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Bulevar oslobođenja 76, NOVI SAD, Vojvodina – Srbija

ZA IZDAVAČA:
Prof. dr Mirjana Franceško, Fakultet za pravne i poslovne studije dr Lazar Vrkatić Univerziteta Union, Novi Sad, Srbija.

GLAVNI I ODGOVORNI UREDNIK:
Prof. dr Vladimir Njegomir, Fakultet za pravne i poslovne studije dr Lazar Vrkatić Univerziteta Union, Novi Sad, Srbija.

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Reč urednika

Poštovani čitaoci, kolege i autori,

Pred vama je drugi broj časopisa CIVITAS za 2023. godinu. Časopis u kontinuitetu, trinaestu godinu zaredom, objavljuje radove koji se bave različitim aktuelnim pitanjima i problemima iz oblasti prava, bezbednosti, psihologije, filologije i ekonomije, kao i interdisciplinarnim istraživanjima iz navedenih naučnih disciplina.

Časopis CIVITAS je od 2021. godine kategorizovan od strane Ministarstva prosvete, nauke i tehnološkog razvoja kao vrhunski časopis nacionalnog značaja kategorije **M51**. U proteklom periodu časopis je indeksiran u Evropskom referentnom indeksu za društvene i humanističke nauke ERIH PLUS, a uključen je i u Kinesku naučnu infrastrukturu – CNKI, Ulrich's Periodicals Directory, Indijsku mrežu razmene časopisa – J-Gate i *online* biblioteku centralne i istočne Evrope – CEEOL.

Radovi prihvaćeni za objavljivanje, tj. radovi koji su prošli postupak recenzije, obuhvataju različita pitanja iz domena društvenih nauka. U fokusu ovog broja su radovi koji analiziraju adaptirani Zimbardov Upitnik vremenskih perspektiva, uticaj digitalnog marketinga na ponašanje potrošača, kontekstualno reformulisanje filmskih naslova, model za definisanje indikatora performansi procesa u okviru informacionog sistema prekršajnih sudova, zaštitu prava zaposlenih u stečajnom postupku, hipersenzitivnost u detinjstvu, izuzetke u kontekstu testamentarnog nasleđivanja, oduzimanje i predaju dece u Republici Srbiji u komparaciji sa austrijskim zakonodavstvom i uvođenje mentorstva i radnog dosijea u policiji. Takođe, ovaj broj sadrži i prikaz knjige „Osiguranje i reosiguranje za 21. vek: od poremećaja do evolucije".

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, 25. decembra 2023. godine.

Editor's Note

Dear Readers, Colleagues, and Authors,

Welcome to the second issue of the CIVITAS Journal for 2023.

For the past 13 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 published in this issue deal with a wide variety of topics in social sciences, such as the Serbian version of Zimbardo's Time Perspective Inventory, influence of digital marketing on consumer behavior, contextual reformulation of movie titles, a model for defining process performance indicators within the information system of misdemeanor courts, protection of the rights of employees in bankruptcy proceedings, hypersensitivity in childhood, exceptions in the context of testamentary inheritance, confiscation and surrender of children in the Republic of Serbia in comparison with Austrian legislation and the introduction of mentoring and work files in the police. This issue also contains a review of the book *Insurance and Reinsurance for the 21st Century: From Disruption to Evolution.*

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 and myself, our sincere thanks to all the authors and contributors for the high quality of the articles in this issue.

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

Until the next issue,

Prof. dr Vladimir Njegomir, Editor-in-Chief

Novi Sad, 25 December 2023

SADRŽAJ

Članci

Articles

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Jasmina Nedeljković[1]

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SKRAĆENA SRPSKA VERZIJA ADAPTIRANOG ZIMBARDOVOG UPITNIKA VREMENSKIH PERSPEKTIVA (ZTPI) – ZTPI-15[2]

Rezime: Osnovni cilj ovog istraživanja bila je validacija skraćene verzije Zimbardovog Upitnika vremenskih perspektiva (ZTPI), koja je prethodno adaptirana na srpski jezik. Originalna verzija ZTPI ima 56 ajtema i meri pet vremenskih perspektiva – pozitivnu i negativnu prošlost, hedonističku i fatalističku sadašnjost i budućnost. Adaptirana srpska verzija ima 52 ajtema i potvrdila je originalnu petofaktorsku strukturu upitnika. Skraćenje upitnika došlo je iz potrebe za ekonomičnošću u korišćenju skale, naročito kada se zadaje kao deo baterije testova koju čine nekoliko psiholoških konstrukata. Kratki ZTPI ima 15 stavki i potvrđenu petofaktorsku strukturu upitnika. Uzimajući u obzir sve uslove i karakteristike ovog istraživanja, poput navedenih indeksa fitovanja, faktorskih zasićenja, kao i veličine uzorka, može se konstatovati da predloženi model sa 15 stavki fituje prikupljenim podacima.

Ključne reči: *vremenske perspektive, merenje vremenskih perspektiva, skraćivanje adaptiranog Zimbardovog Upitnika vremenskih perspektiva, konfirmativna faktorska analiza*

[1] Doktor psihologije, redovni profesor na Fakultetu za pravne i poslovne studije dr Lazar Vrkatić, Bulevar osobođenja 76, Novi Sad; Orcid: https://orcid.org/0000-0002-9869-480X; e-mail: jasmina.nedeljkovic@gmail.com

[2] Rad je nastao u okviru projekta pod nazivom: Izazovi mladih u KOVID-19 i post KOVID-19 periodu: nasilje ili razvoj društva u duhu preduzetništva; projekat broj 142-451-3100/2022-01 podržan od strane Pokrajinskog sekretarijata za visoko obrazovanje i naučnoistraživačku delatnost.

1. Uvod

Mi lažno protičemo u vremenu uvjereni da smo sada, a ne prije ili kasnije. To što mi jesmo, ne znamo povezati sa prije i kasnije, već nam naš isključivi kriterijum vremena govori da mi nigdje izvan sada nismo. Konstatujući da smo bili, ili da ćemo biti, mi ne činimo nikakav presedan. Bili i ćemo biti znači samo da je sada postojalo i da će postojati. Bili smo sada u trolejbusu i bićemo sada u bioskopu. To je jedino kvalitativno značenje razlike između sada, prije i kasnije.

O subjektivnoj dimenziji
vremena (Fajgelj, 1970)

Od početka empirijskih istraživanja vremenskih perspektiva krajem 20. veka, pored operacionalizacije vremenskih perspektiva, akcenat je bio i na izučavanju relacija sa različitim psihološkim konstruktima, poput mentalnog zdravlja i lične sreće (Boniwell and Zimbardo, 2004; Gruber et al., 2012; Stolarski et al., 2013), prokrastinacije kod studenata (Nedeljković, 2017) i osnovnoškolaca (Đokić i Drobnjak, 2018), samokontrole kod maturanata (Kostić, 2019), stresa kod menadžera (Veljković i Nedeljković, 2021).

Ljudi su svesni da je vreme jedini neobnovljivi resurs koji imaju. Pošto ga je jako teško definisati, a svest o tome da protiče postoji, vreme je oduvek zaokupljalo pažnju filozofa, fizičara, teologa, psihologa, običnih ljudi. Kada govorimo o vremenu, zapravo govorimo o događajima koji su prošli pre jedne sekunde, nekoliko minuta, dana, godina, decenija i vekova. I svesni smo da se taj trenutak sadašnjosti, dok još uvek govorimo o onome što je bilo ili se nadamo da će biti, utapa u prošlost. Takođe, svesni smo da budućnost ne postoji, već da je ona projekcija našeg nadanja da će se nešto desiti.

1.1. **Određenje pojma *vremenska perspektiva***

Zimbardo i Bojd (Zimbardo & Boyd, 2008) navode da je Levin (Levin, 1942) bio jedan od prvih istraživača koji je uvideo važnost vremenske perspektive u proučavanju ljudskog ponašanja. Prema Levinu, životni prostor individue se širi na prošlost, sadašnjost i budućnost, tako da to utiče ne samo na emocije i ponašanje osobe, već i na njene moralne izbore. Kasnije se ispostavilo (Boniwell, 2008) da su mnogi istraživači (Nuttin, 1985; Wessman & Gorman, 1977; Zimbardo & Boyd, 1999) delili Levinovo uverenje o uticaju budućih i prošlih događaja na sadašnjost osobe.

Vremenska perspektiva se ogleda u relativnom značaju koji pojedinac u svojim mislima pridaje prošlosti, sadašnjosti ili budućnosti. Naši stavovi prema prošlom, sadašnjem i budućem vremenu mogu biti pozitivni ili negativni. Doživljaj vremena je oblikovan našim emocionalnim stanjem, dominantnom vremenskom perspektivom i tempom života u zajednici čiji smo član.

„Otac" psihološkog proučavanja vremena, Pol Frejz (Paul Fraisse, 1963), smatra da naša ponašanja u bilo kom trenutku ne zavise samo od situacije u kojoj se nalazimo, već od svega što smo dotad iskusili, kao i od svih budućih očekivanja (Zimbardo & Boyd, 2008). Dakle, možemo reći da je svako naše ponašanje smešteno u neku temporalnu perspektivu. Ono zavisi od našeg vremenskog horizonta u sâmom momentu događanja.

Razmatrajući određenje vremenske perspektive, Zimbardo i Bojd (Zimbardo and Boyd, 1999) iznose da je vremenska perspektiva često nesvestan lični stav koji svako od nas ima prema vremenu. Zahvaljujući ličnom stavu, neprekidni tok egzistencije se može smestiti u pet kategorija, koje našim životima daju uređenost, povezanost, sklad i značenje. Taj lični stav ima snažan uticaj na život svih ljudi i predstavlja prvi vremenski paradoks. Kao drugi vremenski paradoks, Zimbardo i Bojd (Zimbardo & Boyd, 2008) navode uravnotežen stav – stav srednjeg intenziteta u odnosu na svih šest dimenzija vremenske perspektive.

1.2. **Zimbardov Upitnik vremenske perspektive – ZTPI**

Odnos prema vremenu je obično naučen u kulturi u kojoj živimo, oblikovan religijom, ekonomskim statusom, obrazovanjem, porodicom, vršnjacima, školom i značajnim događajima u životu. Kulture se međusobno veoma razlikuju po dominantnoj vremenskoj perspektivi. One na različite načine vrednuju prošlost, sadašnjost i budućnost, kao i uticaje njihovih interakcija. Kulture koje su orijentisane ka prošlosti čvrsto veruju u značaj ranijih događaja. Istorija, religija i tradicija su ekstremno važne za ove kulture. Kulture okrenute sadašnjosti pridaju najveći značaj neposrednom trenutku, jer budućnost vide kao nejasnu i neizvesnu. Ako su kulture orijentisane ka budućnosti, one ističu važnost onoga što će doći i očekuju da budućnost bude veličanstvenija od sadašnjosti.

Prema teoriji i tridesetogodišnjim istraživanjima Zimbarda (Zimbardo) i Bojda (Boyd), postoji šest glavnih vremenskih perspektiva: negativna prošlost, pozitivna prošlost, hedonistička sadašnjost, fatalistička sadašnjost, budućnost i transcedentalna budućnost. Na ovom mestu valja skrenuti pažnju da Upitnik za transcedentalnu budućnost nije uključen u ZTPI-56, već se on zadaje kao poseban instrument.

1.2.1. Opis vremenskih perspektiva koje se mere upitnikom ZTPI

1.2.1.1. Okrenutost prošlosti

Ljudi koji su okrenuti prošlosti u stanju su da se distanciraju od konkretne stvarnosti, od aktuelnih situacija i ličnih iskušenja, usmeravajući svoju pažnju na ranije utvrđene obaveze povezane sa prethodno postavljenim ciljevima. Veliki deo njihovog ponašanja je pod uticajem osećanja krivice, zbog neusaglašenosti aktuelnih misli i akcija sa ranije utvrđenim obavezama. Ljudi sa takvom vremenskom orijentacijom često su konzervativni i zabrinuti zbog održavanja *status quo* pozicije nezavisno od toga da li je ta pozicija dobra ili loša za njih. Oni ne rizikuju, njih ne impresioniraju novi, efikasniji načini obavljanja aktivnosti, već posežu za načinima koji su im već poznati i koje imaju u iskustvu. Imaju intenzivnu potrebu da se osete sigurnim, bezbednim, zaštićenim pod okriljem isprobanog iskustva.

Pozitivna prošlost je vremenska perspektiva koju odlikuje topao, sentimentalan stav prema prošlosti, a ne objektivno beleženje dobrih i loših događaja. Pozitivan stav prema prošlosti može odslikavati pozitivne događaje iz ovog perioda života, ali isto tako i pozitivnu interpretaciju, pozitivnu rekonstrukciju prošlih događaja. Psihološki gledano, ono što jedinka *veruje* da se desilo u prošlosti mnogo više utiče na njene misli, osećanja i ponašanje od onoga što se zaista desilo. Ljudi koji u svom iskustvu imaju neprijatne događaje u prošlosti, a prisećaju ih se na pozitivan način mogu postati otporniji na stres, mogu se bolje nositi sa posledicama stresa, mogu postati bolje adaptirani i optimistični pojedinci.

Orijentaciju ka *negativnoj prošlosti* karakteriše generalno negativan stav prema događajima iz prošlosti. Osobe kod kojih je dominantan ovakav ugao gledanja na prošlost obično nemaju bliske prijatelje. Oni koji ih poznaju opisuju ih kao nesrećne, depresivne, stidljive, anksiozne, sa slabom kontrolom impulsa. Iako, po pravilu, nemaju mnogo energije, trude se da budu zauzeti, okupirani, kako bi pobegli od bolnih sećanja.

1.2.1.2. Okrenutost sadašnjosti

Osobe koje imaju naglašen odnos prema sadašnjosti fokusiraju se na konkretne faktore u neposrednom senzornom okruženju (fizička istaknutost – izražajnost, senzorni kvaliteti, aktuelni društveni pritisci). Istovremeno ignorišu ili umanjuju važnost apstraktnih kvaliteta koji su relevantni za postojanje očekivanih budućih dešavanja ili pamćenje prošlih. Takvi ljudi, takođe, imaju tendenciju da budu usko fokusirani na ono što jeste, pre nego na ono što bi se moglo ili na ono što je *bilo*. Njihovo mišljenje je više konkretno, manje apstraktno, u govoru češće koriste sadašnje vreme. Teško im je da odlože zadovoljenje potrebe posebno kada je ona intenzivna, pa su izloženi pritisku. Lako podležu iskušenju i mogu da se distanciraju od zadatka ako su fizički ili socijalno stimulisani. Manje su usmereni na instrumentalne aktivnosti za postizanje budućih ciljeva, a više na aktivnosti koje donose neposredno zadovoljstvo ili kojima izbegavaju bol. Za razliku od ljudi koji su dominantno orijentisani ka budućnosti, ili čak prošlosti, osobe koje su pretežno okrenute sadašnjosti ponekad ignorišu ili izbegavaju da budu pod uticajem stečenih znanja ukoliko to doprinosi zadovoljenju njihovih potreba.

Utvrđeno je da je *hedonistička sadašnjost* dominantna vremenska perspektiva kod pojedinaca koji su impulsivni, kreativni, radoznali, druželjubivi, skloni avanturi i ponekad neodgovorni prema obavezama. Njihova vodilja se može ovako formulisati: *ako to doprinosi da se dobro osećate, uradite to*. Skloni su rizičnom ponašanju bilo da se radi o seksu, ekstremnim sportovima, uzimanju alkohola ili konzumiranju droge. Ne vole mnogo obaveza, trude se da ih bude što manje, ali vole brz tempo i luksuzan život uz malo rada. Vreme za njih ne predstavlja posebnu vrednost. Verovatno bi retko izgovorili rečenicu: „Vreme je novac".

Fatalistička sadašnjost je dominantna kod pojedinaca sa bespomoćnim, beznadežnim stavom prema budućnosti i životu. Odsustvo lične efikasnosti dovodi do anksioznosti i depresivnog ponašanja. Teško sklapaju poznanstva bilo prijateljska bilo ljubavna. Poznanici ih opisuju kao nesrećne, nesavesne i apatične. Retko tragaju za zadovoljstvima i ostavljaju utisak osoba kojima ništa nije posebno važno. Ne plaše se da uđu u rizične situacije, jer polaze od uverenja da je sve unapred određeno i da ma šta da urade to neće bitno promeniti tok i kvalitet njihovog života u budućnosti. Vođeni su krilaticom š*ta će se desiti, desiće se*.

1.2.1.3. Okrenutost budućnosti

Budućnost-pojedince, okrenute planiranju i postavljanju ciljeva, odlikuje princip realnosti. Oni su u stanju da zarad većeg zadovoljstva, koje očekuju kao nagradu za uložen trud i posvećenost, odlože manje zadovoljstvo. Iz tog razloga veoma brinu o svom ponašanju. Imaju mnogo poznanika a malo bliskih prijatelja jer negovanje prijateljstva traži vreme koje im je potrebno za ostvarenje postavljenih ciljeva. Da bi ostvarili svoje snove, veoma brinu o svom zdravlju, umereno troše, imaju liste prioriteta i svakodnevnih zadataka i obaveza, ne vole preterana uzbuđenja. Jednom rečju – imaju dobru kontrolu nad sopstvenim životom.

Ove osobe pokazuju tendenciju da svoje odluke manje zasnivaju na konkretnim, empirijski zasnovanim aspektima trenutnog ponašanja a više na anticipiranim, apstraktnim imaginacijama budućih posledica alternativnih pravaca delovanja. Okrenuti su zaključivanju *ako/onda*, probabilističkom razmišljanju, brižljivim analizama i utvrđivanju kauzal-

nosti. Pažljivo i savesno razmatraju posledice nečijih postupaka, trude se da optimizuju rezultate i veoma su odgovorni. Prihvataju odlaganje neposrednih zadovoljenja da bi postigli dugoročno bolje ciljeve. Spremni su da ulože velike napore u tekuće aktivnosti i da podnesu neprijatne situacije na putu ka ostvarenju pozitivnih rezultata u budućnosti. Štede vreme i energiju i izbegavaju da se angažuju oko poslova koji im nisu bitni.

1.3. **ZTPI u prevodima, validaciji i skraćenjima**

ZTPI nije samo preveden, već je i validiran na više jezika. Trenutno dostupne verzije uključuju francusku (Apostolidis i Fieulaine, 2004), italijansku (D'Alessioet al., 2003), špansku (Diaz-Morales, 2006), rusku (Sircova et al., 2008), grčku (Anagnostopoulos i Griva, 2012), litvansku (Liniauskaite i Kairis, 2009), češku (Lukavska et al., 2011), švedsku (Carelli et al., 2011) i portugalsku verziju razvijenu u Brazilu (Milfont et al., 2008). Neke od ovih verzija su testirane na velikim reprezentativnim uzorcima, npr. litvanska (N = 1529) ili češka verzija (N = 2030). Srpska adaptirana verzija ZTPI (Nedeljković, 2012) testirana je u dva navrata na velikim reprezentativnim uzorcima i to prvi put na uzorku N = 1304 (Nedeljković, 2012) i potom na uzorku N = 933 (Kostić i Nedeljković, 2013). ZTPI je ispitan i međukulturalnim poređenjima (Sircova i Mitina, 2007; Sircova et al., 2014). Studije validacije su potvrdile da su prevodi korisni alati u psihološkoj praksi i da generalno odgovaraju originalnom inventaru na značajnim stavkama svake skale. Ovo iskustvo dovelo je do pretpostavke da bi u različitim kulturnim kontekstima skraćene verzije ZTPI, koje sadrže samo nekoliko ključnih stavki za svaku skalu, mogle da obezbede validnije i praktičnije sredstvo.

1.4. **Ciljevi istraživanja**

Istraživanjem želimo da postignemo dva cilja. Prvi je kratak prikaz parametara adaptirane verzije ZTPI na srpski jezik. Drugi cilj nam je da prikažemo rezultate validacije kratke verzije srpskog adaptiranog ZTPI-52.

2. Metod

2.1. Uzorak

Uzorak, na kom je izvršena provera eksplorativnom i konfirmativnom faktorskom analizom originalnog Zimbardovog Upitnika vremenskih perspektiva prevedenog na srpski jezik, brojao je 400 studenata oba pola, najčešće starosne dobi 21 godina. Validiran je na uzorku od 1304 studenta oba pola sa modom od 21 godine starosti.

Uzorak na kom je sprovedeno skraćivanje adaptirane verzije ZTPI brojao je 752 ispitanika sa najčešćom starošću od 24 godine.

2.2. Instrumenti

2.2.1. Originalni Zimbardov Upitnik vremenskih perspektiva

Zimbardov Upitnik vremenskih perspektiva (*Zimbardo Time Perspective Inventory*; Zimbardo & Boyd, 1999) sadrži 56 stavki. Faktorskom analizom identifikovano je pet dimenzija: *negativna prošlost*, generalno negativan, averzivan pogled na prošlost (*Mislim na loše stvari koje su mi se desile*); *hedonistička sadašnjost*, hedonistički stavovi prema vremenu i životu koji podrazumevaju rizik (*Postojanje rizika čini moj život uzbudljivim*); *budućnost*, planiranje ciljeva i postignuća (*Sposoban sam da se oduprem iskušenjima kada znam da postoji posao koji mora biti završen*); *pozitivna prošlost*, optimistički i pozitivan stav prema prošlosti (*Uživam da pričam o dobrim starim vremenima*) i *fatalistička sadašnjost*, stav beznađa prema budućnosti i životu (*Moj život kontrolišu sile na koje ja nemam uticaj*).

2.2.2. Srpska adaptirana verzija Zimbardovog Upitnika vremenskih perspektiva

Validacijom sprske verzije Zimbardovog Upitnika vremenskih perspektiva potvrđena je pretpostavljena petofaktorska struktura koja je objašnjena sa 52 stavke, tj. četiri stavke manje nego u originalnom upitniku.

2.3. Postupak

Istraživanje je sprovedeno tokom 2017. godine na uzorku koji je obuhvatio 800 ispitanika. Validno popunjenih upitnika bilo je 752.

2.4. Analiza podataka

U postupku skraćivanja srpske adaptirane verzije Upitnika primenjene su eksplorativna i konfirmativna faktorska analiza. Korišćeni su i indeksi podesnosti CFI (Comparative Fit Index, $0 < CFI \leq 1$) i RMSEA (Root mean-square error of approximation, $0 < RMSEA \leq 1$). Vrednosti χ^2 (df) < 2, CFI ≥ 0,85 i RMSEA < 0,05 sugerisale su da teorijski model dobro fituje podacima (Lazarević, 2008). Kao mera pouzdanosti, korišćena je alfa, Krombahova mera interne konzistencije.

3. Rezultati

Rezultati će biti prikazani u skladu sa postavljenim ciljevima u ovom radu. Adaptacija originalnog upitnika na srpski jezik sprovedena je 2008. godine (Nedeljković, 2012) u okviru velikog projekta kros-kulturalne adaptacije (Sircova et al., 2014). Kostićka i Nedeljkovićka (2013) objavile su ceo postupak i rezultate kros-kulturalne adaptacije ovog upitnika na srpski jezik.

3.1. Rezultati adaptacije originalnog ZTPI na srpski jezik

Za adekvatnu primenu konfirmativne faktorske analize (KFA) ceo uzorak je slučajnim izborom podeljen na dva poduzorka. Nad jednim je primenjena eksplorativna faktorska analiza a nad drugim konfirmativna.

3.1.1. Eksplorativna faktorska analiza

Nad podacima dobijenim srpskom verzijom ZTPI primenjena je faktorska analiza. Uzorak podataka za primenu faktorske analize je bio adekvatan (KMO = 0,81). Kao metoda izdvajanja faktora, korišćena je *metoda glavnih komponenti*. Ekstrahovanje faktora je prvo urađeno sa

oblimin rotacijom. Pošto su korelacije između dobijenih faktora bile veoma niske, odlučeno je da se uradi ekstrakcija sa *varimaks* rotacijom. Izdvojenih pet faktora objašnjavalo je 33,50% ukupne varijanse.

Ispitivana su faktorska zasićenja i raspored ajtema po faktorima. Rezultati su upoređeni sa rezultatima na originalnoj verziji Upitnika. Ajtemi #9, #35, #37 i #52 su korelirali sa više faktora i imali su značajna visoka zasićenja na dva faktora. U analizi nisu razmatrane korelacije koje su bile niže od 0,3.

3.1.2. Konfirmativna faktorska analiza adaptirane originalne verzije ZTPI na srpski jezik

KFA je primenjena sa sledećim ciljevima:

1) da se uporedi srpski model sa originalnom verzijom ZTPI (Model 1) i
2) da se utvrdi valjanost modela koji je elaboriran primenom EFA (Model 2).

Statistički indeksi podesnosti teorijskih modela empirijskim podacima svrstavaju se, po značajnosti, u skromne (videti Tabelu 1).

Posle urađenih modifikacija modela dobijeni su sledeći pokazatelji njegove značajnosti (Model 3): $\chi^2 = 3154{,}216$, $df = 1266$; $X^2/(df) = 2{,}39$, $CFI = 0{,}708$, $RMSEA = 0{,}050$. Svi parametri su bolji nego pre modifikacija (Tabela 1).

Tabela 1. Parametri podesnosti srpske verzije skale ZTPI, poređenje modela

Model	χ^2	Df	χ^2/df	CFI	RMSEA	AIC	CAIC	α
1.	4267,893	1473	2,80	0,604	0,056	1321,893	-6627,784	0,82
2.	4110.289	1474	2,79	0,577	0,059	1162.289	-6567.612	0,83
3.	3154,216	1266	2,39	0,708	0,05	622,216	-6210,296	0,81

Legenda: Modeli: 1 = izvorna verzija sa 56 ajtema; 2 = model zasnovan na rezutatima EFA sa 56 ajtema; 3 = konačna verzija sa 52 ajtema. Svi χ^2 statistici su značajni na nivou manjem od 0,001. χ^2/df = količnik χ^2 i stepena slobode; CFI = indeks komparativnog fitovanja; RMSEA = kvadratni koren prosečne kvadrirane greške aproksimacija; AIC = Akajkeov kriterijum informativnosti; CAIC = konzistentan Akajkeov kriterijum informativnosti; α = Kronbahov koeficijent interne konzistencije.

3.1.2.1. Kako je model poboljšan?

1) Ispitane su korelacije između reziduala (E). Pošto je veliki broj ajtema pokazivao visoku korelaciju sa rezidualima, odlučeno je da se uključe korelacije reziduala u model i to kod sledećih ajtema: 42 i 31, 41 i 15, 20 i 2, 11 i 7.

2) Faktorska zasićenja ajtema su ispitivana u cilju traženja podudarnosti sa originalnim modelom ZTPI. Ajtemi koji su značajno visoko korelirali sa dva faktora su izbačeni, kao i ajtemi koji su imali zasićenja manja od 0,3 na određenom faktoru, što je narušavalo stabilnost faktora. Rezultat takvih pokazatelja bio je da su ajtemi sa dvostrukim korelacijama i oni sa zasićenjima manjim od 0,3 izbačeni iz modela.

U poređenju sa izvornom verzijom instrumenta ZTPI (Zimbardo and Boyd, 1999), u kojoj je trebalo obrnuto skorovati pet ajtema, u srpskoj verziji treba obrnuto skorovati dva ajtema, jedan u negativnoj prošlosti i dva u budućnosti, koji se obrnuto skoruju i u originalnoj verziji. Broj ajtema po subtestovima je takođe različit tako da u srpskoj verziji *negativnu prošlost*, umesto originalnih deset ajtema, određuje osam. *Hedonističku sadašnjost*, umesto originalno petnaest, određuje šesnaest ajtema. *Okrenutost budućnosti* u srpskoj verziji određuje jedanaest ajtema, a u originalnom upitniku trinaest. *Fatalističku sadašnjost* u srpskoj verziji Upitnika određuje četiri ajtema a u izvornoj devet. *Pozitivnu prošlost* u izvornoj verziji određuje devet ajtema a u srpskoj trinaest.

Posle svih ovih procedura ponovo je proverena interna pouzdanost subskala (Tabela 2).

Tabela 2. Pouzdanost pojedinih subskala pre i posle primene KFA

Faktor	α	α pre KFA
F1: Negativna prošlost	0,81	0,79
F2: Hedonistička sadašnjost	0,78	0,76
F3: Pozitivna prošlost	0,75	0,66
F4: Budućnost	0,67	0,55
F5: Fatalistička sadašnjost	0,69	0,66

Legenda: α – Kronbahov koeficijent pouzdanosti

Konfirmativnom proverom i promenom modela došlo je do povećanja pouzdanosti svih subskala Upitnika.

3.2. Validacija skraćene srpske verzije ZTPI

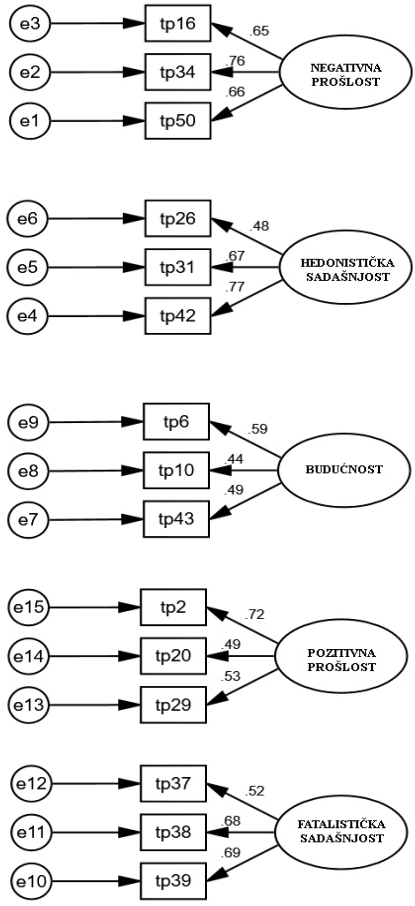
Korišćenjem konfirmativne faktorske analize (KFA) ispitana je petofaktorska struktura Zimbardovog inventara vremenske perspektive (Zimbardo & Boyd, 1999). Testiran je model koji se sastoji od petnaest ajtema ravnomerno raspoređenih na pet faktora: Negativistička prošlost – ajtemi 16 (*.65*), 34 (*.76*) i 50 (*.66*); Hedonistička sadašnjost – ajtemi 26 (*.48*), 31 (*.67*) i 42 (*.77*); Budućnost – ajtemi 6 (*.59*), 10 (*.44*) i 43 (*.49*); Pozitivistička prošlost – ajtemi 2 (*.72*), 20 (*.49*) i 29 (*.53*); Fatalistička sadašnjost – ajtemi 37 (*.52*), 38 (*.68*) i 39 (*.69*). Na Slici 1. (*Model*) i grafički su prikazana faktorska zasićenja svih ajtema. Jedini ajtem koji predstavlja razlog za brigu jeste ajtem 10 (faktorsko zasićenje = *.44*), ali odstupanje od poželjne granice nije toliko veliko da bi obavezno zahtevalo izostavljanje pomenutog ajtema iz nastavka analize.

Nastavak analize odnosio se na proveru fitovanja predloženog modela. Vrednost osnovnog parametra, hi-kvadrata, iznosila je χ^2 *(90, N = 752) = 344.568* i podaci su pokazali da je takva vrednost hi-kvadrata statistički značajna (p = *.000*), što nije ukazivalo na dobar fit modela. Međutim, u obzir treba uzeti i da je istraživanje obuhvatilo 752 ispitanika, budući da je poznato da vrednost hi-kvadrata u velikoj meri zavisi od veličine uzorka. Takođe, vrednost odnosa hi-kvadrata i broja stepeni slobode ukazala je da ipak postoji osnova za konstatovanje dobrog fitovanja modela (χ^2 / *df = 3.829*). Iz tog razloga usledila je provera indeksa fitovanja. Vrednosti GFA (*.94*) i AGFA (*.92*) ukazale su na dobar fit modela, baš kao i vrednosti RMSEA (*.06*, uz intervale pouzdanosti *.05* i *.07*) i SRMR (*.08*). Indeksi fitovanja koji nisu ukazali na idealan fit bili su CFI (*.86*) koji nije zadovoljio kriterijum > *.90* i PCFI (*.73*), čija je poželjna vrednost > *.80*. Pomenuti podaci prikazani su i u Tabeli 3. Uzimajući u obzir sve uslove i karakteristike ovog istraživanja, poput navedenih indeksa fitovanja, faktorskih zasićenja i veličine uzorka, može se konstatovati da predloženi model fituje prikupljenim podacima.

Tabela 3. Indeksi fitovanja kratke srpske verzije ZTPI

χ^2	df	p	χ^2/df	GFI	AGFI	CFI	PCFI	RMSEA	LO90	HI90	SRMR
344.568	90	.000	3.829	.94	.92	.86	.73	.06	.05	.07	.08

Slika 1. *Model*



Napomena: brojevi ajtema odgovaraju originalnoj verziji ZTPI (Zimbardo & Boyd, 1999).

4. Zaključak

Cilj ovog rada bio je da se smanji broj stavki adaptiranog Upitnika vremenskih perspektiva (Zimbardo Time Perspective Inventory) (Kostić i Nedeljković, 2013). Upitnik vremenskih perspektiva operacionalizuje pet vremenskih perspektiva u opsegu prošlosti, sadašnjosti i budućnosti. Proces redukcije se zasnivao na primeni konfirmativne faktorske analize adaptirane – srpske verzije pomenutog upitnika. Koristeći ovaj pristup, kao polaznu tačku, prikazani su rezultati tri različite studije. Prve dve se odnose na adaptaciju originalnog upitnika na srpski jezik, dok se treća odnosi na rezultate skraćivanja adaptirane verzije. Takođe, treba naglasiti da je skraćivanje sprovedeno 2017. godine i da je tokom šest godina ova kratka verzija proveravana u desetinama istraživanja, u kojima su ispitivane relacije sa velikim brojem psiholoških konstrukata, poput samoefikasnosti, samokontrole, modaliteta odlučivanja, sklonosti ka preduzetništvu, dimenzija ličnosti. Istraživanja su sprovedena na različitim uzorcima, od adolescenata i zrelih, preko nezaposlenih i zaposlenih, pa do menadžera i izvršilaca, u uobičajenim okolnostima, kao i u okolnostima socijalne izolacije u vreme pandemije Covid-19.

U svim okolnostima kratka verzija ZTPI pokazala je stabilnost u merenju vremenskih perspektiva. Zadržana je jasna i stabilna petofaktorska struktura Upitnika. Pet izolovanih faktora, po našem mišljenju, pruža dovoljne okvire za sagledavanje karakteristika vremenskih prespektiva pojedinca, kao dela referentnog okvira njihovih kompleksnih, kognitivnih i socijalnih karakteristika.

Skraćena verzija Upitnika omogućava prikupljanje podataka uz niži nivo angažovanja ispitanika i uz zadržavanje istog nivoa informativnosti. Ova verzija se može koristiti i kao protokol za uočavanje izraženosti vremenskih perspektiva ispitanika, a isto tako i za određivanje stepena balansiranosti vremenskih prespektiva, kao pokazatelja optimalnog blagostanja. Ovo otvara mogućnost poređenja podataka dobijenih samoprocenom pojedinca i podataka dobijenih posmatranjem, što smatramo još jednim značajnim kriterijumom objektivnosti merenja. Ograničenja ovog istraživanja predstavljaju otvorena pitanja za buduće istraživače, a u cilju provere stabilnosti merenog konstrukta.

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Jasmina Nedeljković[1]

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SHORT SERBIAN VERSION OF THE ZIMBARDO TIME PERSPECTIVE INVENTORY (ZTPI) – ZTPI-15[2]

Abstract: The main goal of this research was the validation of a short version of Zimbardo's Time Perspective Inventory (ZTPI), which was previously adapted into Serbian. The original version of the ZTPI has 56 items and measures five time perspectives – Past-Positive, Past-Negative, Present-Hedonistic, Present-Fatalistic, and Future. The adapted Serbian version has 52 items and confirmed the original five-factor structure of the inventory. The questionnaire was shortened due to the need for economy in the use of the scale, especially when it is given as part of a battery of tests consisting of several psychological constructs. The short ZTPI has 15 items and a validated five-factor structure of the inventory. Considering all the conditions and characteristics of this study, such as the mentioned fit indices, factor saturations, as well as the sample size, it can be concluded that the proposed model with 15 items fits the collected data.

