juveniles | Adult juveniles |
|---|---|---|---|
| **2010** | 59 | 34 | 25 |
| **2011** | 104 | 60 | 44 |
| **2012** | 105 | 52 | 53 |
| **2013** | 141 | 64 | 77 |
| **2014** | 89 | 35 | 54 |
| **2015** | 74 | 38 | 36 |
| **2016** | 101 | 50 | 51 |
| **2017** | 75 | 36 | 39 |
| **2018** | 67 | 41 | 26 |
| **2019** | 100 | 52 | 48 |
| **2020** | 40 | 21 | 19 |

Based on the data listed in Table 3 for the observed period, we can conclude:

- out of the total number of imposed measures, institutional corrective measures are more often imposed on younger than older juveniles.
- the least number of institutional corrective measures were imposed on younger juveniles in the period of 2020 - 21, and the most in 2013 a total of 64.
- the lowest number of institutional disciplinary measures imposed on older juveniles was in 2020 and amounted to 19, while the highest number was recorded in 2013 as many as 77, which also represents the year when more institutional disciplinary measures were imposed on older juveniles than on younger ones, but also the year with the most imposed corrective measures of an institutional character in general.

**Table 4.** Imposed institutional corrective measures by type: referral to a reformatory institution, referral to a corrective facility, referral to a special institution for medical treatment and training between 2010–2020.

| Year | Total of institutional corrective measure | Referral to a reformatory institution | Referral to a correctional facility | Referral to a special institution for treatment and training |
|---|---|---|---|---|
| **2010** | 59 | 11 | 47 | 1 |
| **2011** | 104 | 35 | 68 | 1 |
| **2012** | 105 | 33 | 72 | - |
| **2013** | 141 | 51 | 88 | 2 |
| **2014** | 89 | 24 | 60 | 5 |
| **2015** | 74 | 16 | 57 | 1 |
| **2016** | 101 | 33 | 64 | 4 |
| **2017** | 75 | 19 | 55 | 1 |
| **2018** | 67 | 13 | 51 | 3 |
| **2019** | 100 | 19 | 78 | 3 |
| **2020** | 40 | 11 | 25 | 4 |

Based on the data listed in Table 4 for the observed period, we can conclude:

- out of the total number of imposed institutional corrective measures in the observed period, juveniles are most often sentenced to the most severe type - referral to a corrective facility, followed by referral to a reformatory institution, while referral to a special institution for medical treatment and training is the least common.
- the fewest imposed corrective measures of referral to a reformatory institution, 11 of them, were during 2010 and 2020, while the most were imposed in 2013 – 51.
- the lowest number of referrals to a correctional facility was in 2020 - 25, and the highest in 2013 (88), when the highest number of referrals to a reformatory institution was imposed as well, and

- referral to a special institution for medical treatment and training is very rare. This measure was not imposed on anyone in 2012, and for the entire observed period, it reaches a maximum of five imposed in 2014.

## 5. Conclusion

In the system of criminal sanctions against juvenile offenders, correction is the rule, and punishment is the exception. Therefore, juvenile criminal law is increasingly turning to the measures of a non-institutional character in the execution of criminal sanctions against juveniles. Nevertheless, institutional corrective measures represent a significant factor in the fight against juvenile delinquency.

Analyzing the case law in the Republic of Serbia, we can conclude that the unequal distribution of the total number of criminal sanctions imposed on juvenile offenders indicates that the rate of juvenile crime varies from year to year, and that there has been a noticeable downward trend in recent years. The primary form of response to juvenile delinquency is corrective measures of an extra-institutional nature, while the unequal distribution of the number of imposed institutional corrective measures leads to the conclusion that institutional corrective measures, as the most severe type of corrective measures, are imposed in the smallest number and as a last resort before the juvenile is sentenced to juvenile detention, and are therefore of limited duration with an emphasis on the role of appropriate specialized institutions. It is interesting that these measures are imposed more often on younger juveniles, which leaves room for further research in this area.

Juveniles are most often given the strictest type of institutional corrective measures - referral to a corrective facility, while the fact that there are problems in the application of institutional measures of referral to a reformatory institution and referral to a special institution for medical treatment and training can be cited as a possible drawback of this type of corrective measures.

**References:**

Blagić, D. (2021). Sistem mera i sankcija prema maloletnicima. Naučnoistraživački projekat „Pravni aspekti savremenih društvenih kretanja u Republici Srbiji". Kosovska Mitrovica: *Univerzitet u Prištini sa privremenih sedištem u Kosovskoj Mitrovici, Pravni fakultet*, str. 211–220.

Bogojević, R. (2013). Execution of Institucional Correctional Measures Imposed on Juvenile Perpetrators of Property Crime in The Positive Legislation of The Republic of Serbia. *Facta Universitatis – Law and Politics*, Vol. 11, N°1. Niš: Faculty of Law, University of Niš, pp. 49–57.

Veković, V. V. (2017). Novi sistem krivičnih sankcija prema maloletnicima u Republici Srbiji, Zbornik radova „Nacionalno i međunarodno pravo – aktuelna pitanja i teme", Tom I. Kosovska Mitrovica: *Univerzitet u Prištini sa privremenih sedištem u Kosovskoj Mitrovici*, Pravni fakultet, str. 361–377.

Veković, V. (2017). Reform of Criminal Sanctions Systems in Juvenile Criminal Matters in Serbia, International Scientific Conference „Archibald Reiss Days", Tom II, Vol. II. Belgrade: *Academy of Criminalistic And Police Studies*, pp. 177–187.

Dragojlović, J., & Matijašević, J. (2013). Osnovna obeležja vaspitnih mera u Srbiji. *Pravo – teorija i praksa*, Vol. 30, broj 4–6. Novi Sad: Univerzitet Privredna akademija u Novom Sadu, Pravni fakultet za privredu i pravosuđe, str. 47–58.

Jovašević, D. (2011). *Maloletničko krivično pravo*. Centar za publikacije. Niš: Pravni fakultet.

Jovašević, D. (2006). Osnovne karakteristike novog maloletničkog krivičnog prava Republike Srbije, Zbornik Pravnog fakulteta Sveučilišta u Rijeci, Vol. 27, broj 2. Rijeka: *Pravni fakultet Sveučilišta u Rijeci*, str. 1055–1087.

Jovašević, D., & Kostić, M. (2012). *Politika suzbijanja kriminaliteta*. Niš: Pravni fakultet, Centar za publikacije.

Karić, T., Protić, S., Kolaković-Bojović, M., Paraušić, A., & Drndarević, N. (2021). Analiza uticaja primene Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica u periodu od 2006. do 2020. godine. *Institut za kriminološka i sociološka istraživanja i Organizacijom za evropsku bezbednost i saradnju - Misija u Srbiji*, Beograd.

Knežević, S. S. (2010). *Maloletničko krivično pravo – materijalno, procesno i izvršno.* Centar za publikacije. Niš: Pravni fakultet.

Lazarević, Lj., & Grubač, M. (2005). Komentar Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica. Beograd: *Justinijan*.

Matijašević, J., & Dragojlović, J. (2013). Zavodske vaspitne mere u maloletničkom krivičnom pravu Srbije. *Bezbednost*, Vol. 55, broj 1. Beograd, str. 84–97.

Mirić, F. (2021). Vaspitna mera upućivanje u vaspitnu ustanovu u uporednom pravu, Zbornik radova sa šeste međunarodne naučne konferencije „Društvene devijacije – Unapređenje kvaliteta života djece i mladih". Banja Luka: *Centar modernih znanja*, str. 453–459.

Nikolić, Z., & Joksić, I. (2011). Maloletnička delinkvencija – socijalnopsihološki i krivičnopravni aspekti. Beograd: Institut za kriminološka i sociološka istraživanja.

Petrović, B., Jovašević, D., & Ferhatović, A. (2006). Izvršenje vaspitnih mjera. *Pravna riječ*, broj 7. Banja Luka, str. 371–394.

Radoman, M. (2021). *Penologija i kazneno izvršno pravo*. Beograd: Udruženje pravnika Srbije.

Ranđelović, V. (2018). Krivične sankcije koje se mogu izreći maloletnicima u pravu Republike Srbije i međunarodni standardi, Usklađivanje pravnog sistema Srbije sa standardima Evropske unije, Knjiga VI. Kragujevac: Pravni fakultet Univerziteta u Kragujevcu, Institut za pravne i društvene nauke, str. 247–261.

Simonović, S. (2012). Izvršenje vaspitnih mera i kazne maloletničkog zatvora, Maloletničko pravosuđe u Republici Srbiji – zbornik radova. Beograd: Centar za prava deteta, str. 300–304.

Skakavac, T. (2012). Zavodske vaspitne mere u zakonodavstvu Republike Srbije i Republike Srpske – vrste i karakteristike*, Godišnjak Pravnog fakulteta Istočno Sarajevo*, godina III, broj 1. Republika Srpska-BiH, str. 145–159.

Soković, S., & Bejatović, S. (2009). *Maloletničko krivično pravo*. Kragujevac: Pravni fakultet u Kragujevcu, Institut za pravne i društvene nauke.

Stojanović, Z. (2019). *Krivično pravo – opšti deo*. Beograd: Pravna knjiga.

Stojanović, Z., & Perić, O. (1996). *Komentar Krivičnog zakona Republike Srbije i Krivični zakon Crne Gore s objašnjenjima*. Beograd: Službeni list.

Škulić, M. (2011). *Maloletničko krivično parvo*. Beograd: Službeni glasnik.

**Legislation:**

Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica, „Službeni glasnik RS", broj 85/2005 *[Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles, Official Gazette of the Republic of Serbia, No. 85/2005]*

Zakonik o krivičnom postupku „Službeni glasnik RS", broj 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – odluka US i 62/2021 – odluka US *[Criminal Procedure Code, Official Gazette of the Republic of Serbia, No. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013, 55/2014, 35/2019, 27/2021 – Constitutional Court decision and 62/2021 – Constitutional Court decision]*

Zakon o izvršenju krivičnih sankcija „Službeni glasnik RS", broj 55/2014 i 35/2019 *[Law on Execution of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 55/2014 and 35/]*

Krivični zakonik Službeni glasnik RS", broj 85/2005, 88/2005 – ispr., 107/2005 – ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019 *[Criminal Code, Official Gazette of the Republic of Serbia, 85/2005, 88/2005 – corrected, 107/2005 – corrected, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 and 35/2019]*

**Internet sources:**

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2010. BILTEN 547. *Republički zavod za statistiku*, Beograd, 2012. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2012/Pdf/G20125547.pdf, 14. 04. 2022. *[Juvenile Offenders: Charges and Convictions 2010. Bulletin 547, Statistical Office of the Republic of Serbia, Belgrade: 2012, Accessed: 14/04/2022]*

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2011. BILTEN 559. *Republički zavod za statistiku*, Beograd, 2012. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2012/Pdf/G20125559.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2012. BILTEN 577. *Republički zavod za statistiku*, Beograd, 2013. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2013/Pdf/G20135577.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2013. BILTEN 589. *Republički zavod za statistiku*, Beograd, 2014. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2014/Pdf/G20145589.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2014. BILTEN 604. *Republički zavod za statistiku*, Beograd, 2015. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2015/Pdf/G20155604.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2015. BILTEN 618. *Republički zavod za statistiku*, Beograd, 2016. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2016/Pdf/G20165618.pdf, 14.04.2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2016. BILTEN 630. *Republički zavod za statistiku*, Beograd, 2017. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2017/Pdf/G20175630.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2017. BILTEN 641. *Republički zavod za statistiku*, Beograd, 2018. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2018/Pdf/G20185641.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2018. BILTEN 654. *Republički zavod za statistiku*, Beograd, 2019. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2019/Pdf/G20195654.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2019. BILTEN 666. *Republički zavod za statistiku*, Beograd, 2020. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2020/Pdf/G20205666.pdf, 14. 04. 2022.

Maloletni učinioci krivičnih dela – Prijave, optuženja i osude – 2020. BILTEN 678. *Republički zavod za statistiku*, Beograd, 2021. godina, preuzeto sa: https://publikacije.stat.gov.rs/G2021/Pdf/G20215678.pdf, 14. 04. 2022.

## ZAVODSKE VASPITNE MERE U SISTEMU MALOLETNIČKIH KRIVIČNIH SANKCIJA

**Rezime:** Autor u radu ukazuje na specifičnosti zavodskih vaspitnih mera sa materijalnog aspekta. Iako primat u primeni imaju vaspitne mere vaninstitucionalnog karaktera, maloletnicima, prema kojima treba preduzeti trajnije mere vaspitanja, lečenja i osposobljavanja uz njihovo potpuno odvajanje od dotadašnje sredine radi vršenja pojačanog uticaja na takve maloletnike, sud izriče vaspitne mere zavodskog karaktera. Prema pozitivnom zakonodavstvu, razlikujemo tri takve mere: upućivanje u vaspitnu ustanovu, upućivanje u vaspitno-popravni dom i upućivanje u posebnu ustanovu za lečenje i osposobljavanje. Takođe, u radu su prikazani rezultati istraživanja o primeni zavodskih vaspitnih mera u sudskoj praksi Republike Srbije za period od 2010. do 2020. godine.

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# NASTANAK I RAZVOJ POZITIVNIH OBAVEZA DRŽAVA POTPISNICA EVROPSKE KONVENCIJE O ZAŠTITI LJUDSKIH PRAVA I OSNOVNIH SLOBODA[3]

**Apstrakt:** Ovaj rad se bavi nastankom i razvojem pozitivnih obaveza država ugovornica Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda. U njemu je najpre pojašnjena podela obaveza iz EKLJP na negativne i pozitivne. Potom smo se osvrnuli na razloge, metodologiju i legitimnost nastanka pozitivnih obaveza iz EKLJP. Analizirali smo njihov sadržaj i obim. U radu je posebna pažnja posvećena principima održavanja pravične ravnoteže interesa, kao i odnosu pozitivnih i negativnih obaveza u praksi Evropskog suda za ljudska prava. Zaključak rada se odnosi na inovativnost, korisnost i značaj pozitivnih obaveza iz EKLJP za povećani standard zaštite ljudskih prava na globalnom nivou.

**Ključne reči:** *pozitivne obaveze, Evropski sud za ljudska prava, Evropska konvencija o ljudskim pravima, doktrina živog instrumenta, doktrina praktičnog i delotvornog*

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## 1. Uvod

Preciznije definicije ljudskih prava neretko se međusobno razlikuju, zavisno od polaznih doktrinarnih postavki. Po pozitivističkim određenjima, ljudska prava su skup individualnih i kolektivnih prava proklamovanih i zaštićenih međunarodnim i domaćim pravom od usvajanja Univerzalne deklaracije o pravima čoveka 1948. godine (Landman, 2005, str. 2). Autori koji naginju holističkom pristupu definišu ljudska prava kao rezultat razvoja prirodnih prava, univerzalnih, u smislu da dopunjuju ili unapređuju postojeće kulture, i koja moraju biti strogo nadzirana i izvršavana od strane nekog tela, koje ima jurisdikciju nad svim državama (Afunaduula, 2005, str. 11). Pojedini autori određuju ljudska prava kao skup minimalnih moralno-političkih zahteva prirodnopravnog karaktera, koje svaki pojedinac poseduje ili bi trebalo da poseduje u odnosu na državnu vlast i društvo u kom živi, i ističu da su ljudska prava prirodna i urođena i da proizilaze iz autonomije čoveka i ljudskog dostojanstva, kao apriornih vrednosti najvišeg moralnog ranga, koje nema potrebe posebno dokazivati jer se radi o očiglednim etičkim i spoznajnim kategorijama (Henkin, 1979, str. 407). Klasični teoretičari ustavnog prava neretko određuju ljudska prava kao sredstvo ograničenja i kontrole državne vlasti (Jovanović, 1990, str. 121).

Ljudska prava su prava koja imamo samim tim što smo ljudska bića (Bantekas, Oette, & Oette, 2014, str. 10). Njihova zaštita je imperativ današnjeg modernog društva jer se na taj način štite pojedinci, ali i humane, demokratske vrednosti čitavih zajednica a, pre svega, dostojanstvo čoveka kao takvog. Evropska konvencija za zaštitu ljudskih prava i osnovnih sloboda (dalje u tekstu: EKLJP) bila je prvi regionalni dokument koji je garantovao međunarodnu zaštitu ljudskih prava i osnovnih sloboda koje su njime obuhvaćene (Grabenwater, 2012, str. 128), a Savet Evrope prva organizacija koja je ustanovila sud za ljudska prava i uvela proceduru ispitivanja pojedinačne predstavke sličnu proceduri zaštite osnovnih ljudskih prava pred domaćim sudovima (Nowak, 2003, str. 160). Ovaj sistem predstavlja prvi uspešan pokušaj da se nacionalni sistemi zaštite ljudskih prava preslikaju na međunarodnom nivou. Stoga je postao uzor za druge regionalne i univerzalne sisteme zaštite ljudskih prava (*Ibidem*, str. 159–160). Stoga su upravo rešenja predviđena ovom konvencijom predmet našeg istraživanja.

Cilj ovog rada jeste da prikaže razvoj posebne vrste obaveza država potpisnica EKLJP, koje se nazivaju pozitivne obaveze. Objasnićemo uzroke i način njihovog nastanka, a zatim, na jedan koncizan način, predstaviti najbitnije momente u njihovoj evoluciji. Kombinovanjem kvalitativnih i kvantitativnih metoda, analizom najvažnijih slučajeva iz prakse Evropskog suda za ljudska prava (dalje u tekstu: Sud), zajedno sa komentarima predstavnika struke, prikazaćemo pravni osnov i legitimnost nastanka pozitivnih obaveza država članica EKLJP, ali i njihov sadržaj i obim, sa posebnim akcentom na najvažnije pozitivne obaveze. Tema našeg razmatranja će biti i principi održavanja pravične ravnoteže interesa, kojim se Sud vodio prilikom razvoja pozitivnih obaveza, ali i odnos između pozitivnih i negativnih obaveza potpisnica EKLJP. U zaključku ćemo sumirati rezultate istraživanja i dati naše mišljenje o budućem razvoju pozitivnih obaveza.

## 2. Podela obaveza iz EKLJP na negativne i pozitivne

Evropski sud za ljudska prava podelio je obaveze država potpisnica EKLJP u dve kategorije – na negativne i pozitivne obaveze.

Negativne obaveze podrazumevaju da se države ne mešaju u uživanje ljudskih prava iz EKLJP. Eksplicitno su navedene u tekstu EKLJP i nazivaju se njenim centralnim, ključnim vrednostima (Russel, 2010, str. 282). Kao takve, preovladavale su u praksi Suda u prvoj fazi njegovog razvitka.

Premda Sud nije dao definiciju pozitivnih obaveza, njihovu suštinu je iskazao sudija Martens, koji je naveo da „negativne obaveze zahtevaju da se države članice uzdrže od postupanja, a pozitivne zahtevaju upravo postupanje“ (*Izdvojeno mišljenje sudije Martensa, koje je podržao sudija Ruso* u presudi *Gül v. Switzerland* (1996)). Van Dijk (1998), stoga, pozitivne obaveze karakteriše kao „obaveze na delanje“ (str. 17), a i mi smatramo da je ovaj opis adekvatan.

Pozitivne obaveze podrazumevaju dužnost organa vlasti u državama potpisnicama da preduzmu sve neophodne mere u cilju zaštite ljudskih prava, kao i da unesu razumne i podobne mere za ostvarenje toga cilja u nacionalni pravni sistem (Akandji-Kombe, 2007, str. 5). Gotovo

bez izuzetka, pozitivne obaveze zahtevaju da države potpisnice EKLJP preduzmu određene akcije u cilju zaštite prava pojedinaca (Starmer, 2001, str. 139), ali ne podrazumevaju i obavezu postizanja konkretnog rezultata (De Than, 2003, str. 168). Drugim rečima, potrebno je da nacionalni organi postupe na određeni način, ali se ne traži i da garantuju određeni ishod.

## 3. Nastanak pozitivnih obaveza u vezi sa poštovanjem ljudskih prava iz EKLJP

Nastanak pozitivnih obaveza je rezultat kreativne interpretacije EKLJP od strane Suda. Naime, one nisu eksplicitno navedene u tekstu Konvencije, već su nastale i razvijene su tumačenjem sudija Evropskog suda, u skladu sa standardima zaštite ljudskih prava, koji su prihvaćeni u državama potpisnicama EKLJP. Kako bi ljudska prava imala status i zaštitu koju zaslužuju, postojala je potreba da se ide „izvan" teksta Konvencije, ali i da se tumačenje ipak održi u okvirima njenog duha i vrednosti.

### 3.1. Razlozi nastanka pozitivnih obaveza i novih metoda tumačenja EKLJP

Kao posledica neizbežne evolucije društva i postepene promene etičkih standarda, pred Sudom su se pojavile situacije koje nisu predviđene u EKLJP (Mahoney, 2002, str. 104). Kako bi odgovorili na nove izazove (Bantekas & Oette, 2014, str. 226), teleološki princip, koji je bio prihvaćen kao centralni prilikom tumačenja EKLJP (Greer, 2003, str. 408), nije više pružao sudijama dovoljno manevarskog prostora za pružanje delotvorne zaštite njome garantovanih ljudskih prava.

Sud je, stoga, usvojio kreativne metode tumačenja EKLJP (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium* (1968), §3 i 5) – doktrinu „živog instrumenta" i doktrinu „praktičnog i delotvornog" (Mowbray, 2005, 59–60). Doktrina „živog instrumenta" je ustanovljena u slučaju *Tyrer v. United Kingdom* (1978), u kom je Sud prvi put istakao da je „EKLJP živi instrument koji mora biti interpretiran u svetlu okolnosti današnjice" (*Tyrer v. United*

*Kingdom*, 1978, §31). Objasnio je da je neizbežno da na njegovo tumačenje odredbi EKLJP utiču napredak postignut u oblasti zaštite ljudskih prava, kao i opšteprihvaćeni standardi u državama potpisnicama u određenim oblastima u vezi sa zaštitom ljudskih prava. U praksi, Sud utvrđuje da li problem, koji se pred njim našao, predstavlja noviji trend koji ukazuje na postojanje konsenzusa između država članica Saveta Evrope. Nakon što se postigne konsenzus o jednom od ciljeva koji su postavljeni u preambuli, smatraće se da je država koja je prekršila postignuti konsenzus prekršila EKLJP (Gemalmaz, 2007, str. 49; *Selmouni v. France* (1999)).

Princip delotvornosti zasnovan je na tome da su cilj i svrha EKLJP zaštita pojedinaca i njihovih prava. Stoga, odredbe EKLJP treba tumačiti tako da zaštita koju pružaju bude praktična i delotvorna, a ne iluzorna i teorijska. Ovaj princip je, kako navodi Merils (1993), „način da odredbe sporazuma imaju određenu težinu, da proizvedu maksimalan efekat" (str. 103). U skladu sa principom delotvornosti, zaštitu prava pojedinaca treba interpretirati što je moguće šire, a izuzetke od pružanja iste što restriktivnije (Greer, 2003, str. 408).

Dok navedene tehnike tumačenja A. Moubrej naziva „novim" (Mowbray, 2005, str. 59–60), drugi autori ih vide kao specifične metode koje Sud primenjuje, a koje su konzistentne s pravilima iz člana 31 Bečke konvencije o ugovornom pravu (Bečka konvencija o ugovornom pravu), o tome da odredbe ugovora treba tumačiti u skladu sa ciljem i svrhom njegovog donošenja (Urbaite, 2011, str. 223). Ono što ih čini inovativnim jeste činjenica da su prilagođeni specifičnom cilju i svrsi EKLJP (*Ibidem*, str. 228). Tako je u slučaju *Soering v. The United Kingdom* (1989) Sud naglasio da svako tumačenje obima prava i sloboda, koji je garantovan EKLJP, mora biti u skladu sa njenim generalnim duhom, pošto je reč o instrumentu načinjenom sa ciljem uspostavljanja i promocije ideala i vrednosti demokratskog društva (*Soering v. The United Kingdom*, 1989, §87).

Primena pomenutih tehnika tumačenja dovela je do stvaranja novih, pozitivnih obaveza država potpisnica EKLJP (Lavrysen, 2013, str. 160). Naime, čisto negativnim pristupom zaštiti ljudskih prava se ne može garantovati njena efikasnost, jer se „ustavni model" zaštite ljud-

skih prava pokazao kao neadekvatan odgovor na veliki broj izazova koji se u ovom polju javljaju (Evans, 2004, str. 159).

Kako to objašnjavaju Kremnitzer i Ghanayim (2003–2004): „U modernom pravu u osnovna ljudska prava ne spadaju samo negativna prava u smislu da pojedinac može zahtevati da mu država garantuje ostvarivanje osnovnih prava, a da je država obavezna ne samo da poštuje ta prava, već i da ih aktivno štiti. Što je važnije osnovno pravo, to je sveobuhvatnija njegova zaštita" (str. 898). Od država se više ne zahteva samo da ne ometaju pojedince u vršenju njihovih osnovnih ljudskih prava ukoliko time ne ugrožavaju prava drugih, već i da čine stvari za te pojedince koje im omogućuju određen kvalitet života (Dickson, 2010, str. 203).

### 3.2. Pravni osnov kreiranja pozitivnih obaveza u vezi sa zaštitom ljudskih prava iz EKLJP

Pojedine pozitivne obaveze izričito su pomenute u tekstu EKLJP. Primeri su: pravo na pravično suđenje, koje je garantovano članom 6 EKLJP; pravo na obrazovanje, garantovano članom 2 Protokola 1 uz EKLJP, te dužnost održavanja slobodnih izbora, predviđena članom 3 istog protokola (Starmer, 2001, str. 139). Međutim, u većini slučajeva one su evoluirale kao posledica sudskog tumačenja, u skladu sa doktrinom „praktičnog i delotvornog" i specijalnim karakterom EKLJP, kao međunarodnim sporazumom koji štiti ljudska prava (Russel, 2010, str. 283), a ne jer ih tekst EKLJP eksplicitno predviđa. Pravni osnov, na kom se temelji doktrina pozitivnih obaveza, predstavljaju članovi 1 i 13 EKLJP, kojima su uspostavljene opšte obaveze država ugovornica i istaknut princip delotvornosti koji je imao najznačajniju ulogu prilikom konstruisanja pozitivnih obaveza država (Urbaite, 2011, str. 219–223).

Prvi pravni osnov podrazumeva kombinaciju supstantivnog prava i opšte obaveze predviđene članom 1 EKLJP. Reč je o tumačenju, po kome opšta obaveza država ugovornica da obezbede delotvorno uživanje prava garantovanih EKLJP obavezuje države ne samo da se uzdrže od kršenja ljudskih prava, već i da preduzmu konkretne akcije u cilju njihove zaštite. Na ovaj način, kako to ističe De Than (2003), „sama prava garantovana EKLJP se posmatraju kao izvor pozitivnih obaveza, što

članu 1. EKLJP daje ogroman istorijski značaj" (str. 169). Na osnovu prvog člana EKLJP, Sud je uspostavio obavezu država ugovornica da kreiraju odgovarajući nacionalni pravni okvir za delotvornu zaštitu ljudskih prava garantovanih ovim regionalnim instrumentom zaštite ljudskih prava. Pored toga, države potpisnice su dužne da obezbede resurse za prevenciju kršenja prava pojedinaca, te da pruže informacije i pravne savete pojedincima o sadržini, obimu i načinima zaštite njihovih prava predviđenih u EKLJP (Russel, 2010, str. 283).

Član 13 EKLJP garantuje pravo na delotvorni pravni lek pred domaćim vlastima svakome kome su povređena prava i slobode iz ovog međunarodnog sporazuma. Naročito je značajan kada je reč o proceduralnim pozitivnim obavezama, te opštim obavezama država potpisnica da uspostave odgovarajući pravni okvir i mehanizme kompenzacije žrtvama kršenja ljudskih prava (Urbaite, 2011, str. 222). Na osnovu člana 13 EKLJP, Sud je uspostavio obavezu država ugovornica da isplate nadoknadu pojedincima, čija ljudska prava su prekršena, ali i da sprovedu delotvornu istragu podobnu da dovede do krivičnog gonjenja počinilaca kršenja (Russel, 2010, str. 284) i obezbede dovoljno učešće žrtve kršenja ljudskih prava u postupcima pred nacionalnim sudovima (Urbaite, 2011, str. 222). Takođe, utvrdio je i obavezu vlasti država potpisnica EKLJP da garantuju poštovanje ljudskih prava ili sloboda čak i kada je reč o privatnim odnosima pojedinaca (Van Dijk, 1998, str. 19).