Key Words: time perspective, time perspective measure, ZTPI shortening, confirmation factor analysis

[1] Full Professor, Faculty of Law and Business Dr Lazar Vrkatić, Bulevar oslobođenja 76, Novi Sad; Orcid: https://orcid.org/0000-0002-9869-480X; e-mail: jasmina.nedeljkovic@gmail.com

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1. Introduction

We flow with time deceptively, convinced that we are now, not before or after. What we are we cannot relate to the before or after; our only perspective of time says we are never beyond the now. By acknowledging that we were or that we will be we set no precedent. "Were" and "will be" merely means that the now existed and will exist in the future. We were on the bus now and we will be at the movies now. That is the only qualitative difference between the now, before and after.

On the Subjective Dimension of Time (Fajgelj, 1970)

From the beginning of empirical research on time perspectives in the late 20th century, besides operationalization of time perspectives, the focus was also on the study of relationships with various psychological constructs, such as mental health and personal happiness (Boniwell & Zimbardo, 2004; Gruber et al., 2012; Stolarski et al., 2013), procrastination in university students (Nedeljković, 2017) and elementary school students (Đokić & Drobnjak, 2018), self-control in high school graduates (Kostić, 2019), stress in managers (Veljković & Nedeljković, 2021).

People are aware that time is the only non-renewable resource they have. Since it is very difficult to define, and the awareness that it flows exists, time as a concept has always been of interest to philosophers, physicists, theologians, psychologists, and ordinary people. When we talk about time, we are talking about events that have passed a second, a few minutes, days, years, decades and centuries ago. And we are aware that the present moment, while we are still talking about what was or what we hope will be, is blending with the past. Also, we are aware that the future does not exist, but that it is a projection of our hope that something will happen.

1.1. **Identifying the concept *time perspective***

Zimbardo & Boyd (2008) state that Levin (1942) was one of the first researchers to see the importance of time perspective in the study of human behaviour. According to Levin, the life space of an individual extends to the past, present and future, so that it affects not only a person's emotions and behaviour, but also his moral choices. Later it turned out (Boniwell, 2008) that many researchers (Nuttin, 1985; Wessman & Gorman, 1977; Zimbardo & Boyd, 1999) shared Lewin's belief about the influence of future and past events on a person's present.

Time perspective is reflected in the relative importance that an individual attaches to the past, present or future in their thoughts. Our attitudes towards past, present and future time can be positive or negative. The experience of time is shaped by our emotional state, the dominant time perspective, and the pace of life in the community of which we are a member.

The "father" of the study of time in psychology, Paul Fraisse (1963), believes that our behaviour at any given moment does not depend only on the situation we are in, but on everything we have experienced so far, as well as on all future expectations (Zimbardo & Boyd, 2008). So, we can say that all our behaviour is placed in some temporal perspective. It depends on our time horizon at the very moment of the event.

Discussing the concept of time perspective, Zimbardo & Boyd (1999) state that time perspective is an often-unconscious personal attitude that each of us has towards time. Thanks to personal attitude, the continuous flow of existence can be placed in five categories, which give order, connection, harmony and meaning to our lives. This personal attitude has a strong influence on the life of all people and represents the first time paradox. Zimbardo & Boyd (2008) state that a balanced attitude – an attitude of medium intensity in relation to all six dimensions of time perspective is another time paradox.

1.2. **Zimbardo's Time Perspective Inventory – ZTPI**

The relationship to time is usually learned in the culture we live in, shaped by religion, economic status, education, family, peers, school, and significant life events. Cultures differ greatly in their dominant time

perspective. They value the past, present, and future in different ways, as well as the impacts of their interactions. Past-oriented cultures strongly believe in the significance of past events. History, religion, and tradition are extremely important to these cultures. Present-oriented cultures place the greatest importance on the immediate moment because they see the future as vague and uncertain. If cultures are future-oriented, they emphasize the importance of what is to come and expect the future to be grander than the present.

According to the theory and thirty years of research by Zimbardo and Boyd, there are six main time perspectives: Past-Negative, Past-Positive, Present-Hedonistic, Present-Fatalistic, Future, and Future-Transcendental. At this point, it should be noted that the Future-Transcendental scale is not included in ZTPI-56, but it is assigned as a separate instrument.

1.2.1. Description of time perspectives measured by the ZTPI

1.2.1.1. Past-Oriented

Past-oriented individuals can distance themselves from actual reality, current situations and personal trials, directing their attention to previously established obligations associated with previously set goals. A large part of their behaviour is influenced by feelings of guilt, due to the inconsistency of current thoughts and actions with previously established obligations. These individuals are often conservative and concerned with maintaining the status quo position regardless of whether that position is good or bad for them. They are risk-averse, and not impressed by new, more efficient ways of doing things. They prefer the well-established ways and previous experiences. They have an intense need to feel safe, secure, and protected under the umbrella of tried and tested experience.

Past-Positive is a time perspective characterized by a warm, sentimental attitude toward the past, rather than an objective record of good and bad events. Past-positive attitude can reflect positive events from this period of life, but also a positive interpretation, a positive reconstruction of past events. Psychologically speaking, what an individual believes happened in the past affects their thoughts, feelings, and behaviour much more than what actually happened. People who expe-

rience unpleasant events in the past and remember them in a positive way can become more resistant to stress, effectively cope with the consequences of stress, and become better adjusted and optimistic individuals.

Past-Negative is characterized by a generally negative attitude towards past events. These individuals usually do not have close friends. Those who know them describe them as unhappy, depressed, shy, anxious, with poor impulse control. Although, as a rule, they do not have much energy, they try to be busy, occupied, to escape from painful memories.

1.1.1.2 *Present-Oriented*

Present-oriented individuals focus on specific factors in the immediate sensory environment (physical prominence – expressiveness, sensory qualities, current social pressures). At the same time, they ignore or minimize the importance of abstract qualities that are relevant to the existence of expected future events or the memory of the past. Such people also tend to be narrowly focused on what is, rather than what could be or what was. Their opinion is more concrete, less abstract, and they tend to use the present tense more often. It is difficult for them to postpone the satisfaction of the need, especially when it is intense, so they are exposed to pressure. They are easily tempted and can distance themselves from the task if they are physically or socially stimulated. They are less focused on instrumental activities to achieve future goals and more on activities that bring immediate pleasure or avoid pain. Unlike people who are predominantly past- or future-oriented, present-oriented individuals sometimes ignore or avoid being influenced by the acquired knowledge if it contributes to the satisfaction of their needs.

Present-Hedonistic has been found to be the dominant time perspective in individuals who are impulsive, creative, curious, sociable, adventurous, and sometimes irresponsible. Their guiding principle is: *If it makes you feel good, do it*. They tend to engage in risky behaviour, be it sex, extreme sports, alcohol, or drug use. They dislike a lot of obligations and try to have as few as possible. They like a fast-paced and luxurious life with little work. Time is not of much value for them. They are unlikely to state: "Time is money".

Present-Fatalistic is predominant in individuals with a helpless, hopeless attitude towards the future and life. Lack of personal efficacy leads to anxiety and depressive behaviour. It is difficult for them to establish relationships, whether friendly or romantic. Acquaintances describe them as unhappy, careless, and apathetic. They rarely seek pleasures and leave the impression of people for whom nothing is particularly important. They are not afraid to get into risky situations, because their belief is that everything is predetermined and that no matter what they do, it will not significantly change the course and quality of their life in the future. Their motto is: *What will be will be*.

1.2.1.3 Future-Oriented

Future-oriented individuals, focused on planning and setting goals, are characterized by the principle of reality. They can postpone lesser satisfaction for the sake of greater satisfaction, which they expect as a reward for the effort and dedication. For this reason, they are very careful about their behaviour. They have many acquaintances and few close friends because cultivating friendships requires the time they need to achieve their goals. To achieve their dreams, they take great care of their health, spend moderately, have lists of priorities and daily tasks and obligations, do not like excessive excitement. In a word, they have good control over their own lives.

These individuals show a tendency to base their decisions less on concrete, empirically based aspects of current behaviour and more on anticipated, abstract imaginations of future consequences of alternative courses of action. They are prone to if/then reasoning, probabilistic thinking, careful analysis, and establishing causality. They carefully and conscientiously consider the consequences of one's actions, try to optimize results and are very responsible. They accept the postponement of immediate gratifications in order to achieve better long-term goals. They are ready to invest great efforts in ongoing activities and to endure unpleasant situations on the way to achieving positive results in the future. They save time and energy and avoid engaging in tasks that are not important to them.

1.3. ZTPI: Translations, validations, and short versions

ZTPI has not only been translated, but also validated in several languages. Currently available versions include the French (Apostolidis & Fieulaine, 2004), Italian (D'Alessioet al., 2003), Spanish (Diaz-Morales, 2006), Russian (Sircova et al., 2008), Greek (Anagnostopoulos & Griva, 2012), Lithuanian (Liniauskaite & Kairis, 2009), Czech (Lukavska et al., 2011), Swedish (Carelli et al., 2011) and Portuguese version developed in Brazil (Milfont et al., 2008). Some of these versions have been tested on large representative samples, e.g. the Lithuanian (N = 1529) or Czech version (N = 2030). The Serbian adapted version of the ZTPI (Nedeljković, 2012) was tested twice on large representative samples, the first time on a sample of N = 1304 (Nedeljković, 2012) and then on a sample of N = 933 (Kostić & Nedeljković, 2013). ZTPI has also been examined through cross-cultural comparisons (Sircova & Mitina, 2007; Sircova et al., 2014). Validation studies have confirmed that the translations are useful tools in psychological practice and that they generally match the original inventory on significant items of each scale. This experience led to the assumption that in different cultural contexts abbreviated versions of the ZTPI, containing only a few key items for each scale, could provide a more valid and practical tool.

1.4. Research Objectives

The present research has two objectives. The first is a brief description of the parameters of the adapted version of ZTPI in the Serbian language. The second goal is to present the results of the validation of the short version of the Serbian adapted ZTPI-52.

2. Method

2.1. Sample

The sample, which was checked by exploratory and confirmatory factor analysis of the original ZTPI translated into Serbian, consisted of 400 students of both sexes, mostly aged 21. It was validated on a sample of 1304 students of both sexes with a mean age of 21.

The sample on which the shortened adapted version of the ZTPI was conducted consisted of 752 respondents with the most common age of 24.

2.2. Instruments

2.2.1. Original ZTPI

Zimbardo Time Perspective Inventory (Zimbardo & Boyd, 1999) contains 56 items. Factor analysis identified five dimensions: Past-Negative, generally negative, aversive view of the past (*I think of bad things that happened to me*); Present-Hedonistic, hedonistic attitudes towards time and life that imply risk (*The existence of risk makes my life exciting*); Future, planning goals and achievements (*I am able to resist temptation when I know there is work that must be done*); Past-Positive, an optimistic and positive attitude towards the past (*I enjoy talking about the good old times*), and Present-Fatalistic, a hopeless attitude towards the future and life (*My life is controlled by forces I cannot influence*).

2.2.2. Serbian version of ZTPI

Validation of the Serbian version of ZTPI confirmed the assumed five-factor structure explained by 52 items, i.e. four items less than in the original questionnaire.

2.3. Procedure

The research was conducted in 2017 on a sample of 800 respondents. There were 752 validly completed questionnaires.

2.4. Data Analysis

In the process of shortening the Serbian adapted version of ZTPI, exploratory and confirmatory factor analysis was applied. The fit indices CFI (Comparative Fit Index, $0 < CFI \leq 1$) and RMSEA (Root mean-square error of approximation, $0 < RMSEA \leq 1$) were also used. The values

of χ^2 (df) < 2, CFI ≥ 0.85 and RMSEA < 0.05 suggested that the theoretical model fits the data well (Lazarević, 2008). As a measure of reliability, alpha, Krombach's measure of internal consistency, was used.

3. Results

The results will be presented in accordance with the research goals. The translation of the original inventory into Serbian was done in 2008 (Nedeljković, 2012) as part of a large cross-cultural adaptation project (Sircova et al., 2014). Kostić & Nedeljković (2013) published the entire procedure and results of the cross-cultural adaptation of the inventory into Serbian.

3.1. Results of the ZTPI adaptation into Serbian

For an adequate application of confirmatory factor analysis (KFA), the entire sample was randomly divided into two subsamples. Exploratory factor analysis was applied to one and confirmatory factor analysis to the other.

3.1.1 Exploratory factor analysis

A factor analysis was applied to the data obtained by the Serbian version of the ZTPI. The data sample for the application of factor analysis was adequate (KMO = 0.81). As a factor extraction method, the principal components method was used. Factor extraction was first performed with *oblimin* rotation. Since the correlations between the obtained factors were very low, it was decided to perform an extraction with varimax rotation. Five isolated factors explained 33.50% of the total variance.

Factor saturations and the distribution of items by factors were examined. The results were compared with the results on the original version of the inventory. Items #9, #35, #37, and #52 correlated with multiple factors and had significantly high saturations on two factors. Correlations lower than 0.3 were not considered in the analysis.

3.1.2 Confirmatory factor analysis of the adapted original version of the ZTPI in Serbian

CFA was implemented with the following objectives:

1) to compare the Serbian model with the original version of ZTPI (Model 1) and

2) to determine the validity of the model elaborated using EFA (Model 2).

The statistical indices of suitability of theoretical models to empirical data are classified as modest in terms of significance (see Table 1).

After the model modifications, the following indicators of its significance were obtained (Model 3): $\chi 2 = 3154.216$, df = 1266; X2 /(df) = 2.39, CFI = 0.708, RMSEA = 0.050. All parameters are better than before modifications (Table 1).

Table 1. Adaptability parameters of the Serbian version of the ZTPI, model comparison

Model	χ^2	Df	χ^2/df	CFI	RMSEA	AIC	CAIC	α
1.	4267,893	1473	2,80	0,604	0,056	1321,893	-6627,784	0,82
2.	4110.289	1474	2,79	0,577	0,059	1162.289	-6567.612	0,83
3.	3154,216	1266	2,39	0,708	0,05	622,216	-6210,296	0,81

Legend: Models: 1 = original version with 56 items; 2 = model based on results of EFA with 56 items; 3 = final version with 52 items. All $\chi 2$ statistics are significant at the less than 0.001 level. $\chi 2$/df = quotient of $\chi 2$ and degrees of freedom; CFI = comparative fit index; RMSEA = root mean square error of approximation; AIC = Akaike's informativeness criterion; CAIC = consistent Akaike's informativeness criterion; α = Cronbach's coefficient of internal consistency.

3.1.2.1. How has the model been improved?

1) Correlations between residuals (E) were examined. Since many items showed a high correlation with the residuals, it was decided to

include the correlations of the residuals in the model for the following items: 42 and 31, 41 and 15, 20 and 2, 11 and 7.

2) The factor saturations of the items were examined to search for concordance with the original ZTPI model. Items that were significantly highly correlated with two factors were dropped, as well as items that had saturations of less than 0.3 on a certain factor, which impaired factor stability. The result of such indicators was that items with double correlations and those with saturations less than 0.3 were dropped from the model.

Compared to the original version of the ZTPI instrument (Zimbardo & Boyd, 1999), in which five items had to be reverse scored, in the Serbian version two items should be reverse scored, one in Past-Negative and two in Future, which are also reverse scored in the original version. The number of items per subtest is also different, so that in the Serbian version, Past-Negative is determined by eight, instead of the original ten items. Present-Hedonistic, instead of the original fifteen, is determined by sixteen items. Future orientation is determined by eleven items in the Serbian version, and thirteen in the original. Present-Fatalistic is determined by four items in the Serbian version, and nine in the original. Past-Positive is determined by nine items in the original version, and thirteen in the Serbian version.

After all these procedures, the internal reliability of the subscales was checked again (Table 2).

Table 2. Reliability of individual subscales prior to and after applying CFA

Factor	α	α before CFA
F1: Past-Negative	0,81	0,79
F2: Present-Hedonistic	0,78	0,76
F3: Past-Positive	0,75	0,66
F4: Future	0,67	0,55
F5: Present-Fatalistic	0,69	0,66

Legend: α – Cronbach's reliability coefficient

The confirmatory check and change of the model resulted in an increase in the reliability of all subscales of the inventory.

3.2. Validation of the abbreviated Serbian version of the ZTPI

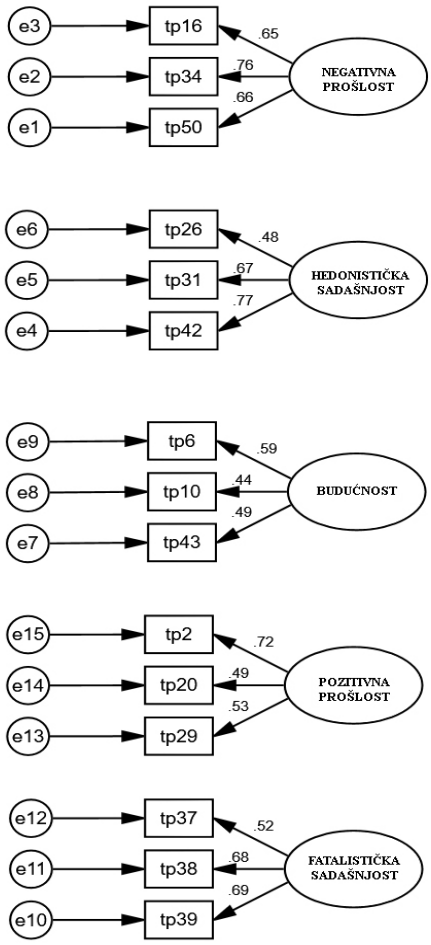
Using confirmatory factor analysis (KFA), the five-factor structure of ZTPI (Zimbardo & Boyd, 1999) was examined. A model consisting of fifteen items evenly distributed over five factors was tested: Past-Negative (NEGATIVNA PROŠLOST) – items 16 (.65), 34 (.76) and 50 (.66); Present-Hedonistic (HEDONISTIČKA SADAŠNJOST) – items 26 (.48), 31 (.67) and 42 (.77); Future (BUDUĆNOST) – items 6 (.59), 10 (.44) and 43 (.49); Past-Positive (NEGATIVNA PROŠLOST) – items 2 (.72), 20 (.49) and 29 (.53); Present-Fatalistic (FATALISTIČKA SADAŠNJOST) – items 37 (.52), 38 (.68) and 39 (.69). Figure 1 (Model) shows the factor saturations of all items graphically. The only item that is cause for concern is item 10 (factor saturation = .44), but the deviation from the desired limit is not so great that it would necessarily require the omission of the mentioned item from the continuation of the analysis.

Further analysis involved checking the fit of the proposed model. The value of the basic parameter, chi-square, was $\chi 2$ (90, N = 752) = 344,568 and the data showed that such chi-square value was statistically significant (p = .000), which did not indicate a good fit of the model. However, it should be considered that the research included 752 respondents, since it is known that the value of the chi-square largely depends on the sample size. Also, the value of the chi-square ratio and the number of degrees of freedom indicated that there is still a basis for stating that the model fits well ($\chi 2$ / df = 3.829). For this reason, a check of the fit index followed. GFA (.94) and AGFA (.92) values indicated good model fit, as did RMSEA (.06, with confidence intervals of .05 and .07) and SRMR (.08). The fit indices that did not indicate an ideal fit were the CFI (.86), which did not meet the criterion > .90, and the PCFI (.73), whose desirable value is > .80. The mentioned data are also shown in Table 3. Considering all the conditions and characteristics of this research, such as the specified fit indices, factor saturations and sample size, it can be concluded that the proposed model fits the collected data.

Table 3. Fit indices of short Serbian version of ZTPI

χ^2	df	p	χ^2/df	GFI	AGFI	CFI	PCFI	RMSEA	LO90	HI90	SRMR
344.568	90	.000	3.829	.94	.92	.86	.73	.06	.05	.07	.08

Figure 1. *Model*



Note: Item numbers correspond to the original ZTPI (Zimbardo & Boyd, 1999).

4. Conclusion

The aim of this research was to reduce the number of items of the adapted Zimbardo Time Perspective Inventory – ZTPI (Kostić & Nedeljković, 2013). ZTPI has operationalized five time perspectives related to past, present, and future. The reduction was based on the application of confirmatory factor analysis of the adapted Serbian version of the inventory. Using this approach as a starting point, the results of three different studies are presented. The first two are related to the adaptation of the original instrument into Serbian, and the third deals with the results of shortening the adapted version. The short version was completed in 2017. For the past six years, this short version was checked in dozens of studies, which examined the correlations with many psychological constructs, such as self-efficacy, self-control, decision-making modality, propensity for entrepreneurship, and personality dimensions. The studies were conducted on different samples, from adolescents and adults, the unemployed and employed, to managers and executives, both in normal circumstances and in social isolation during the Covid-19 pandemic.

In every situation the short version of the ZTPI showed stability in measuring time perspectives. The clear and stable five-factor structure of the inventory was retained. Five isolated factors, in our opinion, provide sufficient frameworks for evaluating an individual's time perspective, as part of the reference frame of their complex, cognitive and social characteristics.

The short version of the ZTPI enables data collection without excessively engaging respondents while maintaining the same informativeness. This version can also be used as a protocol for observing the predominance of the respondents' time perspectives, as well as for determining the balance of time perspectives, as an indicator of optimal well-being. This opens the possibility of comparing the data obtained by individual self-assessment and the data obtained by observation, which is another important criterion of measurement objectivity. The limitations of this research open new paths for future researchers, with the aim of checking the stability of the measured construct.

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Tijana Meseldžija[1]
Vladimir Njegomir[2]

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UTICAJ DIGITALNOG MARKETINGA NA PONAŠANJE POTROŠAČA

Rezime: Cilj ovog istraživanja bio je da se ispita povezanost između uticaja digitalnog marketinga na ponašanje potrošača. Digitalni marketing predstavlja ključni faktor u oblikovanju i usmeravanju ponašanja potrošača. Donošenje odluka u vezi sa kupovinom proizvoda ili usluga postalo je kompleksno pitanje pod uticajem digitalnih tehnologija koje omogućavaju kompanijama da direktno komuniciraju sa svojim ciljnim auditorijumom putem različitih onlajn platformi, kao što su društvene mreže, e-mail marketing i pretraga na internetu. Ispitivanje je sprovedeno na uzorku od 151 ispitanika sa teritorije Srbije putem onlajn ankete. Većina ispitanika bili su ženskog pola (72,8%), sa starosnim rasponom od 18 do 64 godine i prosečnom starošću od približno 32 godine. Podaci su analizirani korišćenjem deskriptivne statistike i Pirsonovog bivarijatnog korelacionog metoda. Zarad poređenja polova prema ispitivanim varijablama koristili smo Studentov t-test za nezavisne uzorke, dok su razlike između ispitanika različitih stepena stručne spreme ispitivane putem ANOVA analize. Nije pronađena statistička značajnost između uticaja digitalnog marketinga i ponašanja potrošača.

Ključne reči: *digitalni marketing, ponašanje potrošača, marketing istraživanje, Srbija*.

[1] Master psihologije, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Bul. oslobođenja 76, Novi Sad, e-mail: tijans98@gmail.com

[2] Redovni profesor, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Bul. oslobođenja 76, Novi Sad, e-mail: vnjegomir@sbb.rs

1. Uvod

Marketing je u svom dosadašnjem razvoju prošao kroz tri faze: fazu proizvodne orijentacije, orijentacije na potrošača i fazu humanocentrične orijentacije. Tekuća faza razvoja marketinga jeste digitalni marketing. Digitalni marketing nastaje zahvaljujući promenama u tehnologiji i uticaju tehnoloških promena na potrošače. Tehnološke promene vidljive su već dve decenije, ali su tek poslednjih nekoliko godina počele da kreiraju kolektivni uticaj, posebno u toku pandemije Covid-19, te da tako utiču i na prakse marketinga širom sveta. Ovu fazu marketinga je vodeći teoretičar marketinga Kotler, koji je i kreator pojma, nazvao Marketing 4.0 u svojoj knjizi *Marketing 4.0: prelazak sa tradicionalnog na digitalni* (Koetler, Kartajaya, & Setiwan, 2017), koja će predstavljati osnovu marketinške teorije i prakse u narednim godinama.

U današnjem, digitalnom dobu digitalni marketing postaje sveprisutan i tražen od potrošača, a time i ključan za uspeh svake organizacije. S razvojem interneta i tehnologije, digitalni kanali postaju osnovno sredstvo za komunikaciju i interakciju sa potrošačima. Digitalni marketing je dinamična i kompleksna oblast koja zahteva duboko razumevanje potrošača, konstantno učenje i prilagođavanje. Kroz sveobuhvatan pristup istraživanju i analizi, kompanije mogu ostvariti uspešne rezultate i ostvariti svoje poslovne ciljeve u digitalnom okruženju koje se neprestano menja.

Iz tog razloga, proučavanje uticaja digitalnog marketinga na ponašanje potrošača postaje neophodno, kako bismo bolje razumeli njihove potrebe i preferencije. U tom smislu, analiza podataka o onlajn aktivnostima potrošača postaje ključna za kreiranje ciljanih marketinških strategija.

Problem istraživanja u ovom radu jeste ispitivanje postojanja povezanosti između uticaja digitalnog marketinga i ponašanja potrošača. U ovom radu detaljnije ćemo istražiti ponašajne, demografske i geografske karakteristike potrošača u digitalnom okruženju, kako bismo dublje razumeli njihove preferencije i navike. Naša namera, prilikom konceptualizacije ovoga rada, bila je da pružimo konkretnije zaključke i precizne preporuke kako bi se marketinške strategije efikasno primenile i ostvarili željeni ciljevi u dinamičnom digitalnom okruženju. Kroz

sistematski pristup i sveobuhvatnu analizu ovih faktora, dajemo pristup za izgradnju čvrstog temelja za uspešno vođenje digitalnog marketinga.

Cilj istraživanja u ovom radu jeste da se utvrdi da li postoji statistički značajna povezanost između uticaja digitalnog marketinga i ponašanja potrošača na relevantnom uzorku, da li postoji statistički značajna povezanost uticaja digitalnog marketinga i ponašanja potrošača na uzorku ženskog pola i da li postoji statistički značajna povezanost između uticaja digitalnog marketinga i ponašanja potrošača na uzorku muškog pola.

Rezultati ovog istraživanja mogu biti značajni za bolje razumevanje ponašanja potrošača u digitalnom okruženju. Takođe, mogu se tumačiti polne razlike između uticaja digitalnog marketinga i potrošača koji kupuju proizvode i usluge onlajn.

Rad je podeljen u nekoliko celina, pri čemu – u drugoj celini – ukazujemo na aspekte digitalnog marketinga i specifičnosti njegovog razvoja, potom obrazlažemo korišćeni metod istraživanja i podatke dobijene anketnim istraživanjem, nakon čega prikazujemo rezultate i iznosimo zaključke.

2. Digitalni marketing i potrošači

Digitalni marketing nije suprotan tradicionalnom marketingu, već predstavlja njegovu komplementarnu dopunu uslovljenu tehnološkim razvojem i promenama potrošača u pravcu veće onlajn tražnje za proizvodima i uslugama. U digitalnom marketingu marketari treba da primenjuju iste bazične principe (Njegomir, 2020). Na primer, treba da tragaju za mogućnostima zadovoljenja potrošača isporukom vrednosti sa aspekta potrošača, na profitabilan način za kompaniju. Svakako postoje razlike u navedenim elementima a, prema Kotleru, posebno u komunikaciji (Koetler, Kartajaya, & Setiwan, 2017). U tradicionalnom marketingu komunikacija je jednosmerna, dok je u digitalnom marketingu komunikacija dvosmerna. Ukoliko komunikacija nije dvosmerna, ni marketing ni kompanija neće biti uspešni u digitalnom marketingu.

Digitalni marketing ima mogućnost globalnog uticaja, mogućnost stalnog oglašavanja – 24 časa svih sedam dana u nedelji, kao i prednost u masovnom prilagođavanju proizvoda i usluga potrošačima. Kroz primenu brojnih alata, poput sajta, onlajn prodaje, prisustva na društvenim

mrežama, primenom tehnika, poput optimizacije pretrage, plaćanja po kliku, e-mail marketinga, influenser-marketinga, video-marketinga, mobilnog marketinga, sadržajnog marketinga i drugih tehnika i strategija onlajn prisustva, organizacije mogu stvoriti dublje veze sa svojim ciljnim tržišnim segmentom, pružiti relevantan i privlačan sadržaj, te optimizirati svoju onlajn vidljivost. Ovaj dinamični pejzaž digitalnog marketinga zahteva stalno učenje i prilagođavanje kako bi se ostvarili uspešni rezultati i održala konkurentska prednost.

Optimizacija pretraživača, plaćena pretraga i plaćanje po kliku su ključni za povećanje vidljivosti i dostupnosti proizvoda i usluga pretraživanjem internet pretraživača. Ove tehnike omogućavaju da se kompanije pojave na vrhu rezultata pretrage, što povećava verovatnoću da će potrošači posetiti njihovu veb-stranicu i izvršiti kupovinu. Optimizacija pretraživača predstavlja postupak optimizacije veb-stranice kako bi se bolje rangirala na internet pretraživačima, povećavajući na taj način količinu besplatnog, odnosno organskog saobraćaja ka sopstvenoj veb-lokaciji (Dimitrijević & Adamović, 2023, str. 54).

Plaćena pretraga i plaćanje po kliku omogućavaju brži pristup ciljanoj publici putem plaćenih reklamnih kampanja. Jedno od najčešće primenjenih plaćanja po kliku je *Google Ads*. *Google ads* omogućava plaćanje za najbolje slotove na stranicama rezultata *Google* pretraživača. Pored *Google Adsa*, kanali za plaćenu pretragu i plaćanje po kliku su *Facebook Ads*, *Instagram Ads*, *Twitter Ads* i sponzorisane poruke na LinkedInu (Dimitrijević & Adamović, 2023, str. 55). Kombinacija ovih tehnika često rezultira povećanjem saobraćaja na veb-stranicama, a time i potencijalno većim konverzijama i prihodima.

E-mail marketing je jednostavan i efikasan način komunikacije sa potrošačima putem elektronske pošte. E-mail komunikacija je jedan od najbržih i najlakših načina pristupa do klijenata i budućih korisnika – lidova (Dimitrijević & Adamović, 2023, str. 55). Slanjem personalizovanih poruka kompanije mogu održavati redovan kontakt sa svojim klijentima, informisati ih o novim proizvodima i promocijama i podsticati ih na akciju. Ovaj marketinški kanal omogućava kompanijama da direktno dospeju do svoje ciljne publike i pruže relevantne informacije koje mogu poboljšati korisničko iskustvo. Takođe, e-mail marketing je

merljiv, što znači da kompanije mogu pratiti performanse svojih kampanja i optimizirati ih, kako bi postigle bolje rezultate. U svetu digitalnog marketinga e-mail marketing ostaje važan alat za izgradnju marketing odnosa sa klijentima i postizanje poslovnih ciljeva.

Društveni mediji su postali nezaobilazan deo svakodnevnog života ljudi. Kroz društvene mreže, kompanije mogu interaktivno komunicirati sa svojom ciljnom grupom, graditi brend i stvarati lojalnost potrošača. Ovaj digitalni prostor omogućava kompanijama da redovno dele relevantan sadržaj, informacije o proizvodima ili uslugama, te da direktno dobijaju povratne informacije. Takođe, društveni mediji pružaju mogućnost za izgradnju zajednice oko brenda, što može rezultirati angažovanijim i lojalnijim potrošačima. Kroz strategije, kao što su influenser marketing i plaćeno oglašavanje na društvenim mrežama, kompanije mogu proširiti svoj doseg i privući nove potencijalne klijente. Otvaranje stranice na Fejsbuku postao je uslov za poslovanje mnogih kompanija (Naylor, Lamberton, & West, 2012). S obzirom da je masovna primena društvenih mreža relativno nova, marketari još uvek uče načine kako da ih na adekvatan način iskoriste za uticaj na široku publiku (Lee & Bell, 2013). Ovo je oblast koja će i dalje biti od suštinskog značaja za uspešan digitalni marketing.

Influenseri (uticajne osobe) i video-marketing sve više dobijaju na značaju u digitalnom marketingu. Influenseri igraju ključnu ulogu u oblikovanju mišljenja potrošača, dok video-sadržaj ima snažan uticaj na njihovo odlučivanje o kupovini. Kroz saradnju sa influenserima, koji imaju odgovarajuću ciljanu publiku, kompanije mogu doseći potencijalne klijente na autentičan način koji se percipira kao preporuka od strane osobe od poverenja. Video-marketing, s druge strane, pruža dinamičan način za prezentaciju proizvoda ili usluga, omogućavajući potrošačima da se bolje upoznaju sa ponudom. Video-materijali, kao što su tutorijali, recenzije proizvoda ili priče o brendu, mogu bolje angažovati publiku i poboljšati njihovu povezanost sa brendom. S obzirom na sve veći broj platformi koje podržavaju video-sadržaj, očekuje se da će ovaj segment digitalnog marketinga nastaviti da raste i da se razvija.

Mobilni marketing postaje sve važniji oblik interaktivnog marketinga u kojem preduzetnici mogu da koriste: 1) tekstualne poruke, 2)

mobilne aplikacije i 3) reklame da se povežu sa potrošačima putem njihovih „pametnih" mobilnih telefona i tablet računara (Njegomir, Pejanović, & Keković, 2017, str. 66). Oglasi i poruke, koji su prilagođeni mobilnim uređajima, omogućavaju kompanijama da direktno dosegnu svoju ciljnu grupu u bilo kom trenutku. Mobilni uređaji su postali deo svakodnevnog života za mnoge ljude, što znači da kompanije moraju biti prisutne na ovim uređajima kako bi održale konkurentsku prednost, a time i uspeh u poslovanju. Mobilni marketing obuhvata različite strategije, uključujući SMS marketing, marketing putem mobilnih aplikacija poput Vibera, mobilno oglašavanje i optimizaciju veb-stranica za mobilne uređaje.

Ovo digitalno okruženje donosi značajne promene u načinu na koji potrošači donose odluke o kupovini, odnosno komuniciraju sa kompanijama. U tradicionalnom okruženju informacije su bile ograničene i pristup proizvodima je bio obično lokalno ograničen. Za razliku od njega, digitalno okruženje omogućava potrošačima pristup neograničenim informacijama i proizvodima u stvarnom vremenu. To znači da potrošači mogu istraživati proizvode, čitati recenzije, upoređivati cene i obavljati kupovinu bez napuštanja svojih domova. Osim toga, digitalno okruženje im omogućava da pristupe proizvodima iz različitih delova sveta, što povećava izbor i konkurenciju na tržištu.

Povećani značaj digitalnog marketinga nastao je, pre svega, zbog promena kod potrošača u pravcu težnji ka dvosmernim komunikacijama, odnosno težnje ka stvaranju dinamičkih mreža sa kompanijama umesto orijentacije na potrošača kao kupca masovno proizvedenih proizvoda. Potrošači zahtevaju da marketing inspiriše, a ne da ubeđuje, da postoji dvosmerno kretanje vrednosti umesto jednosmernog i da postoji ekonomija potrošačke vrednosti umesto ekonomije obima. Promene kod potrošača nastaju zahvaljujući sledećim novim mogućnostima (Kotler & Keler, 2017, str. 16–17):

- Potrošači mogu da koriste internet kao moćno pomoćno sredstvo za pronalaženje informacija i kupovinu. Potrošači mogu da *uporede cene i karakteristike proizvoda*, da *pročitaju ocene korisnika* i da *poruče robu* preko internata iz bilo kog mesta u svetu 24 časa sedam dana u nedelji,

- Potrošači mogu da pretražuju, da komuniciraju i da kupuju u pokretu. Potrošači sve više *koriste* „pametne" telefone i tablet uređaje u svakodnevnom životu. Jedno istraživanje je pokazalo da većina vlasnika ovih telefona u Evropi koristi telefon za istraživanje i kupovinu proizvoda (Smartphones Shape Habits in Europe, 2022),
- Potrošači mogu da iskoriste društvene mreže da prenesu svoja mišljenja i da iskažu lojalnost,
- Potrošači mogu aktivno da komuniciraju o kompanijama. Ukoliko se prijave na mejling liste, potrošači mogu da primaju marketinške i prodajne materijale, obaveštenja o popustima, kuponima i drugim posebnim ponudama,
- Potrošači mogu da odbiju marketinške aktivnosti koje smatraju neprikladnim. Potrošači mogu da blokiraju onlajn poruke, da preskaču reklamne blokove pomoću digitalnih video-rekordera i da izbegavaju marketinške podsticaje koji se plasiraju poštom ili telefonom.

Personalizacija je još jedna ključna karakteristika digitalnog marketinga. Tehnologije praćenja omogućavaju kompanijama da prate aktivnosti korisnika na internetu i pruže im personalizovane reklame i marketinške kampanje, kao i da bolje razumeju potrebe i preferencije potrošača, čime se povećava i efikasnost marketinških napora.

U suštini, digitalno okruženje donosi promene u načinu na koji potrošači komuniciraju, istražuju i kupuju proizvode i usluge. Kompanije koje uspeju da pravilno razumeju ovo okruženje i prilagode svoje marketinške strategije imaju veće šanse za uspeh u privlačenju i zadržavanju digitalnih potrošača.

3. Metod istraživanja i podaci

U okviru ovog istraživanja, koristili smo onlajn anketu putem *Google* forme, kao ključni metod prikupljanja podataka. Istraživanje smo sprovodili tokom 2023. godine i ono je obuhvatilo ukupno 14 pitanja.

Prva tri pitanja bila su usmerena na demografske informacije. Ispitanici su davali odgovore na pitanja o svom polu, stepenu stručne spreme i godinama starosti. Ove informacije su ključne za dobijanje du-

bljeg uvida u profil potrošača i identifikaciju potencijalnih varijacija u odgovorima, s obzirom na demografske karakteristike.

Upitnik se sastojao od 11 tvrdnji koje su ispitanici ocenjivali u stepenu svojih stavova koristeći skalu od „U potpunosti se ne slažem" do „U potpunosti se slažem". Ove tvrdnje su se fokusirale na aspekte ponašanja potrošača, pružajući uvid u njihove stavove i preferencije tokom procesa donošenja odluka o kupovini. Ispitanici su bili informisani o anonimnosti njihovih odgovora.

U okviru istraživanja, onlajn anketu je popunio ukupno 151 ispitanik. Ovaj uzorak pruža raznolikost u demografskim karakteristikama, s obzirom na pitanja koja su bila usmerena na pol, starost i stepen stručne spreme ispitanika. Analizom ovog uzorka, imali smo priliku da dobijemo širi spektar informacija koje će nam omogućiti dublje razumevanje uticaja digitalnog marketinga na ponašanje potrošača. Ova raznolikost u odabranom uzorku doprinosi validnosti rezultata istraživanja, omogućavajući nam da sagledamo potencijalne varijacije u odgovorima, u skladu sa demografskim profilom ispitanika.

U nastavku su prikazane tabele sa strukturom ispitanika prema polu, starosti i nivou obrazovanja.

Tabela 1. Struktura ispitanika prema polu

	f	%
Ženski	110	72,8
Muški	41	27,2
Ukupno	151	100,0

Izvor: autorsko istraživanje

Kao što se vidi u Tabeli 1, u ispitivanju je učestvovao ukupno 151 ispitanik. Struktura uzorka pokazuje značajno veću zastupljenost ženskog pola u poređenju s muškim. Preciznije, ženski ispitanici su činili 72,8% od ukupnog broja ispitanika, odnosno na upitnik je odgovorilo 110 ispitanica. Muški ispitanici su činili 27,2%, što odgovara 21 ispitaniku muškog pola. Ova struktura uzorka omogućava analizu iz perspektive pola ispitanika, nudeći širu sliku demografskog profila koji je doprineo prikupljenim podacima.

Tabela 2. Godine starosti ispitanika

	Min	*Max*	*AS*	*SD*
Godine	18	64	32.61	12.483

Izvor: autorsko istraživanje

Podaci iz Tabele 2. daju uvid u raznolikost uzrasta ispitanika koji su učestvovali u anketi. Najmlađi ispitanik, koji je doprineo istraživanju, imao je 18 godina, dok je najstariji ispitanik imao 64 godine. Ovaj širok raspon starosnih grupa omogućava nam da sagledamo ponašanje potrošača kroz različite životne faze.

Prosečna starost svih ispitanika iznosila je 32 godine. Ovaj statistički podatak pruža dodatnu dimenziju u razumevanju demografskog profila uzorka, doprinoseći celokupnom kontekstu analize. Različite starosne grupe unutar uzorka omogućavaju nam da identifikujemo potencijalne varijacije u percepcijama i ponašanju potrošača u digitalnom okruženju, u zavisnosti od različitih etapa života.

Tabela 3. Stručna sprema ispitanika

	f	*%*
Osnovno obrazovanje	4	2,6
Srednja stručna sprema	53	35,1
Viša stručna sprema	30	19,9
Visoka stručna sprema	64	42,4
Ukupno	151	100,0

Izvor: autorsko istraživanje

U Tabeli 3. predstavljena je distribucija stepena obrazovanja ispitanika koji su učestvovali u istraživanju. Ovi podaci ukazuju na značajnu varijaciju u nivou obrazovanja unutar uzorka. Naime, 2,6% ispitanika imalo je samo osnovno obrazovanje, 35,1% posedovalo je srednju stručnu spremu, 19,9% je steklo višu stručnu spremu, dok je 42,4% ispitanika

imalo stečeno visoko obrazovanje. Ova raznovrsnost obrazovnih pozadina pruža kontekstualni uvid u heterogenost uzorka.

Za analizu prikupljenih podataka koristili smo program *SPSS v26*. Obrada podataka sprovođena je kroz primenu deskriptivne statistike i Pirsonovog bivarijantnog korelacionog metoda. Kako bismo proverili potencijalne razlike među polovima, a u vezi sa ispitivanim varijablama, koristili smo Studentov t-test za nezavisne uzorke. Sa druge strane, kako bismo istražili varijacije među ispitanicima sa različitim stepenom stručne spreme, primenili smo ANOVA analizu. Ovaj sistematičan pristup analizi podataka obezbeđuje temeljan uvid u karakteristike uzorka, omogućavajući nam da identifikujemo potencijalne trendove i razlike relevantne za istraživanje uticaja digitalnog marketinga na ponašanje potrošača.

4. Rezultati istraživanja

Deskriptivna analiza prikupljenih podataka pruža uvid u osnovne karakteristike uzorka, koristeći niz pokazatelja koji obuhvataju minimalne i maksimalne vrednosti, aritmetičke sredine, standardne devijacije i pouzdanost skale. Ova analiza postavlja temelje za detaljnije razumevanje distribucije podataka i varijacija unutar uzorka.

Minimalne i maksimalne vrednosti omogućavaju identifikaciju opsega odgovora ispitanika, dok aritmetičke sredine pružaju meru centralne tendencije, odnosno srednjeg položaja vrednosti.

Ovi deskriptivni pokazatelji predstavljeni su u Tabeli 4, koja služi kao vizuelni prikaz statističkih karakteristika. U nastavku ćemo detaljnije analizirati ključne vrednosti dobijene deskriptivnom analizom.

Tabela 4. Deskriptivna analiza

	Min	Max	AS	SD	α
Scale	12	31	20.28	4.15	.77

Izvor: autorsko istraživanje

Napomena: Minimalne i maksimalne vrednosti, aritmetičke sredine, standardne devijacije i pouzdanost skale u istraživanju.

Prema Tabeli 4, dodatne informacije o karakteristikama skupa podataka obuhvataju minimalnu vrednost od 12, maksimalnu vrednost od 31, aritmetičku sredinu od 20.28, standardnu devijaciju od 4.15, i pouzdanost skale od 0.77. Deskriptivni pokazatelji su potvrdili da nema značajnih odstupanja od proseka u odnosu na skalu. Pored deskriptivnih pokazatelja, merili smo i Kronbahov alfa koeficijent pouzdanosti i on je ukazivao da skala ima zadovoljavajući nivo unutrašnje konzistentnosti.

Pirsonova korelacija predstavljala je naredni korak u istraživanju povezanosti između dve varijable. U ovom slučaju analizirana je veza između godina starosti ispitanika i njihovog skora na skaliranom setu pitanja.

Ova metoda omogućava merenje stepena linearnog odnosa između dve promenljive, pružajući kvantitativni uvid u to kako se promene u jednoj varijabli mogu povezati sa promenama u drugoj. Za prvu varijablu – godine starosti, istraživane su potencijalne korelacije sa skorom na skali, drugom varijablom u analizi. Rezultati Pirsonove korelacije doprineće boljem razumevanju dinamike između starosne strukture ispitanika i njihovih stavova, pružajući dodatnu dubinu interpretacije rezultata.

Tabela 5. Povezanost između merenih varijabli: godina starosti i skora na skali

	Godine
Skor	.334

* - p < .05;

Izvor: autorsko istraživanje

Detaljni rezultati iz Tabele 5. pružaju uvid u odnose između merenih varijabli, konkretno godina starosti ispitanika i njihovog skora na skali. Dobijen Pirsonov koeficijent korelacije iznosi 0.334, što ukazuje na postojanje nekog stepena linearnog odnosa između ovih faktora. Vrednost ovog koeficijenta ne prelazi prag statističke značajnosti, što implicira odsustvo jasne statistički relevantne povezanosti između godina starosti ispitanika i njihovog skora na skali.

Izvršena je analiza T-testa za nezavisne uzorke kako bismo dodatno istražili eventualne razlike među polovima ispitanika. Ova analiza je od posebnog značaja, s obzirom na pol kao ključni faktor u istraživanju, u kom je učestvovalo 110 ženskih ispitanika i 41 muški ispitanik. U Tabeli 6. prikazana je struktura uzorka prema polu, omogućavajući sistematičan uvid u potencijalne varijacije u odgovorima između ženske i muške populacije.

Tabela 6. Deskriptivna statistika ispitivanih psiholoških varijabli prema polu ispitanika

Pol	N	AS	SD
Muški	41	19.56	4.23
Ženski	110	20.55	4.10

Izvor: autorsko istraživanje

Uz prethodne rezultate i aritmetičku sredinu istih, uradili smo t-test za nezavisne uzorke.

Tabela 7. T-test za nezavisne uzorke

	F	*t*	*df*
Skor	.003	-1.300717	149

* - $p < .05$;

Izvor: autorsko istraživanje

Analiza deskriptivnih pokazatelja u Tabeli 7 pruža uvid u razlike između muških i ženskih ispitanika u postignutim skorovima na ispitivanim konstruktima. Muški ispitanici ostvarili su, uopšteno, nešto izraženije skorove na većini ispitivanih faktora, osim kod konstrukta *vulnerabilni narcizam*, gde su ispitanice ženskog pola postigle nešto više vrednosti.

U Tabeli 7. prikazani su rezultati t-testa za nezavisne varijable usmereni na upoređivanje dve grupe ispitanika prema polu u odnosu na skorove skale. Dobijeni rezultati F = 0.003, t = -1.300717 i d = 149 uka-

zuju da nema značajnih razlika između muških i ženskih ispitanika u ovom uzorku, sažimajući statistički utvrđene vrednosti za ukupni efekat (F), t vrednost i stepen slobode (d) kod t-testa za nezavisne uzorke. Na osnovu ovih nalaza, možemo zaključiti da razlike u skorovima između polova nisu statistički značajne u posmatranom uzorku ispitanika.

Analiza varijanse (ANOVA) predstavljala je naredni statistički alat za istraživanje značajnih razlika između više od dve grupe, posebno kada je reč o kategorizaciji prema određenim faktorima. U našem istraživanju koristili smo ANOVA analizu kako bismo istražili strukturu stečenog stepena obrazovanja ispitanika. U Tabeli 8. predstavljena je struktura uzorka prema stepenu obrazovanja.

Tabela 8. Deskriptivni pokazatelji skale u odnosu na nivo stručne spreme ispitanika

	N	*AS*	*SD*	*Min*	*Max*
Osnovno obrazovanje	4	21	4.97	15	26
Srednja stručna sprema	53	20.1509	4.12	12	29
Viša stručna sprema	30	20.2333	3.84	14	26
Visoka stručna sprema	64	20.3594	4.35	12	31

Izvor: autorsko istraživanje

Razmatrali smo, takođe, da li postoji razlika između ispitanika različitog nivoa stručne spreme.

Tabela 9. ANOVA

Model	*Suma kvadrata*	*df*	*Varijansa*	*F*	*p*
Regresija	3.424	3	1.141	.065	.978
Rezidual	2574.893	147	17.516		
Total	2578.318	150			

Izvor: autorsko istraživanje

U Tabeli 9. detaljno su prikazani rezultati ANOVA analize sa fokusom na identifikaciju potencijalnih razlika među ispitanicima sa različitim nivoima stručne spreme. Kroz analizu zaključujemo da nisu pronađene statistički značajne razlike između poduzoraka u odnosu na skor na skali.

Rezultati nisu pokazali statistički značajnu razliku između ispitanika sa različitim nivoima stručne spreme u pogledu njihovog skora na skali ($F = 0.003$, $p = 0.978$). Ova p-vrednost ukazuje na nedostatak statističke značajnosti na konvencionalnom nivou od 0.05. Variranje unutar svake grupe ispitanika i dalje predstavlja značajan deo ukupne varijabilnosti, ali razlike među grupama nisu bile dovoljne da dostignu statističku značajnost. Ukupna varijabilnost u podacima iznosi 2578.318.

Ovi nalazi ukazuju na to da nivo stručne spreme, barem prema uzorku iz ovog istraživanja, možda ne igra ključnu ulogu u formiranju stavova i ponašanja potrošača u kontekstu digitalnog marketinga.

5. Zaključak

Svet digitalnog marketinga predstavlja dinamičan i neprestano evoluirajući svet, gde razumevanje i efikasno ciljanje prave ciljne grupe predstavlja ključ uspeha. Tokom razgovora o definisanju ciljne grupe, analizi geografskih i psihografskih karakteristika, analizi ključnih reči, analizi podataka i korišćenju anketa i istraživanja tržišta, jedna centralna tema se ističe, a to je duboki uticaj digitalnog marketinga na donošenje odluka potrošača.

Digitalni marketing je revolucionisao način na koji se preduzeća povezuju sa potrošačima. Ne radi se samo o dosezanju šire publike, radi se o dostizanju prave publike sa pravom porukom u pravom trenutku. Geografske karakteristike, kao što je lokacija, pomažu marketarima da prilagode svoje strategije određenim regionima, osiguravajući da marketinški napori budu relevantni i efikasni.

Psihografski faktori, uključujući interese, vrednosti i stavove, pružaju uvid u to šta motiviše potrošače i usmerava njihove odluke o kupovini. Dublje razumevanje ovih aspekata omogućiće digitalnim marke-

tarima da kreiraju poruke i kampanje koje rezonuju na dubljem nivou i ostvaruju značajne veze sa ciljnom grupom.

Analiza ključnih reči omogućava marketarima da razumeju nameru korisnika, otkrivajući šta korisnici traže na internetu. Ovo znanje im daje moć da optimizuju sadržaj i kampanje kako bi se uskladili sa potrebama i preferencijama potrošača.

Analiza podataka služi kao osnova digitalnog marketinga. Mogućnost prikupljanja i tumačenja podataka o ponašanju potrošača, demografiji i preferencijama informiše strateške odluke. To omogućava marketarima da usavrše svoj pristup, osiguravajući da svaki aspekt kampanje bude vođen podacima i optimizovan za uspeh.

Rezultati nisu pokazali statistički značajnu razliku između ispitanika sa različitim nivoima stručne spreme u pogledu njihovog skora na skali ($F = 0.003$, $p = 0.978$). Ova p-vrednost ukazuje na nedostatak statističke značajnosti na konvencionalnom nivou od 0.05. Variranje unutar svake grupe ispitanika i dalje predstavlja značajan deo ukupne varijabilnosti, ali razlike među grupama nisu bile dovoljne da dostignu statističku značajnost. Ukupna varijabilnost u podacima iznosi 2578.318. Ovi nalazi ukazuju na to da nivo stručne spreme, barem prema uzorku iz ovog istraživanja, ne igra ključnu ulogu u formiranju stavova i ponašanja potrošača u kontekstu digitalnog marketinga.

Značaj ovog istraživanja jeste u tome da doprinosi boljem shvatanju veze između uticaja digitalnog marketinga i ponašanja potrošača.

Rezultati ovog istraživanja mogu biti značajni za bolje razumevanje ponašanja potrošača u digitalnom okruženju. Takođe, mogu se tumačiti polne razlike između uticaja digitalnog marketinga i potrošača koji kupuju onlajn.

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Tijana Meseldžija[1*]
Vladimir Njegomir[2**]

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IMPACT OF DIGITAL MARKETING ON CONSUMER BEHAVIOUR

Abstract: The aim of this research was to examine the impact of digital marketing on consumer behaviour. Digital marketing is a key factor in shaping and directing consumer behaviour. Making decisions regarding the purchase of products or services has become a complex issue under the influence of digital technologies that allow companies to communicate directly with their target audience through various online platforms, such as social networks, e-mail marketing and Internet search. The survey was conducted on a sample of 151 respondents from Serbia via an online survey. Most respondents were female (72.8%), with an age range of 18 to 64 and an average age of approximately 32. Data were analysed using descriptive statistics and the Pearson bivariate correlation method. In order to compare the sexes according to the investigated variables, we used the student's t-test for independent samples, while the differences between the respondents with different levels of education were examined through ANOVA analysis. No statistical significance was found between the impact of digital marketing and consumer behaviour.

Keywords: digital marketing, consumer behaviour, marketing research, Serbia.

[1] MA Psychologist, Faculty of Law and Business Studies Dr Lazar Vrkatić, Bul. oslobođenja 76, Novi Sad, e-mail: tijans98@gmail.com

[2] Full Professor, Faculty of Law and Business Studies Dr Lazar Vrkatić, Bul. oslobođenja 76, Novi Sad, e-mail: vnjegomir@sbb.rs

1. Introduction

Marketing has gone through three stages in its development: production orientation stage, consumer orientation stage, and the human-centric orientation stage. The current stage in marketing development is digital marketing. Digital marketing has emerged due to advances in technology and the impact of technological changes on consumers. Technological changes have been present for two decades, but only in the last few years have they begun to create a collective impact, especially during the Covid-19 pandemic, and thus influence marketing practices around the world. This stage of marketing was dubbed Marketing 4.0 by the leading marketing theorist Koetler in his book *Marketing 4.0: Moving from Traditional to Digital* (Koetler, Kartajaya, & Setiawan, 2017), which would be the basis of marketing theory and practice in the years to come.

In the digital age, digital marketing is becoming ubiquitous and in demand from consumers, and thus crucial for the success of any organization. With the development of the Internet and technology, digital channels are becoming the primary means of communication and interaction with consumers. Digital marketing is a dynamic and complex field that requires a deep understanding of consumers, constant learning and adaptation. Through a comprehensive approach to research and analysis, companies can achieve successful results and achieve their business goals in an ever-changing digital environment.

For this reason, studying the impact of digital marketing on consumer behaviour becomes necessary in order to better understand their needs and preferences. Data analysis of the online activities of consumers becomes crucial for creating targeted marketing strategies.

The research topic of this paper is to examine the existence of a connection between the influence of digital marketing and consumer behaviour. We will investigate in more detail the behavioural, demographic, and geographic characteristics of consumers in the digital environment, to gain a deeper understanding of their preferences and hab-

its. Our intention was to provide more concrete conclusions and precise recommendations to effectively implement marketing strategies and achieve the desired goals in a dynamic digital environment. Through a systematic approach and comprehensive analysis of these factors, we provide an approach for building a solid foundation for successful digital marketing.

The research objective is to determine whether there is a statistically significant relationship between the influence of digital marketing and consumer behaviour on a relevant sample, whether there is a statistically significant relationship between the influence of digital marketing and consumer behaviour on a female sample, and whether there is a statistically significant relationship between the impact of digital marketing and consumer behaviour on a male sample.

The results of this study can be significant for a better understanding of consumer behaviour in the digital environment and for examining gender differences with regard to the impact of digital marketing and on consumers buying products and services online.

The paper is divided into several parts. In the second part, we will discuss the aspects of digital marketing and the specifics of its development, then we will explain the research method used and the data obtained from the survey research. Finally, we will present the results and conclusions.

2. Digital Marketing and Consumers

Digital marketing is not the opposite traditional marketing; it is a complementary element conditioned by technological development and consumer changes in the direction of greater online demand for products and services. In digital marketing, marketers should apply the same basic principles (Njegomir, 2020). For example, they should look for opportunities to satisfy consumers by delivering value from the consumer's point of view, in a profitable way for the company. There are certainly differences in the mentioned elements and, according to

Koetler, especially in communication (Koetler, Kartajaya, & Setiawan, 2017). In traditional marketing, communication is one-way, while in digital marketing, communication is two-way. If the communication is not two-way, neither the marketing nor the company will be successful in digital marketing.

Digital marketing has the possibility of global influence, the possibility of constant advertising – 24/7, as well as the advantage of mass customization of products and services for consumers. Using numerous tools, such as a website, online sales, presence on social networks, using techniques such as search optimization, pay-per-click, e-mail marketing, influencer marketing, video marketing, mobile marketing, content marketing and other techniques and strategies online presence, organizations can create deeper connections with their target market segment, provide relevant and engaging content, and optimize their online visibility. This dynamic digital marketing landscape requires constant learning and adaptation to deliver successful results and maintain a competitive edge.

Search engine optimization, paid search and pay-per-click are key to increasing the visibility and availability of products and services through internet search engines. These techniques allow businesses to appear at the top of search results, making it more likely that consumers will visit their website and make a purchase. Search engine optimization is the process of optimizing a website in order to rank it better on internet search engines, thus increasing the amount of free, i.e. organic traffic to one's website (Dimitrijević & Adamović, 2023, p. 54).

Paid search and pay-per-click allow faster access to targeted audiences through paid advertising campaigns. One of the most used pay per click is Google Ads. Google Ads allows companies to pay for the best slots on Google search results pages. In addition to Google Ads, paid search and pay-per-click channels are also Facebook Ads, Instagram Ads, Twitter Ads and sponsored LinkedIn messages (Dimitrijević & Adamović, 2023, p. 55). A combination of these techniques often results in increased website traffic and thus potentially higher conversions and revenue.

E-mail marketing is a simple and effective way of communicating with consumers via e-mail. E-mail communication is one of the fastest and easiest ways to reach clients and future users – leads (Dimitrijević & Adamović, 2023, p. 55). By sending personalized messages, companies can maintain regular contact with their customers, inform them about new products and promotions, and encourage them to act. This marketing channel allows companies to directly reach their target audience and provide relevant information that can improve the customer experience. Also, e-mail marketing is measurable, which means that companies can monitor the performance of their campaigns and optimize them to achieve better results. In the world of digital marketing, email marketing remains an important tool for building marketing relationships with clients and achieving business goals.

Social media has become an indispensable part of people's daily lives. Through social networks, companies can interactively communicate with their target group, build a brand, and create consumer loyalty. This digital space allows companies to regularly share relevant content, product, or service information, and receive direct feedback. Also, social media provides an opportunity to build a community around a brand, which can result in more engaged and loyal consumers. Through strategies such as influencer marketing and paid social media advertising, companies can expand their reach and attract new potential customers. Opening a Facebook page has become a business requirement for many companies (Naylor, Lamberton, & West, 2012). Since the mass adoption of social networks is relatively new, marketers are still learning ways to use them adequately to influence large audiences (Lee & Bell, 2013). This is an area that will continue to be essential to successful digital marketing.

Influencers and video marketing are gaining more and more importance in digital marketing. Influencers play a key role in shaping consumer opinion, while video content has a strong impact on their purchasing decisions. By collaborating with influencers, who have the right target audience, companies can reach potential clients in an authentic

way that is perceived as a recommendation from a trusted person. Video marketing, on the other hand, provides a dynamic way to present products or services, allowing consumers to become more familiar with the offer. Video content, such as tutorials, product reviews or brand stories, can better engage the audience and improve their connection with the brand. With the increasing number of platforms supporting video content, this segment of digital marketing is expected to continue to grow and evolve.

Mobile marketing is becoming an increasingly important form of interactive marketing in which entrepreneurs can use: 1) text messages, 2) mobile applications and 3) advertisements to connect with consumers through their "smart" mobile phones and tablets (Njegomir, Pejanović, & Keković 2017, p. 66). Ads and messages, which are adapted to mobile devices, allow companies to directly reach their target group at any time. Mobile devices have become a part of everyday life for many people, which means that companies need to be present on these devices in order to maintain a competitive advantage and thus business success. Mobile marketing encompasses a variety of strategies, including SMS marketing, marketing through mobile apps such as Viber, mobile advertising, and optimizing websites for mobile devices.

The digital environment brings significant changes in the way consumers make purchasing decisions, i.e., communicate with companies. In the traditional environment, information was limited and access to products was usually locally restricted. In contrast, the digital environment allows consumers access to unlimited information and products in real time. This means consumers can research products, read reviews, compare prices, and make purchases without leaving their homes. In addition, the digital environment allows them to access products from different parts of the world, which increases market choice and competition.

The increased importance of digital marketing emerged due to changes among consumers in the direction of striving for two-way communications, i.e., striving to create dynamic networks with companies

instead of focusing on the consumer as a buyer of mass-produced products. Consumers demand that marketing inspire rather than persuade, that there is a two-way flow of value instead of a one-way flow, and that there is an economy of consumer value instead of an economy of scale. Changes in consumers occur thanks to the following new possibilities (Koetler & Keller, 2017, pp. 16–17):

- Consumers can use the Internet as a powerful aid for finding information and making purchases. Consumers can compare prices and product features, read user reviews and order goods online from anywhere in the world 24 hours a day, seven days a week.
- Consumers can browse, interact, and shop on the go. Consumers are increasingly using "smart" phones and tablet devices in their daily lives. One study showed that most owners of these phones in Europe use the phone to research and buy products (Smartphones Shape Habits in Europe, 2022),
- Consumers can use social networks to convey their opinions and show loyalty,
- Consumers can actively communicate with companies. By signing up for mailing lists, consumers can receive marketing and sales materials, information about discounts, coupons, and other special offers.
- Consumers can refuse marketing activities they find inappropriate. Consumers can block online messages, skip ad blocks with digital video recorders, and avoid marketing incentives by mail or phone.

Personalization is another key feature of digital marketing. Tracking technologies allow companies to monitor users' online activities and provide them with personalized advertisements and marketing campaigns, as well as to better understand consumer needs and preferences, thus increasing the effectiveness of marketing efforts.

In essence, the digital environment is bringing about changes in the way consumers communicate, search, and buy products and services. Companies that manage to properly understand this environment and adapt their marketing strategies have a greater chance of success in attracting and retaining digital consumers.

3. Research Methodology and Data

We used an online survey consisting of 14 items via Google Forms as a key method of data collection. The research was conducted during 2023.

The first three items focused on demographic information (respondents' gender, education, and age). This information is crucial for gaining deeper insight into the consumer profile and identifying potential variations in responses.

The questionnaire consisted of 11 statements that respondents rated using a scale from "Strongly disagree" to "Strongly agree". These statements focused on aspects of consumer behaviour, providing insight into their attitudes and preferences during the purchase decision-making process. Respondents were informed about the anonymity of their answers.

A total of 151 respondents participated in the online survey. This sample provides diversity in demographic characteristics, given the questions that focused on respondents' gender, age, and educational level. By analysing this sample, we had the opportunity to obtain a wider range of information that will allow us to gain a deeper understanding of the impact of digital marketing on consumer behaviour. This diversity in the selected sample contributes to the validity of the research results, allowing us to see potential variations in responses, according to the demographic profile of the respondents.

Tables with the structure of respondents according to gender, age and level of education are shown below.

Table 1. Respondents' Gender

	f	%
Female	110	72,8
Male	41	27,2
Total	151	100,0

Source: Authors' survey

As can be seen in Table 1, a total of 151 respondents participated in the study. The structure of the sample shows a significantly more female respondents compared to the male respondents. More precisely, female respondents made up 72.8% of the total number of respondents, i.e., 110 female respondents. Male respondents accounted for 27.2%, which corresponds to 21 male respondents. This sample structure allows for analysis from the perspective of respondent gender, offering a broader picture of the demographic profile that contributed to the data collected.

Table 2. Respondents' Age

	Min	*Max*	*AS*	*SD*
Age	18	64	32.61	12.483

Source: Authors' survey

The data from Table 2 give an insight into the diversity of the ages of respondents who participated in the survey. The youngest respondent was 18, while the oldest respondent was 64. This wide range of age groups allows us to look at consumer behaviour across different life stages.

The respondents' average age was 32 years. This statistic provides an additional dimension in understanding the demographic profile of the sample, contributing to the overall context of the analysis. Different

age groups within the sample allow us to identify potential variations in consumer perceptions and behaviour in the digital environment, depending on different life stages.

Table 3. Respondents' Education

	f	%
Elementary	4	2,6
Secondary	53	35,1
College	30	19,9
University	64	42,4
Total	151	100,0

Source: Authors' survey

Table 3 shows the distribution of the level of education of the respondents who participated in the research. These data indicate significant variation in the level of education within the sample. Namely, 2.6% of the respondents had elementary education, 35.1% had a secondary education, 19.9% obtained college education, while 42.4% of the respondents had university education. This diversity of educational backgrounds provides contextual insight into the heterogeneity of the sample.

The SPSS v26 software was used to analyse the collected data. Data processing was carried out through the application of descriptive statistics and the Pearson bivariate correlation method. In order to check for potential differences between genders, and in relation to the investigated variables, we used the student's t-test for independent samples. On the other hand, to investigate the variations among respondents with different degrees of professional education, we applied ANOVA analysis. This systematic approach to data analysis provides thorough insight

into sample characteristics, allowing us to identify potential trends and differences relevant to research on the impact of digital marketing on consumer behaviour.

4. Results

Descriptive analysis of the collected data provides insight into the basic characteristics of the sample, using a series of indicators that include minimum and maximum values, arithmetic means, standard deviations, and scale reliability. This analysis lays the groundwork for a more detailed understanding of data distribution and within-sample variation.

The minimum and maximum values enable the identification of the respondent's response range, while the arithmetic means provide a measure of the central tendency, i.e., the mean position of the values. These descriptive indicators are presented in Table 4, which serves as a visual representation of the statistical characteristics. In the following section, we will analyse in more detail the key values obtained by descriptive analysis.

Table 4. Descriptive analysis

	Min	Max	AS	SD	α
Scale	12	31	20.28	4.15	.77

Source: Authors' survey

Note: Minimum and maximum values, arithmetic means, standard deviations and scale reliability in research.

Table 4 shows that additional information about the characteristics of the data set includes a minimum value of 12, a maximum value of 31, an arithmetic mean of 20.28, a standard deviation of 4.15, and a scale reliability of 0.77. Descriptive indicators confirmed that there are no significant deviations from the average in relation to the scale. In addition to descriptive indicators, we also measured Cronbach's alpha reliability coefficient and it indicated that the scale has a satisfactory level of internal consistency.

Pearson's correlation was the next step in investigating the relationship between two variables. In this case, the relationship between the age of the respondents and their score on a scaled set of questions was analysed.

This method makes it possible to measure the degree of linear relationship between two variables, providing quantitative insight into how changes in one variable may be related to changes in another. For the first variable - age, potential correlations with the score on the scale, the second variable in the analysis, were investigated. The results of the Pearson correlation will contribute to a better understanding of the dynamics between the age structure of the respondents and their attitudes, providing an additional depth of interpretation of the results.

Table 5. Correlation between measured variables: age and scale score

	Age
Score	.334

* - $p < .05$;

Source: Authors' survey

The detailed results from Table 5 provide an insight into the relationships between the measured variables, specifically the age of the respondents and their score on the scale. The obtained Pearson's correlation coefficient is 0.334, which indicates the existence of some degree of linear relationship between these factors. The value of this coefficient does not exceed the threshold of statistical significance, which implies the absence of a clear statistically relevant connection between the age of the respondents and their score on the scale.

A T-test analysis for independent samples was performed to further investigate possible differences between the sexes of the respondents. This analysis is of particular importance, considering gender as a key factor in the research, in which 110 female respondents and 41 male respondents participated. Table 6 shows the structure of the sample by

gender, allowing a systematic insight into potential variations in responses between the female and male population.

Table 6. Descriptive statistics of measured psychological variables by respondents' gender

Gender	N	AS	SD
Male	41	19.56	4.23
Female	110	20.55	4.10

Source: Authors' survey

Together with the results and the arithmetic means presented above, we performed a t-test for independent samples.

Table 7. T-test for independent samples

	F	*t*	*df*
Score	.003	-1.300717	149

** - p < .05;*

Source: Authors' survey

The analysis of descriptive indicators in Table 7 provides an insight into the differences between male and female respondents in the achieved scores on the examined constructs. Male respondents achieved, in general, slightly higher scores on most of the examined factors, except for the vulnerable narcissism construct, where female respondents scored slightly higher.

Table 7 shows the results of the t-test for independent variables aimed at comparing the two groups of respondents according to gender in relation to the scale scores. The obtained results F = 0.003, t = -1.300717 and d = 149 indicate that there are no significant differences between male and female respondents in this sample, summarizing the statistically determined values for the total effect (F), t value and degree

of freedom (d) in the t-test for independent samples. Based on these findings, we can conclude that the differences in scores between genders are not statistically significant in the observed sample of respondents.

Analysis of variance (ANOVA) was the next statistical tool for investigating significant differences between more than two groups, especially when it comes to categorization according to certain factors. In our research, we used ANOVA analysis to investigate the structure of the obtained level of education of the respondents. Table 8 presents the structure of the sample according to the level of education.

Table 8. Descriptive indicators according to respondents' education

	N	*AS*	*SD*	*Min*	*Max*
Elementary	4	21	4.97	15	26
Secondary	53	20.1509	4.12	12	29
College	30	20.2333	3.84	14	26
University	64	20.3594	4.35	12	31

Source: Authors' survey

We also examined whether there are differences between respondents with different levels of education.

Table 9. ANOVA

Model	*Sum of squares*	*df*	*Variance*	*F*	*p*
Regression	3.424	3	1.141	.065	.978
Residual	2574.893	147	17.516		
Total	2578.318	150			

Source: Authors' survey

Table 9 shows in detail the results of the ANOVA analysis with a focus on identifying potential differences among respondents with different levels of education. Through the analysis, we conclude that no statistically significant differences were found between the subsamples in relation to the score on the scale.

The results showed no statistically significant difference between respondents with different levels of education in terms of their score on the scale ($F = 0.003$, $p = 0.978$). This p-value indicates a lack of statistical significance at the conventional 0.05 level. Variation within each subject group still accounted for a significant portion of the total variability, but differences between groups were not sufficient to reach statistical significance. The total variability in the data is 2578,318.

These findings indicate that the level of education, at least according to the sample from this research, may not play a key role in the formation of consumer attitudes and behaviour in the context of digital marketing.

5. Conclusion

The world of digital marketing is a dynamic and constantly evolving environment, where understanding and effectively targeting the right target group is the key to success. While discussing target group definition, geographic and psychographic analysis, keyword analysis, data analysis, and the use of surveys and market research, one central issue stands out, and that is the profound impact of digital marketing on consumer decision-making.

Digital marketing has revolutionized the way businesses connect with consumers. It's not just about reaching a wider audience; it's about reaching the right audience with the right message at the right time. Geographic features, such as location, help marketers tailor their strategies to specific regions, ensuring that marketing efforts are relevant and effective.

Psychographic factors, including interests, values, and attitudes, provide insight into what motivates consumers and guides their purchasing decisions. A deeper understanding of these aspects will enable digital marketers to create messages and campaigns that resonate on a deeper level and make meaningful connections with the target group.

Keyword analysis allows marketers to understand user intent by discovering what users are searching for online. This knowledge gives them the power to optimize content and campaigns to align with consumer needs and preferences.

Data analysis serves as the foundation of digital marketing. The ability to collect and interpret data on consumer behaviour, demographics and preferences informs strategic decisions. It allows marketers to fine-tune their approach, ensuring that every aspect of the campaign is data-driven and optimized for success.

The results showed no statistically significant difference between respondents with different levels of education in terms of their score on the scale ($F = 0.003$, $p = 0.978$). This p-value indicates a lack of statistical significance at the conventional 0.05 level. Variation within each group of subjects still accounted for a significant portion of the total variability, but differences between groups were not sufficient to reach statistical significance. The total variability in the data is 2578,318. These findings indicate that the level of education, at least according to the sample from this research, does not play a key role in the formation of consumer attitudes and behaviour in the context of digital marketing.