### 3.3. Legitimnost uspostavljanja pozitivnih obaveza u vezi sa pravima iz EKL

Princip vladavine prava jedan je od temelja konstruisanja pozitivnih obaveza. Utkan je u samu EKLJP, naročito kada je reč o zabrani zloupotrebe prava, koja je predviđena u članu 17 (Urbaite, 2011, str. 219). Takođe, Sud je na efikasan način uspostavio teorijsku osnovu za konstituisanje pozitivnih obaveza za vlasti država članica razvijanjem šireg shvatanja državne odgovornosti predviđene EKLJP, te proširivanjem definicije „žrtve povrede prava" u okviru svoje prakse (Starmer, 2001, str. 146).

Konzervativniji komentatori su, međutim, smatrali da je razvoj pozitivnih obaveza u pojedinim aspektima prešao granice pukog tuma-

čenja EKLJP, postavši *de facto* stvaranje prava (Xenos, 2012, str. 214). Njihov je stav da je Sud ovakvim postupanjem prekoračio dozvoljene granice legitimnog tumačenja sporazuma (Urbaite, 2011, str. 214–232). Ukoliko bi isključivo Sud odlučivao o tome ko mogu biti nosioci ljudskih prava i šta sve spada u obaveze država u vezi sa njihovom zaštitom, to bi, kako smatra Russel (2010), rezultiralo „velikim mračnim područjem nesigurnosti koja okružuje pravne obaveze pojedinaca", pošto Sudu „nedostaje odgovarajući kapacitet da se nosi sa kumulativnim i nenamernim posledicama ponašanja pojedinaca" (str. 285). Stoga, ovaj autor insistira da zadatak uspostavljanja pozitivnih obaveza ne bi trebalo prepustiti sudovima, već bi on trebalo da bude u nadležnosti zakonodavnih organa (Russel, 2010, str. 294).

Nasuprot tome, u teoriji preovladava stav, prema kojem je Sud prilično rano u svojim presudama ustanovio da je EKLJP predmet evolutivnog tumačenja. Iz tog razloga mu nisu „vezane ruke" time da mora da se rukovodi isključivo originalnim namerama tvoraca nacrta ovog pravnog akta (Urbaite, 2011, str. 219). Van Dijk (1998) ocenjuje da su strazburške sudije posmatrale EKLJP kao „živi instrument zaštite ljudskih prava" i tumačile ga u skladu sa standardima današnjice. Postupali su sa posebnom pažnjom kada su donosili odluke u kojima se konstatuje postojanje određenih obaveza u skladu sa EKLJP koje njeni prvobitni autori nisu predvideli (str. 18). Mi smo saglasni sa ovim stavom, čija je argumentacija jasno izložena, koherentna i ubedljiva. Imajući u vidu ulogu Suda, kao nepristrasnog, nadnacionalnog zaštitnika ljudskih prava, sasvim je opravdano dati njegovim sudijama slobodu da prilikom tumačenja odredbi međunarodnog dokumenta, koji je usvojen pre sedam decenija i koji je odražavao pravne standarde toga vremena, navedene odredbe prilagode potrebama današnjeg društva, koje se u pogledu zaštite ljudskih prava sveukupno nalazi na višem stepenu razvoja.

EKLJP, kao sporazum o ljudskim pravima, ima određene osobenosti usled kojih manje zavisi od „dnevne" promene volja njenih potpisnica. Međutim, Konvencija i dalje predstavlja ugovor i zavisi od suverene volje država ugovornica o tome da li će prihvatiti određenu obavezu (Van Dijk, 1998, str. 33). Stoga, legitimnost uspostavljanja pozitivnih obaveza ne leži samo u tome što je njihova doktrina razvijena na osnovu opštih obaveza država potpisnica predviđenih EKLJP, već i u činjenici

da su države potpisnice EKLJP pokazale prihvatanje ove doktrine time što su prihvatile obaveznu nadležnost Suda koji je najpre ustanovio doktrinu pozitivnih obaveza država, a zatim nastavio da je dalje razvija. Do istog zaključka dolazimo uvidom u ukupan broj izvršenih odluka Suda, kao i u potonji konstantni razvoj nacionalnih pravnih sistema i sudske prakse. Normativni legitimitet pozitivnih obaveza leži u tome što one promovišu norme koje su u skladu sa evropskim standardima zaštite ljudskih prava, odražavajući, na taj način, zajednički pristup država članica u tom pogledu.

Imajući u vidu sve navedeno, saglasni smo sa stavom koji zastupa Van Dijk (1998) da „upravo zbog toga što se radi o pravu koje su stvorile sudije, domaći i strazburški organi bi trebalo da pokažu oprez i ne budu suviše kreativni u prihvatanju i oblikovanju pozitivnih obaveza država ugovornica i kad god je to moguće, ostave vlastima prilično veliku marginu procene prilikom uspostavljanja pravične ravnoteže između javnih interesa u pitanju i interesa pojedinca koji zahteva primenu određenih pozitivnih mera“ (str. 33). Na taj način se omogućava uspostavljanje zajedničkog standarda, kada je reč o nivou zaštite ljudskih prava i progresiji istog. Istovremeno se poštuje suverenitet država i nacionalnim organima ostavlja dovoljno prostora da se ti standardi implementiraju u nacionalne pravne sisteme na jedan organski, prirodan i delotvoran način.

## 4. Sadržaj i obim pozitivnih obaveza u EKLJP

Postoje brojne varijacije, kada je reč o sadržaju pozitivnih obaveza. One predstavljaju sveobuhvatan sistem zaštite ljudskih prava koji se sastoji od legislativnog, odnosno regulativnog okvira, administrativnog okvira i praktičnih mera za *ad hoc* primenu (Xenos, 2012, str. 209). Stoga, pozitivne obaveze mogu biti sprovedene aktima zakonodavnih ili izvršnih organa. Prema suštini postupanja koje se od organa vlasti zahteva, pozitivne obaveze mogu biti materijalne ili procesne (Urbaite, 2011, str. 215–216). Pored ove značajna je i podela koja se odnosi na sam sadržaj pozitivnih obaveza država potpisnica EKLJP. Ona će biti predmet našeg nešto detaljnijeg razmatranja.

### 4.1. Uspostavljanje odgovarajućeg pravnog okvira za delotvornu zaštitu prava iz EKLJP

Starmer (2001) deli pozitivne obaveze država ugovornica EKLJP na pet kategorija (str. 146). Prvu kategoriju čini obaveza da se ustanovi pravni okvir koji će omogućiti delotvornu zaštitu prava predviđenih EKLJP. Ova dužnost predstavlja minimum obaveza, koji mora da ispuni država potpisnica (Starmer, 2001, str. 147). Obaveza države da unese u svoj pravni poredak materijalno pravo kojim se pruža aktivna zaštita ljudskih prava i odgovarajuće procesne garancije (Xenos, 2012, str. 207) ne podrazumeva nužno da se odredbe EKLJP inkorporiraju direktno. Dovoljno je da se u unutrašnjem pravu uspostavi praktičan okvir zaštite ljudskih prava (Russel, 2010, str. 285), koji uključuje delotvorne pravne lekove. Države su, takođe, obavezne da kriminalizuju određena postupanja sa ciljem zaštite prava pojedinaca (Urbaite, 2011, str. 216).

Ovo pravilo je opšteg karaktera. Međutim, pojedina kršenja prava garantovanih Konvencijom bila su toliko ozbiljna da je Sud insistirao na uvođenju krivičnih sankcija u pravni sistem država u kojima je do kršenja došlo. Primera radi, u slučaju *X and Y v. The Netherlands* (1985), Sud nije bio saglasan sa tvrdnjama Vlade Holandije da su njene obaveze iz EKLJP ispunjene time što su podnosioci predstavke imali mogućnost da pokrenu parnični postupak i zahtevaju naknadu štete. Zauzeo je čvrst stav da zaštita koju pruža parnični postupak nije dovoljna u slučajevima kršenja ljudskih prava, poput ovoga u kome je šesnaestogodišnja devojka s mentalnim poremećajima bila žrtva seksualnog napada (Starmer, 2001, str. 147; *X and Y v. The Netherlands* (1985)).

Na pitanje koje konkretne mere države treba da preduzmu kako bi ispunile svoje obaveze iz EKLJP, Sud nije dao precizan odgovor. Njegova uloga jeste samo da utvrdi da li su mere koje je država preduzela bile odgovarajuće i dovoljne da garantuju delotvorno uživanje ljudskih prava predviđenih EKLJP. Ukoliko država nije delala u dovoljnoj meri, na Sudu je da odredi koji je bio zahtevan minimalni stepen uloženog truda da se pravo u pitanju zaštiti, odnosno da se omogući njegovo nesmetano uživanje, kao i koje je postupanje bilo moguće u datoj situaciji (*Ibidem*, 218). Pozitivna obaveza, kao takva, postoji, ali je njena konkretizacija ostavljena državama potpisnicama EKLJP. Sud ima nadzornu ulogu i on

naknadno daje „konačnu reč" o tome da li je država postupila u skladu sa onim što joj je dužnost na osnovu EKLJP (*Pini and others v. Romania* (2004), *ZIT Company v. Serbia* (2007), *Vlahović v. Serbia* (2008)).

### 4.2. Sprečavanje kršenja prava iz EKLJP

Države potpisnice EKLJP, takođe, imaju obavezu da spreče kršenja prava koja su njome garantovana (Starmer, 2001, str. 146). Ova dužnost se razlikuje u zavisnosti od zaštićenog prava o kome je reč. Zaštita osnovnih ljudskih prava zahteva posebnu pažnju od strane nacionalnih organa. Postoji obaveza da se u pravni sistem uvedu efikasne odredbe sa ciljem prevencije protivpravnih ponašanja (De Than, 2003, str. 182). Kako Russel (2010) navodi: „Ukratko, ukoliko bi bilo moguće predvideti stvari kojim će se Sud baviti, razumno je pretpostaviti da bi domaće zakonodavstvo pokušalo da u svoj pravni sistem uvede zakone i politike koje mogu da preduprede i spreče ta očekivana kršenja ljudskih prava. Drugim rečima, države potpisnice bi dobrovoljno prihvatile pozitivne obaveze i priznale im pravno dejstvo" (str. 285).

Pored toga, nužno je da se u državama potpisnicama obezbedi mreža izvršnih organa sa zadatkom da spreči i obeshrabri kršenje ljudskih prava, odnosno kazni počinioce ukoliko do istog dođe. U pojedinim jasno definisanim slučajevima, organi državne vlasti su dužni da preduzmu preventivne operativne mere sa ciljem da zaštite pojedince, ukoliko postoji opasnost da njihova prava budu ugrožena krivičnim delima drugih pojedinaca (*Osman v. The United Kingdom,* 1998, §115).

### 4.3. Pružanje informacija i pravnih saveta

U velikom broju slučajeva, Sud je prepoznao da je jedini način za pojedince, da zaštite svoja Konvencijom garantovana prava, da im se omogući pristup relevantnim informacijama (Starmer, 2001, str. 147). Državni organi ne smeju, u tom pogledu, ostati pasivni i nedostupni pojedincima, kojima su te informacije potrebne.

### 4.4. Savesno reagovanje u slučaju kršenja prava iz EKLJP

Države su dužne da odgovore na kršenja prava iz EKLJP (Starmer, 2001, str. 154), naročito ukoliko su prekršena osnovna prava, poput prava na život, zabrane mučenja, nehumanog ili ponižavajućeg ponašanja ili kažnjavanja. To podrazumeva ne samo obavezu plaćanja naknade žrtvama, već i obavezu sprovođenja detaljne i delotvorne istrage (Urbaite, 2011, str. 216), te uspostavljanje mehanizama krivičnog gonjenja tamo gde je to neophodno (Starmer, 2001, str. 156). Potrebno je i da zakon predviđa adekvatne sankcije za kršenje prava koja Konvencija štiti, te da se one dosledno sprovode.

### 4.5. Obezbeđivanje resursa koji će pojedincima omogućiti da spreče kršenje prava garantovana EKLJP

Naposletku, države ugovornice imaju obavezu da obezbede resurse koji će pojedincima omogućiti da spreče kršenje prava iz EKLJP. Ti resursi mogu biti u vidu besplatne pravne pomoći ili obezbeđivanja smeštaja potencijalnim žrtvama (*Ibidem*, str. 147–157). Države imaju dužnost da obezbede resurse i odgovarajuće treninge za pripadnike svojih izvršnih organa sa ciljem prevencije kršenja EKLJP (O'Connel, 2010, str. 263).

### 4.6. Zaključak u vezi sa vrstama pozitivnih obaveza država iz EKLJP

Principi, koje smo izložili, predstavljaju generalne uslove koje vlada svake države potpisnice mora da ispuni kako bi odgovorila svojim pozitivnim obavezama iz EKLJP. Oni moraju da se primenjuju obazrivo i imajući u vidu kontekst svakog slučaja (Russel, 2010, str. 293). S obzirom na širok spektar ljudskih prava zaštićenih Konvencijom i veliki dijapazon i specifične odlike pravnih sistema država potpisnica, a naročito imajući u vidu da je svaki slučaj osoben, jasno je da se ne može primeniti jedno rigidno pravilo na sve, niti se u svakom slučaju i od svih država može zahtevati identično postupanje. Međutim, nužno je da postoje opšti standardi, kada je reč o sadržaju i minimalnom obimu pozitivnih obaveza država članica, a upravo kroz praksu Evropskog suda se navedeni standardi uspostavljaju i, po potrebi, nadograđuju.

## 5. Principi održavanja pravične ravnoteže interesa kojim se Evropski sud vodio prilikom razvoja pozitivnih obaveza

Sud je u više navrata istakao da princip poštovanja ljudskih prava nije precizno određen. On varira od slučaja do slučaja u svetlu raznolikosti postupanja različitih organa vlasti u različitim državama i situacijama. Stoga je Sud bio krajnje obazriv prilikom razvijanja pozitivnih obaveza. U više navrata nije utvrdio postojanje pozitivne obaveze, navodeći da to ne proističe iz teksta odredbe EKLJP, čak ni evolutivnim tumačenjem. Oprezan pristup Suda ukazuje na to da se granica razvitka pozitivnih obaveza povlači u slučajevima u kojima ne postoji zajednički stav u zakonodavstvu i sudskoj praksi država ugovornica (Van Dijk, 1998, str. 20).

Tako Van Dijk (1998) zaključuje: „Sud je spreman da ustanovi implicirane pozitivne obaveze u odredbama Konvencije ako i u meri u kojoj to smatra neophodnim za povećavanje delotvornosti odredbi u pitanju, ali pokazuje zadršku u slučajevima kada bi ovo iznalaženje obaveza tumačenjem teksta EKLJP za rezultat imalo stvaranje potpuno nove obaveze koja nije povezana sa tekstom odredbe EKLJP, ili prihvatanje postojanja obaveze u kontekstu i obimu koji još nisu opšteprihvaćeni među državama članicama Saveta Evrope“ (str. 22).

Kako je među sudijama Suda postojala svest da uvođenje novih pozitivnih obaveza iz EKLJP za države ugovornice može predstavljati organizacioni i finansijski teret, Sud je državama dozvolio da izaberu odgovarajuće mere ili afirmativne akcije koje su potrebne da se pruži delotvorna zaštita prava ili slobode (Van Dijk, 1998, str. 22). U dosadašnjoj praksi to je podrazumevalo obavezu nacionalnih vlasti da postignu pravičnu ravnotežu između opštih interesa zajednice i interesa pojedinca.

S obzirom na to da EKLJP ne sadrži kriterijume za uspostavljanje takve pravične ravnoteže, upravo su kroz praksu Suda uspostavljeni generalni principi kojima se sudije vode prilikom vršenja tog zahtevnog zadatka. Pri tome, načinjena je razlika između kvalifikovanih i nekvalifikovanih prava koje EKLJP garantuje. Naime, kvalifikovana prava su ona u koja se može mešati u cilju zaštite prava drugih ili javnog interesa (poput prava na poštovanje privatnog i porodičnog života). Tako, primera radi, u presudi *Von Hannover v. Germany* (2004) Sud naglašava da

granica između pozitivnih i negativnih obaveza države, shodno odredbi člana 8 EKLJP, ne može precizno da se definiše. Međutim, načela koja su primenjiva u odnosu na njih su slična. U oba konteksta se mora dati pažnja pravičnoj ravnoteži koja mora biti postignuta između suprotstavljenih interesa pojedinca i zajednice u celini; i u oba konteksta, država uživa određeno polje slobodne procene (*Von Hannover v. Germany*, 2004, §57).

Nasuprot tome, nekvalifikovana su ona prava koja ne mogu da se „balansiraju" spram potreba drugih ili opšteg javnog interesa. Ona mogu podlegati određenim izuzecima, poput prava na slobodu i bezbednost, ili od njih nema izuzetaka, kao što je slučaj sa zabranom mučenja. Sud je, stoga, u presudi *Gafgen v. Germany* (2010) naveo da „član 3 EKLJP, koji je nedvosmislen, utvrđuje da svaki čovek ima apsolutno, neotuđivo pravo da ne bude izložen mučenju ili nečovečnom ili ponižavajućem postupanju ni pod kojim okolnostima, čak ni u najtežim. Filozofska osnova koja podupire apsolutnu prirodu prava shodno članu 3 ne dozvoljava nikakve izuzetke ili opravdavajuće faktore ili balansiranje interesa, bez obzira na ponašanje osobe na koju se odnosi i okolnosti datog prestupa" (*Gafgen v. Germany*, 2010, §107).

Princip pravične ravnoteže je tako prisutan kako u ranijoj, tako i u novijoj praksi Suda. U predmetu *Soering v. The United Kingdom* Sud je zauzeo stav da je potraga za pravičnom ravnotežom između opštih interesa zajednice i zaštite osnovnih prava pojedinca inherentna EKLJP u celini (*Soering v. The United Kingdom*, 1989, §88). Sud je koristio ovaj princip kao osnovu za ocenu proporcionalnosti mešanja država potpisnica u uživanje ljudskih prava podnosilaca predstavke, kao i za određivanje kada postoje pozitivne obaveze država potpisnica u skladu sa EKLJP.

Kada je reč o negativnim obavezama, najbitniji instrument za postizanje željene ravnoteže interesa i sprečavanje zloupotrebe i samovolje vlasti jeste princip proporcionalnosti (Nowak, 2012, str. 275). Ovaj princip ograničava obim i sadržinu dozvoljenog mešanja u prava garantovana EKLJP – dozvoljeno je samo ono mešanje koje najmanje zadire u konkretno ljudsko pravo, a za svrhu ima ostvarenje legitimnog cilja (Greer, 2003, str. 409). Njegova uloga jeste da spreči zloupotrebe od strane organa vlasti država potpisnica (Nowak, 2003, str. 60–61).

Kada utvrđuje da li je princip proporcionalnosti poštovan, Sud najpre mora da utvrdi da li su mere države članice EKLJP preduzete kako bi se ostvario neki legitiman cilj, a potom i da li su one podobne da se taj cilj ostvari. Zatim, Sud utvrđuje da li su navedene mere neophodne i da li je reč o merama koje su najumerenije i najmanje zadiru u ljudska prava garantovana EKLJP (Nowak, 2012, str. 275).

Najčešće primenjivan princip, kad je reč o pozitivnim obavezama, jeste princip „dužne pažnje". U skladu sa njim, države su obavezne da preduzmu sve mere koje se razumno mogu očekivati da se preduzmu u datim okolnostima kako bi osigurale poštovanje prava garantovanih EKLJP.

Istovremeno, pozitivne obaveze ne smeju nametati preveliki teret državama koje ih sprovode. Stoga se moraju definisati, što je uže moguće, i odnositi samo na fundamentalne vrednosti zaštićene EKLJP (De Than, 2003, str. 169). Sud je zauzeo stav da EKLJP ne treba tumačiti tako da se njome državama ugovornicama nameću obaveze koje nije moguće ispuniti ili teret koji je disproporcionalan (*Osman v. The United Kingdom*, 1998, §116). U slučaju *Rees v. The United Kingdom* (1986) Sud je bio jasan u oceni da će „obim obaveza sasvim izvesno varirati, imajući u vidu raznovrsnost situacija u državama potpisnicama EKLJP, poteškoće u vezi sa sprovođenjem zakona u modernim društvima i važne izbore koji se moraju doneti u pogledu prioritetizacije i alociranja dostupnih resursa" (*Rees v. The United Kingdom*, 1986, §37). Na taj način je pokazao razumevanje za različitost situacija u kojima se od države zahteva izvršenje pozitivnih obaveza, te istakao važnost adaptabilnosti sudskog tumačenja u tom kontekstu.

Postoje i izvesne kritike primene principa pravične ravnoteže. Uglavnom su zasnovane na tome što se na taj način Sud stavlja u središte pitanja koja spadaju u unutrašnju politiku država članica.

Međutim, ne treba zanemariti da Sud dozvoljava nacionalnim državama izvesno polje slobodne procene u ovom pogledu (Mowbray, 2020, str. 289–318). Tako je, primera radi, Ustavni sud Italije, u stavu 7 Odluke broj 317 iz 2009. godine, decidno naveo da „koncept što veće ekspanzije zaštite mora uključiti uslov odmeravanja prava u odnosu na druge ustavno zaštićene interese tj. u odnosu na druge ustavne odredbe

koje zauzvrat garantuju osnovna prava na koja može uticati ekspanzija individualne zaštite. Ovo balansiranje primarno mora izvršiti zakonodavac, ali je takođe pitanje za ovaj Sud (Ustavni) kada tumači ustavno pravo. Ukupan rezultat dopune garancija iz domaćeg prava mora biti pozitivan u smislu da uticaj pojedinačnih odredbi Evropske konvencije na italijansko pravo mora rezultirati povećanjem zaštite za čitav sistem fundamentalnih prava" (Repetto, 2013, str. 47). Drugim rečima, zadatak nacionalnih sudova je da odmeravaju interese na jedan pravičan način, koji će doprineti podizanju nivoa zaštite ljudskih prava makar do standarda predviđenih Konvencijom, ali prilikom tog balansiranja imaju izvesnu slobodu i ostavlja im se određena mogućnost slobodne procene.

## 6. Odnos između pozitivnih i negativnih obaveza iz EKLJP

Negativne obaveze su garancija da ljudska prava predstavljaju svojevrstan zaštitni bedem protiv arbitrarnog postupanja državne vlasti i uvođenja prepreka pojedincima da nesmetano uživaju i vrše svoja ljudska prava (Russel, 2010, str. 282). One su i formulisane negativno, kao zabrana državi da se meša u vršenje pojedinačnih prava na arbitraran ili neproporcionalan način (Urbaite, 2011, str. 214). Nasuprot tome, pozitivne obaveze su u ogromnoj većini slučajeva nastale tumačenjem EKLJP i nisu eksplicitno navedene u tekstu iste. One pozitivne obaveze koje su izričito predviđene tekstom EKLJP formulisane su pozitivno, kao zahtev državi da postupi na određeni način.

U literaturi nailazimo i na dodatne kriterijume, kojima se ukazuje na zasebnu prirodu pozitivnih obaveza. One se posmatraju kao „aktivna zaštita ljudskih prava" (Xenos, 2012, str. 206) i zasnovane su na paragrafu 1 EKLJP. Element saznanja da postoji potreba za zaštitom određenih ljudskih prava može opravdati zahtev da država aktivno dela u cilju zaštite ugroženih prava i to u čitavom spektru različitih okolnosti. Postojanje ovog objektivnog elementa jeste uslov primene pozitivnih obaveza i na osnovu njega se efikasno postavljaju granice državne odgovornosti (*Ibidem*, str. 206–207).

Sud je u više navrata izjavio da „granice između pozitivnih i negativnih obaveza država nisu precizno definisane" (*Keegan v. Ireland*,

1994, §49; Klatt, 2011, str. 694). Ove dve vrste obaveza imaju i neke zajedničke osobine. U čuvenom slučaju *Powell and Rayner v. The United Kingdom* (1990) istaknuto je da „principi koji se primenjuju su u velikoj meri slični. Kako u kontekstu pozitivnih, tako i u kontekstu negativnih obaveza, mora se uspostaviti pravična ravnoteža između interesa pojedinca i interesa čitave zajednice; u oba konteksta država uživa izvesnu marginu slobodne procene prilikom odabira mera koje će se preduzeti kako bi se osiguralo poštovanje EKLJP" (*Powell and Rayner v. The United Kingdom*, 1990, §41).

Štaviše, u nekim slučajevima Sud je smatrao da nije neophodno da se slučaj analizira sa tačke postupanja u skladu sa pozitivnim ili negativnim obavezama (Klatt, 2011, str. 694), već da je uloga suda da utvrdi da li je postignuta pravična ravnoteža javnih i privatnih interesa (Urbaite, 2011, str. 218). Xenos (2012) ide tako daleko da tvrdi da u svojoj praksi Sud nije načinio jasno razlikovanje između pozitivnih i negativnih obaveza država. On dodaje da je „ova situacija pogoršana rastućom tendencijom da se svaka mera kojom se poštuju ljudska prava označava kao pozitivna obaveza" (str. 205).

Odstupajući od većinskog stanovišta u teoriji, Dickson i Hohfeld (2010) pak smatraju da je dihotomija pozitivnih i negativnih obaveza lažna, jer sva prava imaju korelativne obaveze koje su i pozitivne i negativne. Ovi autori tvrde da se negativne obaveze mogu lako postaviti kao pozitivne i obrnuto (str. 203).

Krähenmann (2013) zastupa slično mišljenje, te navodi da su u mnogim slučajevima negativne i pozitivne obaveze nerazdvojive. Kao primer, navodi dužnost planiranja operacija organa izvršne vlasti na način koji minimizira rizik i za metu operacije i za slučajne prolaznike. Ova dužnost se može posmatrati kao opšti princip proporcionalnosti upotrebe sile, ali i kao odvojena pozitivna obaveza nacionalnih organa izvršne vlasti i njihovih pripadnika (str. 170).

Naše gledište je da pozitivne i negativne obaveze imaju svoje osobenosti koje se, pre svega, odnose na pravni osnov, utemeljenost i očekivano (ne)postupanje državnih organa. U isto vreme, one su usko povezane i isprepletane. Stoga, u određenom broju slučajeva, kako je to istakao i sam Sud, nije moguće, a po našem mišljenju ni nužno, načiniti razli-

kovanje između ove dve vrste obaveza. Ono što je svakako važno jeste razvijanje svesti o neophodnosti poštovanja jednih i drugih u državama potpisnicama EKLJP.

## 7. Zaključak

Pozitivne obaveze predstavljaju obaveze država članica da aktivno delaju da pruže potpuniju zaštitu ljudskih prava garantovanih EKLJP. Postoje različite vrste pozitivnih obaveza, u zavisnosti od vrste postupanja koja se od nacionalnih organa očekuju.

Kako je vrlo mali broj ovih obaveza naveden u tekstu EKLJP, Sud je pozitivne obaveze ustanovio primenom specifičnih metoda tumačenja EKLJP – doktrine „živog instrumenta" i doktrine „praktičnog i delotvornog". Pri tome, u obzir su uzeta pravila iz nacionalnih pravnih sistema, pravila međunarodnog prava i sudska praksa međunarodnih sudova, te supranacionalne norme i standardi. Važnu ulogu u kreiranju pozitivnih obaveza imao je i princip vladavine prava, kao i to što je Sud, kroz svoju praksu, proširio opseg državne odgovornosti, ali i definiciju ko se sve smatra „žrtvom povrede ljudskih prava" garantovanih EKLJP.

Prilikom razvoja pozitivnih obaveza, strazburške sudije vode računa o pravičnoj ravnoteži, koju je potrebno postići između opštih interesa zajednice i njima suprotstavljenih legitimnih javnih interesa, ali i o tome da se njihovim uspostavljanjem ne nametne prevelik i neproporcionalan teret državama potpisnicama EKLJP. Premda su, u skladu sa principom „dužne pažnje", države obavezne da preduzmu sve mere koje se razumno mogu očekivati da preduzmu u datim okolnostima kako bi osigurale poštovanje prava garantovanih EKLJP, prilikom odabira konkretnih mera, koje će se preduzeti, država uživa izvesnu marginu slobodne procene. Isto važi i za balansiranje opštih i interesa pojedinca. Uloga Suda u Strazburu je u ovom pogledu, uslovno rečeno, nadzorne prirode.