The importance of this research is that it contributes to a better understanding of the relationship between the impact of digital marketing and consumer behaviour.

The results of this research can be significant for a better understanding of consumer behaviour in the digital environment, as well as examining gender differences with regard to the impact of digital marketing and online consumers.

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Marko Volf[1]

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KONTEKSTUALNO REFORMULISANJE FILMSKIH NASLOVA

Sažetak: Ovaj rad je nastao kao rezultat opsežnog istraživanja i analiziranja prikupljenih filmskih naslova nastalih u periodu od 2011. do 2020. godine, a u nastojanju da se zabeleže i prikažu veoma kreativni i upečatljivi prevodi naslova dobijeni nekim stepenom kontekstualne rekonstrukcije originalnog naslova. Zašto je, recimo, film *The Hundred-Foot Journey* preveden kao *Indijski začin na francuski način* ili film *The Lincoln Lawyer* kao *Advokat na točkovima*? U tom pogledu, kroz rad je prikazana kontekstualna reformulacija, kao prevodni postupak prepoznat kao rezultat prevodilačke umešnosti i jezičke kreativnosti. Cilj ovog rada jeste da se kroz mnogobrojne ilustrativne primere prikaže značaj i efekat primene ovog prevodnog postupka, koji, iako zahteva malo više vremena, razmišljanja, malo više slobode i svakako jeste rizičniji, daje impresivne rezultate u situacijama kada je adekvatno primenjen.

Ključne reči: *igrani filmovi, naslov, kontekstualna reformulacija, prevodni postupak, kontekst*

1. Uvod

Filmski naslovi poput *Gayby* ili *Stuber* neminovno predstavljaju izazove za prevodioce i često dovode do dileme da li ih ostaviti u izvornom obliku ili kreativno osmisliti srpsku verziju naslova nakon

[1] Lektor, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, mariste79@gmail.com

pažljivog sagledavanja filmske radnje. Shodno tome, naslov filma *Paklene ulice* kreativno je prikazan kao alternativa za direktan prevod *Brzi i razjareni*. Ovo su samo neki od mnoštva primera filmskih naslova, kao predmeta istraživanja, koji će biti prikazani u ovom razmatranju, kada je reč o njihovom prevođenju metodom koja je sve samo ne oblik direktnog prevođenja. Kao i svako stvaralačko delo, i predstavnici sedme umetnosti svoju prepoznatljivost nemalo duguju nadenutom naslovu, najpre na domaćem tržištu, a koji potom treba preneti i na druge jezike kako bi dotična priča izazvala podjednako interesovanje i zadobila pažnju ciljne publike. Kroz ovaj rad biće prikazano istraživanje čiji je cilj da pokaže da jezička kreativnost pri prevođenju filmskih naslova ipak postoji na jednom solidnom nivou, kada se radi o zvaničnim prevodima filmskih naslova koji su komercijalno bili dostupni domaćoj publici. Ovo svakako ide u prilog većem ugođaju publike, jer kreativno prevedeni naslovi, posebno kada se oni sasvim nepogrešivo nadovezuju na filmsku radnju, direktno utiču na obrazovanje ljudi i olakšavajuju premošćavanje i razumevanje kulturoloških razlika.

2. **Istraživanje**

Istraživački segment, na kome je zasnovan ovaj rad, čini 1015 filmskih naslova koji su nastali u periodu od 2011. do 2020. godine i koji su razvrstani prema stepenu postojanja ili odsustva kontekstualne reformulacije, kao upotrebljenog metoda prilikom njihovog prevođenja na srpski jezik. Naslovi su prikupljeni sa zvaničnih internet prezentacija domaćih bioskopa (*Cineplexx, CineStar*) i njihovog filmskog repertoara za navedeni period i po određenim kriterijumima, zatim iz kataloga distributerskih kuća (*Tuckwood Cineplex*, *First Production*, *Pro Vision*, *Taramount*, *MegaCom Film*), kao i sa internet stranica poput *IMDb* i *MojTV*. Zbog velikog broja jedinica u uzorku, u radu će biti pomenuti samo neki od reprezentativnih primera.

1.1. **Kriterijumi za odabir filmskih naslova**

Prilikom odabira filmskih naslova za istraživački deo vodilo se računa o nekoliko kriterijuma. To su najpre popularni naslovi koji imaju naziv na engleskom jeziku i u kojima je engleski jezik u potpunosti ili u većinskom delu jezik kojim se saopštava filmska radnja.

Zatim, odabrani filmovi su bili komercijalno dostupni ili zvanično prikazivani na bioskopskom platnu, pa su samim tim sadržali i zvaničan prevod naslova na srpskom jeziku. Naslovi su, takođe, ograničeni na tzv. *A produkciju* (engl. *A-movie*, *feature film*), čime su izbegnuti filmovi *B kategorije*, kao i ona filmska ostvarenja koja nisu zvanično bila distribuirana na srpskom jeziku.

Sledeći kriterijum odnosi se na vremenski period unutar kojeg su prikupljeni filmski naslovi nastali a to je period od 2011. do 2020. godine. Ovo je značajno istaći zato što je realni broj nastalih filmskih dela po jednoj kalendarskoj godini zapravo mnogo veći, međutim, nisu svi ti naslovi bili i komercijalno dostupni gledaocima.

Odabir filmskih naslova ograničen je i prema konceptu i žanrovima. Uzimani su u obzir isključivo *igrani filmovi* sa osmišljenom pričom i živim glumcima. Dokumentarni i animirani filmovi nisu deo korpusa.

1.2. **Metodologija istraživanja i klasifikacija filmskih naslova**

Filmski naslovi obuhvaćeni korpusom su metodom klasifikacije razvrstani prema odsustvu ili prisustvu kontekstualne reformulacije, kao metode prevođenja njihovih originalnih naslova sa engleskog na srpski jezik. Filmski naslovi koji su ostavljeni u izvornom obliku uglavnom su naslovi koji su sačinjeni od vlastitih imena ili su prevedeni bukvalno i, kao takvi, nisu rekonstruisani, pa su klasifikovani kao direktni prevodi. Za potrebe metode klasifikacije, upotrebljena je najpre metoda analize kako bi se svaki od filmskih naslova rasporedio u odgovarajuću kategoriju prema svojim osobinama, kao i statistički metod za prikazivanje deskriptivnih statističkih pokazatelja stanja svake od ispitanih kategorija.

3. Naslov

U razmatranju prevođenja filmskih naslova neophodno je ukratko se osvrnuti najpre na pojam naslova, odnosno na ono što daje karakterističan naziv nekom delu, bilo da je ono književno, umetničko ili filmsko. Jedno upečatljivo objašnjenje filmskih naslova daje Kalmanova, koja kaže da je naslov „vizit-karta umetničkog dela, i kao što prilikom upoznavanja dvoje ljudi prvi utisak može biti od presudnog značaja za dalje poznanstvo, tako je i s filmskim naslovom i daljim odnosom gledaoca prema filmu" (Kálmán, citirana u Panić Kavgić, 2011, str. 148). Odavde se odmah može uvideti važnost povezanosti semantičkog sadržaja naslova sa sadržajem dela koje on imenuje, a koje treba preneti na datom jeziku.

4. Kontekstualna reformulacija

Zabeležena metoda prevođenja, koja je svojevrsni tip ekvivalencije, može dovesti do stvaranja kreativnih i kulturološko povezanijih prevoda na jeziku na koji se prevodi, uzimajući u obzir i jezičke i vanjezičke elemente. Mnogi filmovi u svojim naslovima „mogu obuhvatati različite aspekte ljudskog života, kao što su politika, ekonomija, istorija" (Xiuquan, 2007, str. 8). I Brifa govori o značaju konteksta i njegove integrisanosti u naslov dela. Po njemu, kontekst predstavlja jednu kulturološku perspektivu, jer umetnička dela često i jesu izraz kultorološki uslovljenog načina razmišljanja koji je svojstven dotičnoj kulturi, pa, kao takav, nosi i određene elemente koji prožimaju datu kulturu (Briffa, 2009, str. 13). Metodu koju ovaj rad prikazuje kao postupak prevođenja filmskih naslova Panić Kavgić (2011) označava kao ***kontekstualna reformulacija***. To je postupak koji se zasniva na tome da se „filmskom delu u ciljnom jeziku daje sadržinski i/ili strukturno nov naslov, koji se delimično ili u potpunosti razlikuje od izvornog, a koji je u skladu sa jezičkim i vanjezičkim kontekstom u kom dati prevod nastaje" (Panić Kavgić, 2011, str. 137). Ukratko rečeno, to je prevodni

metod koji date vanjezičke elemente realizuje jezičkim elementima jezika na koji se neki naslov prevodi. Jezički elementi mogu obuhvatati i raznorazne neformalne strukture, gde su „kovanice, njihova značenja, kolokacije i idiomatske fraze uslovljene mnogim kulturološkim domenima, pa stoga i korisnici određenog jezika počinju da usvajaju ove govorne jedinice kako bi zadovoljili svoje novonastale potrebe u komunikaciji" (Crystal, 2003, str. 146), koje su vrlo često autohtone i u dotičnom jeziku svakodnevne. Slično tome, i Jovanović (2016) svrstava idiome, slengove i igre reči u veoma česte i neformalne oblike kazivanja. Prilikom izrade filmskih naslova, koji su tematski namenjeni određenoj publici ili starosnoj grupi, valja upotrebiti stepen neformalnosti svojstven namenjenoj starosnoj grupi. Kada se takav naslov prevodi, poželjno je upotrebiti sličnu tehniku radi postizanja istog ili vrlo sličnog efekta kod iste starosne grupe na čiji se jezik dati filmski naslov prevodi. Lekseme koje se u takvim naslovima koriste mogu stajati u stilističkom kontrastu dok se istovremeno odnose na isti entitet, odnosno imaju različita *asocijativna obeležja*. Tako lekseme *father* (*otac*), *dad* (*tata*) i *pop* (ćale) asocijativno su obeležene, jer upućuju na isti pojam, ali su stilistički drugačije jer se razlikuju po stepenu formalnosti. O asocijaciji i asocijativnim obeležjima koje lekseme mogu imati govori i Prćić (2016) koji kaže da je asocijativno obeležje „svako distinktivno svojstvo ili osobina lekseme, a delimično i referenta, koje je relevantno pri uspostavljanju nekog stilističkog kontrasta" (str. 79). Određene lekseme „nalaze se u stilističkom kontrastu, zbog zastupljenosti stilskog asocijativnog obeležja" (str. 80) i, kao takve, svojstvene su određenoj govornoj zajednici ili sociolektu. Takvo obeležje prevodilac filmskog naslova „trebalo bi da očuva i u prevodu, da bi odmah bilo jasno kojoj je ciljnoj grupi film namenjen" (Panić Kavgić, 2011, str. 142). Neka od ovih asocijativnih obeležja mogu se primetiti u naslovima poput *Stig'o ćale 2* (*Daddy´s Home 2*), *Keva* (*Ma*), *Matorani 2* (*Grown Ups 2*) i *Ludi Božić u kancu* (*Office Christmas Party*) koji su prevedeni u mladalačkom žargonu.

Prema Panić Kavgić (2011), postoje najpre dva najučestalija oblika kontekstualne reformulacije, u zavisnosti od stepena rekonstrukcije

prevedenog filmskog naslova. Tako postoji **potpuna** i **delimična** kontekstualna reformulacija (str. 138). Ovde se radi o stepenu mogućnosti da se iz naslova nasluti originalni naziv na engleskom jeziku. ***Potpuna kontekstualna reformulacija*** je ona kada iz prevedenog naslova filma nije moguće naslutiti originalni naslov na engleskom jeziku, odnosno nije moguće jasno ustanoviti semantičku vezu između dva naslova, jer je naslov potpuno rekonstruisan u odnosu na svoju izvornu verziju. Tabela 1. sadrži neke od brojnih reprezentativnih filmskih naslova koji su dobijeni metodom potpune kontekstualne reformulacije.

Tabela 1. Distribuirani filmski naslovi prevedeni metodom potpune kontekstualne reformulacije.

Godina	***Originalni naslov***	***Prevedeni naslov***
2011	*30 Minutes or Less*	*Ekspresna pljačka*
2011	*Friends with Benefits*	*Veza bez obaveza*
2011	*Reel Love*	*Srce na udici*
2011	*The Girl with the Dragon Tattoo*	*Muškarci koji mrze žene*
2011	*The Lincoln Lawyer*	*Advokat na točkovima*
2012	*Mud*	*Leto na obalama Misisipija*
2012	*Thanks for Sharing*	*Zavisni o seksu*
2012	*The Company You Keep*	*Pravilo ćutanja*
2012	*The Perks of Being a Wallflower*	Čarlijev svet
2012	*Wanderlust*	*Kuda plovi ovaj brod*
2012	*What to Expect When You're Expecting?*	*Imate li znanje za drugo stanje?*
2013	*Behind The Candelabra*	*Moj život s Liberačijem*
2013	*Fast & Furious 6*	*Paklene ulice 6*
2013	*Out of the Furnace*	Čelična pravda
2013	*Pain & Gain*	*Znojem do love*
2013	*The Heat*	Žestoke devojke
2013	*The Railway Man*	*Tragovi prošlosti*
2014	*A Million Ways to Die in the West*	*Ko preživi pričaće*
2014	*The Hundred-Foot Journey*	*Indijski začin na francuski način*
2014	*The Little Death*	*Slatka tajna orgazma*
2015	*Absolutely Anything*	*Sve što poželiš*

2015	*Once I Was a Beehive*	*Leto za velike stvari*
2015	*Trainwreck*	*Haos u najavi*
2016	*Hell or High Water*	*Po cenu života*
2016	*The Shallows*	*Opasnost iz dubine*
2017	*All The Money in the World*	*Cena života*
2017	*Call Me By Your Name*	*Skrivena ljubav*
2018	*A Simple Favor*	*Slatka mala tajna*
2018	*Keepers*	*Tajna svetionika*
2018	*The Girl in the Spider's Web*	*Ono što nas ne ubije*
2019	*Drunk Parents*	*Promil do (k)raja*
2019	*Hustlers*	*Prevarantkinje sa Vol Strita*
2019	*Stuber*	*Ortaci na točkovima*
2020	*Unhinged*	*Van kontrole*

Pri izradi naslova upotrebom ***delimične kontekstualne reformulacije*** postoje neki leksički elementi koji ostaju neizmenjeni i koje je moguće naslutiti u originalnom naslovu, pa je njegova rekonstrukcija samo delimična. Moglo bi se reći da je u takvim slučajevima jedan deo naslova kontekstualno reformulisan, dok je drugi deo preveden postupkom direktnog prevođenja. Primer jednog takvog filmskog naslova je Čelična borba (*Real Steel*) u kojem postoji ekvivalentnost u prevodu između leksema čelik i *steel,* dok je leksema *borba* potpuno nepovezana sa ostatkom originalnog naslova, ali je verna kontekstu filmske radnje. Tabela 2. prikazuje zanimljiva izdanja filmskih naslova prevedenih ovom metodom.

Tabela 2. Distribuirani filmski naslovi prevedeni metodom delimične kontekstualne reformulacije.

Godina	***Originalni naslov***	***Prevedeni naslov***
2011	*Final Destination 5*	*Poslednja ekskurzija*
2011	*Horrible Bosses*	*Kako se rešiti šefa*
2011	*Real Steel*	Čelična borba
2011	*Sucker Punch*	*Iznenadni udarac*
2011	*The Art of Getting By*	*Umetnost prepuštanja*

2011	*The Iron Lady*	Čelična dama
2011	*Tinker Tailor Soldier Spy*	*Dečko dama kralj špijun*
2012	*Hit and Run*	*Udri i beži*
2012	*Iron Sky: Invasion*	Čelično nebo
2012	*Magic Mike*	*Vreli Majk*
2012	*The Five-Year Engagement*	*Veridbi nikad kraja*
2012	*This Is 40*	*Ovako je sa 40*
2013	*Fading Gigolo*	*Matori žigolo*
2013	*Insidious: Chapter 2*	*Astralna podmuklost: Poglavlje 2*
2013	*The Big Wedding*	*Venčanje godine*
2013	*The To Do List*	*Seks po spisku*
2013	*White House Down*	*Napad na Belu kuću*
2014	*How to Make Love Like an Englishman*	*Ljubav na engleski način*
2014	*Open Windows*	*Pogrešan prozor*
2014	*The Other Woman*	*Osveta na ženski način*
2015	*Love the Coopers*	*Božić kod Kuperovih*
2015	*The Lady in the Van*	*Dama iz dvorišta*
2016	*Bad Moms*	*Opasne mame*
2016	*Mike and Dave Need Wedding Dates*	*Frka na venčanju*
2016	*Office Christmas Party*	*Ludi Božić u kancu*
2016	*Bad Moms*	*Opasne mame*
2017	*How to Be a Latin Lover*	*Male tajne velikog latino zavodnika*
2018	*Book Club*	*Klub zadovoljnih žena*
2018	*If Beale Street Could Talk*	Šapat ulice
2018	*The House with a Clock in Its Walls*	*Kuća magičnog sata*
2019	*Knives Out*	*Nož u leđa*
2020	*My Spy*	*Otkrila sam špijuna*

Pored ova dva najkreativnija oblika kontekstualne reformulacije, Panić Kavgić (2011) navodi još nekoliko oblika ovog metoda prevođenja filmskih naslova. Reč je **asocijativnoj** i **dopunskoj** (str. 140), kao i **unutarjezičkoj kontekstualnoj reformulaciji** (str. 141).

Asocijativna kontekstualna reformulacija označava metod pomoću kojeg prevodilac filmskog naslova želi da izazove asocijaciju na neki već postojeći filmski naslov radi postizanja većeg efekta. Tako je film *Klub zadovoljnih žena* (*Book Club*) iz 2018. godine najverovatnije preveden po uzoru na naslov filma *The First Wives Club* iz 1996. godine koji je preveden kao *Klub prvih žena*. Slično tome, film *Ludilo devojačke večeri* (*Rough Night*) iz 2017. godine po naslovu asocira na film *Groznica subotnje večeri* (*Saturday Night Fever*) iz 1977. godine.

Dopunska kontekstualna reformulacija uključuje kontekstualno prevođenje naslova filma uz dodavanje novih elemenata radi pojašnjenja ili dopune naslova. Primeri tako prevedenih naslova su Čepi: *Robot koji je promenio svet* (*Chappie*), *Maska od kože: Početak* (*Leatherface*), *Lavirint – Nemoguće bekstvo* (*The Maze Runner*), *Portorikanske noći: dnevnik opijanja* (*The Rum Diary*) u kojima, pored kontekstualne reformulacije, u naslovu filma postoji i dodatni podatak.

Unutarjezička kontekstualna reformulacija označava promenu filmskog naziva na samom izvornom jeziku prilikom njegove distribucije u određene zemlje. Radi se zapravo o „drugom naslovu" ili filmu „poznatom i kao" (*also known as*), a primeri takvih naslova iz korpusa su: *Osvetnici* (*The Avengers*, poznatom i kao *Avengers Assemble*), zatim *Pirati sa Kariba: Salazarova osveta* (*Pirates of the Caribbean: Dead Men Tell No Tales*, poznatom i kao *Pirates of the Caribbean: Salazar's Revenge*), kao i *Loše komšije* (*Neighbors*, poznatom i kao *Bad Neighbours* na britanskom tržištu).

Kontekstualna reformulacija ne mora nužno da bude najbolja opcija prilikom prevođenja filmskih naslova. Najčešće su to situacije kada se reformulisanjem originalnog naziva zapravo delimično ili u potpunosti naslućuje ili otkriva suština filmske radnje. Jedan takav primer je film *Izdaja* (*Red Sparrow*), čiji je originalni naslov zapravo naziv škole za obuku ruskih tajnih agenata, a čiji prevedeni naslov na prvi pogled može da ukaže na preokret ili poentu čitave filmske radnje. Još jedan sličan primer je filmski naslov *Tuđe slađe* (*Something Borrowed*). Iako izgleda privlačnija i definitivno reformulisana, u srpskom jeziku fraza

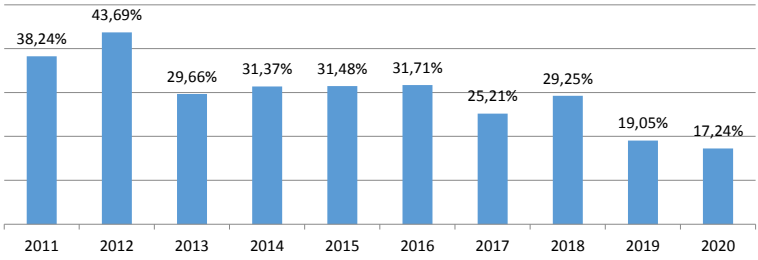
koju ovaj naslov koristi ima konotaciju zavidnosti ili ljubomore, što nije tematika ovog filma. Originalni naziv zapravo je deo stare engleske rime koja predstavlja recept za uspešan brak, pri čemu mlada treba da nosi nešto staro, nešto novo, *nešto pozajmljeno* i nešto plavo kako bi joj brak bio srećan i uspešan.

Sa druge strane, kontekstualna reformulacija može da bude moćan saveznik pri prevođenju polisemičnih filmskih naslova. To su naslovi koji svojom strukturom odaju višeznačnost, tj. mogu se protumačiti na više od jednog načina (Panić Kavgić, 2011). Tek sagledavanjem fimske radnje gledalac zapravo dobija pravu sliku i shvata pravo značenje dotičnog naslova. U takvim situacijama, kontekstualnom reformulacijom može se stvoriti kreativan naslov koji ipak zadržava tajnovitost filmske radnje, dok pri tom ostaje podjednako blizak onome o čemu ona govori. Ovde bi se mogao uvrstiti naslov filma *Skrivena ljubav* (*Call Me By Your Name*), koji bi, u direktnom prevodu, mogao ostaviti mesta dvosmislenosti (*Zovi me tvojim/svojim imenom*), jer u srpskom jeziku povratna prisvojna zamenica *svoj* može van konteksta imati dvosmisleno značenje po pitanju referenta. Takođe, film *Blue Jasmin* je preveden kao *Nesrećna Džasmin* i time je izbegnuta dvosmislenost prideva *blue* koji na engleskom jeziku može da znači i *plav* i *tužan* (zapravo, cela imenska sintagma bi se van konteksta mogla protumačiti i kao *plavi jasmin*). Sa druge strane, u naslovu filma *Promil do (k)raja* (*Drunk Parents*) namerno je ostavljena dvosmislenost radi postizanja komičnog efekta i nagoveštaja zapleta u koji dotični roditelji upadaju.

5. **Rezultati i diskusija**

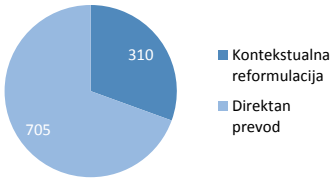
Od ukupno 1015 analiziranih filmskih naslova obuhvaćenih korpusom, njih 310 prevedeno je nekim oblikom kontekstualne reformulacije, što zbirno čini 30,54% od ukupnog analiziranog uzorka (potpuna, delimična, dopunska i asocijativna zajedno). Ovaj podatak svakako daje ohrabrenje da je kreativno prevođenje filmskih naslova na jednom solidnom nivou. Ipak, tokom istraživanja primećena je

fluktuacija u broju filmskih naslova prevedenih metodom kontekstualne reformulacije na godišnjem nivou tokom datog desetogodišnjeg perioda. Zavidan i ujedno i najveći udeo naslova prevedenih ovom metodom zabeležen je za 2012. godinu u iznosu od čak 42,57%, dok je za 2019. godinu to svega 17,31%, što je i prikazano na Grafikonu 1.

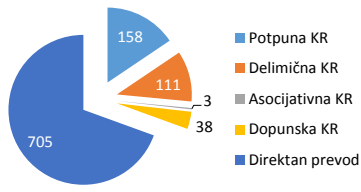


Grafikon 1. Udeo naslova prevedenih metodom kontekstualne reformulacije po godinama

Razlozi za ovakvu fluktuaciju mogu se naći u heterogenosti uzorka, tj. broju onih filmova čiji bi naslovi, po svojoj strukturi, bili pogodni za prevođenje nekim oblikom kontekstualne reformulacije, pa su prevodioci takve filmske naslove mahom prevodili direktno, što je svakako uticalo na udeo prisutnosti pomenute metode. Stoga je očekivano da je broj filmskih naslova koji se mogao prevesti direktno znatno veći, i u ovom slučaju to je 705 filmskih naslova, odnosno 69,46% od ukupnog analiziranog korpusa. Ova distribucija prikazana je na Slici 1. i Slici 2.

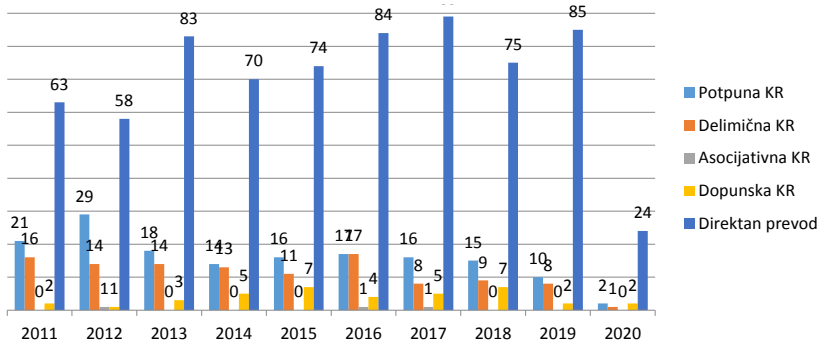


Slika 1. Zastupljenost kontekstualne reformulacije



Slika 2. Distribucija po tipovima

Ukupan prikaz broja filmskih naslova prevedenih nekim oblikom kontekstualne reformulacije kumulativno je prikazan na Grafikonu 2. za ceo desetogodišnji period.



Grafikon 2. Zastupljenost tipova kontekstualne reformulacije u filmskim naslovima od 2011. do 2020. godine.

Korpus čine filmska ostvarenja čiji su naslovi u izvesnoj meri prevedeni nekim oblikom kontekstualne reformulacije, tamo gde je to bilo moguće, čime su stvoreni zanimljivi i kreativni prevodi naslova uz često izbegavanje direktnog prevođenja u skoro čitavoj trećini korpusa. Ipak, preostali deo korpusa čine filmski naslovi kod kojih je direktno prevođenje „najčešći prevodni postupak kojim se filmski naslovi prevode sa engleskog jezika na srpski" (Panić Kavgić, 2010, str. 94). Ohrabrujuć je podatak da je potpuna kontekstualna reformulacija vodeći oblik ovog metoda u svakoj od deset obrađenih kalendarskih godina, dok odmah iza nje sledi delimična. Ova dva oblika su najčešći zabeleženi oblici ovog prevodnog metoda, što ukazuje da postoji tendencija ka kreativnim prevođenjem filmskih naslova. Ukoliko se Grafikon 2. sagleda detaljnije, može se reći da je kontekstualno reformulisanje filmskih naslova opadalo iz godine u godinu, naročito od 2013. godine pa nadalje. Ovde se može primetiti jedan hronološki negativan trend, ali njegovo postojanje zapravo je odraz činjenice da su dotične godine sadržale naslove koji, s prevodiočeve tačke gledišta, ili zbog svoje strukture, nisu bili podložni

nekoj rekonstrukciji. Metod dopunske kontekstualne reformulacije (3,74%) znatno je manje zastupljen u odnosu na potpunu (15,57%) i delimičnu (10,94%), dok je najmanje onih filmskih naslova čiji su nazivi asocijacija na neka prethodna filmska ostvarenja (svega 0,30%). S obzirom na to da ovaj rad uzima u obzir isključivo igrane filmove, njih 269 prevedeno je postupcima delimične i potpune kontekstualne reformulacije, što čini 26,5% od ukupnog broja analiziranih jedinica. Kada se uzmu u obzir sva četiri oblika ovog prevodnog metoda, njegov je ukupan udeo od 30,54%. Ovo je ohrabrujuć podatak koji govori da je gotovo trećina uzorka prevedena kreativno, što je svakako doprinelo da mnogi naslovi ostanu upečatljivi, upamćeni i prepoznatljivi.

Kontekstualizacijom prevođenja filmskih naslova na srpski jezik nije se bavilo mnogo autora. Značaj ovog istraživanja ogleda se u prikazu naslova prevedenih spomenutom metodom u kojima su prevodičeva kreativnost i umeće stvorili prevedeni naslov koji je prepoznatljiv, kreativan i privlačan. Sve ovo istovremeno doprinosi i podizanju svesti o potrebi za što kvalitetnijim prevođenjem i izbegavanju ili umanjenju neprikladno prevedenih filmskih naslova.

6. **Zaključak**

Kreativno prevedeni filmski naslovi, kao svojevrsni mostovi u međukulturnoj razmeni i dijalogu između filmske priče i publike, svedoče o važnosti primene opisanog prevodnog metoda, pa se može zaključiti da bi njegov izostanak na kinematografskoj sceni neminovno osiromašio prevođenje i ukupni doživljaj filmske radnje. Svaki filmski naslov od momenta svog nastanka na izvornom jeziku ima svoje nezanemarljive funkcije koje treba u što većoj meri preneti i na ciljni jezik. A upravo zahvaljujući izmeni izvorne konceptualizacije, kreativno prevođenje stvara novoskovane naslove koji predstavljaju za razumevanje prikladniji, za publiku privlačniji, a za stvaraoce filma uspešniji filmski naslov.

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Marko Volf[1]

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CONTEXTUAL REFORMULATION OF MOVIE TITLES

Summary: This paper is the result of extensive research and analysis of collected movie titles from the period between 2011 and 2020 in an effort to record and present highly creative and striking movie title translations created through some degree of contextually reconstructing the original title. Why, for example, was the movie *The Hundred-Foot Journey* translated as *Indijski začin na francuski način*, or *The Lincoln Lawyer* as *Advokat na točkovima*? In this regard, the paper shows contextual reformulation as a translation method recognized as a result of translation skill and linguistic creativity. The aim of this paper is to show through numerous illustrative examples the importance and effect of applying this translation method which, although requiring a little more time, devising, a little more freedom and is certainly riskier, gives impressive results in situations when it is adequately applied.

Keywords: *feature films, title, contextual reformulation, translation method, context*

1. Introduction

Movie titles such as *Gayby* or *Stuber* inevitably present challenges for translators and often lead to a dilemma whether to leave them in their original form or to creatively design a Serbian version of the title

[1] English Instructor (MA), Department of English, Faculty of Law and Business Studies dr Lazar Vrkatić, Novi Sad, UNION University, Belgrade, email: mariste79@gmail.com

after carefully observing the plot of the movie. Consequently, the title of the movie *Paklene ulice* (literally *Streets of Hell*) was creatively presented as an alternative to the direct translation of *Fast and Furious*. These are just some of the many examples of movie titles, as research subjects, that will be presented in this paper when it comes to their translation using a method that is anything but a form of direct translation. Just as any creative work, the representatives of the seventh art largely owe their recognition to the given title, primarily on the domestic market, which should then be translated into other languages so that the story in question arouses equal interest and gains the attention of the target audience. This paper represents research, the aim of which is to show that linguistic creativity in the translation of movie titles still exists at a solid level when it comes to official translation of movie titles commercially available to the domestic audience. This certainly goes in favor of better pleasing the audience, because creatively translated titles, especially when they are unmistakably linked to the plot of the movie, have a direct impact on the education of people and facilitate the bridging and understanding of cultural differences.

2. **Research**

The research segment which constitutes the base of this paper consists of 1015 movie titles which were produced between 2011 and 2020, classified according to the degree of existence or absence of contextual reformulation – a method used for translating them into the Serbian language. The titles were collected from official websites of local cinemas (*Cineplexx, CineStar*) and their movie repertoire for the period specified and according to certain criteria, then from the catalogs of distribution companies (*Tuckwood Cineplex*, *First Production*, *Pro Vision*, *Taramount*, *MegaCom Film*), as well as from websites like *IMDb* and *MojTV*. Due to the large number of units in the sample, only some of the representative examples will be mentioned in the paper.

1.1. **Movie Selection Criteria**

Several criteria were taken into account when selecting movie titles for the research part. These are primarily popular titles that have an English title, and in which English is the language entirely or for the most part used to convey the plot of the movie.

Furthermore, the selected movies were commercially available or officially shown at cinemas, thus having their titles officially translated into Serbian. Titles are also limited to the so-called *A production* (feature films), therefore avoiding B-rated movie category, as well as movies not officially distributed in the Serbian language.

The next criterion refers to the time period within which the collected movie titles were produced, which is the period from 2011 to 2020. Indicating this is important as the actual number of movies produced per calendar year is actually much higher; however, not all of those titles were commercially available to viewers.

The selection of movie titles is also restricted to the concept and genre. Only feature films with an invented story and live actors were considered. Documentaries and animated movies are not part of the corpus.

1.2. **Movie Titles Research and Classification Methodology**

Movie titles included in this corpus are sorted by the method of classification according to the absence or presence of contextual reformulation, a method of translating their original titles from English into Serbian. Movie titles which have been left in their original form are mostly titles composed of proper nouns or which have been translated literally and, as such, have not been reconstructed, so they are classified as direct translations. For the purpose of classification method, an analysis method was first used in order to allocate each of the movie titles to an appropriate category according to its characteristics, as well as a statistical method for displaying descriptive statistical indicators of each of the examined categories state.

3. The Title

When considering the translation of movie titles, it is necessary to briefly refer first to the concept of the title itself, that is, to that what gives a specific name to a piece of work, be it literary, artistic or cinematic. A notable explanation of movie titles is given by Kalman, who states that a title is like "a visit card of a work of art, and just as the first impression can be of crucial importance for further acquaintance when two people meet, the situation is the same with a movie title and the further relationship of the viewer towards the movie." (Kálmán, cited in Panić Kavgić, 2011, p. 148). From here, one can immediately see the importance of connecting the semantic content of the title with the content of the work it names, which should then also be conveyed in a given language.

4. Contextual Reformulation

In this paper, the portrayed translation method, which is a kind of equivalence, can lead to the production of creative and more culturally intertwined translation in the target language, taking into account both linguistic and non-linguistic elements. Many movies in their titles "can include various aspects of human life, such as politics, economics, history" (Xiuquan, 2007, p. 8). Briffa as well talks about the importance of context and its integration into a title of the work. According to him, the context represents a cultural perspective, because works of art often are an expression of a culturally conditioned way of thinking that is specific to the culture in question, and as such, it also carries certain elements that pervade the given culture (Briffa, 2009, p. 13).

The method that this paper presents as a process of translating movie titles is referred to by Panić Kavgić (2011) as ***contextual reformulation***. It is a procedure based on the fact that "a movie in the target language is given a substantially and/or structurally new title, which is partially or completely different from the original, and which is in accordance with the linguistic and non-linguistic context in which the given translation is created " (Panić Kavgić, 2011, p. 137). In short, it is the translation method that implements given non-linguistic elements

with linguistic elements of the language into which a title is translated. Linguistic elements can also include various informal structures, where "coinage words, their meanings, collocations and idiomatic phrases are conditioned by many cultural domains, and therefore users of a particular language begin to adopt these speech units in order to satisfy their new communication needs" (Crystal, 2003, p. 146), which are very often autochthonous and used daily in a given language. Similarly, Jovanović (2016) classifies idioms, slangs and puns as very frequent and informal forms of speech. When creating movie titles thematically intended for a specific audience or age group, a degree of informality specific to the intended age group should be used. When such a title is translated, it is desirable to use a similar technique in order to achieve the same or very similar effect with the same age group into whose language the given movie title is translated. The lexemes used in such titles can stand in stylistic contrast, while at the same time referring to the same entity, that is, they have different *associative features*. For example, lexemes *father*, *dad* and *pop* are marked associatively, because they refer to the same concept, but they are stylistically different because they differ in the degree of formality. Both the association and associative features that lexemes can have are also discussed by Prćić (2016), claiming that an associative feature is "any distinctive feature or a feature of a lexeme, and partially also of a referent, which is relevant when establishing some stylistic contrast" (p. 79). Certain lexemes "are in stylistic contrast, due to the presence of a stylistically associative feature" (p. 80) and, as such, are specific to a certain speech community or sociolect. The translator of a movie title "should preserve such a feature in the translation, so that it is immediately clear which target group the movie is intended for" (Panić Kavgić, 2011, p. 142). Some of these associative features can be observed in titles such as *Daddy´s Home 2* (*Stig'o* ćale *2*), *Ma* (*Keva*), *Grown Ups 2* (*Matorani 2*) and *Office Christmas Party* (*Ludi Božić u kancu*) which have been translated by employing youthful slang.