Saglasni smo sa ocenom koju daje Starmer (2001), da „u mnogim aspektima pozitivne obaveze predstavljaju karakteristično obeležje EKLJP koje ga razlikuju od drugih instrumenata za zaštitu ljudskih prava, naročito onih koji su načinjeni pre Drugog svetskog rata" (str. 159). Stoga, ne bismo smeli da zanemarimo njihovu rastuću važnost u praksi

Suda u Strazburu (Klatt, 2011, str. 692). Uvođenjem pozitivnih obaveza, zaštita ljudskih prava na evropskom tlu se pomera na jedan viši nivo i dovodi nas korak bliže njihovom sveobuhvatnijem poštovanju u čitavom regionu i šire.

Materija pozitivnih obaveza država potpisnica EKLJP jeste oblast koja se razvija i konstantno nadograđuje. S obzirom na njen nesumnjiv značaj, iznenađujuće je malo radova i literature koji se ovom oblašću detaljnije bave. Upravo specifičnost razvoja pozitivnih obaveza, kreativnost interpretacije strazburških sudija prilikom njihovog nastanka, domišljatost i pravna spretnost koje leže iza njihovog razvoja, i činjenica da je doktrina pozitivnih obaveza svojevrstan odgovor sudske prakse na izazove koje teorija nije mogla svojevremeno da predvidi i odgovori im na adekvatan način, predstavljaju glavne razloge zbog kojih ovoj temi treba pružiti više pažnje u budućnosti.

**Literatura:**

Knjige i članci:

Afunaduula, I. (2005). *Defining Human Rights: The Need for a Holistic Definition*. Kampala: International University.

Akandji-Kombe, J. F. (2007). *Positive obligations under the European Convention on Human Rights*. Strasbourg: Council of Europe.

Bantekas & Oette, I. Oette, L. (2014). *International human rights, law and practice*. Cambridge: Cambridge University Press.

Van Dijk, P. (1998). Positive obligations' implied in the European Convention on Human Rights: Are the States still the 'masters' of the Convention?. U Castermans-Holleman, M., Van Hoof, F. & Smith, J. (ured.) (1999) *The role of the nation-state in the 21st century -- human rights, international organisations and foreign policy: essays in honour of Peter Baehr*. The Hague: Springer.

Grabenwater, C. (2012). The European Convention on Human Rights and its monitoring mechanism. U Nowak, M. Januszewski, K.M. Hofstätter, T.(ured.) (2012). *All human rights for all*. Vienna, Graz: Intersentia. 128–134.

Greer S. (2003). Constitutionalizing adjucation under the European Convention on Human Rights. *Oxford Journal of Legal Studies, 3(XXIII)*, 405–433.

Gemalmaz, H. B. (2007). Making Sense of Children Rights: Transforming the Precedents of the European Court of Human Rights Concerning Corporal Punishment of Children. *Annales de la Faculté de Droit d'Istanbul*, *56*, 37–70.

De Than, C. (2003). Positive Obligations under the ECHR: Towards the Human Rights of Victims and Vulnerable Witnesses?. *The Journal of Criminal Law*, 165–182.

Dickson, B. (2010). Positive obligations and the European Court of Human Rights. *Northern Ireland Legal Quarterly*, *3(LXI)*, 203–208.

Evans, M. D. (2004). State responsibility and the European Convention on Human Rights: Role and Realm. U Fitzmaurice, M. & Sarooshi, D. (ured.). (2004) *Issues of state responsibility before International Judicial Institutions*. London: Blumsbury publishing.

Henkin, L. (1979). *How nations behave*. New York: Columbia University Press.

Jovanović, S. (1990). *O državi: Osnovi jedne pravne teorije*. Grupa izdavača, Beograd.

Klatt, M. (2011). Positive obligations under the European Convention on Human Rights. *Journal of International law*, *71*, 691–718.

Krähenmann, S. (2013) Positive obligations in human rights law during armed conflicts. U Kolb, R. Gaggioli. G. (ured.) (2013). *Research handbook on human rights and humanitarian law*. Chentelham: Edward Elgar. 170–187.

Kremnitzer, M., & Ghanayim, H. (2003–2004). Proportionality and the aggressor's culpability in self-defense. *Tulsa Law Review*, *39*, 875–899.

Landman, T. (2005). *The Scope of Human Rights. From Background Concepts To Indicators*. Colchester: Human Rights Centre.

Lavrysen, L. (2013). No Significant Flaws in the Regulatory Framework: E.S. v. Sweden and the Lowering of Standards in the Positive Obligations Case-Law of the European Court of Human Rights. *Human Rights & International Legal Discourse*, *1(VII)*, 145–164.

Mahoney, P. (2002). New Challenges for the European Court of Human Rights Resulting from the Expanding Case Load and Membership Promoting and Protecting Human Rights in Europe. *Penn State International Law Review*, *1(XXI)*, 101–114.

Merrils, J. G. (1993). *The development of international law by the European Court of Human Rights*. Manchester: Manchester University Press.

Mowbray, A. (2010). A study of the Principle of Fair Balance in the Jurisprudence of the European Court of Human Rights. *Human Rights Law Review*, *2(X)*, 289–318.

Mowbray, A. (2005). The creativity of the European Court of Human Rights. *Human Rights Law Review*, *1(L),* 57–80.

Nowak, M. (2003). *Introduction to the Human Rights Regime*. Leiden: Brill Academic Publishers.

Nowak M. (2012). Introduction to human rights theory. U Nowak, M. Januszewski, K.M. Hofstätter, T. (ured.) (2012). *All human rights for all*. Vienna, Graz: Intersentia. 269–279.

Nowak, M. (2012) Human rights from a legal perspective. U Nowak M., Januszewski K.M., Hofstätter, T. (ured.) (2012). *All human rights for all*. ed., Vienna, Graz: Intersentia. 21–25.

O' Connel, R. (2010). Realising political equality: the European Court of Human Rights and positive obligations in a democracy. *Northern Ireland Legal Quarterly*, *3 (LXI)*, 263–279.

Repetto, G. (2013). *Rethinking a Constitutional Role for the ECHR. The Dilemmas of Incorporation into Italian Domestic Law*. Cambridge: Intersentia.

Russel, D. (2010). Supplementing the European Convention on Human Rights: legislating for positive obligations. *Northern Ireland Legal Quarterly*, *3 (LXI)*, 281–294.

Starmer, K. (2001). Positive obligations under the Convention. U Jowell, J. Cooper, J. (ured.) (2001). *Understanding Human Rights Principles*. Oxford and Portland: Hart Publishing.

Urbaite, L. (2011). Judicial Activism in the Approach of the European Court of Human Rights to Positive Obligations of the State. *Baltic Yearbook of International Law*. *11*, 211–238.

Fitzmaurice, M. Sarooshi, D. (prir), (2004). *Issues of State Responsibility Before International Judicial Institutions*. Oxford and Portland Oregon: Hart Publishing.

Xenos, D. (2012). *The positive obligations of the state under the European Convention on Human Rights*. London and New York: Routledge.

**Međunarodni dokumenti**:

Bečka konvencija o ugovornom pravu (1969), preuzeto 29. juna 2020. sa: treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf,

Evropska Konvencija za zaštitu ljudskih prava i osnovnih sloboda (1950), preuzeto 4. avgusta 2020. sa: www.echr.coe.int/Documents/Convention_SRP.pdf

**Presude Evropskog suda za ljudska prava:**

*Vlahović v. Serbia*, no. 42619/04, 16. 12. 2008.

*Von Hannover v Germany*, no. 59320/00, 24. 6. 2004.

*Gafgen v. Germany*, no. 22978/05, 1. 6. 2010.

*Gül v. Switzerland*, no. 23218/94, 19. 2. 1996.

*ZIT company v. Serbia*, no. 37343/05, 27. 11. 2007.

*Keegan v. Ireland*, no. 16969/90, 26. 5. 1994.

*Osman v. The United Kingdom* (GC), no. 87/1997/871/1083, 28. 10. 1998.

*Pini and others v. Romania*, nos. 78028/01 and 78030/01, 22. 6. 2004.

*Rees v. The United Kingdom,* no. 9532/81, 17. 10. 1986.

*Selmouni v. France*, no. 25803/94, 28. 7. 1999.

*Soering v. The United Kingdom*, no. 14038/88, 7. 7. 1989.

*Tyrer v. The United Kingdom*, no. 5856/72, 25. 4. 1978.

*Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium,* no. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, 9. 2. 1967.

*X and Y v. The Netherlands*, no. 8978/80, 26. 3. 1985.

## THE CREATION AND DEVELOPMENT OF POSITIVE OBLIGATIONS OF STSTES SIGNATORIES OF THE EUROPEAN CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

**Abstract**: This paper deals with the creation and development of positive obligations of contracting states of the European Convention for the Protection of Human Rights and Fundamental Freedoms. At the beginning we explain the division of obligations from ECHR into positive and negative. Then we presented the reasons, methodology and legitimacy of the development of positive obligations under ECHR. We analysed their content and scope. Special emphasis has been placed on maintaining fair balance of interests, as well as on the relation between positive and negative obligations in the practice of the European Court of Human Rights. In conclusion we highlight innovation, usefulness, and importance of positive obligations under ECHR for the increased standard of human rights protection on a global level.

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# THE CREATION AND DEVELOPMENT OF POSITIVE OBLIGATIONS OF STSTES SIGNATORIES OF THE EUROPEAN CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS[3]

**Abstract**: This paper deals with the creation and development of positive obligations of contracting states of the European Convention for the Protection of Human Rights and Fundamental Freedoms. At the beginning we explain the division of obligations from ECHR into positive and negative. Then we presented the reasons, methodology and legitimacy of the development of positive obligations under ECHR. We analysed their content and scope. Special emphasis has been placed on maintaining fair balance of interests, as well as on the relation between positive and negative obligations in the practice of the European Court of Human Rights. In conclusion we highlight innovation, usefulness, and importance of positive obligations under ECHR for the increased standard of human rights protection on a global level.

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**Key words**: positive obligations, European Court of Human Rights, European Convention on Human Rights, Convention interpretation, living instrument doctrine, practicality and effectiveness doctrine.

## 1. Introduction

Depending on doctrinal assumptions, more precise definitions of human rights often differ. According to the positivist conception, human rights are a set of individual and collective rights proclaimed and protected by international and national law since the adoption of the Universal Declaration on Human Rights in 1948 (Landman, 2005, p. 2). Authors inclined to holistic approach define human rights as a result of evolution of natural rights, which are universal in the sense that they supplement and improve existing cultures and have to be supervised and implemented by a certain body having jurisdiction over all states (Afunaduula, 2005, p. 11). Some authors determine human rights as a set of minimal moral and political requirements universal in character that every individual possesses, or ought to possess, in relation to the government and the society in which he or she lives. Moreover, they emphasize that these rights are natural and innate, being a consequence of human autonomy and dignity, as values apriori of the highest moral rank which need not be proven since their ethical and epistemological status is evident (Henkin, 1979, str. 407). Classical theorists of constitutional law frequently define human rights as a means of limiting and controlling state power (Jovanović, 1990, p. 121).

Human rights are the rights we have by the very fact we are human beings (Bantekas, Oette, & Oette, 2014, p. 10). Their protection is imperative in contemporary modern society, since in this way not only individuals are protected, but also the humane, democratic values of entire communities, and, above all, the dignity of the human beings as such. The European Convention on Protecting Human Rights and Fundamental Freedoms (ECHR, hereafter) was the first regional document to guarantee international protection of human rights and fundamental freedoms comprised within it (Grabenwater, 2012, p. 128), and the European Council was the first organization to establish a court of human

rights and instituted an investigative procedure of individual petitions similar to the procedure of protecting basic human rights before national courts (Nowak, 2003, p. 160). This system represents the first successful attempt to mirror national systems of human rights protection on an international level. That is the reason it became the model for other regional and universal systems for protecting human rights (*Ibidem*, p. 159–160). The solutions provided for by this convention are the subject of our enquiry.

In this paper we attempt to present a development of a special kind of obligations the signatory nations of ECHR have taken commitment to called positive obligations. We explain the causes and forms of their origin, and then concisely present the most important moments in their evolution. Combining qualitative and quantitative methods in analysing the most important cases from the practice of European Court of Human Rights (hereafter: Court) together with the comments of experts, we show the legal basis and legitimacy of the emergence of positive obligations in the member countries of ECHR, as well as their content and scope, laying stress on the most important ones. The subject of our discussion shall be also the principles of maintaining fair balance of interest the Court was guided by in developing positive obligations, together with the relation between positive and negative obligations of ECHR signatories. In conclusion, we summarize the results of these investigations and offer our opinion about the future development of positive obligations.

## 2. The distinction between positive and negative obligations in ECHR

The European Court of Human Rights divided the obligations of signatory states into two categories – positive and negative obligations.

Negative obligations imply that states do not interfere in enjoyment and exercise of human rights under ECHR. They are explicitly stated in the text of ECHR and called their central, core values (Russel, 2010, p. 282), and, as such, they dominated the practice of the court during the first phase of its development.

Although the Court did not give a definition of positive obligations, their essence was explicated by judge Martens: "negative obligations require that member countries refrain from action, while the positive ones require action" (*the separate opinion of judge Martens accepted by judge Rousseau* in the verdict of *Gül v. Switzerland* (1996)). Van Dijk (1998), hence, characterises positive obligations as "obligations to act" (p. 17); we agree with that description.

Positive obligations imply that the government in the signatory countries has a responsibility to undertake any necessary measures to protect human rights, as well as to implement, in their respective national legal systems, reasonable and adequate measures to realize that goal. (Akandji-Kombe, 2007, p. 5). Almost without exceptions signatory countries of ECHR are required to take actions to protect the rights of the individual (Starmer, 2001, p. 139), but, in the same time, they are not committed to achieving concrete results (De Than, 2003, p. 168). In other words, the national governments are required to proceed in a certain way but are not required to guarantee a certain outcome.

## 3. The creation of positive obligations in connection with respect of human rights from ECHR

The creation of positive obligations is the result of creative interpretations of ECHR by the Court. Namely, these obligations are not explicitly stated in the text of the Convention but are created and developed through the interpretation of judges in the European Court in accordance with the standards of human rights protection accepted by the signatory states of ECHR. Since there was a need to go "beyond" the text of the Convention to secure the status and protection human rights deserve, but, in the same time, to keep the interpretation within the confines of its spirit and values.

### 3.1. The reasons for creating positive obligations and new methods of interpretation of ECHR

As a consequence of inevitable evolution in society and piecemeal change of ethical standards, unforeseen situations appeared before the Court (Mahoney, 2002, p. 104). The teleological principle, adopted as a central principle of interpretation for ECHR (Greer, 2003, p. 408), provided the judges with insufficient space for manoeuvre to meet the new challenges (Bantekas & Oette, 2014, p. 226), and give efficacious protection to the rights guaranteed by the Convention. Thus, the Court introduced creative methods of interpreting ECHR (*Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium* (1968), §3 i 5) – the doctrine of "living instrument" and the doctrine of "practical and efficient" (Mowbray, 2005, p. 59–60). The doctrine of "living instrument" was established in the case *Tyrer v. United Kingdom* (1978), in which the Court emphasized, for the first time, that „ECHR was a living instrument that should be interpreted in the light of present circumstances" (*Tyrer v. United Kingdom*, 1978, §31). The Court explained that it is unavoidable that the regulations in ECHR are interpreted as influenced by the progress achieved in the domain of human rights and by the universally accepted standards in areas connected with the protection of human rights. In practice, the Court establishes whether the problem at hand represents a new trend pointing towards an already existing consensus among the member states of the European Council. Once a consensus has been reached about some of the goals presented in the preamble, any state breaking the consensus will be considered as violating the ECHR (Gemalmaz, 2007, p. 49; *Selmouni v. France* (1999)).

The principle of effectiveness emerges from the general agreement that the aim and purpose of ECHR is the protection of the individual and his/her rights. Therefore, the regulations of ECHR should be interpreted so that the protection they provide should be practical and effective, not theoretical and illusory. This principle, says Merrils (1993), "is a way to secure a certain weight to the decrees of the agreement, and to produce maximum effect" (p. 103). In accordance with the principle of effectiveness, the protection of individual rights is to be interpreted as

broadly as possible, while the exceptions to it as restrictively as possible (Greer, 2003, p. 408).

Whereas Mowbray (2005, p. 59-60) calls the above mentioned interpretation techniques "new", other authors see them as specific methods the Court has applied, consistent with the regulations from article 31 of the Vienna Convention on contract law (Vienna Convention on the Law of Treaties) whereby the terms of the contract should be interpreted in accordance with the aim and purpose of its enactment (Urbaite, 2011, p. 223). What makes them innovative is that they are adapted to specific aims and purposes of ECHR (*Ibidem*, p. 228). Thus, in the case *Soering v. The United Kingdom* (1989), the Court emphasized that any interpretation of the scope of rights and freedoms guaranteed by the ECHR should be consistent with its general spirit, since it is about an instrument created with the purpose of establishing and promoting the ideals and values of democratic society (*Soering v. The United Kingdom*, 1989, §87).

The application of these interpretation techniques leads to creating new, positive obligations of the signatory states of ECHR (Lavrysen, 2013, p. 160). Specifically, a purely negative approach to protecting human rights cannot warrant its efficiency, since the "constitutional model" of protecting human rights is found to be an inadequate response to a large number of challenges emerging in the area (Evans, 2004, p. 159).

As explained by Kremnitzer & Ghanayim (2003–2004): "In modern law fundamental human rights just do not fall under negative rights, in the sense that an individual can demand from the state the actualization of his/her basic rights and that the responsibility of the state is exhausted by respecting those rights, on the contrary, the duty of the state is not only to respect the rights, but actively to protect them. The more important the fundamental right is, the more comprehensive its protection should be" (p. 898).

It is demanded from the states not only not to interfere with individuals exercising their basic rights - unless they do not threaten the rights of others - but to do things for those individuals so that they have a better quality of life (Dickson, 2010, p. 203).

### 3.2. The legal basis of creating positive obligations considering protection of human rights from ECHR

Some positive obligations are explicitly referred to in the text of ECHR. For example, a right to a fair trial, guaranteed by the article 6 of ECHR; a right to education guaranteed by the article 2 of Protocol 1 on ECHR; the obligation to uphold free elections by article 3 of the same protocol (Starmer, 2001, p. 139). However, most of them have been developed as a consequence of judicial interpretation in conformity with the doctrine of „practical and effective" and with the special character of ECHR as an international agreement that protects human rights (Russell, 2010, p. 283), having not been explicitly stated in the text of ECHR. The legal basis of the positive obligations doctrine are presented in the articles 1 and 13 of ECHR in which the general obligations of contracting states are declared and the principle of effectiveness laid stress on – and these played the most important role in constructing positive obligations of states (Urbaite, 2011, p. 219-223).

The first principal element is a combination of substantive law and general obligation specified in article 1 of ECHR. It is about an interpretation according to which the general obligation of the contracting states is to provide effective enjoyment of rights guaranteed by ECHR which puts the states under obligation not only to refrain from violating human rights, but also to take concrete actions to protect them. This way, emphasizes De Than (2003), "the rights themselves guaranteed by ECHR are viewed as sources of positive obligations, and this gives article 1 of ECHR immense historical importance" (p. 169). On the basis of article 1 of ECHR, the Court established the obligation of contracting states to create an adequate national legal framework to increase effective protection of human rights warranted by this regional instrument of protection. Furthermore, the signatory states are responsible for providing resources to prevent violation of human rights, to give information and legal advice to individuals regarding content, scope and means of protecting their rights under ECHR (Russell, 2010, p. 283).

The article 13 of ECHR warrants the right of efficient legal remedy before national governments to everyone whose rights and freedoms guaranteed by this international agreement were violated. It is especially

significant regarding procedural positive obligations and general obligations of signatory states to establish adequate legal framework, as well as mechanisms of compensating victims whose human rights were violated (Urbaite, 2011, p. 222). On the basis of article 13 of ECHR the Court established the responsibility of contracting states to grant compensation to individuals whose rights were violated, as well as to conduct efficient investigation that will lead to prosecution of the perpetrator of the violation (Russell, 2010, p. 284) and to provide for sufficient participation of the victim of human rights violation in the proceedings before national courts (Urbaite, 2011, p. 222). Moreover, the Court established the responsibility of the governments of the signatory states of ECHR to guarantee the respect of human rights and freedoms even in case relations between private individuals are at stake (Van Dijk, 1998, p. 19)

### 3.3. The legitimacy of establishing positive obligations considering the rights under ECHR

The principle of rule of law is one of the cornerstones to the construction of positive obligations. This principle is woven into ECHR itself, especially considering making illegal the abuse of rights dealt with in article 17 (Urbaite, 2011, p. 219). Furthermore, the Court operatively established a theoretical ground for constituting positive obligations for the governments of the member states by developing a broader understanding of state responsibility provided by ECHR and by extending the definition of the term "victim of rights violation" within its practice (Starmer, 2001, p. 146).

The more conservatively inclined commentators were of opinion, however, that the development of positive obligations in some aspects went beyond the limits of interpretation proper of ECHR becoming *de facto* creator of law (Xenos, 2012, p. 214). They claim that the Court by taking such a course overstepped the limits of legitimate interpretation of the agreement (Urbaite, 2011, p. 214-232). If the answer to the question of who could be a bearer of human rights and what should be understood to be the responsibilities of the states considering their protection, depended solely upon the decision of the court, that would, as Russel

(2010) remarked, result in "vast, dark area of uncertainty that surrounds the legal obligations of the individual", because the Court "lacks the appropriate capacity to cope with the cumulative and unintentional consequences of individual behaviour" (p. 285). This author consequently insists that the task of establishing positive obligations should not be left to the courts, but it should fall under the competence of a legislative body (Russell, 2010, p. 294):

In contrast to this, most theoreticians hold that the Court, quite from the beginning, established in its verdicts that the ECHR is subject to evolutionary interpretation. It is for this reason that the Court's "hands were not tied", in the sense to be exclusively guided in making decisions by the original intentions of the creators of this legal document (Urbaite, 2011, p. 219). Van Dijk (1998) estimates that the judges in Strasbourg viewed the ECHR as "a living instrument of protecting human rights" and interpreted it in consonance with the standards of the present age. They proceeded with some care when decisions were to be made in cases in which the existence of certain obligations in accordance with the ECHR were implied, but not explicitly stated by the original authors of the document (p. 18). We find this argumentation clear, coherent and convincing. We agree that it is justified that the judges, having in mind the role of the Court, as an impartial, supranational protector of human rights, be given the freedom when interpreting regulations of an international document written seven decades ago, reflecting legal standards of that period, to adapt them, meeting the needs of contemporary society, which considering human rights protection reached an altogether higher level of development.

ECHR, as an agreement on human rights, has certain distinguishing characteristics that makes it less dependent on "daily" changes of will of its signatories. However, the Convention is essentially a contract dependent on the sovereign will of the contracting states as to whether they would accept (or not) a certain obligation (Van Dijk, 1998, p. 33). Therefore, the legitimacy of establishing positive obligations is not contained only in the fact that their doctrine is developed from the general obligations of the signatory states provided by the ECHR, but also in the fact that signatory states of the ECHR accepted the doctrine by acknowledging mandatory jurisdiction of the Court that first established

the doctrine of positive obligations and then continued to develop it further. We may reach the same conclusion by examining the total number of decisions made by the Court and the ensuing constant development of national legal systems and judicial practice. The normative legitimacy of positive obligations stems from promoting norms consistent with the European standards of protecting human rights, thus reflecting the common attitudes of the member states.

Bearing all this in mind, we agree with the assessment of Van Dijk (1998) when he says that "precisely because this is law created by judges, the judges of the national institutions as well as those in Strasbourg should proceed with caution not being too creative in accepting and forming positive obligations of contracting states, and whenever possible leave to the government quite wide a margin for assessment when establishing a fair balance between public interests at stake and the interests of the individual that requires application of certain positive measures" (p. 33). It is thus made possible to create common standards regarding the level of protecting human rights and its advancement, simultaneously respecting the sovereignty of the states, and leaving them enough space to implement these standards into their own national legal systems in an organic, natural and efficient way.

## 4. The content and scope of positive obligations from the ECHR

There are numerous variations regarding content of positive obligations, as they represent a comprehensive system of human rights protection consisting of legislative or regulative framework, administrative framework and practical measures for *ad hoc* application (Xenos, 2012, p. 209). Thus, positive obligations can be actualized by acts of the legislative, as well as the executive authorities. According to the proceedings the authorities are required to perform, positive obligations can be material or procedural (Urbaite, 2011, p. 215-216). Moreover, significant is the division regarding positive obligations of ECHR signatory states. We discuss this in some detail presently.

### 4.1. Establishing adequate legal framework for efficient protection of rights under ECHR

Starmer (2001) divides positive obligations of ECHR contract states into five categories (p. 146). In the first category falls the responsibility to secure a legal framework which would make efficient protection of rights guaranteed by ECHR possible. This responsibility is considered to be minimal, which every signatory state has an obligation to fulfil (Starmer, 2001, p. 147). The obligation of the state is to implement in its legal system a material law in order to make available active protection of human rights and adequate procedural guarantees (Xenos, 2012, p. 207); this does not necessarily mean incorporating the provisions of ECHR directly. It is sufficient to establish a practical framework for protecting human rights in the national legal system (Russell, 2010, p. 285) which includes efficient legal remedies. The states also have an obligation to criminalize certain actions in order to protect rights of individuals (Urbaite, 2011, p. 216).

This rule is of general character. However, some violations of the rights guaranteed by the Convention were so serious that the Court insisted on imposing criminal sanctions in the legal system of the states in which the violations occurred. For example, in the case X *and Y v. The Netherlands* (1985), the Court did not agree with the claims of the Dutch Government that their obligations under ECHR were fulfilled by the very fact that the petitioners had the opportunity to institute criminal proceedings and claim restitution for damage. The Court took the firm position that the protection provided by the lawsuit does not suffice in cases human rights are violated, such as this one when a mentally disturbed sixteen-year-old girl was sexually assaulted (Starmer, 2001, p. 147; *X and Y v. The Netherlands* (1985)).

To the question what concrete measures the states should implement to fulfil their obligations to the ECHR, the Court gave no precise answer. The role of the Court is just to appraise whether measures the states had adopted were adequate and sufficient to guarantee efficient enjoyment of human rights provided by the ECHR. In case they were not sufficient, the task of the Court is to determine what was the minimal amount of effort required to protect the right in question, that

is, what makes unhindered enjoyment of that right possible, and what is more, what procedures were possible in the given situation (*Ibidem*, 218). The positive obligation exists, although its actualization is up to the signatory states of ECHR. The Court acts as a supervisor and has the "final word" on whether the state acted in accordance with its responsibilities to ECHR (*Pini and others v. Romania* (2004), *ZIT Company v. Serbia* (2007), *Vlahović v. Serbia* (2008)).

### 4.2. Preventing violation of rights from ECHR

The signatory states have the responsibility to prevent violation of rights guaranteed by the ECHR. (Starmer, 2001, p. 146). This responsibility differs relative to the protected right in question. The protection of basic human rights requires special attention from the national governments. There is an obligation to introduce efficient provisions into the legal system to prevent wrongful behaviour (De Than, 2003, p. 182). As Russell (2010) puts it "in short, if it were possible to anticipate the things the Court had to deal with, it would be reasonable to assume that the national legislation would introduce into its legal system laws and policies that would forestall and prevent those expected violations of human rights. In other words, the signatory states would willingly accept positive obligations and acknowledge their legal impact" (p. 285).

Moreover, it is necessary in the signatory states to set up a network of executive agencies to prevent and discourage violation of human rights and to punish the perpetrators of such crimes. In some well-defined cases the executive organs of the government have taken preventive operative measures to protect individuals in case there is danger that their rights should be threatened by criminal acts of other persons (*Osman v. The United Kingdom,* 1998, §115).

### 4.3. Giving information and legal advice

The Court recognized that in large number of cases the only way for an individual to protect his or her rights guaranteed by the Convention is to have accessible relevant information (Starmer, 2001, p. 147). The

state authorities must not remain passive and unattainable to individuals who need information.