According to Panić Kavgić (2011), there are two most common forms of contextual reformulation, depending on the degree of reconstructing the translated movie title. So, there is **complete** and **partial** contextual reformulation (p. 138). This refers to the degree of possibility to recognize a movie title in its original English counterpart. ***Complete***

contextual reformulation means it is not possible to recognize the original title in English from the translated counterpart, that is, it is not possible to clearly establish the semantic connection between the two titles because the title has been completely reconstructed in relation to its original form. *Table 1* contains some of the numerous representative movie titles created by employing the full contextual reformulation method.

Table 1. Distributed movie titles translated using the complete contextual reformulation method.

Year	***Original title***	***Translated title***
*201*1	*30 Minutes or Less*	*Ekspresna pljačka*
2011	*Friends with Benefits*	*Veza bez obaveza*
2011	*Reel Love*	*Srce na udici*
2011	*The Girl with the Dragon Tattoo*	*Muškarci koji mrze* žene
2011	*The Lincoln Lawyer*	*Advokat na točkovima*
2012	*Mud*	*Leto na obalama Misisipija*
2012	*Thanks for Sharing*	*Zavisni o seksu*
2012	*The Company You Keep*	*Pravilo* ćutanja
2012	*The Perks of Being a Wallflower*	Čarlijev *svet*
2012	*Wanderlust*	*Kuda plovi ovaj brod*
2012	*What to Expect When You're Expecting?*	*Imate li znanje za drugo stanje?*
2013	*Behind The Candelabra*	*Moj* život *s Liberačijem*
2013	*Fast & Furious 6*	*Paklene ulice 6*
2013	*Out of the Furnace*	Čelična *pravda*
2013	*Pain & Gain*	*Znojem do love*
2013	*The Heat*	Žestoke *devojke*
2013	*The Railway Man*	*Tragovi prošlosti*
2014	*A Million Ways to Die in the West*	*Ko preživi pričaće*
2014	*The Hundred-Foot Journey*	*Indijski začin na francuski način*
2014	*The Little Death*	*Slatka tajna orgazma*
2015	*Absolutely Anything*	*Sve* što *poželiš*
2015	*Once I Was a Beehive*	*Leto za velike stvari*
2015	*Trainwreck*	*Haos u najavi*
2016	*Hell or High Water*	*Po cenu* života

2016	*The Shallows*	*Opasnost iz dubine*
2017	*All The Money in the World*	*Cena* života
2017	*Call Me By Your Name*	*Skrivena ljubav*
2018	*A Simple Favor*	*Slatka mala tajna*
2018	*Keepers*	*Tajna svetionika*
2018	*The Girl in the Spider's Web*	*Ono* što *nas ne ubije*
2019	*Drunk Parents*	*Promil do (k)raja*
2019	*Hustlers*	*Prevarantkinje sa Vol Strita*
2019	*Stuber*	*Ortaci na točkovima*
2020	*Unhinged*	*Van kontrole*

When creating a title by employing ***partial contextual reformulation***, there are some lexical elements that remain unchanged and which can be recognized in the original title, so its reconstruction is only partial. In such cases, one part of the title is contextually reformulated, while the other part is translated by direct translation. An example of such a movie title is *Real Steel* (Čelična *borba*) in which the translation equivalence between the lexemes *čelik* and *steel* does exist, whereas the lexeme *borba* is completely unrelated to the rest of the original title, but is faithful to the context of the movie plot. *Table 2* shows interesting creations of movie titles translated by using this method.

Table 2. Distributed movie titles translated using the partial contextual reformulation method.

Year	***Original title***	***Translated title***
2011	*Final Destination 5*	*Poslednja ekskurzija*
2011	*Horrible Bosses*	*Kako se rešiti* šefa
2011	*Real Steel*	Čelična *borba*
2011	*Sucker Punch*	*Iznenadni udarac*
2011	*The Art of Getting By*	*Umetnost prepuštanja*
2011	*The Iron Lady*	Čelična *dama*
2011	*Tinker Tailor Soldier Spy*	*Dečko dama kralj* špijun
2012	*Hit and Run*	*Udri i beži*
2012	*Iron Sky: Invasion*	Čelično *nebo*
2012	*Magic Mike*	*Vreli Majk*
2012	*The Five-Year Engagement*	*Veridbi nikad kraja*

2012	*This Is 40*	*Ovako je sa 40*
2013	*Fading Gigolo*	*Matori* žigolo
2013	*Insidious: Chapter 2*	*Astralna podmuklost: Poglavlje 2*
2013	*The Big Wedding*	*Venčanje godine*
2013	*The To Do List*	*Seks po spisku*
2013	*White House Down*	*Napad na Belu kuću*
2014	*How to Make Love Like an Englishman*	*Ljubav na engleski način*
2014	*Open Windows*	*Pogrešan prozor*
2014	*The Other Woman*	*Osveta na* ženski *način*
2015	*Love the Coopers*	*Božić kod Kuperovih*
2015	*The Lady in the Van*	*Dama iz dvorišta*
2016	*Bad Moms*	*Opasne mame*
2016	*Mike and Dave Need Wedding Dates*	*Frka na venčanju*
2016	*Office Christmas Party*	*Ludi Božić u kancu*
2016	*Bad Moms*	*Opasne mame*
2017	*How to Be a Latin Lover*	*Male tajne velikog latino zavodnika*
2018	*Book Club*	*Klub zadovoljnih* žena
2018	*If Beale Street Could Talk*	Šapat *ulice*
2018	*The House with a Clock in Its Walls*	*Kuća magičnog sata*
2019	*Knives Out*	*Nož u leđa*
2020	*My Spy*	*Otkrila sam* špijuna

In addition to these two most productive forms of contextual reformulation, Panić Kavgić (2011) lists several other forms of this movie titles translation method. They are ***associative*** and ***supplementary*** (p. 140), as well as ***intra-language contextual reformulation*** (p. 141).

Associative contextual reformulation is a method by which a translator of a movie title attempts to evoke association with an already existing movie title in order to achieve a greater effect. Thus, the movie *Book Club* from 2018 was most likely translated based on the title of the movie *The First Wives Club* (*Klub zadovoljnih* žena) from 1996, which was translated as *Klub prvih* žena. Similarly, the 2017 movie *Rough Night*

(*Ludilo devojačke večeri*) is reminiscent of the 1977 movie title *Saturday Night Fever* (*Groznica subotnje večeri*).

Supplementary contextual reformulation involves contextual translation of a movie title while adding new elements to clarify or supplement the title. Examples of such translated titles are *Chappie* (Čepi: *Robot koji je promenio svet*), *Leatherface* (*Maska od kože: Početak*), *The Maze Runner* (*Nemoguće bekstvo*), *The Rum Diary* (*Portorikanske noći: dnevnik opijanja*), whereby in addition to the contextual reformulation, there is also additional information included in these movie titles.

Intra-language contextual reformulation implies changing a movie title in the original language itself during its distribution in certain countries. It is actually a "different title" or a movie "also known as", and examples of such titles from the corpus are: *The Avengers* (*Osvetnici*, also known as *Avengers Assemble*), then *Pirates of the Caribbean: Salazar's Revenge* (*Pirati sa Kariba: Salazarova osveta*, also known as *Pirates of the Caribbean: Dead Men Tell No Tales*), as well as *Neighbors* (*Loše komšije*, also known as *Bad Neighbors* in the UK market).

Contextual reformulation is not necessarily the best option when translating movie titles. Most often, these are situations when, by reformulating the original title, the essence of the plot is partially or completely revealed. One such example is the movie *Red Sparrow* (*Izdaja*, betrayal), the original title of which actually denotes the name of a training school for Russian secret agents, but the translated title can initially indicate the twist or the point of the entire plot of the movie. Another similar example is the movie *Something Borrowed* (*Tuđe slađe*). Although it looks more attractive and definitely reformulated, the phrase employed by this title in the Serbian language has the connotation of envy or jealousy, which is not the topic of this movie. The original name is actually part of an old English rhyme that represents a recipe for a successful marriage, whereby the bride should wear something old, something new, something borrowed and something blue to make her marriage happy and successful.

On the other hand, contextual reformulation can be a powerful ally when translating polysemic movie titles. These are titles that convey ambiguity within their structure, i.e., they can be interpreted in more than

one way (Panić Kavgić, 2011). Only by looking at the plot of the movie does the viewer actually get the right picture and understand the true meaning of the title in question. In such situations, contextual reformulation can produce a creative title that still retains the mystery of the movie plot, while remaining equally close to what it is about. The title of the movie *Call Me By Your Name* (*Skrivena ljubav*, hidden love) could be included here, which, in a direct translation, could leave room for ambiguity, because in the Serbian language the possessive pronoun *svoj* would have an ambiguous meaning out of context in terms of its referent. Also, the movie *Blue Jasmine* was translated as *Nesrećna Džasmin* (unhappy Jasmine), thus avoiding the ambiguity of the adjective *blue*, which in English can mean both *blue* and *sad* (in fact, out of context, the whole noun phrase could be interpreted as the *blue jasmine* flower). On the other hand, in the title of the movie *Drunk Parents* (*Promil do (k) raja*), ambiguity is deliberately left in order to achieve a comic effect and hint at the plot which befalls the parents in question.

5. **Results and Review**

Out of a total of 1015 analyzed movie titles included in the corpus, 310 of them were translated by some form of contextual reformulation, which collectively comprises 30.54% of the total analyzed sample (complete, partial, supplementary and associative all together). This information certainly gives encouragement that the creative translation of movie titles is at a solid level. However, during the research, a fluctuation was observed in the number of movie titles translated using the method of contextual reformulation on an annual basis during a given ten-year period. A substantial and at the same time the largest share of titles translated by using this method was recorded for the year 2012 in the amount of 42.57%, while for the year 2019 it was only 17.31%, as shown in *Chart 1*.

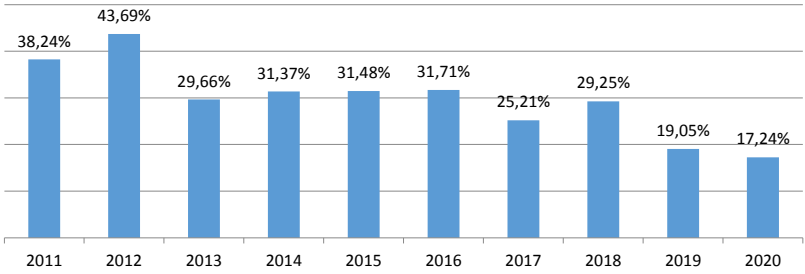

Chart 1. The share of titles translated using the contextual reformulation method per year

Reasons for this fluctuation can be found in the heterogeneity of the sample, i.e., in the number of movies whose titles, due to their structure, were suitable for translating by employing some form of contextual reformulation, so translators mostly translated such movie titles directly, which certainly affected the mentioned method share of presence. Therefore, it is expected that the number of movie titles translated directly is significantly higher, and in this case, it is 705 movie titles, or 69.46% of the total analyzed corpus. This distribution is shown in *Figure 1* and *Figure 2*.

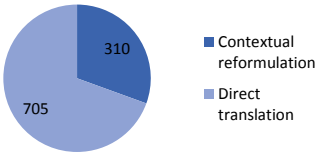

Figure 1. Contextual reformulation share

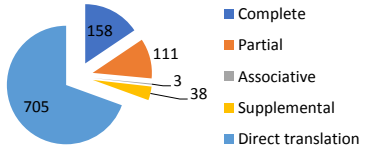

Figure 2. Distribution by type

The total display of the number of movie titles translated by using some form of contextual reformulation is cumulatively shown in *Chart 2* for the entire ten-year period.

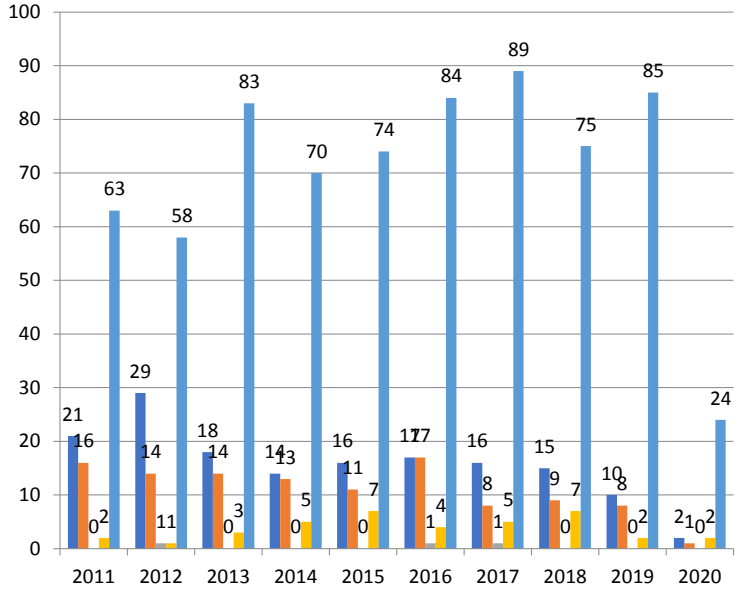

Chart 2. The presence of contextual reformulation types in movie titles from 2011 to 2020.

The corpus consists of movies titles which have been translated to some extent by some form of contextual reformulation where applicable, producing interesting and creative translation of titles while often avoiding direct translation in almost a third of the corpus. However, the remaining part of the corpus consists of movie titles where direct translation is "the most common translation procedure for translating movie titles from English to Serbian" (Panić Kavgić, 2010, p. 94). It is encouraging to note that complete contextual reformulation is the prevalent form of this method in each of the ten calendar years covered, immediately followed by partial reformulation. These two forms are the most common recorded forms of this translation method, which indicates that there is a tendency towards creative translation of movie titles. When *Chart 2* is observed more closely, it is indicative that the contextual reformulation of movie titles has been decreasing year by year, especially from 2013 onwards. The chronologically negative trend can be noticed here, but its existence is actually a reflection of the fact that the respec-

tive years contained titles which, from the translator's point of view or due to their structure, were not viable for any reconstruction. The supplementary contextual reformulation method (3.74%) is significantly less prevalent compared to the complete (15.57%) and partial (10.94%) reformulation, while the least number of movie titles are associated with some previous movie productions (total 0.30%). Given that this research takes into account only feature films, 269 of them were translated using the procedures of partial and complete contextual reformulation, which constitutes 26.5% of the total number of analyzed units. When all four forms of this translation method are taken into account, its total share becomes 30.54%. This is an encouraging fact showing that almost a third of the sample was translated creatively, which certainly contributed to many titles remaining impressive, memorable and recognizable.

Not many authors have immersed themselves in the contextualization of movie titles translation in the Serbian language. The importance of this research is reflected in the display of titles translated using the mentioned method, in which the translator's creativity and skill produced translated titles that are recognizable, creative and attractive. All this simultaneously contributes to raising awareness of the need for high-quality translation and avoiding or reducing inappropriately translated movie titles.

6. **Conclusion**

Creatively translated movie titles, a sort of bridges in intercultural exchange and dialogue between a movie story and its audience, testify to the importance of applying the described translation method, thus its absence from the cinematographic plane would inevitably diminish the translation and the overall experience of a movie plot. Every movie title, from the moment of its creation in the original language, has its own significant functions that should be transferred into the target language as much as possible. And precisely by employing the modification of the original conceptualization, creative translation produces newly minted titles that are more suitable for understanding, more attractive for the audience, and more successful for the moviemakers.

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Biljana Tešić[1]
Dragan Obradović[2]
Velisav Marković[3]

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MODEL ZA DEFINISANJE INDIKATORA PERFORMANSI PROCESA U OKVIRU INFORMACIONOG SISTEMA PREKRŠAJNIH SUDOVA

Apstrakt: Svrha rada jeste da se ukaže na značaj razvoja i primene kontrolno-upravljačkih mehanizama, koji omogućavaju efikasno upravljanje procesima i uspostavljanje jedinstvenog kvantitativnog okvira za merenje performansi softverskog informacionog sistema prekršajnih sudova, koji je razvijen za potrebe upravljanja predmetima u prekršajnim postupcima u Republici Srbiji. Cilj rada je definisanje konceptualnog modela opšteprimenljivih indikatora performansi za kontrolu, monitoring, merenje, ocenjivanje i analizu postignutih rezultata u svim kritičnim procesnim radnjama suda koji odražavaju principe efikasnosti i efektivnosti u procesuiranju predmeta. Rezultati primene mogu obezbediti podršku menadžmentu u upravljanju tokom prekršajnih predmeta, poboljšati efikasnost u radu u vezi sa povećanim prilivom predmeta, naplatom novčanih kazni i troškova, kao i u odlučivanju, a sve u cilju unapređenja kvaliteta rada prekršajnih sudova, u skladu sa zakonom i sudskim poslovnikom.

Ključne reči: *informacioni sistem, ključni indikatori performansi, prekršajni sud, kvalitet, upravljanje procesima*

[1] Vanredni profesor, Fakultet zdravstvenih i poslovnih studija Valjevo, Univerzitet Singidunum Beograd, btesic@singidunum.ac.rs

[2] Sudija, Viši sud u Valjevu, ul. Karađorđeva 48, Valjevo, Republika Srbija, naučni saradnik, e-mail: dr.gaga.obrad@gmail.com

[3] Redovni profesor, Fakultet zdravstvenih i poslovnih studija Valjevo, Univerzitet Singidunum Beograd, vmarkovic@singidunum.ac.rs

1. Uvod

Jedno od osnovnih načela prekršajnog postupka, prema odredbama Zakona o prekršajima (dalje: ZOP 2013), jeste načelo ekonomičnosti, prema kojem je sud dužan da postupak sprovede bez odugovlačenja, ali tako da to ne bude na štetu donošenja pravilne i zakonite odluke. U skladu sa opštim promenama i reformskim procesima, koji se danas dešavaju u sferi sudstva, nameće se potreba za uvođenjem savremenih upravljačkih sistema koji obezbeđuju unapređenje procesa planiranja, praćenja, kontrole i upravljanja sudskim predmetima (Anthony & Govindarajan, 2014).

Ubrzani razvoj informacionih i komunikacionih tehnologija (dalje: IKT) i primena „pametnih rešenja" koja ove tehnologije pružaju po različitim aspektima u svim sistemima, uključujući i pravosuđe, rezultirali su tokom 2010. godine najpre donošenjem Strategije razvoja informacionog društva u Republici Srbiji do 2020. godine (dalje: SRID 2010–2020) a potom i Nacionalne strategije reforme pravosuđa za period 2013–2018. godine (dalje: NSRP 2013–2018), kao i Strategije razvoja pravosuđa za period 2020–2025. godine (dalje: SRP 2020–2025). Međutim, SRP 2020–2025 konstatuje da, i pored značajnog napretka u oblasti informacionih tehnologija, u okviru pravosuđa sudovi još uvek nemaju standardizovane i kompatibilne sisteme za automatsko vođenje predmeta (dalje: AVP). Informacioni sistem za upravljanje predmetima, koji je u upotrebi u najvećem broju sudova, još uvek nije centralizovan, što onemogućava efektivno statističko i analitičko praćenje rezultata rada i savremeno upravljanje sistemom pravosuđa. Kao strateške prioritete, SRP 2020–2025, između ostalih, navodi i unapređenje i razvijanje IT sistema u pravosuđu sa ciljem postizanja modernog e-pravosuđa.

Dosadašnja iskustva ukazuju na nedovoljno razvijenu primenu konkretnih metoda analize efektivnosti, efikasnosti i kvaliteta obrade sudskih predmeta. Pravovremenost i kvalitet pravde međusobno se ne isključuju, niti u teoriji, niti u praksi. Istraživanja ukazuju da je ekspeditivno rešavanje krivičnih predmeta povezano sa sudskim sistemima u kojima uslovi takođe promovišu efikasno zastupanje. S obzirom da efektivno zastupanje leži u osnovi dužnog postupka i jednake zaštite zakona, ono je integralni aspekt šireg koncepta kvalitetne obrade pred-

meta. Razvijen je analitički okvir da pokaže kako koncept efikasnosti utiče na vrednosti blagovremenosti i kvaliteta. Blagovremenost se meri na direktan način: brojem dana od podizanja optužnice ili donošenja do konačnog rešenja. Nove procedure, informacione i komunikacione tehnologije, inovativni načini za rešavanje sporova, rokova, upravljanje kvalitetom i efikasno upravljanje sudskom praksom samo su neki primeri akcija koje se mogu preduzeti da bi se poboljšalo funkcionisanje sudova koji su institucionalni kamen temeljac pravosudnog sistema (Fabri, 2017).

Međutim, daleko je manje prihvaćeno kako se meri kvalitet obrade predmeta. Verujemo da je osnovni izazov sa kojim se sudovi suočavaju upravo povećanje efikasnosti, kao načina za poboljšanje performansi sistema u celosti (Ostrom & Hanson, 2000). Sa ciljem kreiranja dokumenata, procedura i izveštaja koji podržavaju operativne i strateške planove neophodno je obezbediti informacionu podršku za upravljanje sudskim predmetima, kao i primenu savremenih koncepata za definisanje performansi, a zatim i analizu postignutih rezultata procesa i sistema.

Istraživanja pokazuju da u većini sudova, u svetu, a i kod nas, takva merila performansi nisu prisutna ili se ne sprovode, a kao strategijski važan kontrolno-upravljački problem navodi se nepostojanje integrisanog informacionog sistema za upravljanje sudskim predmetima, koji bi omogućio efektivno upravljanje procesima i uspostavljanje jedinstvenog kvantitativnog i sveobuhvatnog sistema merenja indikatora performansi sistema upravljanja predmetima u sudovima, konkretno prekršajnim sudovima.

Dokument *Globalne mere rada suda* (dalje: Globalne mere 3 – Court excellence, 2020) u određenoj meri popunjava ovu prazninu. Ovo je treće izdanje *Globalnih mera*, koje je, kao i prethodna dva izdanja (2012. i 2018. godine), deo Međunarodnog okvira za sudsku izvrsnost (dalje: IFCE – *International Framework for Court Excellence*).

Kao sastavni deo IFCE-a, Globalne mere 3 u velikoj meri proširuju pokrivenost prethodna dva izdanja, kada su u pitanju pretpostavke, opšti koncepti, principi i ideje merenja i upravljanja performansama (dalje: PMM – *Performance Measurement and Management*), uključujući njegove osnovne vrednosti, principe i koncepte, kao i njegove izazove, prilike i rizike.

Uporedo sa tendencijom za reformisanje pravosuđa, u razvijenim zemljama je tokom protekle dve decenije prihvaćena metoda usmerena

na rezultate tako što se efektivno merenje učinka fokusira na ishode. U skladu sa tim, *Globalne mere* definišu sistem od jedanaest osnovnih merila performansi koje, pored merila inputa, uključuju i merljive indikatore efekata (rezultata). Pojavljuju se u sva tri izdanja, ali su u ovom – poslednjem izdanju u značajnoj meri ažurirani i prošireni.

Ipak, praktični saveti i specifične smernice za merenje i upravljanje performansama (PMM) za sudove i sudske sisteme su i danas veoma ograničeni za razliku od velikog broja komentara vezanih za prepreke i izazove za njihovu implementaciju.

U radu su prikazane osnovne karakteristike procesnog pristupa i upravljanja procesima sistema prekršajnih sudova u Srbiji i dat je predlog modela za definisanje i ocenu performansi karakterističnih procesa korišćenjem metode kritičnih faktora uspeha (dalje: CFS-*Critical Success Faktors*), a koji je u skladu sa definisanim Globalnim merama u okviru IFCE-a. Takođe, korišćeni su i rezultati Funkcionalne analize pravosuđa u Srbiji iz 2014. godine (dalje: FAPS), u kojoj su procene zasnovane na analizi kvantitativnih i kvalitativnih podataka, uključujući statističke analize u upravljanju predmetima, podatke o finansijskim i ljudskim resursima, anketu o percepciji pravosuđa, anketu o dostupnosti pravde, procesne mape, pravne analize, analizu postojećih istraživanja i dr., a preporuke su osmišljene tako da mogu da budu sprovedene i specifične sa ciljem usklađivanja učinka srpskog pravosuđa sa učinkom zemalja članica EU.

Cilj rada je da se ukaže na značaj kontrole, monitoringa, unapređenja i mendžmenta procesima u oblasti prekršajnih sudova, kao osnove za merenje uspeha i analizu kvaliteta i efektivnosti procesa koje treba unaprediti.

Osnovni doprinos rada jeste definisanje okvira opšteprimenljivih indikatora performansi, kao pomoći i podrške procesnim radnjama prekršajnih sudova u rešavanju problema vezanih za efikasno savladavanje povećanog priliva predmeta, efektivnu naplatu novčanih kazni i troškova, smanjenje zastarelosti predmeta i ispunjenje norme rešavanja predmeta po sudijama, u skladu sa zakonima i sudskim poslovnikom.

2. Informaciona podrška procesima u sudovima

Primena savremenih informaciono-komunikacionih tehnologija (dalje: ICT – *Information and communication technologies)*, standardizovanih softvera i centralizovanih sistema za vođenje predmeta u sudovima i tužilaštvima neophodna je da bi se realizovala ključna načela delotvornog pravosuđa: nezavisnost, nepristrasnost, odgovornost, stručnost, efikasnost i transparentnost.

Značaj ICT ogleda se i u činjenici da se među sedam vodećih inicijativa ekonomske strategije *Evropa 2020* nalazi i *Digitalna agenda za Evropu* (European Commission, 2010). Sa druge strane, i Akcioni plan za Poglavlje 23, revidiran od strane Ministarstva pravde Republike Srbije u julu 2020. godine (dalje: AP 23), pokazao je da primena alata i mehanizama e-pravosuđa prevazilazi njegovu ulogu u unapređenju efikasnosti i predstavlja horizontalni mehanizam koji se prožima kroz neke od ključnih principa organizacije i reforme pravosuđa.

Pravosudni informacioni sistem (dalje: PIS) omogućio je elektronsku komunikaciju između, pre svih, sudova i organa čiji se podaci traže u različitim vrstama sudskih postupaka (npr. matične knjige, Republički fond za penzijsko i invalidsko osiguranje, Ministarstvo unutrašnjih poslova, Centralni registar obaveznog socijalnog osiguranja, Republički geodetski zavod).

Ipak, činjenica da svi sudovi u Srbiji ne koriste jedinstvenu aplikaciju za upravljanje predmetima niti imaju mogućnost međusobnog povezivanja predstavlja značajan izazov u izradi pouzdanih statističkih izveštaja i u njihovoj analizi na koju bi trebalo da se oslanjaju donosioci odluka u sektoru pravosuđa prilikom planiranja i značajno otežava prikupljanje i obradu podataka za domaće potrebe, potrebe izveštavanja prema EU i drugim organizacijama prema kojima takva obaveza postoji.

U delu *Efikasnost pravosuđa* u okviru SRP 2020–2025 posebno se ukazuje na potrebu za daljim unapređenjem e-servisa unutar pravosuđa čime bi se obezbedili: pristup pravdi, povećanje kvaliteta postupanja i odlučivanja, efikasno upravljanje predmetima, statističko praćenje i izveštavanje o radu pravosuđa i transparentnost rada pravosudnih organa.

Prekršajni sudovi u Srbiji koriste informacioni sistem tzv. SIPRES (dalje SIPRES – Sistem za vođenje predmeta u prekršajnim sudovima),

aplikaciju koja je uvedena 1. januara 2016. godine, koja, međutim, ne proizvodi sve statističke izveštaje potrebne za planiranje tako da veliki broj prekršajnih sudova, uključujući i Prekršajni apelacioni sud, još uvek vodi dvostruke evidencije – manuelne (u papiru) i elektronske.

SIPRES je prvi sistem u srpskom pravosuđu koji je povezan sa ostalim organima u okviru mreže pravosudnih organa i mreže Uprave za zajedničke poslove republičkih organa (dalje: UZPRO). To su zasad: Uprava za trezor, Uprava saobraćajne policije MUP Srbije i Centralni registar obaveznog socijalnog osiguranja.

U okviru SIPRES-a je i Registar neplaćenih novčanih kazni i drugih novčanih iznosa. Povezivanjem sa Ministarstvom unutrašnjih poslova Republike Srbije omogućena je elektronska dostava desetina hiljada prekršajnih naloga sudovima. Od početka primene zakona samo Uprava saobraćajne policije, kao integralni deo MUP-a, izdala je više od milion prekšajnih naloga, a dobrovoljno plaćanje kazni dostiglo je rekordan nivo od 74%, što je više nego duplo u odnosu na 30% koliko je iznosio procenat dobrovoljnog plaćanja mandatnih kazni u skladu sa prethodnim zakonom (OzonPress, 2016).

SIPRES je aktivan sistem koji obuhvata različite funkcije. U njega je implementirana svaka procesna radnja u sudu, te svaki zaposleni deo svog referata obavlja direktno u programu; on sadrži funkcije poput kompletnog vođenja elektronskog registra predmeta, odluka, sudija, zatim rešavanje predmeta, ekspedicije i arhive, kao i funkcije formiranja kalendara i podsetnika koji upozoravaju korisnike na važne predstojeće aktivnosti.

Kako bi se utvrdio kvalitativni stepen rezultata implementacije informacionog sistema SIPRES, u radu je prezentovan pristup u modeliranju kvaliteta i efektivnosti sa aspekta definisanih kriterijuma koji se odnose na inpute-e i njihove transformacije u output-e.

Za potrebe definisanja modela efektivnosti i kvaliteta u radu su korišćeni rezultati dizajniranja konceptualnog modela informacionog sistema na primeru Prekršajnog suda u Valjevu, respektujući sve faze životnog ciklusa razvoja informacionog sistema (dalje: SDLC-*System Development Life Cycle*) (Bocij et al., 2019; Avison & Fitzgerald, 2010).

Prekršajni sud u Valjevu osnovan je za teritoriju opština Lajkovac, Ljig, Mionica, Osečina, Ub i za grad Valjevo sa odeljenjima Suda u Laj-

kovcu, Ljigu, Mionici, Osečini i Ubu. Otpočeo je sa radom 1. 1. 2010. godine u skladu sa Zakonom o sedištima i područjima sudova i javnih tužilaštava (2013) i Zakonom o uređenju sudova (2008–2022).

U skladu sa primenjenim procesnim pristupom (Becker, 2011), sa aspekta podrške menadžmentu na operativnom, taktičkom i strategijskom nivou, istraživanje je obuhvatilo: definisanje performansi ključnih karakteristika procesa, evidentiranje podataka značajnih za praćenje karakteristika ključnih procesa (vreme, odstupanja, kvalitet), identifikaciju objekta merenja, dodavanje novih atributa objekata merenja značajnih za kontrolu i upravljanje, identifikaciju odstupanja od zadatih vrednosti karakteristika objekata merenja i promenu konfiguracije sistema u zavisnosti od promena ključnih procesa (dodavanje, brisanje i/ili promena strukture aktivnosti i redosleda izvršavanja aktivnosti), odnosno promena uloga i odgovornosti korisnika sistema.

U okviru procesno orijentisane informacione arhitekture navedenog modela informacionog sistema koji, između ostalog, omogućava definisanje upravljačkih aktivnosti na nivou poslovnih procesa, korišćene su metode upravljanja procesima, kao osnova za kontinuirano unapređenje ključnih procesa sistema među kojima se izdvajaju Upravljanje pomoću ciljeva (dalje: MBO - *Management By Objectives*), Planiranje, Realizacija, Kontrola, Unapređenje (dalje: PDCA - *Plan Do Check Act*), Statistička kontrola procesa (dalje: SPC - *Statistical Process Control*) i Six sigma.

3. Model kvaliteta i efektivnosti sistema za upravljanje procesima prekršajnih sudova

Zahtevi standarda za kvalitet procesa u okviru informacionog sistema prekršajnih sudova definisani su na osnovu ključnih procesa, zahteva korisnika na svim nivoima odlučivanja, raspodele odgovornosti menadžmenta, kritičnih faktora uspeha (dalje: CFS – *Critical Success Factors*) i menadžmenta sudskim predmetima. Primena metodologije upravljanja poslovnim procesima (dalje: BPM – *Business Process Management*) i procesnog pristupa u sistemu menadžmenta kvalitetom (Jeston & Nelis, 2013) predstavlja jedan od značajnijih faktora uspeha upravljanja procesnim radnjama suda jer omogućava: definisanje ciljeva

ključnih procesa u odnosu na kritične faktore uspeha; analizu, definisanje i ispunjavanje zahteva korisnika; kontrolu realizacije procesa; kontinuirano praćenje i merenje rezultata performansi i efektivnosti procesa i iterativno unapređenje procesa zasnovanog na prihvatljivim merljivim indikatorima.

Pored kritičnih faktora uspeha koji su fokusirani na oblasti koje obezbeđuju realizaciju definisanih ciljeva, u cilju efikasnog upravljanja procesima definišu se i ključni indikatori performansi (dalje: KPI – *Key Performance Indicator)*, koji su definisani tako da mere vitalne procese i aktivnosti, odnosno kritične faktore uspeha, kao osnovne pokazatelje kvaliteta procesa i sistema za upravljanje sudskim predmetima, kao i za merenje učinka u pogledu ispunjavanja strateških i operativnih ciljeva (Neely et al., 2005). Oni pružaju kritične informacije, tokove kretanja informacija i generisane finansijske izveštaje menadžmentu prekršajnih sudova, neophodne za praćenje, kontrolu, merenje i unapređenje performansi informacionog sistema za vođenje pedmeta u prekršajnim sudovima, u skladu sa strateškim ciljevima (Kronz, 2006).

Analizirana je konkretna struktura indikatora performansi koja u skladu sa strategijskom piramidom odlučivanja predstavlja osnovu za merenje uspeha ostvarenja strategije i ciljeva sudskog procesa. Korišćeni su rezultati istraživanja u oblasti razvoja modela menadžmenta informacionog sistema na primeru Prekršajnog suda u Valjevu.

3.1. Identifikacija karakteristika ključnih procesa

Osnovna uloga upravljačke strukture sudova jeste donošenje efektivnih odluka iz čega proizilazi da kvalitet i efektivnost ciljeva unapređuje proces odlučivanja i omogućava efikasnije praćenje procesa vezanih za upravljanje sudskim predmetima. Određenost ciljeva pomaže u definisanju parametara za ocenu kvaliteta i rezultata procesa i omogućava upravljačkoj strukturi vrednovanje i poboljšanje u kritičnim aktivnostima sudskog procesa.

Za potrebe analize efektivnog strukturiranja i dizajniranja procesa, postupkom identifikacije i uspostavljanjem relacija između procesa izvršeno je mapiranje ključnih procesa, procesa praćenja i kontrole i definisana je mapa procesa sa akcentom na procese kontrole, praćenja,

merenja i unapređenja. Praćenje kvaliteta procesa podrazumeva praćenje efektivnosti i efikasnosti procesa na osnovu rezultata procesa, dok efektivnost procesa predstavlja sposobnost procesa da postigne željene rezultate.

Identifikacijom ključnih procesa definisane su osnovne funkcije i procesi, odnosno aktuelne funkcionalne oblasti sistema SIPRES, kao logične celine grupe aktivnosti od kojih zavisi ostvarivanje ciljeva sistema i to:

Obrada zahteva: podrazumeva sve procesne radnje prilikom prijema zahteva u sud, unos potrebnih generalija u skladu sa zakonom i sudskim poslovnikom, kako bi zahtev bio pravilno zaveden u skladu sa pravnom kvalifikacija zahteva itd.,

Formiranje predmeta: podrazumeva sve procesne radnje neophodne kako bi se predmet formirao u skladu sa zakonom i sudskim poslovnikom, klasifikovanje predmeta prema zakonu, kao i obradu svih učesnika postupka i pravne kvalifikacije predmeta, kako bi se predmet formirao u celini,

Obrada premeta: podrazumeva sve procesne radnje u predmetu, kako bi se predmet okončao, tj. kako bi se u predmetu donela odluka po kojoj bi se kasnije nastavilo izvršenje predmeta. Obuhvata konačno kreiranje predmeta, izbor sudija koji će postupati u istom, rešavanje predmeta, donošenje odluke, razvođenje predmeta i definisanje sankcija za lica ukoliko su ista osuđena,

Izvršenje predmeta: podrazumeva sve procesne radnje nakon donošenja odluke u predmetu, kako bi se predmet izvršio do kraja i konačno arhivirao. Obuhvata izvršenje novčane kazne, izvršenje ostalih sankcija i mera, kao što su kazneni poeni, zaštitne mere zabrane upravljanja motornim vozilom ili bilo koje druge zaštitne mere i, na kraju, arhiviranje predmeta.

Na osnovu ključnih ciljeva i uticaja na kvalitet sistema i zadovoljenje zainteresovanih strana, definisani su ciljevi karakterističnih procesa i mere uspeha na osnovu kojih je izvršena analiza na nivou procesa i na nivou aktivnosti.

Za identifikovane procese, koji su ključni za merenje kvaliteta i efektivnosti sistema, pored već analiziranih aspekta vezanih za procese upravljanja sudskim predmetima (odgovornost za proces, ulazi i izlazi iz procesa, veze između procesa, potrebni resursi), definisani su ciljevi

procesa, karakteristike i kriterijumi za merenje kvaliteta procesa. Kako je ispunjenje ciljeva sistema zavisno od realizacije ključnih procesa, definisane su osnovne karakteristike kvaliteta procesa, koje se odnose na: (1) efektivno planiranje i obradu zahteva, (2) obim i sveobuhvatnost primljenih i rešenih predmeta, (3) standarde za formiranje predmeta, (4) definisanje odluka, (5) izvršenje sankcija i (6) potpuno, blagovremeno, pouzdano, uporedivo, relevantno i dosledno izveštavanje i usklađenost sa primenljivim standardima, zakonima i propisima.

Tabela 1. Analiza efektivnosti procesa „Formiranje predmeta"

CILJEVI PROCESA	PROCES	AKTIVNOST
Efikasno formiranje predmeta Efikasna obrada učesnika u postupku Ravnomerna opterećenost po kompleksnosti predmeta	***Formiranje predmeta***	P 2.1.-Obrada podnosioca zahteva P 2.2 -Obrada okrivljenih P 2.3- Obrada svedoka P 2.4- Obrada branioca zastupnika P 2.5- Obrada veštaka
Kritični faktori uspeha	Definisanje principa zavodjenja predmeta po sudijama, i obezbedjivanje ravnomerne opterećenosti predmetima po broju, klasifikaconoj vrsti (težini predmeta), i blagovremeno određivanje vremenskog opsega rešavanja predmeta u cilju ravnomerne opterećenosti korisnika za preduzimanje radnje u predmetima.	
Rezultat procesa	Definisanje postupka evidencije podataka o OKRIVLJENOM sa svim potrebnim generalijma, efiksano iskorišćenje podataka iz prethodnog procesa obrade zahteva.	
Indikator (karakteristike) kvaliteta procesa	Odnos broja zavedenih predmeta u odnosu na broj obrađenih zahteva (%)	
Efekat koji se postiže ispunjenjem cilja	Obezbeđenje usklađenosti obrađenih zahteva i zavedenih predmeta; Jedinstven proces planiranja formiranja predmeta; Priprema početnih ograničenja; Efektivno upravljanje tokovima sudskog procesa; Kontrola obrade predmeta	

Polaznu osnovu za analizu kvaliteta i efektivnosti informacionog sistema SIPRES i identifikovanje procesa koje treba unaprediti čine: definisane odgovornosti i vlasništva nad procesima, identifikovani ključni faktori uspeha i uspostavljanje adekvatnog sistema merenja kvaliteta i efektivnosti procesa. Realizacija ove aktivnosti ima za cilj da kroz identifikovane ključne faktore uspeha procesa i definisane ciljeve za svaki proces, definiše rezultate procesa, odgovarajuće indikatore kvaliteta procesa i efekte koji se određenim procesom postižu. Predstavljen je primer analize procesa – *Formiranje predmeta* (Tabela 1). Za svaki proces i svaku aktivnost formulisani su ciljni standardi efektivnosti, odnosno definisani su zahtevi performansi procesa.

3.2. Model analize indikatora performansi i ocene faktora uspeha

Imajući u vidu logiku funkcionisanja informacionog sistema za vođenje predmeta u prekršajnim sudovima, koji podrazumeva planiranje, obezbeđenje resursa za realizaciju plana, realizaciju plana, proveru efektivnosti i efikasnosti realizacije plana i sprovođenje mera poboljšanja u narednom ciklusu, identifikovanjem kriterijuma za merenje performansi procesa (Poister et al., 2015) definisani su procesi upravljanja, praćenja i merenja, njihove interakcije, kao i procesi kontrole i unapređenja sistema neophodni za sistem menadžmenta kvalitetom.

Tabela 2. Indikatori performansi sistema za upravljanje sudskim predmetima

INDIKATORI PERFORMANSI SISTEMA	
IK1	Odstupanje obrađenih zahteva u odnosu na primljene zahteve (%) **Dimenzije koje se ocenjuju**: Razlika između primljenih i obrađenih zahteva
IK2	Ukupan broj klasifikovanih zahteva u odnosu na obradjene zahteve. **Dimenzije koje se ocenjuju**: Razlika između obrađenih i klasifikovanih zahteva
IK3	Odnos broja zavedenih predmeta u odnosu na broj obrađenih zahteva (%) **Dimenzije koje se ocenjuju**: Razlika između zavedenih i obradjenh zahteva
IK4	Ukupan broj rešenih predmeta u odnosu na broj zavedenih predmeta **Dimenzije koje se ocenjuju**: Razlika između ukupnog broja rešenih predmeta (pokrenutih postupaka) u odnosu na ukupan broj zavedenh predmeta u toku godine (%)
IK5	Ukupan broj potvrđenih odluka u odnosu na ukupan broj rešenih predmeta-kvalitet **Dimenzije koje se ocenjuju**: Razlika između ukupnog broja potvrđenih odluka u odnosu na ukupan broj ožalbenih predmeta.
IK6	Odnos broja potvrđenih odluka u odnosu na ukupan broj rešenih predmeta-kvalitet **Dimenzije koje se ocenjuju**: Razlika između ukupnog broja potvrđenih odluka u odnosu na ukupan broj ožalbenih predmeta.
IK7	Ukupan broj naplaćenih kazni u odnosu na ukupan broj izrečenih kazni **Dimenzije koje se ocenjuju**: Razlika između ukupnog broja naplaćenih novcanih kazni u odnosu na ukupan broj izrečenih novcanih kazni.

Definisani ključni indikatori performansi, odnosno pokazatelji uspešnosti sistema za upravljanje sudskim predmetima (Tabela 2) predstavljaju integrisane ocene performansi određene grupe indikatora.

U ovom delu korišćena je osnovna sintagma metodologije Six Sigma, koja podrazumeva *definisanje, merenje, analizu, kontrolu procesa i poboljšanje.* Osnovna namena Six sigma modela u okviru metrike jeste merenje varijabilnosti procesa koje služi za merenje nivoa kvaliteta i predstavlja standard koji ukazuje na nivo kontrole nad bilo kojim procesom u sistemu (5). Primenom ove metodologije, koja se u osnovi bazira na SPC, mogu se pronaći i ukloniti uzroci varijacije u procesima i razviti alternative koje će dovesti do smanjenja varijacija (Goetsch & Davis, 2013).

Tabela 3.Analiza indikatora performansi (pokazatelji uspeha) procesa „Obrada zahteva"

OBRADA ZAHTEVA	
Ciljevi procesa	-Efikasna obrada zahteva -Obrada zahteva u skladu sa pravilima rada suda i sudskim poslovnikom -Ravnomerna opterećenost po kompleksnosti zahteva -Efikasno klasifikovanje zahteva
Kritični faktori uspeha	-Obezbedjenje blagovremene i pravilne obrada zahteva u zakonskim okvirima i u skladu sa sudskim poslovnikom -Definisanje dinamike prijema i evidentiranja u skladu sa prilivom zahteva -Definisanje sistema pravilnog klasifikovanja zahteva u svrhu ravnomernog opterećenja tezinom vrste postupka
Rezultati realizacije procesa	- Prijemna knjiga zahetva - Registar primljenih zahteva - Registar klasifikacija zahteva
Efekti realizacije ciljeva	-Efektivnost sistema da evidetira veliki priiv zahetva -Sposobnost sistema da izvrsi klasifkaciju zahteva u odnosu na veliki broj obrađenih zahetva
Inikatori performansi procesa: Referentne vrednosti	**Iindikator 1, Indikator 2:** < 1% -Zadovoljava u potpunosti 1-5 % - Zadovoljava 5-10% - Delimično zadovoljava >10% - Ne zadovoljava

Definisanje, kao prva faza Six Sigma metodologije (McCarty, 2005), podrazumeva mapiranje, odnosno identifikaciju ključnih procesa, čiji se efektivnost i efikasnost prate. Pored toga, definišu se i ključni faktori procesa koji će biti mereni, analizirani, kontrolisani i poboljšani. Merenje podrazumeva kvantifikovano odstupanje od indikatora performansi tako što se definišu merila performansi, odnosno kvaliteta. Za svako merilo definiše se standardna vrednost, kako bi se ustanovilo odstupanje u skladu sa definisanim ciljevima procesa.

Standardi se utvrđuju na osnovu usvojenog sistema merenja (indikatora, metodologije merenja i drugo). U fazi analize identifikuju se input varijable koje mogu da utiču na kvalitet i kvantitet outputa u zavisnosti od mera performansi. Primenom statističkih metoda proveravaju se i testiraju određene pretpostavke o faktorima koji su kritični za ishod. Kontrola procesa podrazumeva monitoring procesa preko definisanog mernog kontrolnog sistema indikatora performansi.

U skladu sa navedenim, model za merenje performansi sistema za upravljanje predmetima u prekršajnim sudovima definisan je na osnovu karakteristika koje sa aspekta kritičnih faktora uspeha, ključnih indikatora kvaliteta procesa, indikatora efektivnosti ciljeva i očekivanih rezultata i efekata realizacije procesa imaju odlučujuću ulogu u obezbeđenju efektivnosti i kvaliteta razvijenog menadžmenta informacionog sistema. Kao primer, prikazana je analiza indikatora performansi (pokazatelji uspeha) za procese „Obrada zahteva" (Tabela 3) i „Obrada predmeta" (Tabela 4).

Tabela 4. Analiza indikatora performansi (pokazatelji uspeha) procesa „Obrada predmeta"

OBRADA PREDMETA	
Ciljevi procesa	- Efikasna evidencija - Zavođenje predmeta - Jasno definisanje pravila za ispunjenje norme - Smanjena zastarelost - Efikasno rešavanje predmeta - Efikasno Razvođenje predmeta
Kritični faktori uspeha	-Definisanje sistema automatskog dodeljivanja brojeva predmeta i automatsko dodeljivanja veća sudija prema predmetu -Odredjivanje jedinstvene kaznene politike u skladu sa zakonskim okvirima i normama, i jednstvenih procesnih radnji u odredjenim vremenskim okvirima
Rezultati realizacije procesa	-Spisak predmeta – UPISNIK -Klasifikacija odluka po predmetima -Registar odluka
Efekti realizacije ciljeva	-Efiksano iskorićenje podataka iz prethodnog prijema zahteva, -Efikasno izvodjenje dokaza u postupku -Efektivno rešavanje predmeta i kontrola pravilnog razvodjenja istih
Indikatori performansi procesa: Referentne vrednosti	**Indikator 4** <10%-Zadovoljava u potpunosti 10-20%- Zadovoljava 20-30%-Delimično zadovoljava >30%-Ne zadovoljava

3.3. **Rezultati merenja performansi i potrebe za unapređenje procesa**

Primenom deskriptivne statistike, prikupljeni su i organizovani podaci na posmatranom uzorku, koji omogućavaju analizu trenutnog stanja procesa i uočavanje mogućnosti za poboljšanje, a inferencijalnom statistikom omogućeno je zaključivanje o budućim kretanjima najvažnijih parametara procesa.

Za merenje i ocenu performansi korišćene su matematičke metode standardne devijacije i varijanse. Za analizu rezultata istraživanja, kao uzorak, izabrana su tri odeljenja Prekršajnog suda u Valjevu i to Mionica, Lajkovac i Ljig za period od tri uzastopne godine, odnosno od 2017. do 2019. godine. Za istraživanje pokazatelja uspešnosti projektovanog sistema izabrani su indikatori IK1 i IK4, čijom se statističkom obradom, analizom i dobijenim rezultatima može ukazati na kvalitet i efektivnost procesa ključnih procesa IS SIPRES u odnosu na trenutno stanje. U Tabeli 5. prikazan je model za merenje indikatora performansi, tačnije za ocenu performansi za IK1, a u Tabeli 6. za IK4.

Tabela 5. Ocena performansi za IK-1 – ukupno obrađenih zahteva u odnosu na broj primljenih zahteva

Prekršajni sud u Valjevu - odeljenje suda u Mionici			
Godina	2017	2018	2019
Broj primljenih zahteva	1258	1413	1322
Broj obrađenih zahteva	1247	1409	1314
Razlika	9 (<1%)	5 (<1%)	8 (<1%)
Ocena	**4**		
Prekršajni sud u Valjevu - odeljenje suda u Lajkovcu			
Godina	2017	2018	2019
Broj primljenih zahteva	1478	1889	1642
Broj obrađenih zahteva	1471	1878	1634
Razlika	7 (<1%)	11 (<1%)	8 (<1%)
Ocena	**4**		
Prekršajni sud u Valjevu - odeljenje suda u Ljigu			
Godina	2017	2018	2019
Broj primljenih zahteva	2896	3155	2754
Broj obrađenih zahteva	2881	3139	2750
Razlika	15 (<1%)	16 (<1%)	4 (<1%)
Ocena	**4**		

Izvor: Prekršajni sud u Valjevu

Tabela 6. Ocena performansi za IK4 – ukupno rešenih predmeta u odnosu na ukupan broj zavedenih predmeta

Prekršajni sud u Valjevu - odeljenje suda u Mionici			
Godina	2017	2018	2019
Broj zavedenih predemeta	1245	1408	1313
Broj rešenih predemeta	1007	1125	1122
Razlika	238 (10 - 20%)	283 (10 - 20%)	191 (10 - 20%)
Ocena	**3**		
Prekršajni sud u Valjevu - odeljenje suda u Lajkovcu			
Godina	2017	2018	2019
Broj zavedenih predmeta	1468	1876	1633
Broj rešenih predmeta	1180	1515	1359
Razlika	288 (10 - 20%)	361 (10 - 20%)	274 (10 - 20%)
Ocena	**3**		
Prekršajni sud u Valjevu - odeljenje suda u Ljigu			
Godina	2017	2018	2019
Broj zavedenih predmeta	2879	3135	2747
Broj rešenih predmeta	2308	2607	2207
Razlika	571 (10 - 20%)	528 (10 - 20%)	540 (10 - 20%)
Ocena	**3**		

Izvor: Prekršajni sud u Valjevu

Na osnovu analiziranog indikatora IK1, utvrđuje se da je ukupna razlika između primljenih i obrađenih zahteva u sva tri navedena odeljenja Prekršajnog suda u Valjevu (Mionica, Lajkovac i Ljig) manja od 1% za sve tri analizirane godine (2017, 2018. i 2019. godina). Zaključujemo da je ocena performansi za ovaj indikator *četiri (4)*, što je ujedno najveća ocena za definisane indikatore performansi.

Na osnovu analiziranog indikatora IK4, utvrđuje se da je ukupna razlika između zavedenih predmeta i rešenih predmeta u sva tri navedena odeljenja Suda (Mionica, Lajkovac i Ljig) između 10% i 20% za sve tri analizirane godine (2017, 2018. i 2019. godinu). Zaključujemo da je ocena performansi za ovaj indikator tri (3), što znači da zadovoljava, ali ne u potpunosti, i zahteva definisanje mera i preduzimanje određenih aktivnosti za unapređenje procesa obrade predmeta, koji je ujedno i jedan od najvažnijih ključnih procesa sistema za upravljanje predmetima prekršajnih sudova.

Identifikacija mogućnosti za unapređenje ključnih procesa sistema za upravljanje predmetima u prekršajnim sudovima uključila je ana-

lizu performansi poslovnih procesa, kao i probleme koji se javljaju u određenim vremenskim ciklusima (proteklim ili narednim). Rangiranje potencijalnih unapređenja ključnih procesa utvrđuje se na osnovu mogućnosti procesa da se kroz promene u njegovom izvršenju realizuje željeni output (kvalitet).

Poboljšanje procesa, kao poslednja faza Six Sigma metode, ima značajnu ulogu u postupku unapređenja, jer se u ovoj fazi potvrđuju ključne varijable i kvantifikuju efekti/uticaji varijabli na ishod/rezultat, odnosno kvalitet outputa. U fazi poboljšanja iznalaze se rešenja za eliminisanje odstupanja i sprovode se korektivne mere na osnovu neusaglašenosti dobijenih analizom indikatora performansi. Korektivne mere obuhvataju utvrđivanje problema, preduzimanje korektivne akcije i praćenje efekata korektivne akcije. Na primer, ukoliko se analizom dobijenih performansi ustanove neusaglašenosti između zavedenih i rešenih predmeta, kao što je i u našem primeru slučaj, neophodno je, u cilju unapređenja i poboljšanja performansi procesa i sistema u celini, sprovesti korektivne mere uvođenjem srednjoročnog planiranja i predviđanja na osnovu rezultata (učinka). Na taj način se obezbeđuje kvalitet rada prekršajnih sudova u svim prioritetnim oblastima.

Unapređenje uključuje sve promene, od malih izmena, pa sve do kompletnog reinženjeringa poslovnih procesa. Sadrži postupke: *Uspostavljanje polaznih osnova* (internih i eksternih) u opštem slučaju obuhvata sagledavanje tokova procesa, mera i dobijenih rezultata, ograničenja, organizacione strukture za podršku unapređenim poslovnim procesima i uloge i odgovornosti menadžmenta i *Dizajniranje i mapiranje novih procesa* koje uključuje reinženjering poslovnih procesa kako bi se ispunile polazne osnove i dobila unapređenja identifikovanih ključnih procesa.

4. **Zaključak**

Zahtevi za informacijama i merenjem kvaliteta i efektivnosti radi ostvarenja kontinuiranog unapređenja procesa fokusiranjem na ciljeve, procese i zahteve korisnika dominantna su pitanja u oblasti upravljanja sudskim predmetima. Pored potreba za razvojem i implementacijom integrisanog informacionog sistema za vođenje sudskih predmeta u prekršajnim sudovima (SIPRES), u skladu sa tendencijama i trendovi-

ma koji postoje u ovoj oblasti u zemljama Evropske unije i sveta, ukazuje se i potreba za uvođenjem sistema kvaliteta, efektivnosti, praćenja, kontrole i merenja ključnih procesa definisanjem modela performansi uspeha u skladu sa razvijenom metodologijom.

Primeri integralnog pristupa mogu se naći u američkim, holandskim i finskim sudovima, koji mogu primeniti modele sistema kvaliteta. I za prikupljanje podataka o „efikasnosti" i (sudskom) radu, kao i za (druge) aspekte kvaliteta važno je da je implementiran odgovarajući informacioni sistem za upravljanje sudom (Albers, 2009).

U radu su prezentovani rezultati istraživanja vezani za kvalitet i efektivnost, usmereni na upravljanje procesima, merenje realizacije ciljeva, kontrolu rezultata procesa, praćenje neophodnih standarda i obezbeđenje osnove za kontinuirano poboljšanje i unapređenje procesa formiranja, zavođenja, izvršenja i kontrole sudskih predmeta u okviru prekršajnih sudova u Republici Srbiji na primeru tri odeljenja Prekršajnog suda u Valjevu.

Model performansi i rezultati njegove primene definisan je kao podrška menadžmentu u dijagnostici stanja predmeta, rešavanju problema vezanih za efikasno rešavanje povećanog priliva predmeta, efikasnu naplatu novčanih kazni i troškova, kao i efektivno odlučivanje u cilju unapređenja kvaliteta rada prekršajnih sudova, u skladu sa zakonom i sudskim poslovnikom. Razvijeni su instrumenti za monitoring i ocenjivanje uspostavljanjem jedinstvenog kvantitativnog i sveobuhvatnog sistema merenja indikatora performansi sistema upravljanja predmetima u sudovima, konkretno prekršajnim sudovima. Na ovaj način obezbeđena je primena standardnih propisa i sudskih procedura koje su u skladu sa međunarodnim normama kvaliteta, efektivnosti, efikasnosti, transparentnosti i odgovornosti u oblasti upravljanja procesima obrade i rešavanja predmeta prekršajnih sudova. Smatramo da bi podaci koji su navedeni u ovom radu mogli biti od značaja za sistem prekršajnog pravosuđa u Republici Srbiji u celosti.

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Biljana Tešić[1]
Dragan Obradović[2]
Velisav Marković[3]

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DEFINING PROCESS PERFORMANCE INDICATORS WITHIN THE INFORMATION SYSTEM OF MISDEMEANOR COURTS

Abstract: This paper will examine the importance of developing and implementing management control mechanisms that enable not only efficient process management, but also the establishment of a unique quantitative framework, intended for measuring the performance of the information system used by misdemeanor courts. This system was developed for the purposes of case management in misdemeanor proceedings in the Republic of Serbia. This paper aims to define a conceptual model of generally applicable performance indicators in reference to control, monitoring, measurement, evaluation, and analysis of the courts' achieved results in misdemeanors, which reflect the principles of efficiency and effectiveness in case processing. Implementation of the model potentially results in obtaining management support during misdemeanor proceedings, improving work efficiency relative to the increased influx of cases, collection of fines and costs, as well as decision-making, in an effort to improve the quality of misdemeanor courts' work, in accordance with the law and court rules of procedure.

Keywords: information system, key performance indicators, misdemeanor court, quality, process management

[1] Associate Professor, Faculty of Health, Legal and Business Studies Valjevo, Singidunum University Belgrade, btesic@singidunum.ac.rs

[2] Judge, Research Associate, Higher Court in Valjevo, Republic of Serbia, dr.gaga.obrad@gmail.com

[3] Full Professor, Faculty of Health, Legal and Business Studies Valjevo, Singidunum University Belgrade, vmarkovic@singidunum.ac.rs

1. Introduction

According to the provisions of the Law on Misdemeanors (2013), one of the basic principles of infringement procedure is the principle of economy, by which the court is obliged to carry out the procedure without delay, but in a manner that will not detriment the making of an appropriate legal decision. Consistent with the general changes and reform processes that take place today in today's judiciary, appeared the need to introduce modern management systems that ensure the improvement of planning, monitoring, controlling, and managing court proceedings. (Anthony & Govindarajan, 2014).

The accelerated development of information and communication technologies (hereinafter: ICT), along with the application of "smart solutions" that these technologies provide in various aspects and systems, including the judiciary, resulted in the Republic of Serbia adopting the *Information Society Development Strategy* (2010–2020), followed by the *National Justice Reform Strategy* (2013–2018), and the *Judiciary Development Strategy* (hereinafter: JDS), adopted from 2020 to 2025. The JDS states that despite significant progress in the field of information technology, courts still lack standardized and compatible automated case management software within the judiciary. The case management information system used in most courts is still not centralized, which prevents effective statistical and analytical monitoring of work results, and contemporary justice system management. Among other objectives, the JDS lists the improvement and development of the judiciary's IT systems as strategic priorities, with the aim of achieving modern e-justice.

Previous experiences point to an insufficiently developed implementation of specific methods that analyze the effectiveness, efficiency, and quality of case processing. Timeliness and the quality of justice are not mutually exclusive, neither in theory nor in practice. Research indicates that efficient resolution of criminal proceedings is associated with court systems in which the circumstances support effective representation. Given that effective representation is the basis of due process and equal protection of the law, it is an integral aspect of the broader concept of quality case processing. An analytical framework was developed

to show how the concept of efficiency affects the values of timeliness and quality. Timeliness is measured directly, by calculating the number of days from the indictment, or the adoption of the final decision. New procedures, ICT, innovative ways to resolve disputes, deadlines, quality management, and efficient judicial practice management are just some examples of actions that can be taken to improve the functioning of courts, which are the institutional cornerstone of the judicial system (Fabri, 2017).

However, methods that measure case processing quality are far less than accepted. According to Ostrom & Hanson (2000), the main challenge that courts face is increasing their efficiency as a means to improve the performance of the system as a whole. To form documents, procedures, and reports that enable operational and strategic plans, it is necessary to provide an adequate case management information system, as well as to implement modern performance-defining concepts, aimed towards analyzing the achieved results of processes and systems.

Research shows that most courts do not implement such performance measures, and the lack of an integrated court management information system is seen as a strategically important control and management problem, as one would enable effective process management, as well as the establishment of a unique quantitative and comprehensive system, formed for the purpose of measuring the case management system's performance indicators, specifically in misdemeanor courts.

The document *Global Measures of Court Performance* (hereinafter: *Global Measures 3*) fills this gap to a certain extent. Accompanying two previous editions (2012 and 2018), *Global Measures 3* (2020) is part of the International Framework for Court Excellence (hereinafter: IFCE).

As an integral part of the IFCE, *Global Measures 3* greatly expands the previous two editions' coverage when it comes to assumptions, general concepts, principles, ideas, and core values of performance measurement and management (hereinafter: PMM), including challenges, opportunities, and risks.

Along with the tendency to reform the judiciary, the result-oriented method has been adopted in developed countries during the past two decades, whereby effective performance measurement focuses on

results. Accordingly, the *Global Measures* define a system of eleven basic performance measures which, in addition to input measures, also include measurable indicators of effects (results). These appear in all three editions, but they have been significantly updated and expanded in the latest edition.

However, practical advice and PMM-specific guidelines for courts and court systems are very limited even today, contrary to numerous comments regarding obstacles and challenges to their implementation.

This paper studies the basic characteristics of Serbia's misdemeanor court system's process approach and process management. Furthermore, the paper provides a model for defining and evaluating the performance of characteristic processes using the Critical Success Factor method (hereinafter: CSF), which is consistent with the *Global Measures* defined within the framework of IFCE. The results of the Serbia Judicial Functional Review (2014) were used as well. The review's assessments were based on quantitative and qualitative analysis, including statistical analysis in case management, data on financial and human resources, judiciary perception survey, access to justice survey, process maps, legal analyses, existing research analysis, etc. The models presented in this paper are designed so that they can be implemented and modified, with the intention of coordinating the Serbian judiciary's performance with the performance of the European Union member states.

This paper aims to point out the importance of control, monitoring, improvement, and management of processes in the domain of misdemeanor courts, as a basis for analyzing performance, quality, and effectiveness of processes that require improvement.

This paper defines a framework of generally applicable performance indicators in accordance with laws and court rules, so as to facilitate procedural actions of misdemeanor courts in solving problems related to efficient handling of the increased case influx, effective collection of fines and costs, reducing the statute of limitations, and the judges' fulfillment of the resolved cases norm.

2. Information System for Judicial Process Management

When it comes to managing cases in courts and prosecutor's offices, the utilization of contemporary ICT, standardized software, and centralized systems is crucial in an effort to achieve the key principles of an effective judiciary: independence, impartiality, responsibility, expertise, efficiency, and transparency.

The importance of ICT is also reflected in the fact that the Digital Agenda for Europe is among the seven leading initiatives of the Europe 2020 economic strategy (European Commission, 2010). On the other hand, the Action Plan for Chapter 23, revised by Serbia's Ministry of Justice in July 2020, showed that the implementation of e-justice tools and mechanisms goes beyond improving efficiency, and represents a horizontal mechanism that pervades through some of the key principles of judicial organization and reform.

Primarily, the judicial information system enabled electronic communication between courts and authorities whose data is required in various types of court proceedings (e.g., civil registry, Republic Pension and Disability Insurance Fund, Ministry of Internal Affairs, Central Registry of Compulsory Social Insurance, Republic Geodetic Institute).

However, the fact that all courts in Serbia neither use a unique program for case management nor have the ability to interconnect, represents a significant challenge in constructing reliable statistical reports. Subsequently, this hinders the reports' analysis, which should be relied upon by the judicial sector's decision-makers when planning, and significantly complicates data collection and data processing for domestic requirements, reporting obligations towards the EU, and other organizations towards which such an obligation exists.

In the section *Efficiency of the Judiciary* within the JDS, the need for further improvement of e-services within the judiciary is particularly pointed out, as it would ensure: access to justice, an increase in the quality of proceedings and decision-making, efficient case management, statistical monitoring and reporting on the work of the judiciary, and transparency of the work of judicial bodies.

Misdemeanor courts in Serbia use a centralized software called SIPRES, a system for managing cases in misdemeanor courts, which was

introduced on January 1, 2016. However, SIPRES does not produce all the statistical reports necessary for planning. Consequently, a large number of misdemeanor courts, including the Misdemeanor Appellate Court, still keep double records – manual (on paper) and electronic.

SIPRES is the first system in the Serbian judiciary that is connected to other bodies within the judicial bodies network, as well as the network of Administration for Joint Services of the Republic Bodies, including: Treasury Administration, Traffic Police Administration, Ministry of Internal Affairs, and the Central Registry of Compulsory Social Insurance.

SIPRES also includes the Register of Unpaid Fines and Other Monetary Amounts. Connecting with the Ministry of Internal Affairs enabled the electronic delivery of tens of thousands of misdemeanor orders to the courts. Since the implementation of the law, the Traffic Police Administration, as an integral part of the Ministry of Internal Affairs, has issued more than a million search warrants. Moreover, the voluntary payment of fines has reached a record level of 74%, which is more than double compared to the 30% which was the voluntary payment percentage of imposed fines in accordance with the previous law (OzonPress, 2016).

SIPRES is an active system that includes various functions. Every procedural action in the court is implemented in the system, and every employee submits a part of their report directly into the program. SIPRES contains functions such as the complete electronic management of the case registry, decisions, judges, case resolutions, expeditions and archives, as well as functions meant for creating calendars and reminders that alert users to important upcoming activities.

In order to determine the qualitative results of the SIPRES software implementation, this paper presents an approach to quality and effectiveness modeling, from the aspect of defined criteria, related to inputs and their transformation into outputs.

For the purposes of defining the effectiveness and quality model, this paper references the results of designing a conceptual information system model, on the example of the Misdemeanor Court in Valjevo, respecting all phases of the system development life cycle (Bocij et al., 2019; Avison & Fitzgerald, 2010).

Besides the city of Valjevo, the Misdemeanor Court in Valjevo was established for the municipal territories of Lajkovac, Ljig, Mionica, Osečina, Ub, with divisions in Lajkovac, Ljig, Mionica, Osečina, and Ub. It started operating on January 1, 2010, per the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices (2013) and the Law on Organization of Courts (2008–2022).

Complying with the process approach (Becker, 2011), from the aspect of management support at operational, tactical, and strategic levels, the research focused on the following: defining the performance of key process characteristics, recording data important for the monitoring of key process characteristics (time, deviations, quality), identifying a quantitative variable, adding new quantitative attributes (important for control and management), identifying the standard deviation of quantitative variable characteristics, and changing the system's configuration in regards to the changes of key processes (adding, deleting and/or changing the activity structure and the order of activity execution), i.e., changing roles and responsibilities of system users.

Within the process-oriented information architecture of the previously mentioned information system model, the following process management methods were used as a basis for continuous improvement of the system's key processes: Management by Objectives, Planning, Implementation, Control, Improvement (PDCA – Plan-Do-Check-Act), Statistical Process Control, and Six Sigma. Among other things, the model enables the definition of management activities at the level of business processes.

3. Quality and Effectiveness Model of the Process Management System of Misdemeanor Courts

Standard requirements for process quality within the information system of misdemeanor courts are defined based on key processes, user requirements at all levels of decision-making, distribution of management responsibilities, CSFs, and case management. In a quality management system, the application of the Business Process Management methodology and the process approach is one of the most important factors in the successful management of procedural actions (Jeston &

Nelis, 2013), as it enables: defining the key process objectives in respect to CSFs; analysis, definition, and fulfillment of user requests; process implementation control; continuous monitoring and measurement of performance results and process effectiveness; iterative improvement of the process based on acceptable measurable indicators.

In addition to CSFs that are focused on areas which ensure the achievement of the defined objectives, in order to effectively manage processes, Key Performance Indicators are defined as a means of measuring vital processes and activities (CSFs), as basic indicators of process quality, case management system quality, as well as performance, in terms of meeting strategic and operational objectives (Neely et al., 2005). Key Performance Indicators provide essential information, information flows, and generated financial reports to the misdemeanor courts' management, all of which are necessary to monitor, control, measure, and improve the case management information system, as per strategic objectives (Kronz, 2006).

The analyzed structure of performance indicators represents the basis for measuring the performance of the strategy implementation and the fulfillment of the judicial process' objectives, consistent with the strategic decision-making pyramid. This paper references the results of the management information system model research, on the example of the Misdemeanor Court in Valjevo.

3.1. Identifying Key Process Characteristics

The basic role of the courts' management structure is to make effective decisions. Consequently, the quality and effectiveness of the objectives improve the decision-making process and enable more effective monitoring of the processes related to case management. Establishing the objectives helps to define the parameters for evaluating the quality and the results of the process, and enables the management structure to evaluate and improve the critical activities of the judicial process.

In order to analyze the effective structuring and designing of the process, key processes, as well as monitoring and control processes were mapped by way of identifying and establishing relationships between the said processes. Additionally, a process map was defined with

an emphasis on control, monitoring, measurement, and improvement processes. Monitoring the process quality implies monitoring the effectiveness and efficiency of the process based on process results, while process effectiveness represents the ability of the process to achieve the anticipated results.

By identifying key processes, basic functions and processes (the current functional areas of the SIPRES system) are defined as a logical unit of a group of activities which influence the achievement of the system's objectives, namely:

Petition Processing: includes all procedural actions when receiving a request in court, i.e., entering the necessary general information in accordance with the law and court rules, so that the petition is filed in respect to the legal qualification of the request, etc.,

Case Formation: includes all procedural actions necessary to form the case in accordance with the law and court rules, classification of the case according to the law, as well as the processing of all participants and the legal qualifications of the proceeding, in order to form the case as a whole,

Case Processing: includes all procedural actions necessary to enter a final decision in the case, according to which the enforcement would be continued later. It includes case formation, judge selection, case resolution, the adoption of a final decision, case disposition, and determining the sanctions for convicted individuals,

Enforcement: includes all procedural actions after a final decision has been entered, in order to close and archive the case. It includes fine enforcement, enforcement of other sanctions and measures, such as penalty points, security measures banning the driving of a motor vehicle, or any other protective measures, and archiving the case.

Based on key objectives, impact on system quality, and stakeholder satisfaction, the objectives of characteristic processes and performance measures were defined. Hence, an analysis was performed at the process level and at the activity level.

Process objectives, characteristics, and criteria for measuring process quality were defined for identified processes, which are vital when it comes to measuring the quality and effectiveness of the system, in addition to the previously analyzed aspects of case management pro-

cesses (process-related responsibilities, process inputs and outputs, connections between processes, required resources). As the fulfillment of system objectives depends on the implementation of key processes, the basic characteristics of process quality are defined. These characteristics relate to: (1) effective planning and processing of petitions, (2) volume and comprehensiveness of received and resolved cases, (3) standards for case formation, (4) definition of decisions, (5) enforcement of sanctions, (6) complete, timely, reliable, comparable, relevant and consistent reporting in compliance with applicable standards, laws, and regulations.

Table 1. Case Formation Process Effectiveness Analysis

PROCESS OBJECTIVES	PROCESS	ACTIVITY
Efficient case formation	***Case Formation***	P 2.1. – Applicants processing P 2.2. – Defendants processing
Efficient processing of the participants		P 2.3. – Witness processing
Equal workload distribution by case complexity		P 2.4. – Defense attorney processing P 2.5. – Expert witness processing
Critical Success Factors (CSI)	Defining the principle of filing cases and assigning them to judges; equal workload distribution by number and classification type (weight of the case); timely appointing the time range of resolving cases, to balance the users' workload for undertaking action.	
Process result	Defining the data filing procedure for the accused, including all necessary general information; efficient use of previously acquired petition processing data.	
Process quality characteristics	The ratio of the number of filed cases to the number of processed petitions (%).	
Effects achieved by objective accomplishment	Ensuring compliance of processed petitions and filed cases; a unique process of case formation planning; preparation of initial limitations; effective management of court proceedings; control of case processing.	