### 4.4. Conscientious reaction to violation of rights under ECHR

The states have an obligation to respond to violation of rights under ECHR (Starmer, 2001, p. 154), in particular, if basic rights are violated, such as the right to life, prohibition of torturing, inhuman and humiliating treatment or punishment. This implies not only making restitution to the victim, but also an obligation to conduct detailed and efficient investigation (Urbaite, 2011, p. 216), and what is more, instituting mechanisms of criminal proceedings where necessary (Starmer, 2001, p. 156).

### 4.5. Providing resources which will enable individuals to prevent violating rights guaranteed by ECHR

Finally, the contracting states have an obligation to provide resources which will enable individuals to prevent violating the rights under ECHR. These resources may include giving free legal advice or providing safe houses for potential victims (*Ibidem*, p. 147–157). Moreover, the states have a duty to provide resources and appropriate training for the members of the executive authorities to prevent violation of ECHR (O'Connell, 2010, p. 263).

### 4.6. Conclusion concerning types of positive obligations of the states under ECHR

The principles we outlined represent general conditions that the government of every signatory state must fulfil in order to comply with its positive obligations under ECHR. They must be applied with circumspection, taking into account the specifics of each context (Russell, 2010, p. 293). Considering the wide variety of human rights protected by the Convention and the distinctive characteristics of the legal systems of the signatory states, and especially taking into account the

uniqueness of each case; it is clear that one cannot apply one rigid rule to everything, and that one cannot demand from every state in each case identical proceedings. However, universal standards are necessary considering the content and minimal scope of positive obligations of member states. These standards are established and, when necessary, upgraded through the practice of the Court.

## 5. The principles of maintaining fair balance of interests the European Court was guided by when creating positive obligations

The Court has repeatedly pointed out that the principle of respecting human rights is not precisely determined. It varies from case to case relative to diverse proceedings of different authorities in different countries and situations. The Court was, therefore, extremely cautious in creating positive obligations. More than once it did not establish the existence of positive obligation on the grounds that it is not warranted by the text of the regulation in the ECHR, even by evolutionary interpretation. Such cautious approach shows that limits are set in cases when common perspective in legislation and judicial practice of contracting states is absent (Van Dijk, 1998, p. 120).

Thus Van Dijk (1998) concludes: „The Court is ready to establish the implied positive obligations in the text of the Convention if, and to the extent, the Court deems it necessary to increase the efficiency of the regulation in question, but shows restraint in cases when discovering obligations through interpretation of the text of ECHR would result in creating an entirely new obligation not connected with the text of the regulation in the ECHR, or accepting an obligation not generally accepted in that context and scope among the states members of the European Council" (p. 22).

As the judges of the Court were aware that instituting new positive obligations under ECHR can be an organisational and financial burden to the contracting states, the Court allowed the states to select appropriate measures or affirmative actions needed for efficient protection of rights or freedoms (Van Dijk, 1998, p. 22). In practice, this involves an obligation of national governments to achieve fair balance between general interests of the community and the interest of the individual.

Since such criteria for establishing fair balance are not included in the ECHR, general principles are established the judges are guided by in performing this challenging task through the practice of the Court. Hereby, a distinction between qualified and unqualified rights guaranteed by ECHR is made. Thus qualified rights are those which allow interference with a purpose of protecting rights of others or public interest (such as right to privacy and respect of family life). So, for example, the Court emphasizes in their verdict in the case *Von Hannover v. Germany* (2004) that dividing-line between positive and negative obligations of the state, according to the regulation from article 8 of ECHR, cannot be precisely defined; however, the principles applicable to them are similar. In both contexts special attention must be devoted to fair balance to be brought about between conflicting interests of the individual and of the community as a whole; and in both contexts the state is given a certain space for free estimation (*Von Hannover v. Germany*, 2004, §57).

By contrast, unqualified rights are rights that cannot be "balanced" against the needs of others or general public interest. There may be some exceptions though, such as the right to freedom and security, but, on the other hand, those that admit no exceptions such as the right not to be tortured. Therefore, the Court in the verdict to the case *Gafgen v. Germany* (2010) explicitly stated that "article 3 of ECHR is unambiguous – stating that every human being has an absolute, inalienable right not to be exposed to torturing or inhuman or humiliating treatment under any circumstances, even the most difficult ones. The philosophical ground of the absolute nature of this right according to article 3 does not permit any exceptions whatever, or any justifying factors, or any balance of interests regardless of the behaviour of the person related with and the circumstances of the offence" (*Gafgen v. Germany*, 2010, §107).

The principle of fair balance is present in the previous, as well as in the recent practice of the Court. In the case of *Soering v. The United Kingdom* the Court stated that the quest for fair balance between the general interests of the community and the protection of the basic rights of individuals is inherent to the ECHR as a whole. (*Soering v. The United Kingdom*, 1989, §88). The Court used this principle as a basis for proportionality assessment of interference of signatory states in enjoyment of rights of petition submitters, as well as for determining whether positive obligations of signatory states exist according to the ECHR.

Considering negative obligations, the most important instrument for achieving desirable balance of interests and preventing abuse and arbitrariness of the government is the principle of proportionality (Nowak, 2012, p. 275). This principle constraints the scope and content of permissible interference in the rights guaranteed by the ECHR. Only the least encroaching interference upon a given human right for the purpose of realizing some legitimate aim is considered permissible (Greer, 2003, p. 409). Its purpose is to prevent oppressive actions by the authorities in signatory countries. (Nowak, 2003, p. 60–61). When determining whether the principle of proportionality is respected, the Court must decide in the first place, whether the measures of the member state of ECHR are taken with the purpose of realizing a legitimate aim and secondly, whether the measures are appropriate to realize such an aim. Finally, the Court establishes whether the measures are unavoidable and whether the measures are moderate and the least intrusive considering human rights guaranteed by the ECHR (Nowak, 2012, p. 275).

The principle most often used considering positive obligations is the principle of "due attention". According to this principle the states have an obligation to take every measure which can be reasonably expected to be taken in the given circumstances in order to secure respecting the rights guaranteed by the ECHR.

At the same time, positive obligations must not impose too much burden on the states that accept them. Therefore, they must be defined as narrowly as possible and be related only to fundamental values protected by the ECHR (De Than, 2003, p. 169). The Court took the position as follows: ECHR should not be interpreted in such a way that the contracting states be imposed responsibilities they cannot fulfill or disproportional burdens (*Osman v. The United Kingdom*, 1998, §116). In the case *Rees v. The United Kingdom* (1986). The Court clearly expressed the judgement "that the scope of responsibilities will most certainly vary, bearing in mind the diversity of situations in the signatory states of ECHR, the difficulties of law enforcement in modern societies and important choices to be made considering prioritization and allocation of available resources" (*Rees v. The United Kingdom*, 1986, §37). Thus, showing understanding for the diversity of the situations in which the

states are required to carry out positive obligations emphasizing the importance of adaptability in judicial interpretation in this context.

To be sure, there is criticism of the principle of fair balance. Mostly their key argument is saying that in this way the Court becomes the centre of the question that belongs to the internal affairs of member states.

However, one should not forget that the Court allows a certain leeway for estimation to national states in this respect (Mowbray, 2020, p. 289-318). Thus, for example, the Italian Constitutional Court in subsection 7 of Decision No. 317 in 2009, explicitly stated that "the concept of protection expansion must include the condition of balancing rights in relation to other constitutional provisions which, in turn, guarantee fundamental rights that can be influenced by the expansion of individual protection. This balancing must be made principally by the lawgiver, but it is also a question to this Court (the Constitutional) when interpreting constitutional law. The overall result of complementing guarantees from the national law must be positive, in the sense that the impact of single provision of the European Convention on the Italian law must result with increased protection for the whole system of fundamental rights" (Repetto, 2013, p. 47). In other words, the task of national courts is to weigh interests fairly in order to contribute to increasing the level of protection of human rights, at least up to the level reached by the Convention and while balancing they have a certain amount of freedom and an occasion to estimate freely.

## 6.The relation between positive and negative obligations under ECHR

The negative obligations represent a bulwark, as it were, against arbitrary actions of authorities hindering individuals to enjoy and exercise their human rights (Russel, 2010, p. 282). Their formulation is in the negative, as a prohibition for a state to interfere with exercising individual rights in an arbitrary and disproportionate manner (Urbaite, 2011, p. 214). By contrast, positive obligations were largely created through interpretations of ECHR and are not explicitly stated therein. Those positive obligations, however, which are stated in the text of ECHR, are formulated positively, as requirements from the states to act in a certain way.

In the literature we find additional criteria pointing to distinct nature of positive obligations. They are viewed as "active protection of human rights" (Xenos, 2012, p. 206) based on paragraph 1 of ECHR. The justification of this requirement for the state to act with a purpose of protecting threatened rights is grounded on the knowledge that there is a need to protect certain human rights in a whole gamut of various circumstances. The existence of this objective element is the condition for application of positive obligations, based on which the limits of state responsibilities are efficiently set (*Ibidem*, p. 206–207).

The Court repeatedly issued the statement that "the dividing line between positive and negative obligations is not precisely defined" (*Keegan v. Ireland*, 1994, §49; Klatt, 2011, str. 694). However, these two kinds of obligations have some characteristics in common. In the famous case *Powell and Rayner v. The United Kingdom* (1990), it is emphasized that "the principles to be applied are very similar. In the context of both positive and negative obligations a fair balance must be established between the interests of individuals and interests of whole communities; in both of these context the state is given a certain margin of estimation considering which measures to take in order to secure recognition of the ECHR" (*Powell and Rayner v. The United Kingdom*, 1990, §41).

What is more, in some cases the Court was of opinion that it is unnecessary to analyse the case from the point of view of acting in accordance with either positive or negative obligations (Klatt, 2011, p. 694), but that the role of the Court is to ascertain whether a fair balance of private and public interest has been achieved (Urbaite, 2011, p. 218). Xenos (2012) goes even further claiming that the Court in its practice did not make a clear distinction between the positive and the negative obligations of states, adding that "the situation is made even worse by the growing tendency to designate each measure to respect human rights as a positive obligation" (p. 205).

Dickson and Hohfeld, disagreeing with the point of view of most theoreticians, claim that the dichotomy of positive and negative obligations is false, for all rights have correlative obligations which are both positive and negative. The authors claim also that negative obligations can be presented as positive and vice versa (p. 203).

Krähenmann (2013) has a similar opinion saying that in many cases negative and positive obligations are inseparable. As an example, he gives the duty of executive authorities to minimize the risk when planning an operation both to the target and to the random passers-by. This duty can be seen as a general principle of proportionality in using force, as well as a separate positive obligation of the executive authorities and the members of the force (p. 170).

Our view is that both positive and negative obligations have characteristics that are related to legal basis, legal grounds and expected (in)action of authorities. At the same time, they are interrelated and closely connected. Therefore, as the Court has often pointed out, it is not possible, and in our opinion, not even necessary, to distinguish between these two kinds of obligation. What is of essential importance is to increase awareness of either of these obligations within the signatory states of ECHR.

## 7. Conclusion

Positive obligations are responsibilities of states members to actively take part in protecting human rights guaranteed by the ECHR. There are different kinds of positive obligations depending on the kind of action expected from the national authorities.

Since only a few of these obligations are stated in the text of ECHR, the Court has established them by applying specific methods of interpretation of ECHR – the doctrine of "living instrument" and the doctrine of "practical and efficient" – taking into account rules from national legal systems, the rules of international law and the judicial practice of the international court, as well as supranational norms and standards. An important part in creating positive obligations has the principle of rule of law and the practice of the Court that widened the scope of state responsibility and the definition of who may be considered "a victim of human rights violation".

In developing positive obligations, the judges in Strasbourg are guided by the principle of fair balance between the general interests of the community and the opposed legitimate public interests taking care not to burden disproportionately the signatory countries. Although in accordance with the principle of "due attention" the states have an obliga-

tion to take every reasonable measure in given circumstances to secure the respect the rights guaranteed by the ECHR, in selecting concrete measures they are given a certain margin for free estimation. The same goes for balancing general interest and the interest of the individual. The role of the Court in Strasbourg is in this respect one of a supervisor, as it were.

We are in agreement with the judgement of Starmer (2001) that "in many aspects positive obligations represent the characteristic feature of ECHR distinguishing it from other instruments for protecting human rights, especially those created before the Second World War" (p. 159). Hence, we must not underestimate their increasing importance for the practice of the Court in Strasbourg (Klatt, 2011, p. 692). Instituting positive obligations, the protection of human rights reached a higher level, a step nearer to universal respect in the region and beyond.

The content of positive obligations of signatory states is a constantly expanding and upgrading area of expertise. Considering its increasing importance, there is surprisingly few publications and research papers in the area. The interpretive creativity of judges in Strasbourg in creating them, the ingenuity and skill behind their development, and the fact that the doctrine of positive obligations represents a response of judicial practice to the challenges the theory of the period could not foresee, let alone answer adequately, are good reasons for devoting closer attention to this topic in the future.

***References:***

Books and articles:

Afunaduula, I. (2005). *Defining Human Rights: The Need for a Holistic Definition*. Kampala: International University.

Akandji-Kombe, J. F. (2007). *Positive obligations under the European Convention on Human Rights*. Strasbourg: Council of Europe.

Bantekas & Oette, I. Oette, L. (2014). *International human rights, law and practice*. Cambridge: Cambridge University Press.

Van Dijk, P. (1998). Positive obligations' implied in the European Convention on Human Rights: Are the States still the 'masters' of the Convention?. U Castermans-Holleman, M., Van Hoof, F. & Smith, J. (ured.) (1999) *The role of the nation-state in the 21st century -- human rights, international organisations and foreign policy: essays in honour of Peter Baehr*. The Hague: Springer.

Grabenwater, C. (2012). The European Convention on Human Rights and its monitoring mechanism. U Nowak, M. Januszewski, K.M. Hofstätter, T.(ured.) (2012). *All human rights for all*. Vienna, Graz: Intersentia. 128–134.

Greer S. (2003). Constitutionalizing adjucation under the European Convention on Human Rights. *Oxford Journal of Legal Studies, 3(XXIII)*, 405–433.