The basis for analyzing the quality and effectiveness of the SIPRES information system and identifying the processes that need to be improved include: defining the responsibilities and ownership of the processes, identifying key success factors, and establishing an adequate system for measuring the quality and effectiveness of the process. By identifying key success factors and defining the objectives for each process, the performance of this analysis aims to define process results, the corresponding indicators of process quality, and the effects achieved by a certain process. An example of process analysis, *Case Formation*, is presented in Table 1. Effectiveness target standards are formulated for each process and each activity, i.e., process performance requirements are defined.

3.2. Performance Indicators Analysis and Success Factors Evaluation Model

Bearing in mind the functioning of misdemeanor courts' case information system — which includes planning, providing resources for plan implementation, plan implementation, inspecting the effectiveness and efficiency of plan implementation, and introducing improvements in the next cycle — the processes of management, monitoring, measuring, their interactions, as well as the system's control and improvement processes, necessary for the quality management system, are defined by identifying criteria for measuring process performance (Poister et al., 2015).

Table 2. Case Management System Performance Indicators

SYSTEM PERFORMANCE INDICATORS	
	The ratio of petitions filed to petitions processed (%). **Evaluated dimensions**: The difference between the number of filed petitions and the number of processed petitions.
	The ratio of petitions processed to petitions classified. **Evaluated dimensions**: The difference between the number of processed petitions and the number of classified petitions.
	The ratio of petitions processed to cases filed (%). **Evaluated dimensions**: The difference between the number of processed petitions and the number of filed cases.
	The ratio of cases filed to cases resolved (%). **Evaluated dimensions**: The difference between the number of cases filed during the year and the number of resolved cases (initiated procedures).
	The ratio of decisions confirmed to cases resolved – quality. **Evaluated dimensions**: The difference between the number of confirmed decisions and the number of appealed cases.
	The ratio of fines imposed to fines collected. **Evaluated dimensions**: The difference between the number of imposed fines and the number of collected fines.

The defined key performance indicators, i.e., indicators of the case management system's performance (Table 2), represent integrated performance ratings of a certain group of indicators.

This part uses the basic syntax of the Six Sigma methodology, which entails *defining, measuring, analyzing, process control, and improvement*. The main purpose of the Six Sigma model within metrics is to measure process variability, which serves to further measure the level of quality. It represents a standard that indicates the level of control over any process in the system (5). By applying this methodology based on Statistical

Process Control, it is possible to locate and remove the process variation causes and develop alternatives that will lead to a variation reduction (Goetsch & Davis, 2013).

Table 3. Petition Processing Process Performance (Success) Indicators Analysis

PETITION PROCESSING	
Process objectives	– Efficient petition processing. – Petition processing in accordance with the court rules of procedure. – Equal workload distribution according to the complexity of the petition. – Efficient petition classification.
CSI	– Ensuring timely and proper petition processing, in accordance with the legal frameworks and court rules of procedure. – Defining the dynamics of reception and filing according to petition influx. – Defining the system of correct classification of petitions, in the purpose of evenly distributing the weight of the proceeding.
Process implementation results	– Book of filed petitions. – Filed petitions registry. – Petition classifications registry.
Effects achieved by objective accomplishment	– Effectiveness of the system's ability to record an influx of petitions. – The system's ability to classify the petition in relation an influx of processed petitions.
Process performance indicators: reference values	Indicator 1, Indicator 2: < 1% - Completely satisfactory 1-5 % - Satisfactory 5-10% - Partially satisfactory >10% - Not satisfactory

Defining, the first phase of the Six Sigma methodology (McCarty, 2005) involves mapping, i.e., key process identification, whose effectiveness and efficiency are monitored. In addition, defined key process factors will be measured, analyzed, controlled, and improved. Measuring implies a quantified deviation from performance indicators by defining performance criteria, i.e., quality. A standard value is defined for each criterion, so as to establish the deviation per the defined process objectives.

Standards are determined based on the adopted measurement system (indicators, measurement methodology, etc.). Identification of input variables that can affect output quality and quantity (depending on performance measures) occurs in the analysis phase. Certain assumptions about factors that are critical to the result are examined and tested by applying statistical methods. Process control implies process monitoring through a defined measurement control system of performance indicators.

According to the above, the model for measuring the misdemeanor courts' case management system's performance is defined based on the characteristics that have a decisive role in ensuring the effectiveness and the quality of the developed information system's management, from the aspect of CSFs, key process quality indicators, objective effectiveness and expected results indicators, along with process implementation effects. As an example, the analysis of performance indicators for the *Petition Processing* process (Table 3) and the *Case Processing* process (Table 4) is presented.

Table 4. Case Processing Process Performance (Success) Indicators Analysis

CASE PROCESSING	
Process objectives	– Effective records - case filing. – Clearly defining the rules for norm fulfillment. – Reduced statute of limitations. – Efficient resolving of cases. – Effective case disposition.
CSI	– Defining the automatic case number assignment system and the automatic assignment of a judicial panel according to the subject. – Determining a uniform penal policy in accordance with legal frameworks and norms, as well as uniform procedural actions in certain time frames.
Process implementation results	– Case registry. – Classification of decisions by cases. – Decision registry.
Achieved effect by objective accomplishment	– Efficient use of data from previous petitions. – Efficient presentation of evidence in the proceedings. – Effective handling and controlled disposition of cases.
Process performance indicators: reference values	Indicator 4: < 10% - Completely satisfactory 10-20 % - Satisfactory 20-30% - Partially satisfactory >30% - Not satisfactory

3.3. **Performance Measurement Results and Process Improvement Requirements**

Data samples were collected and organized by using descriptive statistics, which enables the analysis of the current state of the process, as well as the identification of opportunities for improvement. Inferential statistics were used to support conclusions about future trends in the most important parameters of the process.

Mathematical methods of standard deviation and variance were used to measure and evaluate performance. So as to analyze research results, three departments of the Misdemeanor Court in Valjevo, namely Mionica, Lajkovac, and Ljig, were selected as samples for a period of three consecutive years (2017–2019). Indicators 1. (Table 5) and 4. (Table 6) were used to measure and evaluate the system's performance. Further statistical processing, indicator analysis, and obtained results can indicate the quality and effectiveness of the SIPRES information system's key processes, in relation to its current state.

Table 5. Performance Evaluation of the Number of Filed Petitions to the Number of Processed Petitions

Misdemeanor Court in Valjevo — Mionica Department			
Year	2017	2018	2019
Number of filed petitions	1258	1413	1322
Number of processed petitions	1247	1409	1314
Difference	9 (<1%)	5 (<1%)	8 (<1%)
Score	**4**		
Misdemeanor Court in Valjevo — Lajkovac Department			
Year	2017	2018	2019
Number of filed petitions	1478	1889	1642
Number of processed petitions	1471	1878	1634
Difference	7 (<1%)	11 (<1%)	8 (<1%)
Score	**4**		
Misdemeanor Court in Valjevo — Ljig Department			
Year	2017	2018	2019
Number of filed petitions	2896	3155	2754
Number of processed petitions	2881	3139	2750
Difference	15 (<1%)	16 (<1%)	4 (<1%)
Score	**4**		

Source: Misdemeanor Court in Valjevo

Table 6. Performance Evaluation of the Number of Filed Cases to the Number of Resolved Cases

Misdemeanor Court in Valjevo — Mionica Department			
Year	2017	2018	2019
Number of filed cases	1245	1408	1313
Number of resolved cases	1007	1125	1122
Difference	238 (10–20%)	238 (10–20%)	191 (10–20%)
Score	**3**		
Misdemeanor Court in Valjevo — Lajkovac Department			
Year	2017	2018	2019
Number of filed cases	1468	1876	1633
Number of resolved cases	1180	1515	1359
Difference	288 (10–20%)	361 (10–20%)	274 (10–20%)
Score	**3**		
Misdemeanor Court in Valjevo — Ljig Department			
Year	2017	2018	2019
Number of filed cases	2879	3135	2747
Number of resolved cases	2308	2607	2207
Difference	571 (10–20%)	528 (10–20%)	540 (10–20%)
Score	**3**		

Source: Misdemeanor Court in Valjevo

Based on the analysis shown in Table 5, it is determined that the total difference between filed and processed petitions is less than 1%, in all three departments of the Misdemeanor Court in Valjevo (Mionica, Lajkovac, and Ljig), during the period of three years (2017, 2018 and 2019). It is concluded that the performance rating for this indicator is four (4), which is also the highest rating for the defined performance indicators.

Based on the analysis shown in Table 6, it is determined that the total difference between filed and processed petitions is between 10% and 20%, in all three departments of the Misdemeanor Court in Valjevo (Mionica, Lajkovac, and Ljig), during the period of three years (2017,

2018 and 2019). It is concluded that the performance rating for this indicator is three (3), which means that it is not completely satisfactory, and that it requires defining the measures and undertaking certain activities to improve the case processing process, which is also one of the most significant key processes of the misdemeanor courts' case management system.

The procedure of identifying opportunities to improve the key processes of the misdemeanor courts' case management system included an analysis of business processes performance, as well as a description of problems that occur in certain time cycles (past or future). The ranking of potential key process improvements is determined based on the ability of the process to achieve the desired output (quality) through changes in its execution.

The last phase of the Six Sigma method, process improvement, has a substantial role. In this phase, key variables are confirmed, while the variable effects concerning the results, i.e., output quality, are quantified. Solutions that eliminate deviations are located in the improvement phase, and corrective measures are implemented based on the non-conformities obtained from the analysis of performance indicators. Corrective measures include identifying the problem, taking corrective action, and monitoring the corrective action effects. For example, if the analysis of the obtained performance establishes inconsistencies between filed and resolved cases, as is the case in the given example, it is necessary to implement corrective measures by introducing medium-term planning, and forecasting based on the results (effects), in order to improve both process and system performance as a whole. Subsequently, misdemeanor courts' work quality is ensured in all priority areas.

Improvement includes all changes, from small ones to complete reengineering of business processes. Firstly, it involves *establishing baselines* (internal and external), which generally include an overview of process flows, measures and results obtained, constraints, organizational structure that supports improved business processes, roles and responsibilities of management. Secondly, it involves *designing and mapping* new processes that include business process reengineering, in order to meet initial values and improve identified key processes.

4. Conclusion

Requirements for information, as well as measurements of quality and effectiveness are dominant issues in the field of court case management, for the purpose of achieving continuous process improvement by focusing on objectives, processes, and user requirements. Honoring tendencies and trends that exist in the European Union and other world countries, in addition to the need to develop and implement an integrated system for managing cases in misdemeanor courts (SIPRES), there is also the need to introduce a system of quality, effectiveness, monitoring, control and measurement of key processes by defining a performance model consistent with the developed methodology.

Examples of an integral approach can be found in American, Dutch, and Finnish courts, which successfully apply quality system models. An appropriate information system for court management must be implemented for the collection of both efficiency and court work data, as well as for other aspects of quality (Albers, 2009).

This paper presents the results of quality and effectiveness research, aimed at managing processes, measuring objective implementation, controlling process results, monitoring necessary standards, and providing the basis for continuous improvement, including forming, filing, resolving, and controlling cases within misdemeanor courts in the Republic of Serbia, on the sample of three departments of the Misdemeanor Court in Valjevo.

The performance model and the results of its application are defined as management support in diagnosing the complexity of cases, solving problems related to the efficient resolution of the increased influx of cases, effective collection of fines and costs, as well as effective decision-making in order to improve the misdemeanor courts' work quality, in accordance with the law and court rules. Monitoring and evaluation instruments were developed by establishing a unique quantitative and comprehensive system for measuring performance indicators of the misdemeanor courts' case management system. Thus, the application of standard regulations and court procedures is ensured, in accordance with international norms of quality, effectiveness, efficiency, transparency, and responsibility in the field of case processing management and

case resolution in misdemeanor courts. It is concluded that the data presented in this paper could be of importance to the misdemeanor justice system in the Republic of Serbia as a whole.

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Marija Mijatović[1*]
Zoran Vavan[2*]
Tamara Gajinov[3*]

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ZAŠTITA PRAVA ZAPOSLENIH U STEČAJNOM POSTUPKU PRED PRIVREDNIM SUDOVIMA U APV[4*]

Rezime: U radu je analizirana praksa privrednih sudova na teritoriji Autonomne Pokrajine Vojvodine sa ciljem razumevanja položaja zaposlenih, kao poverilaca u stečajnom postupku. Takođe, s obzirom na uticaj pandemije virusa COVID-19 na globalne i uže – nacionalne privredne tokove, autori su smatrali da je od značaja izvršiti uvid u broj novih stečajnih predmeta po sudovima za svaku godinu počev od 2016. godine i zaključno sa 2021. godinom, ne bi li ustanovili da li je bilo povećanja broja stečajnih postupaka uzrokovanih pandemijskim dešavanjima. Nadalje, autori su dali kritički osvrt na pozitivnopravnu regulativu Republike Srbije u pogledu opsega prava i potraživanja zaposlenih u stečajnom postupku, pogotovo imajući u vidu standarde koji postoje u ovom pogledu u Evropskoj uniji. Naposletku, autori daju i viđenje perspektive pozitivnog nacionalnog stečajnog prava u delu koji se tiče prava zaposlenih.

[1*] Docent, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Bulevar oslobođenja 76, Novi Sad, ORCID: 0000-0001-8160-7397, e-mail: mrksicmarija@gmail.com kontakt: 063 85 95 401.

[2*] Docent, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Bulevar oslobođenja 76, Novi Sad, ORCID: 0000-0003-2965-6532, e-mail: zoran.vavan@yahoo.com kontakt: 062 592 008.

[3*] Docent, Fakultet za pravne i poslovne studije dr Lazar Vrkatić, Bulevar oslobođenja 76, Novi Sad, ORCID: 0000-0003-4265-9244, e-mail: tamara.gajinov@gmail.com kontakt: 064 20 93 965.

[4*] Rad i prezentovani podaci su rezultat angažovanja na kratkoročnom naučnoistraživačkom projektu pod nazivom „Sudska zaštita prava iz radnog odnosa tokom Kovid pandemije na teritoriji APV – izazovi u procesu pridruživanja Srbije EU“ (broj rešenja: 42-451-2027/2022-01/01).

Ključne reči: *prava zaposlenih, stečajni postupak, bankrot, reorganizacija, sudska zaštita zaposlenih*

1. Uvodne napomene

Pandemija korona virusa, uvođenje vanrednog stanja, primena restriktivnih epidemioloških mera koje su često podrazumevale i zabranu ili ograničenje kretanja, udruživanja i poslovanja, uz veliku ekonomsku krizu iz korena su promenili način života i rada ljudi (Gajinov, 2022, str. 154). Ovi faktori uticali su na funkcionisanje sveta rada, njegovo delimično preoblikovanje i proces fleksibilizacije (Rajić Ćalić, 2020, str. 88–89), ali i na činjenicu da je mnogo zaposlenih, usled ekonomskog kraha poslodavca, ostalo bez posla. Posledično su otvarana pitanja zaštite njihovih prava pred sudovima, ali i efikasnosti takve vrste zaštite, te njenog opsega.

Sudska zaštita prava iz radnog odnosa vrši se primarno, pred osnovnim sudovima, ali i pred privrednim sudovima, kroz ostvarivanje prava zaposlenih, kao poverilaca u stečajnom postupku, koja su u fokusu interesovanja autora ovoga rada. Upravo oblast stečajnog prava jeste ona u kojoj se „ukrštaju" radno pravo i pravo privrednih društava. Naime, celo IX poglavlje Zakona o radu (pod nazivom *Potraživanja zaposlenih u slučaju stečajnog postupka*) posvećeno je ovom pitanju, dok se Zakonom o stečaju ova materija reguliše u više članova. Svakako da otvaranje stečajnog postupka donosi značajnu neizvesnost za zaposlene i stoga pravni sistemi nastoje da stečajnim zakonodavstvom prošire zaštitu koju pruža radno zakonodavstvo. Prilikom regulisanja zaštite zaposlenih u stečajnom postupku uzeti su u obzir svi razlozi za pružanje privilegovanog položaja zaposlenima, kao ranjivoj grupi poverilaca, te se na taj način Srbija priklonila stavu većine evropskih država koje zaposlenima daju prioritet (Višekruna, Rajić Ćalić, 2019, str. 266). S obzirom na to da se prava zaposlenih detaljnije regulišu u Zakonu o stečaju, ovaj propis predstavlja *lex specialis* u odnosu na matični Zakon o radu, koji je u ovom slučaju *lex generali*.

Stečaj je moguće vršiti kroz bankrot (stečaj u užem smislu) i reorganizaciju. Pod bankrotstvom se podrazumeva namirenje poverilaca iz vrednosti celokupne imovine stečajnog dužnika. Pod reorganizacijom

se podrazumeva namirenje poverilaca,prema usvojenom planu reorganizacije (čl. 1 Zakona o stečaju, dalje: ZOS), ako se time obezbeđuje povoljnije namirenje poverilaca u odnosu na bankrotstvo (čl. 155, ZOS). U slučaju stečaja, radni odnos zaposlenom definitivno prestaje, a u slučaju reorganizacije može a ne mora predstavljati jednu od predviđenih mera (zbog čega se iz ugla zaposlenog smatra poželjnijom opcijom). U našem sistemu, kada nastupi neki od stečajnih razloga (čl. 11 ZOS), u dominantnom broju slučajeva ipak se sprovodi bankrot.

2. Stečaj i pozitivnopravni položaj zaposlenih u Republici Srbiji

U slučaju stečaja, zaposlenom radni odnos ne prestaje automatski (što je predstavljalo istorijski zastupljen način uređenja ovog pitanja), već se stečaj pozitivnopravno reguliše kao razlog za otkaz ugovora o radu koji je stečajni dužnik zaključio sa zaposlenima (čl. 77 ZOS). Kada do toga dođe pravima po osnovu radnog odnosa može se smatrati naplata zarada i drugih primanja. Zakonom je utvrđeno da u prvi isplatni red spadaju neisplaćene neto zarade zaposlenih i bivših zaposlenih u iznosu minimalnih zarada za poslednjih godinu dana pre otvaranja stečajnog postupka sa kamatom od dana dospeća do dana otvaranja stečajnog postupka i neplaćeni doprinosi za penzijsko i invalidsko osiguranje zaposlenih za poslednje dve godine pre otvaranja stečajnog postupka, a čiju osnovicu za obračun čini najniža mesečna osnovica doprinosa, kao i potraživanja po osnovu zaključenih ugovora sa privrednim društvima, čiji su predmet neisplaćene obaveze na ime doprinosa za penzijsko i invalidsko osiguranje zaposlenih za poslednje dve godine pre otvaranja stečajnog postupka (čl. 54 ZOS). Ipak, pored ovakvih formulacija (ograničenim u iznosu i vremenskim faktorom nastanka potraživanja) mnogi evropski pravni sistemi uveli su posebne zaštitne sisteme – garantne institucije koje preuzimaju na sebe isplatu potraživanja koja zaposleni ne mogu da namire od poslodavca, a za koja se uzima da predstavljaju minimum koji mora da se pruži za normalan i dostojanstven život (Višekruna, 2016). Tako je i domaćom regulativom implementiran hibridni mehanizam zaštite zaposlenih, jer je, pored privilegovanog namirenja potraživanja u stečajnom postupku, predviđena i zaštita putem namirenja od garantne institucije – Fonda solidarnosti. Ova materija,

koja pak prevazilazi opseg rada, uređena je Zakonom o radu i u teoriji se ističu stavovi da ne postoji dovoljna koordinacija između ovog propisa i Zakona o stečaju (Višekruna & Rajić Ćalić, 2019, str. 266).

2.1. Analiza prakse privrednih sudova u APV

Autori rada prikupili su podatke od privrednih sudova u Novom Sadu, Subotici, Zrenjaninu i Sremskoj Mitrovici. Dat je pregled svake od traženih godina (od 2016. do zaključno sa 2021. godinom) odvojeno za postupke bankrota i reorganizacije. Evidentiran je opseg namirenja potraživanja zaposlenih u kategoriji potpunog, delimičnog namirenja i postupaka u kojima potraživanja nisu namirena. Pribavljanje ove kategorije podataka pokazalo se kao izazov, budući da se službena evidencija o stepenu namirenja stečajnih poverilaca kada je postupak sprovođen unovčavanjem imovine stečajnog dužnika ne vodi od strane sudova. Nadalje, ukazano je na postupke rešavane usvajanjem plana reorganizacije i prisutnost mere otpuštanja radnika, kao mere plana reorganizacije, te na stepen predviđenog namirenja poverilaca iz redova zaposlenih. Ipak, potrebno je shvatiti navedene podatke kao podatke orijentacione vrednosti.[5]

S obzirom na uticaj pandemije na globalne i nacionalne privredne tokove, autori su pošli od pretpostavke da je za kreiranje koherentnog okvira za analizu prvo potrebno utvrditi da li je od 2020. godine pokretano više stečajnih postupaka nego u godinama pre pandemije. Ipak, na osnovu podataka dobijenih istraživanjem, zaključeno je da pandemijski uslovi nisu doveli do povećanja broja novih stečajnih predmeta. Štaviše, npr. pred Privrednim sudom u Subotici 2020. godine (kao prve „pandemijske" godine) registrovano je značajno manje novih stečajnih predmeta (ukupno 47) u poređenju sa prethodnom, 2019. godinom, koja je u posmatranom periodu bila u ovom kontekstu i „najbrojnija" (76 novih predmeta). Slično stanje zabeleženo je i u Privrednom sudu u Sremskoj Mitrovici. Naime, 2018. godine registrovano je 39 novih stečajnih predmeta, a 2020. i 2021. godine po 28, odnosno 30 novih predmeta. U Privrednom sudu u Zrenjaninu najviše novih stečajnih predmeta za-

[5] Podaci iz privrednih sudova u Novom Sadu, Subotici i Sremskoj Mitrovici obezbeđeni su na relativno ujednačen način, dok su podaci iz Privrednog suda u Zrenjaninu svedeni na one o broju stečajnih postupaka i postupaka reorganizacije.

beleženo je 2016. godine (20), a 2020. i 2021. godine 10, odnosno 16 novih slučajeva. Samo je u Privrednom sudu u Novom Sadu 2020. godine bilo najviše novih stečajnih predmeta u odnosu na ostale godine u posmatranom periodu (162 nova predmeta). Ipak, već sledeće – 2021. godine broj novih stečajnih predmeta bio je manji (126) od sledeće po redu „najmasovnije" godine po broju novih stečajnih predmeta – 2018. godine kada ih je bilo 145. Sveukupno posmatrano, prema referadi četiri analizirana privredna suda u APV, najviše novih stečajnih predmeta bilo je 2019. godine – 252 predmeta, zatim 2018. godine (248), 2020. godine (247), 2021. godine (227) i najmanje 2017. i 2016. godine (187 i 180 novih stečajnih predmeta). Svakako može se zaključiti da se broj stečajnih predmeta značajno povećao u odnosu na početak posmatranog perioda, ali da zabeležen porast nema veze sa uticajima proisteklim iz pandemijskih okolnosti, već da je „vrhunac" dostignut u godini pre pandemije (2019. godine). Ovakvi podaci odgovaraju i analizama sprovedenim u, na primer, Švajcarskoj, gde takođe nije došlo do velikog talasa bankrota, od kojeg se strahovalo zbog krize u vezi sa pandemijom COVID-19, a najverovatnije zbog raznih oblika hitne državne finansijske pomoći (Rodriguez, Ulli, 2023, p. 275).

Nadalje, usled otkazivanja ugovora o radu, što za zaposlenog podrazumeva mnoštvo negativnih efekata, od presudnog značaja je Zakonom o stečaju utvrđena mogućnost da zaposleni ostvari naplatu svojih potraživanja, te favorizovanje položaja zaposlenog u odnosu na ostale poverioce stavljanjem istih u prvi isplatni red. Ipak, u mnogo slučajeva, nakon što se iz stečajne mase izvrše prioritetne isplate (poput troškova stečajnog postupka), zaposleni ne uspeju da ostvare svoja potraživanja u potpunosti, a nekada čak ni delimično. Upravo najviše prostora u teorijskim radovima sa ovom tematikom zauzimaju ocene date za uspeh u ostvarivanju primarnog cilja Zakona – uspešnog namirenja potraživanja poverilaca, pa tako i zaposlenih (Bilbija, 2012, str. 42). U navedenom smislu, najreprezentativnijim podacima pokazali su se oni iz Privrednog suda u Novom Sadu. Naime, od analiziranih 150 stečajnih predmeta u periodu od 2016. do 2021. godine (uključujući i 2021. godinu) zaposleni su namireni sa 100% utvrđenog potraživanja u 19,33% slučajeva, u 26,67% stečajnih postupaka su delimično namireni, a u čak 54% stečajnih postupaka zaposleni nisu namirili svoja utvrđena potra-

živanja. Nenamirivanje zaposlenih neretko je posledica stanja u kojima je imovina firme manja od troškova postupka ili je neznatne vrednosti u trenutku kada se postupak pokreće bez odlaganja, a nakon kojeg se dužnik briše iz registra privrednih subjekata.

Ovakva statistika obavezuje na društveno savesnije razmišljanje i delovanje. Naime, stečaj se ne događa naglo i potpuno neočekivano. Postoji određena progresija i postupnost nadiranja finansijskih problema koji dovode do bankrota. U periodu krize zaposleni će prvi biti na udaru, jer će, po pravilu, biti uskraćeni za osnovno pravo iz radnog odnosa – pravo na zaradu (Kovačević, 2022, str. 349). Autori smatraju da bi stečajni razlozi morali biti postavljeni strože u odnosu na pozitivnopravnu regulativu, ne bi li se stečajni postupak pokretao u trenutku kada se raspolaže sa više mogućnosti za namirenje poverilaca, odnosno pravovremeno. Na taj način bi se, u većoj meri, ostvarilo osnovno načelo stečajnog postupka – najpovoljnije kolektivno namirenje stečajnih poverilaca ostvarivanjem najveće moguće vrednosti imovine stečajnog dužnika, a samim tim i namirenje zaposlenih u najvećem mogućem obimu. Ovakvo regulatorno delovanje takođe bi bilo u skladu sa zakonodavnom aktivnošću EU i njenih članica na unapređenju oblasti stečajnog prava kako u navratu nakon finansijke krize iz 2008. godine, tako i u aktuelnom periodu nakon krize izazvane pandemijom (Coutinho, Kappeler, Turrini, 2023, p. 17). U tom smislu, posebno se ističu novi instituti uvedeni u stečajno pravo Savezne Republike Nemačke (Đurić, Jovanović, 2023).

Takođe, autori smatraju da bi zaštita zaposlenih u stečajnom postupku morala da se razvija u pravcu uključivanja što šireg, a objektivno ostvarljivog, kruga potraživanja zaposlenih prema stečajnom dužniku. Posledično bi se srpsko zakonodavstvo približilo savremenijim i protekcionističkim prema zaposlenima orijentisanim pravnim sistemima država članica Evropske unije. Svakako, prosto preuzimanje EU pravnih obrazaca, u kontekstu recepcije prava, nije ideal kome bespogovorno valja težiti bez studija izvodljivosti i usklađivanja usvojene regulative i onoga što je realnost i primenljivo (Mijatović, 2019, str. 91). Pa ipak, prema nekim teorijskim stavovima (Višekruna, Rajić Čalić, 2019, str. 266), trenutna situacija u pravu Srbije je takva da uspostavljeni režim nije ni u potpunosti u skladu sa standardima konvencija Međunarodne organizacije rada, te je razmatranje promena neophodno. Iako određena po-

traživanja zaposlenih uživaju privilegovan položaj, ograničenja predmetnog karaktera čine ovu zaštitu nezadovoljavajućom i iziskuju izmene. Neophodno je proširiti obim prava zaposlenih, kojima se garantuje privilegovan položaj u stečajnom postupku. U tom smislu, kao polazna tačka, mogle bi da se koriste odredbe Zakona o radu koje određuju koja prava zaposleni mogu da ostvare pred garantnom institucijom.

Naposletku, nakon sprovedenog istraživanja i izazova u pogledu objedinjavanja podataka iz stečajne referade različitih privrednih sudova na teritoriji APV čini se adekvatnim i iznošenje predloga o konstituisanju obaveze vođenja ujednačene službene evidencije o stepenu namirenja stečajnih poverilaca. Takva evidencija bi svakako doprinela boljem razumevanju „kulisa" i krajnjih posledica, odnosno efikasnosti stečajnog postupka na teritoriji APV, ali i Srbije.

3. Reorganizacija i pozitivnopravni položaj zaposlenih viđeni kroz analizu prakse privrednih sudova u APV

U pogledu postupka reorganizacije, podaci su optimističniji iz ugla položaja zaposlenih nego što je to slučaj kod bankrota. Naravno, osnovna ideja institucije reorganizacije jeste davanje još jedne šanse privrednom društvu koje je pred bankrotom da se usvajanjem efikasnog plana „održi" na površini, odnosno da ne dođe do prestanka postojanja privrednog društva. Samim tim, iako je mera otpuštanja zakonska opcija (čl. 157 st. 12 ZOS), postoji mogućnost da ne bude predviđena planom reorganizacije, ili da obuhvata relativno mali broj zaposlenih. Plan reorganizacije svakako može predstavljati i važnu izvršnu ispravu ukoliko dođe do postupka prinudnog izvršenja, te je stoga njegov značaj višestruk (Vavan, 2023, str. 4). Upravo u tom smislu povoljnim se pokazuju podaci privrednih sudova sa teritorije APV. Od skromnog ukupnog broja sprovedenih slučajeva reorganizacije (37) u sva četiri anketirana privredna suda u periodu od 2016. do 2021. godine, nijedan usvojen plan reorganizacije nije sadržao meru otpuštanja zaposlenih i svakim je bilo predviđeno puno namirenje njihovih potraživanja.

Ipak, u dominantnom postotku analiziranih slučajeva, usled nastupanja stečajnih razloga i otvaranja stečajnog postupka, isti su bivali okončani bankrotom a ne reorganizacijom. Npr. 2020. godine pred Pri-

vrednim sudom u Subotici bankrotom je okončano 45 stečajnih predmeta a nijedan reorganizacijom. Slično je bilo i pred Privrednim sudom u Zrenjaninu 2020. i 2021. godine. Ukupno je bankrotom okončano 35 stečajnih postupaka a nijedan reorganizacijom. Pred Privrednim sudom u Sremskoj Mitrovici na 60 postupaka bankrota izvršene su svega tri reorganizacije, dok je taj odnos pred Privrednim sudom u Novom Sadu 575 bankrota prema 28 reorganizacija. U Novom Sadu ih je najviše bilo 2016. i 2017. godine (osam i devet), da bi se beležio stabilan pad postupaka reorganizacije od 2018. godine (pet), 2019. godine (tri), a u pandemijskim godinama (2020. i 2021. godine) sprovedena su svega tri postupka reorganizacije. Taj podatak nam govori o neophodnosti podizanja svesti o beneficijama koje po sâmo privredno društvo, zaposlene, ali i privredu cele države može imati značajnije okretanje ovom konceptu.

4. Zaključak

Položaj zaposlenih u stečajnom postupku regulisan je Zakonom o radu, ali mu se detaljnija zaštita pruža kroz stečajno zakonodavstvo kao ranjivoj grupi poverilaca u stečajnom postupku. Usled toga zaposleni imaju i prioritetno mesto u Zakonom o stečaju uređenim isplatnim redovima. Ipak, opseg potraživanja koja se garantuju pozitivnom regulativom Republike Srbije, prema mišljenju autora, previše je usko postavljen. Naime, rezultati dobijeni istraživanjem obavezuju na implementiranje društveno odgovornije socijalne dimenzije ovog dela stečajnog prava. Iako statistika privrednih sudova u APV pokazuje da pandemija COVID-19 nije uticala na povećanje broja stečajnih predmeta, stepen namirenja zaposlenih, kao poverilaca u stečajnom postupku, uznemiravajuće je nizak, dok su neretki slučajevi u kojima zaposleni nisu čak ni delimično namireni. Stoga autori smatraju da bi se stečajni razlozi morali postaviti na striktniji način ne bi li se ovaj postupak pokretao u ranijoj fazi, odnosno pravovremeno. Takođe, iako proces reorganizacije, kao prema zaposlenom humanija alternativa bankrotu, jeste opcija u stečajnom postupku, istraživanje pokazuje da se nedovoljno koristi. U tom smislu, autori predlažu preduzimanje aktivnijih koraka u procesu podizanja svesti među privrednim subjektima o prednostima koje pruža ovaj institut stečajnog prava.

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Marija Mijatović[1]
Zoran Vavan[2]
Tamara Gajinov[3]

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PROTECTION OF EMPLOYEE RIGHTS IN BANKRUPTCY PROCEEDINGS BEFORE COMMERCIAL COURTS OF THE APV[4]

Abstract: This paper analyzes the practices of commercial courts in the Autonomous Province of Vojvodina (APV) with the aim of understanding the position of employees as creditors in bankruptcy proceedings. Considering the impact of the COVID-19 virus pandemic on global and national economic flows, we deemed it important to examine the number of new bankruptcy cases in courts for each year between 2016 and 2021. This was done to determine whether there was an increase in the number of bankruptcy proceedings caused by pandemic-related events. Furthermore, we provide a critical overview of the positive legal regulations in the Republic of Serbia regarding the scope of rights and claims of employees in bankruptcy proceedings,

[1] Assistant Professor, Faculty of Law and Business Studies Dr Lazar Vrkatić, Bulevar oslobođenja 76, Novi Sad, ORCID: 0000-0001-8160-7397, e-mail: mrksicmarija@gmail.com

[2] Assistant Professor, Faculty of Law and Business Studies Dr Lazar Vrkatić, Bulevar oslobođenja 76, Novi Sad, ORCID: 0000-0003-2965-6532, e-mail: zoran.vavan@yahoo.com

[3] Assistant Professor, Faculty of Law and Business Studies Dr Lazar Vrkatić, Bulevar oslobođenja 76, Novi Sad, ORCID: 0000-0003-4265-9244, e-mail: tamara.gajinov@gmail.com

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especially considering the existing standards in the European Union. Finally, we offer our perspective on the positive national bankruptcy law concerning the rights of employees.

Key Words: *employee rights, bankruptcy proceedings, bankruptcy, reorganization, judicial protection of employees*

1. Introduction

The coronavirus pandemic, state of emergency, restrictive epidemiological measures – which often involved bans or limitations on movement, gatherings, and business operations – coupled with a large-scale economic crisis, have fundamentally changed the way people live and work (Gajinov, 2022, p. 154). These factors had a major impact on the world of work, which was evident in its partial restructuring and flexibilization (Rajić Ćalić, 2020, pp. 88–89). Furthermore, a considerable number of employees have lost their jobs due to their employers' economic collapse. Consequently, concerns have emerged regarding the protection of the employee rights in legal proceedings, along with considerations about the effectiveness and scope of such protection.

The judicial protection of rights arising from the employment relationship primarily occurs before the courts of general jurisdiction. It can also be pursued before commercial courts, where employees are treated as creditors in bankruptcy proceedings, which is the central focus of interest in this study. It is precisely in the domain of bankruptcy law that labor law and corporate law intersect. Namely, the entire Chapter IX of the Labor Law (titled *Claims of employees in the event of bankruptcy proceedings*) addresses this issue, while several articles of the Law on Bankruptcy further regulate this matter. Undoubtedly, the opening of bankruptcy proceedings brings about a significant level of uncertainty for employees. Therefore, legal systems attempt to augment the protection afforded by Labor Law through bankruptcy laws. In regulating employee protection in bankruptcy proceedings, all factors

justifying a privileged position for employees as a vulnerable group of creditors are considered; in doing so, Serbia has aligned itself with the stance of the majority of European countries that prioritize employees in this manner (Višekruna, Rajić Ćalić, 2019, str. 266). Given that the rights of employees are regulated in more detail in the Law on Bankruptcy, this regulation represents a *lex specialis* in relation to the parent Labour Law, which, in this case, is a *lex generalis*.