Gemalmaz, H. B. (2007). Making Sense of Children Rights: Transforming the Precedents of the European Court of Human Rights Concerning Corporal Punishment of Children. *Annales de la Faculté de Droit d'Istanbul*, *56*, 37–70.

De Than, C. (2003). Positive Obligations under the ECHR: Towards the Human Rights of Victims and Vulnerable Witnesses?. *The Journal of Criminal Law*, 165–182.

Dickson, B. (2010). Positive obligations and the European Court of Human Rights. *Northern Ireland Legal Quarterly*, *3(LXI)*, 203–208.

Evans, M. D. (2004). State responsibility and the European Convention on Human Rights: Role and Realm. U Fitzmaurice, M. & Sarooshi, D. (ured.). (2004) *Issues of state responsibility before International Judicial Institutions*. London: Blumsbury publishing.

Henkin, L. (1979). *How nations behave*. New York: Columbia University Press.

Jovanović, S. (1990). *O državi: Osnovi jedne pravne teorije*. Grupa izdavača, Beograd.

Klatt, M. (2011). Positive obligations under the European Convention on Human Rights. *Journal of International law*, *71*, 691–718.

Krähenmann, S. (2013) Positive obligations in human rights law during armed conflicts. U Kolb, R. Gaggioli. G. (ured.) (2013). *Research handbook on human rights and humanitarian law*. Chentelham: Edward Elgar. 170–187.

Kremnitzer, M., & Ghanayim, H. (2003–2004). Proportionality and the aggressor's culpability in self-defense. *Tulsa Law Review*, *39*, 875–899.

Landman, T. (2005). *The Scope of Human Rights. From Background Concepts To Indicators*. Colchester: Human Rights Centre.

Lavrysen, L. (2013). No Significant Flaws in the Regulatory Framework: E.S. v. Sweden and the Lowering of Standards in the Positive Obligations Case-Law of the European Court of Human Rights. *Human Rights & International Legal Discourse*, *1(VII)*, 145–164.

Mahoney, P. (2002). New Challenges for the European Court of Human Rights Resulting from the Expanding Case Load and Membership Promoting and Protecting Human Rights in Europe. *Penn State International Law Review*, *1(XXI)*, 101–114.

Merrils, J. G. (1993). *The development of international law by the European Court of Human Rights*. Manchester: Manchester University Press.

Mowbray, A. (2010). A study of the Principle of Fair Balance in the Jurisprudence of the European Court of Human Rights. *Human Rights Law Review*, *2(X)*, 289–318.

Mowbray, A. (2005). The creativity of the European Court of Human Rights. *Human Rights Law Review*, *1(L),* 57–80.

Nowak, M. (2003). *Introduction to the Human Rights Regime*. Leiden: Brill Academic Publishers.

Nowak M. (2012). Introduction to human rights theory. U Nowak, M. Januszewski, K.M. Hofstätter, T. (ured.) (2012). *All human rights for all*. Vienna, Graz: Intersentia. 269–279.

Nowak, M. (2012) Human rights from a legal perspective. U Nowak M., Januszewski K.M., Hofstätter, T. (ured.) (2012). *All human rights for all*. ed., Vienna, Graz: Intersentia. 21–25.

O' Connel, R. (2010). Realising political equality: the European Court of Human Rights and positive obligations in a democracy. *Northern Ireland Legal Quarterly*, *3 (LXI)*, 263–279.

Repetto, G. (2013). *Rethinking a Constitutional Role for the ECHR. The Dilemmas of Incorporation into Italian Domestic Law*. Cambridge: Intersentia.

Russel, D. (2010). Supplementing the European Convention on Human Rights: legislating for positive obligations. *Northern Ireland Legal Quarterly*, *3 (LXI)*, 281–294.

Starmer, K. (2001). Positive obligations under the Convention. U Jowell, J. Cooper, J. (ured.) (2001). *Understanding Human Rights Principles*. Oxford and Portland: Hart Publishing.

Urbaite, L. (2011). Judicial Activism in the Approach of the European Court of Human Rights to Positive Obligations of the State. *Baltic Yearbook of International Law*. *11*, 211–238.

Fitzmaurice, M. Sarooshi, D. (prir), (2004). *Issues of State Responsibility Before International Judicial Institutions*. Oxford and Portland Oregon: Hart Publishing.

Xenos, D. (2012). *The positive obligations of the state under the European Convention on Human Rights*. London and New York: Routledge.

**International documents**:

Bečka konvencija o ugovornom pravu (1969), preuzeto 29. juna 2020. sa: treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf,

Evropska Konvencija za zaštitu ljudskih prava i osnovnih sloboda (1950), preuzeto 4. avgusta 2020. sa: www.echr.coe.int/Documents/Convention_SRP.pdf

**The verdicts of the European Court for Human Rights:**

*Vlahović v. Serbia*, no. 42619/04, 16. 12. 2008.

*Von Hannover v Germany*, no. 59320/00, 24. 6. 2004.

*Gafgen v. Germany*, no. 22978/05, 1. 6. 2010.

*Gül v. Switzerland*, no. 23218/94, 19. 2. 1996.

*ZIT company v. Serbia*, no. 37343/05, 27. 11. 2007.

*Keegan v. Ireland*, no. 16969/90, 26. 5. 1994.

*Osman v. The United Kingdom* (GC), no. 87/1997/871/1083, 28. 10. 1998.

*Pini and others v. Romania*, nos. 78028/01 and 78030/01, 22. 6. 2004.

*Rees v. The United Kingdom,* no. 9532/81, 17. 10. 1986.

*Selmouni v. France*, no. 25803/94, 28. 7. 1999.

*Soering v. The United Kingdom*, no. 14038/88, 7. 7. 1989.

*Tyrer v. The United Kingdom*, no. 5856/72, 25. 4. 1978.

*Case "relating to certain aspects of the laws on the use of languages in education in Belgium" v. Belgium,* no. 1474/62; 1677/62; 1691/62; 1769/63; 1994/63; 2126/64, 9. 2. 1967.

*X and Y v. The Netherlands*, no. 8978/80, 26. 3. 1985.

# NASTANAK I RAZVOJ POZITIVNIH OBAVEZA DRŽAVA POTPISNICA EVROPSKE KONVENCIJE O ZAŠTITI LJUDSKIH PRAVA I OSNOVNIH SLOBODA

**Apstrakt**: Ovaj rad se bavi nastankom i razvojem pozitivnih obaveza država ugovornica Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda. U njemu je najpre pojašnjena podela obaveza iz EKLJP na negativne i pozitivne. Potom smo se osvrnuli na razloge, metodologiju i legitimnost nastanka pozitivnih obaveza iz EKLJP. Analizirali smo njihov sadržaj i obim. U radu je posebna pažnja posvećena principima održavanja pravične ravnoteže interesa, kao i odnosu pozitivnih i negativnih obaveza u praksi Evropskog suda za ljudska prava. Zaključak rada se odnosi na inovativnost, korisnost i značaj pozitivnih obaveza iz EKLJP za povećani standard zaštite ljudskih prava na globalnom nivou.

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| Knjiga s dva autora | Prema tvrdnjama Đorđevića i Mitića (2000), … | Đorđević, S., & Mitić, M. (2000). *Diplomatsko i konzularno pravo*. Službeni list SRJ. |
| Knjiga sa tri i više autora | PRI PRVOM NAVOĐENJU IZVORA:<br>Kako navode Rokai, Đere, Pal i Kasaš (2002), …<br><br>KOD SVAKOG SLEDEĆEG NAVOĐENJA IZVORA:<br>Kako navode Rokai i dr. (2002), … | Rokai, P., Đere, Z., Pal, T., & Kasaš, A. (2002). *Istorija Mađara*. Clio. |

| | | |
|---|---|---|
| Knjiga sa urednikom / Zbornik radova | Prema Radoviću (2007), … | Radović, Z. (2007). Donošenje ustava. U M., Đurković, (ur.), *Srbija 2000-2006: država, društvo, privreda* (str. 27-38). Institut za evropske studije. |
| Knjiga korporativnog izdavača | Prema navodima Unicefa (2007), … | UNICEF. (2007). *Promoting the rights of children with disabilities*. UNICEF Innocenti Research Centre. |
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| **Časopis** | | |
| Naučni časopis | Kako Tovarović (2021) tvrdi, … | Tovarović, J. (2021). Relationships between stress responses and ego-identity in adolescents. *Civitas*, *10*(2), 97-113. |
| Naučni časopis sa DOI brojem | Prema Novakoviću (2021, str. 111), … | Novaković, A. (2021). Funkcionalnost elekstronskih i interaktnivnih platformi u onlajn nastavi. *Nastava i vaspitanje*, *70*(1), 105-125. https://doi.org/10.5937/nasvas2101105N |

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|---|---|---|
| Magazin | Kako tvrdi Braun (2021), …<br><br>AY.3 je najverovatnije nova varijanta delta soja virusa (Browne, 2021). | Browne, E. (2021, March 9). AY.3 COVID subtype explained as delta variant spawns offshoots. *Newsweek*. https://www.newsweek.com/ay-3-covid-subtype-explained-delta-variant-offshoot-1625785 |
| Novine | Po tvrdnjama Gerštajnove (2021), …<br><br>Po tvrdnjama mnogih autora (npr. Gerstein, 2021), … | Gerstein, T. (2021, September 6). Why everyone should care about workers' rights. *The New York Times*. https://www.nytimes.com/2021/09/06/opinion/labor-workers-rights.html |
| **Pravni dokument** | | |
| Zakon/ pravilnici/ Ustav | Prema Zakonu o obligacionim odnosima (2020), … | Zakon o obligacionim odnosima, (*Sl. list SFRJ*, br. 29/78, 39/85, 45/89 - odluka USJ i 57/89, *Sl. list SRJ*, br. 31/93, *Sl. list SCG*, br. 1/2003 - *Ustavna povelja* i *Sl. glasnik RS*, br. 18/2020). https://www.paragraf.rs/propisi/zakon_o_obligacionim_odnosima.html |
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| Vebsajt koporacije/ insitucije | Prema Svetskoj zdravstvenoj organizaciji (2021), … | World Health Organization (2021, September 2). *World failing to address dementia challenge*. https://www.who.int/news/item/02-09-2021-world-failing-to-address-dementia-challenge |
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| Neobjavljena magistarska teza ili doktorska disertacija | Prema Volfu (2021), … | Volf, M. (2021). *Zastupljenost kontekstualne reformulacije pri prevođenju filmskih naslova na srpski jezik u poslednjoj deceniji.* [Neobjavljeni masterski rad]. Univerzitet Union. |
| **Saopštenje** | | |
| Usmeno saopštenje na konferenciji/skupu | Prema Rutkovskom i Majnkovoj (2019), … | Rutkowski, D., & Meinck, S. (2019, June 24-25). *Using large-scale assessment data to inform policy and practice* [Workshop]. 8th IEA International Research Conference, Copenhagen, Denmark. https://www.iea.nl/news-events/irc/8th-international-research-conference/program |

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| | | |
|---|---|---|
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| Book with three and more authors | UPON THE FIRST MENTION:<br>As suggested by Tsagari, Vogt, Froehlich, Csépes, Fekete, Green, Hamp-Kyons, Sifakis, and Kordia (2018), …<br><br>UPON SUBSEQUENT MENTIONS:<br>As suggested by Tsagari et al. (2018), … | Tsagari, D., Vogt, K., Froehlich, V., Csépes, I., Fekete, A., Green, A., Hamp-Lyons, L., Sifakis, N., & Kordia, S. (2018). *Handbook of assessment for language teachers*. European Commission. |
| Edited book | According to Birkle (2020), … | Birkle, C. (2020). "Obama sushi" and the ch(i)ang way of life: Transculturalting America and the world. In A. Izgarjan, D., Đurić, & S. Halupka-Rešetar (Eds.), *Aspects of Translationality in American Literature and American English* (pp. 28-59). Faculty of Philosophy, University of Novi Sad. http://digitalna.ff.uns.ac.rs/sadrzaj/2020/978-86-6065-632-4 |
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| | | |
|---|---|---|
| Book with a foreign author | As indicated by Vasić (2021), … | Vasić, A. (2021). *Razvojna psihologija* [*Developmental psychology*]. Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Univerzitet Union. |
| **Periodicals** | | |
| Scientific journal with DOI | As claimed by Brantmeier and Vanderplank (2008, p. 460), … | Brantmeier, C., & Vanderplank, R. (2008). Descriptive and criterion-referenced self-assessment with L2 readers. *System*, *36*, 456-477. doi:10.1016/j.system.2008.03.001 |
| Magazine | As Browne (2021) warns, …<br><br>AY.3 is a new version of the Delta variant of the SARS-Cov-2 virus (Browne, 2021). | Browne, E. (2021, March 9). AY.3 COVID subtype explained as Delta variant spawns offshoots. *Newsweek*. https://www.newsweek.com/ay-3-covid-subtype-explained-delta-variant-offshoot-1625785 |
| Newspaper | As claimed by Gerstein (2021), …<br><br>As claimed by many authors (e.g., Gerstein, 2021), … | Gerstein, T. (2021, September 6). Why everyone should care about workers' rights. *The New York Times.* https://www.nytimes.com/2021/09/06/opinion/labor-workers-rights.html |
| **Legal documents** | | |
| Law/ Rulebook/ Constitution | In accordance with the COVID-19 Hate Crimes Act (2021), … | COVID-19 Hate Crimes Act, 34 U.S.C. & 937 (2021). https://www.govinfo.gov/content/pkg/PLAW-117publ13/pdf/PLAW-117publ13.pdf |

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| Website of an institution | As suggested by World Health Organization (2021), … | World Health Organization (2021, September 2). *World failing to address dementia challenge*. https://www.who.int/news/item/02-09-2021-world-failing-to-address-dementia-challenge |
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| Unpublished master's or doctoral thesis | As suggested by Alnofaie (2013), … | Alnofaie, H. A. (2013). *The implementation of critical thinking as EFL pedagogy: Challenges and opportunities*. [Unpublished doctoral dissertation]. Newcastle University. |
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| Conference presentation | According to Rutkowski and Meinck (2019), … | Rutkowski, D., & Meinck, S. (2019, June 24-25). *Using large-scale assessment data to inform policy and practice* [Workshop]. 8th IEA International Research Conference, Copenhagen, Denmark. https://www.iea.nl/news-events/irc/8th-international-research-conference/program |

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