Bankruptcy proceedings can be conducted through liquidation (bankruptcy in the narrower sense) or through reorganization. The act of bankruptcy involves the settlement process whereby creditors receive payment through the sale of the debtor's entire asset value. Reorganization entails the satisfaction of creditors in accordance with the adopted reorganization plan (Article 1 of the Law on Bankruptcy, hereinafter: LB), provided that it ensures a more favorable settlement option for creditors compared to compulsory liquidation (Article 155, LB). In the case of bankruptcy, the employee's work contract is terminated, whereas in the case of reorganization, it may or may not constitute one of the proposed measures, which is why reorganization is considered a more preferable option from the employee's perspective. In the Serbian legal system, if any of the requirements for bankruptcy are present (Article 11, LB), bankruptcy is instituted in the majority of cases.

2. Bankruptcy and the legal status of employees in the Republic of Serbia

In the event of bankruptcy, there is no automatic termination of employment, which is a departure from the historical norm in regulating this matter; instead, bankruptcy is legally regulated as grounds for terminating the employment contracts between the bankrupt debtor and employees (Article 77, LB). When this occurs, the collection of salaries and other earnings can be considered within the rights arising from the employment relationship. The Law on Bankruptcy stipulates that unpaid net salaries of both current and former employees comprise the first rank of claims. The salaries are calculated based on the level of minimum wage from the year preceding the opening of bankruptcy proceedings, with interest accruing from the maturity date

until the institution of bankruptcy proceedings. Additionally, unpaid contributions to employees' pension fund and disability insurance for two years prior the initiation of bankruptcy proceedings are covered and are based on the minimum monthly contribution base. This provision also encompasses claims arising from contracts with companies and the scope of such contracts involves outstanding obligations for contributions to employees' pension fund and disability insurance for two years preceding the initiation of bankruptcy proceedings (Article 54, LB). According to Višekruna, despite these formulations (with limitations imposed by the amount as well as the time of the claim's occurrence), numerous European legal systems have implemented specific protective mechanisms – guarantee institutions that undertake the payment of claims that employees cannot recover from the employer. These claims are set at a level considered the minimum necessary for a decent and dignified life (Višekruna, 2016). Similarly, a hybrid mechanism for employee protection has been implemented in Serbian regulations stipulating that alongside the preferred settlement of claims during bankruptcy proceedings, there should be an additional layer of protection through reimbursement from the Solidarity Fund acting as a guarantee institution. This issue, which extends beyond the scope of this paper, is governed by the Labor Law and, in theory, there are opinions emphasizing the lack of sufficient coordination between this regulation and the Law on Bankruptcy (Višekruna & Rajić Ćalić, 2019, p. 266).

2.1. Analysis of the practices of commercial courts in the APV

Data was collected from commercial courts in Novi Sad, Subotica, Zrenjanin, and Sremska Mitrovica. An overview has been provided for each of the years under review (starting from 2016 and conclusive with 2021) separately for bankruptcy and reorganization proceedings. Levels of settlement of employees' claims were documented in categories of complete, partial settlement, and proceedings in which the claims were not settled at all. Gathering this category of data proved challenging since the official records on levels of settlement with creditors are not kept by the courts when the process involves liquidating the assets of the bankrupt debtor. Furthermore, the instances where resolutions were

achieved through the adoption of a reorganization plan, along with the occurrences of employee dismissals as part of the reorganization strategy were highlighted. The anticipated levels of settlement for employee creditors were also emphasized. Nevertheless, it is important to consider these data as approximations.[5]

Given the impact of the pandemic on global and national economic trends, the paper presupposes that, to create a coherent analysis framework, it is first necessary to establish whether there has been an increase in the number of bankruptcy proceedings since 2020 compared to the years before the pandemic. The findings indicate that the pandemic conditions did not result in a higher number of new bankruptcy cases. Furthermore, in 2020, which was the first year of the pandemic, the Commercial Court in Subotica recorded a notable decrease in new bankruptcy cases (a total of 47) compared to the previous year, 2019, which was, in this context, the "busiest" with 76 new cases during the observed period. A similar situation was observed in the Commercial Court in Sremska Mitrovica where 39 new bankruptcy cases were registered in 2018, while in 2020 and 2021, there were 28 and 30 new cases, respectively. When it comes to the Commercial Court in Zrenjanin, the highest number of new bankruptcy cases was recorded in 2016 (20), with 10 and 16 new cases in 2020 and 2021, respectively. Notably, only the Commercial Court in Novi Sad recorded the highest number of new bankruptcy cases in 2020, compared to other years in the observed period (162 new cases). Yet, in the very next year, 2021, the number of new bankruptcy cases was lower (126) than in the next peak year, 2018, with 145 new cases. Taking a broader perspective and considering the reports from all four examined commercial courts in the APV, the peak for new bankruptcy cases occurred in 2019 with 252 cases, followed by 2018 (248), 2020 (247), and 2021 (227). In contrast, the lowest numbers were observed in 2017 and 2016, with 187 and 180 new bankruptcy cases, respectively. One can certainly conclude that the overall number of bankruptcy cases saw a significant increase compared

[5] Data from the commercial courts in Novi Sad, Subotica, and Sremska Mitrovica were obtained in a relatively consistent manner, whereas the data from the Commercial Court in Zrenjanin were limited to the number of bankruptcy and reorganization proceedings.

to the beginning of the observed period. However, this upturn is unrelated to the impacts arising from the pandemic considering that the peak was reached in the year preceding it (2019). These data align with analyses conducted in countries like Switzerland, where there was also no substantial wave of bankruptcies, which was feared due to the COVID-19 pandemic crisis and was most likely avoided thanks to various forms of urgent financial aid provided by the government (Rodriguez, Ulli, 2023, p. 275).

Moreover, with employment contracts being terminated and subsequent negative repercussions for employees, the possibility for employees to recover their claims, as stipulated by the Law on Bankruptcy, along with designating employees as preferential creditors is crucial. However, in numerous instances, even after the priority payments from the insolvent estate have been completed (such as the costs associated with the bankruptcy proceedings), employees are often unable to fully, and sometimes even partially, settle their claims. A significant portion of theoretical papers on this topic revolves around assessing the effectiveness of achieving the primary goal of the Law, which is the successful settlement of creditors' claims, including those of employees (Bilbija, 2012, p. 42). In this context, the most representative data have been derived from the Commercial Court in Novi Sad. Out of the 150 analyzed bankruptcy cases spanning from the beginning of 2016 to the end of 2021, employees achieved complete settlement of all claims in 19.33% of cases, partial settlement in 26.67% of bankruptcy proceedings, and, notably, in 54% of cases, employees were unable to settle their claims. The inability to meet employees' claims frequently occurs when a company's assets are insufficient to cover the procedural costs or have minimal value when the procedure is instituted without delay, which later leads to the removal of the debtor from the register of economic entities.

These statistics urge a more socially responsible mindset and course of action. In other words, bankruptcy does not occur suddenly and unexpectedly; rather, there is a gradual progression of financial challenges that ultimately lead to it. In times of crisis, employees are the first to bear the brunt as they are typically denied a fundamental right derived from the employment relationship – the right to earn income

(Kovačević, 2022, p. 349). We advocate for stricter criteria for initiating bankruptcy proceedings in relation to positive legal regulations to ensure that bankruptcy is initiated when settling creditors' claims is more feasible, i.e., in a timely manner. In this way, the fundamental principle of bankruptcy proceedings – achieving the most favorable collective settlement for creditors by maximizing the value of the debtor's assets, and consequently, providing the greatest possible settlement for the employees – would be realized to a higher extent. This type of regulatory action would also align with the legislative efforts of the EU and its member states in terms of improving the field of bankruptcy law, both following the 2008 financial crisis and during the ongoing post-pandemic period (Coutinho, Kappeler, Turrini, 2023, p. 17). In this regard, particular emphasis is placed on the new institutes introduced in the bankruptcy law of the Federal Republic of Germany (Đurić, Jovanović, 2023).

Furthermore, we believe that the protection of employees in bankruptcy proceedings should evolve towards including a broader but realistically achievable range of employee claims against the debtor. As a result, Serbian legislation would move closer to the more contemporary legal systems of EU member states with legislation oriented towards protecting the interests of employees. Certainly, merely embracing EU legal frameworks without conducting feasibility studies and ensuring alignment with practical application is not an ideal to strive for in the context of legal reception (Mijatović, 2019, p. 91). However, some theoretical viewpoints (Višekruna, Rajić Čalić, 2019, p. 266) suggest that Serbia's current legal landscape is not entirely aligned with the conventions of the International Labour Organization; thus, it is imperative to contemplate necessary changes. Although certain employee claims are prioritized, the limitations inherent in this protection render it unsatisfactory and call for revisions. Expanding employees' rights to ensure they have a preferential position in bankruptcy proceedings is crucial. In this context, the provisions outlined in the Labour Law, which specify the rights employees can claim before the guarantee institution, could be used as a starting point.

In conclusion, after conducting the research and facing the challenges of consolidating data from various bankruptcy departments in commercial courts of the APV region, it appears fitting to propose that standardized official records documenting levels of settlement of creditors' claims be kept. Such records would undoubtedly enhance our understanding of the inner workings and ultimate outcomes, i.e., the effectiveness of bankruptcy proceedings both in the APV region and Serbia as a whole.

3. Reorganization and the legal status of employees through the analysis of commercial courts' practices in the APV region

In terms of reorganization and the status of employees, the data present a more optimistic outlook for reorganization compared to bankruptcy. Of course, the core concept behind the institution of reorganization is to offer businesses facing bankruptcy an opportunity to "stay afloat" by implementing an efficient plan and thereby preventing the cessation of the business. Therefore, even though dismissal is a legally viable option (Article 157, paragraph 12 of the LB), it still might not be part of the reorganization plan or it might impact only a relatively small number of employees. The reorganization plan can also play a significant role as an enforceable document in case of enforcement performance, hence its significance is manifold (Vavan, 2023, p. 4). The data from the commercial courts in the APV region prove particularly favorable in that regard. Among the relatively few reorganization cases (37) handled across all four commercial courts surveyed from 2016 to 2021, none of the reorganization plans implemented included measures of dismissal; instead, each plan aimed at complete settlement of all employees' claims.

However, in the majority of cases analyzed, the requirements for bankruptcy and the institution of bankruptcy proceedings lead to a preference for handling these cases through bankruptcy/liquidation rather than reorganization. For instance, before the Commercial Court in Subotica in 2020, 45 bankruptcy cases were settled through bankruptcy and none through reorganization. A similar pattern was observed before the Commercial Court in Zrenjanin in 2020 and 2021 where 35 bankruptcy cases were settled through bankruptcy and none

through reorganization. Before the Commercial Court in Sremska Mitrovica, out of 60 bankruptcy cases, only three were settled through reorganization. Meanwhile, the ratio before the Commercial Court in Novi Sad was 575 bankruptcies to 28 reorganizations. The highest number of reorganizations in Novi Sad was recorded in 2016 and 2017 (eight and nine, respectively), followed by a steady decline from 2018 (five), 2019 (three), to only three reorganization cases in the years of the pandemic (2020 and 2021). This data underscores the importance of raising awareness about the benefits that more substantial adherence to this concept can yield for the company itself, its employees, and the broader economy of the entire country.

4. Conclusion

Employe status in bankruptcy proceedings is governed by the Labor Law, although employees, as a vulnerable group of creditors in the bankruptcy process, are afforded more extensive protection under bankruptcy legislation. Consequently, employees' claims are also granted the first rank in the payment hierarchy, as regulated by the Law on Bankruptcy. Nevertheless, we believe that the scope of claims guaranteed by the positive regulations of the Republic of Serbia is too narrowly defined. Namely, the findings from this research call for the implementation of a more socially responsible dimension within this aspect of bankruptcy law. The statistics from the commercial courts in the APV indicate that the COVID-19 pandemic did not result in an increase in bankruptcy cases. However, levels of settlement of employees' claims remain alarmingly low, with many instances where employees received no compensation at all. Hence, we believe that bankruptcy requirements should be stricter to ensure the initiation of this process at an earlier stage, i.e., in a timely manner. Moreover, although the reorganization process, which is a more humane alternative to bankruptcy from employees' perspective, is an existing option in bankruptcy proceedings, this research indicates its underutilization. In this regard, we suggest taking more proactive measures to enhance awareness among commercial entities about the benefits provided by this institute of bankruptcy law.

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Isidora Rajić[1]

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HIPERSENZITIVNOST U DETINJSTVU

Apstrakt: U ovom radu dat je prikaz dosadašnje literature o razvoju hipersenzitivne dece, od njihovog rođenja do perioda adolescencije. Opisane su najvažnije odlike hipersenzitivne dece, kao i rezultati istraživanja o hipersenzitivnoj deci. Naime, u naučnoj literaturi se navodi da u opštoj populaciji ima oko 20% hipersenzitivnih ljudi i iz ovog razloga je neophodno da stručnjaci (psiholozi, psihoterapeuti i psihijatri), ali i roditelji i nastavnici budu bolje upoznati sa osnovnim karakteristikama hipersenzitivnosti. Na primer, često se dešava da hipersenzitivna deca dobiju dijagnozu nekog poremećaja, kao što je autizam i poremećaj pažnje sa hiperaktivnošću, ili da budu procenjeni kao niže inteligentni samo zato što stručnjaci nisu bili upoznati sa osnovnim odlikama hipersenzitivnih osoba. Iako su istraživanja o hipersenzitivnosti u poslednjih dvadesetak godina sve brojnija u svetu, na našim prostorima to nije slučaj i stručnjaci koji rade u kliničkoj praksi u Srbiji nisu u velikoj meri upoznati sa hipersenzitivnošću, kao ni sa njenim osnovnim karakteristikama. Tek nakon razumevanja razlika između hipersenzitivnih i nehipersenzitivnih ljudi, osnovnih karakteristika hipersenzitivnosti, kao i različitih faktora koji utiču na fizičko i mentalno zdravlje hipersenzitivne dece, stručnjaci, roditelji i nastavnici će moći da im budu odgovarajuća podrška.

Ključne reči: *Detinjstvo, hipersenzitivnost, sistem bihejvioralne inhibicije, dubina obrade informacija.*

[1] Master psiholog (MA), Katedra za psihologiju, Fakultet za pravne i poslovne studije dr Lazar Vrkatić. Novi Sad, Univerzitet UNION, Beograd, adresa elektronske pošte: isidorarajic5995@gmail.com

1. Uvod

U naučnoj literaturi se navodi da hipersenzitivni ljudi predstavljaju manjinski deo populacije koji ima senzitivniji nervni sistem u odnosu na većinski, nehipersenzitivni deo populacije (Aron & Aron, 1997; Gearhart & Bodie, 2012; Greven et al., 2019; Jagiellowicz et al., 2016). Razlog za ovu pretpostavku leži u rezultatima istraživanja u kojima je pokazano da hipersenzitivne osobe imaju određene moždane zone aktivnije u odnosu na nehipersenzitivne osobe (Acevedo et al., 2021). Na primer, u nekim istraživanjima je pokazano da hipersenzitivni ispitanici više koriste delove mozga koji su povezani sa dubljom obradom informacija (Acevedo et al., 2021; Jagiellowicz et al., 2011). Pored dublje obrade informacija, druge odlike hipersenzitivnih ljudi su: viša emocionalna reaktivnost, lakoća dolaženja u stanje preplavljenosti i osetljivost na suptilnosti.

Dubina obrade informacija predstavlja, kao što i sam naziv kaže, tendenciju da se informacije dublje obrađuju. Hipersenzitivne osobe sve procesuiraju više, pri čemu povezuju i porede ono što zapažaju sa svojim prošlim iskustvima u sličnim situacijama. Mnogi istraživači smatraju da je upravo dubina obrade informacija osnovna karakteristika hipersenzitivnih ljudi (Aron et al., 2005; Liss et al., 2005). S obzirom da dublje obrađuju informacije, veća je verovatnoća da će se hipersenzitivni ljudi pre i fizički i psihički umoriti, a zatim i lakše doći u stanje preplavljenosti. Viša emocionalna reaktivnost se odnosi na intenzivnije emocionalne reakcije hipersenzitivnih osoba na pozitivna i negativna životna iskustva, kao i na intenzivnije reagovanje na emocije drugih ljudi. Osetljivost na suptilnosti se odnosi na sve one sitne stvari koje hipersenzitivni ljudi primećuju a koje drugim ljudima promiču (Aron, 2011; Baryla-Matejczuk et al., 2020; Boterberg & Warreyn, 2016).

Istraživanja o hipersenzitivnoj deci datiraju još od perioda pre definisanja koncepta hipersenzitivnosti i osnovnih karakteristika hipersenzitivnih ljudi (Boyce et al., 1996; Gunnar, 1994; Nachmias et al., 1996). Naime, istraživači su u prošlosti primetili da postoji određena grupa dece koja se po svojim osnovnim karakterstikama razlikovala od svojih vršnjaka. Termini koji su se koristili u vreme sprovođenja ovih istraživanja bili su viša reaktivnost, stidljivost ili viša negativna emocionalnost,

dok su naučnici tek kasnije uvideli da je zapravo bila proučavana povišena senzitivnost određene grupe dece (Jagiellowicz et al., 2020). Nakon definisanja koncepta hipersenzitivnosti počinju da se sprovode istraživanja konkretno o višoj senzitivnosti određene grupe dece (Aron & Aron, 1997). Takođe, veliki broj karakteristika o razvoju hipersenzitivne dece, kao i o uticaju porodice na hipersenzitivnu decu navodi Elejn Aron (Elain N. Aron). Njeni zaključci, napisani u knjizi „Osetljivo dete" proizilaze iz terapeutskog rada sa hipersenzitivnim osobama i decom, kao i iz konsultacija sa razvojnim psiholozima (Aron, 2002; Aron, 2011).

2. Hipersenzitivne bebe i deca predškolskog uzrasta

Kako bi se razumele karakteristike hipersenzitivne dece kroz različite faze njihovog razvoja, neophodno je razumeti pojmove koji se odnose na sisteme bihejvioralne aktivacije i bihejvioralne inhibicije (Aron, 2002). Naime, prema Grejovoj teoriji osetljivosti na potkrepljenje, postoje tri osnovna emocionalna sistema. Sistem borbe/bežanja reguliše izbegavanje i odbranu od agresivnog ponašanja, kao reakcije na bezuslovne signale kazne. Sistem bihejvioralne aktivacije je zadužen za kontrolu aktivnog pristupa i za ponašanje koje predstavlja reakciju na signale nagrade. Sistem bihejvioralne inhibicije reguliše pasivno izbegavanje signala kazne i uključuje frustraciju usled izostajanja nagrade (Gray, 1991; Gray & McNaughton, 2000). Iako svi ljudi imaju sistem bihejvioralne inhibicije, smatra se da je ovaj sistem kod hipersenzitivnih ljudi veoma aktivan ili snažan (Aron & Aron, 1997; Smolewska et al., 2006). Sistem bihejvioralne inhibicije je poznat i kao *sistem zastani i proveri* zato što utiče na sagledavanje situacije kojoj osoba pristupa i poređenje te situacije sa drugim sličnim situacijama iz prošlosti. Zbog ovoga dolazi do inhibicije samo na momenat, osim ako takva slična situacija iz prošlosti nije bila preteća. Međutim, nekoliko loših iskustava u pristupanju novim situacijama može da pretvori *sistem zastani i proveri* u *sistem zastani i nemoj ništa da uradiš*. Ovakva reakcija može da se razvije već na uzrastu od šest meseci kod hipersenzitivnih beba tako što polako nastaje strategija *Najbolji način da se izbegnu loše stvari jeste izbegavati sve*. Na primer, beba želi nešto da proba, ali se istovremeno plaši nove situacije (Aron, 2002). Iz ovog razloga je već na ovom uzrastu

veoma važno da roditelji pomažu detetu u regulaciji sopstvenih emocija, odnosno da li će se plašiti nepoznatih situacija ili će im pristupiti i na koji način. Pretpostavka je i da roditelji mogu svojim zaštitničkim ponašanjem kod svoje dece podsticati razvoj strategije izbegavanja novih životnih situacija. Na ovaj način oni svom detetu šalju poruku da ne može sâmo da pristupi novim životnim situacijama, već da čeka na njihovu pomoć.

Osim roditeljske podrške i brige, i negativna stimulacija posebno snažno utiče na hipersenzitivne bebe. Ukoliko je dete konstantno izloženo određenim stresorima, kao što je svađa roditelja, može doći do porasta negativne emocionalnosti kod hipersenzitivnih beba već i na uzrastu od devet meseci (Aron, 2002). Međutim, ukoliko o njima brinu senzitivni i responzivni roditelji nivo negativne emocionalnosti hipersenzitivne bebe se neće povećavati. Ovo je, pored adekvatne roditeljske podrške i brige, objašnjeno i manjom prisutnošću veće stimulacije u detetovom životu. Naime, na ovom uzrastu sve bebe privlače pažnju staratelja da se više igraju sa njima. Međutim, za razliku od drugih beba, hipersenzitivne bebe lakše dolaze u stanje preplavljenosti, pa je neophodno da roditelji i o ovome vode računa (Aron, 2011; Baryla-Matejczuk et al., 2020). Zbog toga je pronalaženje optimalnog nivoa stimulacije za hipersenzitivnu decu od izuzetnog značaja.

Naravno, sve prethodno važi i za nehipersenzitivne bebe, međutim razlika je upravo u intenzitetu. Hipersenzitivnim bebama će biti potrebno manje negativnih životnih iskustava da bi već do godinu dana starosti polako dolazilo do porasta negativne emocionalnosti (Aron, 2002). Razlike između hipersenzitivnih i nehipersenzitivnih beba su pokazane i u jednom eksperimentu. Naime, ispitivana je veća uzbuđenost beba merenjem količine kortizola u krvi nakon zastrašujuće situacije (Gunnar, 1994). Identifikovane su devetomesečne bebe sa jačim i sa slabijim sistemom bihejvioralne inhibicije (hipersenzitivne i nehipersenzitivne) i one su bile odvojene od svojih majki na pola sata. Polovina hipersenzitivnih i polovina nehipersenzitivnih beba su ostavljene sa pažljivom bebisiterkom koja je adekvatno reagovala na sve detetove potrebe, dok su druga polovina hipersenzitivnih i druga polovina nehipersenzitivnih beba ostavljene sa bebisiterkom koja je bila nepažljiva i nije reagovala, osim ako bi dete zaista jako plakalo. Dobijeni rezultati su pokazali da su

samo hipersenzitivne bebe sa nepažljivom bebisiterkom imale više kortizola u pljuvački (Gunnar, 1994). Na osnovu rezultata ovog istraživanja, čini se kao da su se hipersenzitivne bebe sa pažljivom bebisiterkom, kao i obe grupe nehipersenzitivnih beba sa pažljivom i sa nepažljivom bebisiterkom osećale kao da imaju resurse za suočavanje sa ovom situacijom i da nema potrebe da stvaraju dugotrajni odgovor na stres (Gunnar, 1994).

Iz ovog eksperimenta se vidi koliki uticaj (ne)adekvatna briga ima na hipersenzitivnu decu. Uticaj staratelja na hipersenzitivnu decu je pokazan i u eksperimentu u kom su osamnaestomesečna deca izlagana nepoznatim situacijama dok su bila sa svojim majkama (Nachmias et al., 1996). Pre početka eksperimenta identifikovana su deca sa sigurnom i deca sa nesigurnom afektivnom vezanošću za majke pomoću metode strane situacije. Hipersenzitivna deca su kao prvu reakciju imala jako lupanje srca i povećan nivo adrenalina. U istom ovom istraživanju nehipersenzitivna deca su ulazila u situaciju bez pravljenja pauze. Međutim, hipersenzitivna deca sa sigurnom afektivnom vezanošću za majke samo su napravila pauzu da provere nepoznatu situaciju. Kada bi procenili da je situacija sigurna, počeli bi da je istražuju, kao i nehipersenzitivna deca. Za razliku od njih, hipersenzitivna deca sa nesigurnom afektivnom vezanošću za majke su se zaista uplašila, na šta je ukazivao porast nivoa kortizola u krvi (Nachmias et al., 1996). Iz ovih istraživanja moglo bi se zaključiti da će, ukoliko su svakodnevno suočena sa novim situacijama, hipersenzitivna deca sa nesigurnom vezanošću za staratelje imati hronično viši nivo kortizola. Viši nivo kortizola može da utiče na slabiji imuni sistem i na nastanak problema sa spavanjem (Aron, 2002).

U jednom kasnije sprovedenom istraživanju (Lionetti et al., 2019) proveravalo se da li zaista postoje deca na koju roditeljsko ponašanje i vaspitanje više utiče. U ovom istraživanju je ispitivana razlika među decom uzrasta od tri do šest godina u odnosu na njihovu različitu osetljivost na roditeljsku brigu (Lionetti et al., 2019). Roditeljska briga je bila operacionalizovana Upitnikom roditeljskih stilova i dimenzija (Robinson et al., 2001), dok su roditelji procenjivali senzitivnost svoje dece pomoću Upitnika za procenu senzitivnosti dece (Lionetti et al., 2019). Uzorak su činila deca uzrasta od tri do šest godina i rezultati ovog istraživanja su pokazali da zaista postoje razlike u dečjoj osetljivosti. Naime, jedna grupa dece je bila veoma osetljiva kako na lošu, tako i na dobru

roditeljsku brigu, dok je druga grupa dece bila manje osetljiva. Hipersenzitivna deca koja su imala niži nivo adekvatne roditeljske brige imala su veći broj problema u internalizovanom ponašanju, kao što su anksioznost i depresija, i eksternalizovanom ponašanju, kao što je agresivnost, u odnosu na nehipersenzitivnu decu sa istom ovakvom roditeljskom brigom (Lionetti et al., 2019). Takođe, u drugoj studiji je pokazano da su hipersenzitivna deca uzrasta od tri do pet godina i sa stresnijim porodičnim i školskim okruženjem bila pod većim rizikom da se razbole ili da se povrede u odnosu na svoje vršnjake. Međutim, u ovoj studiji je konstatovan i pozitivan uticaj okruženja na zdravlje hipersenzitivne dece. Naime, hipersenzitivna deca sa manje stresnim porodičnim i školskim okruženjem su u odnosu na svoje vršnjake bila pod manjim rizikom da se povrede ili da se razbole (Boyce et al., 1996).

Na osnovu sprovedenih istraživanja se uočava da dobro roditeljstvo i sigurna vezanost za primarne staratelje u velikoj meri utiču na mentalno i fizičko zdravlje, ali i na ponašanje hipersenzitivne dece kako ona ne bi razvila internalizovane i eksternalizovane probleme i kako se ne bi povlačila od spoljašnjeg sveta. Dakle, da bi se hipersenzitivna deca tokom prvih par godina života osećala bezbedno da istražuju nove situacije, ona treba prvo da se osećaju bezbedno sa svojim starateljima. Iako tačno za svu decu, ovo se posebno odnosi na hipersenzitivnu decu zato što je njihov sistem bihejvioralne inhibicije jači (Aron, 2002).

3. Hipersenzitivna deca osnovnoškolskog uzrasta

Upravo zbog lakoće dolaženja u stanje preplavljenosti, koje je jedno od osnovnih karakteristika hipersenzitivnih ljudi, na osnovnoškolskom uzrastu se mogu, u najvećoj meri, uočiti razlike u ponašanju hipersenzitivne i nehipersenzitivne dece (Aron, 2002). Kada je dete svesno svega što se dešava u njemu i oko njega i kada dublje proživljava životne situacije, kao i ponašanje drugih ljudi, ono se onda lakše mentalno i fizički umori od druge dece. Dakle, lako dolaženje u stanje preplavljenosti je posledica dublje i temeljnije obrade informacija. Ova karakteristika je, zbog svojih posledica, često veoma teška za dete, kao i za roditelje ili staratelje (Baryla-Matejczuk et al., 2020).

Na primer, situacije koje su privlačne detetu, kao što su putovanja ili igraonice, mogu biti i izvor prevelike stimulacije. Količina i intenzitet stimulusa u ovakvim situacijama može da otežava detetovo svakodnevno funkcionisanje. Ovo znači da hipersenzitivnu decu uznemirava ono što druga deca ne primećuju (Aron, 2002). Upravo zbog lakog dolaženja u stanje preplavljenosti usled spoljašnje stimulacije, hipersenzitivnost može da podseća na autizam (Liss et al., 2008), odnosno, reakcije hipersenzitivne i autistične dece mogu biti slične kada su hipersenzitivna deca u stanju preplavljenosti. Kada su u ovom stanju, i jedna i druga grupa dece mogu reagovati povećanom iritabilnošću ili povlačenjem od drugih ljudi (Liss et al., 2008). Međutim, hipersenzitivna deca u poznatijim okruženjima imaju dobre društvene veštine. Generalno, ne postoje preklapanja između kriterijuma za hipersenzitivnost i kriterijuma za autizam (Aron, 2011). Osim na autizam, kada je hipersenzitivno dete u stanju preplavljenosti njegovo ponašanje može da podseća i na ponašanje deteta sa poremećajem pažnje sa hiperaktivnošću. Na primer, imaju problem sa održavanjem pažnje, ne slušaju druge dok govore, ne završavaju zadatke i zaboravljaju stvari. Međutim, kao i u slučaju autizma, ne postoje preklapanja između kriterijuma za hipersenzitivnost i kriterijuma za poremećaj pažnje sa hiperaktivnošću (Aron, 2011). Može se desiti i da hipersenzitivna deca budu procenjena kao manje inteligentna od strane nastavnika, zbog lošijih rezultata na testiranjima koje nekada ostvaruju usled preteranog uzbuđenja. Ovo je posledica njihove više emocionalne reaktivnosti, što je još jedna osnovna karakteristika hipersenzitivnosti. Međutim, kada nisu uznemirena, pokazuje se da je ova procena bila netačna (Aron, 2011).

Iz svih ovih razloga veoma je važno da roditelji nauče dete kako da se nosi sa stanjem uznemirenosti i preplavljenosti. Dakle, roditelji treba da pomognu detetu na osnovnoškolskom uzrastu da razvije adekvatnu strategiju koja će mu pomoći kada oseća da postaje uznemireno ili da dolazi u stanje preplavljenosti zbog prevelike stimulacije. Ovo je veoma važno posebno u slučaju lakoće dolaženja u stanje preplavljenosti, zato što ova karakteristika može da oteža detetovo druženje s vršnjacima i uklapanje u kolektiv. Međutim, pored toga što roditelji treba da pomognu detetu da razvije adekvatne strategije za nošenje sa stanjem preplavljenosti, nekada i sama porodica može biti izvor preterane stimulacije.

Ukoliko roditelji ne prepoznaju detetovu potrebu za nižim nivoom stimulacije, oni mogu da dovedu dete do stanja preplavljenosti tako što ga, na primer, vode na veliki broj vannastavnih aktivnosti, što insistiraju da se stalno druži sa vršnjacima i slično (Aron, 2002; Baryla-Matejczuk et al., 2020).

Negativan uticaj porodice na hipersenzitivno dete je pokazan i u istraživanjima u kojima je dobijeno da će hipersenzitivni odrasli ljudi imati viši neuroticizam (Aron & Aron, 1997), da će biti stidljiviji (Aron et al., 2005), da će imati višu depresivnost (Liss et al., 2005) i da će biti manje zadovoljni svojim životom (Booth et al., 2015) ukoliko su tokom detinjstva imali stresnije porodično okruženje i niži nivo adekvatne roditeljske brige. Sve ovo nije dobijeno ili je pokazano u manjoj meri za nehipersenzitivne ispitanike sa istim ovakvim okruženjem tokom odrastanja. Međutim, mnogi istraživači napominju da, pored negativnih aspekata, i pozitivni aspekti okruženja imaju veći uticaj na hipersenzitivnu decu u odnosu na nehipersenzitivnu (Greven et al., 2019; Pluess et al., 2018). Na primer, u istraživanju sprovedenom u Velikoj Britaniji je pokazan pozitivan uticaj okruženja na hipersenzitivnu decu. Naime, hipersenzitivne devojčice su imale više koristi od psiholoških intervencija sprovedenih u školi, koje su bile usmerene na razvoj socio-emocionalnih veština dece. Iako pre početka programa nije bilo značajnih razlika u skorovima na skali depresivnosti između hipersenzitivnih i nehipersenzitivnih devojčica, nakon završetka programa hipersenzitivne devojčice su imale značajno niže skorove na skali depresivnosti. Autori zaključuju da ovo ima veze sa dubljom obradom informacija hipersenzitivnih devojčica, odnosno, hipersenzitivne ispitanice su dublje obrađivale sadržaj ovih intervencija, što je dovelo do bolje internalizacije i primene stečenih kognitivno-bihejvioralnih strategija suočavanja (Pluess & Boniwell, 2015). Rezultati ovih istraživanja pokazuju da na hipersenzitivnu decu više utiču averzivni, ali i podržavajući aspekti okruženja u odnosu na nehipersenzitivnu decu (Aron & Aron, 1997; Pluess & Boniwell, 2015).

4. Zaključak

Istraživanja o hipersenzitivnoj deci su u poslednjih dvadeset godina sve brojnija u svetu, ali su ipak i dalje na početku, što ukazuje na činjenicu da brojni aspekti o hipersenzitivnoj deci još uvek nisu dovoljno proučeni. Ovo se posebno odnosi na istraživanja o hipersenzitivnim bebama i deci predškolskog uzrasta. Većina ovih istraživanja su bile eksperimentalne studije koje su sprovođene pre definisanja koncepta hipersenzitivnosti, dok su naučnici tek kasnije zaključili da su zapravo bila proučavana hipersenzitivna deca. Dakle, neophodno je da se sprovede veći broj istraživanja o hipersenzitivnoj deci mlađeg uzrasta.

Veći broj istraživanja o hipersenzitivnoj deci starijeg uzrasta bio je usmeren isključivo na uticaj porodičnog okruženja na njihovo mentalno i fizičko zdravlje. Međutim, ne postoje istraživanja o tome kakvo bi vaspitanje i porodična dinamika hipersenzitivnoj deci najviše odgovarali, kao i da li vaspitanje od strane roditelja može uticati na dodatno povećavanje senzitivnosti deteta (Liss et al., 2005). Iako se u literaturi navodi da i pozitivni aspekti okruženja više utiču na hipersenzitivnu decu, oni su u manjoj meri proučavani u odnosu na uticaj negativnih aspekata okruženja. Na kraju, nije sprovedena nijedna longitudinalna studija o hipersenzitivnim osobama i iz tog razloga brojne karakteristike hipersenzitivnih ljudi, kroz njihove različite faze razvoja, još uvek nisu poznate.

Bez obzira na nedostatke dosadašnjih istraživanja o hipersenzitivnoj deci, na osnovu rezultata prethodno sprovedenih istraživanja i na osnovu zapažanja psihologa naučnici zaključuju da hipersenzitivnost predstavlja dimenziju temperamenta, kao i da, u skladu sa tim, hipersenzitivni ljudi i deca zaista imaju određene karakteristike koje se ne odnose na nehipersenzitivni deo populacije (Aron & Aron, 1997; Jagiellowicz et al., 2016; Licht et al., 2020; Liss et al., 2005). Ove karakteristike se odnose na njihovu veću senzitivnost na pozitivne i negativne aspekte okruženja, na veću opreznost prilikom pristupanja novim životnim situacijama, ali i na četiri osnovne karakteristike hipersenzitivnosti, odnosno na dublju obradu informacija, višu emocionalnu reaktivnost, lakoću dolaženja u stanje preplavljenosti i osetljivost na suptilnosti. Nalazi ovih istraživanja su bitni zato što ukazuju roditeljima, nastavnicima i stručnjacima na osnovne karakteristike hipersenzitivne dece.

Roditelji bi trebalo da budu upoznati sa činjenicom da je dobro okruženje od presudne uloge za hipersenzitivnu decu. Ovo ne znači da roditelji moraju da budu hipersenzitivni da bi hipersenzitivno dete bilo dobro prilagođeno, već znači da porodično okruženje treba da bude podržavajuće prema detetu i njegovim potrebama. Kao što je prethodno napisano, važno je da roditelji budu podrška svom hipersenzitivnom detetu i da ga podstiču da pristupi novim životnim situacijama onda kada je to bezbedno. Naime, hipersenzitivna deca mogu odlučiti da nešto ne pokušaju zbog veće opreznosti i na taj način mogu propustiti brojna značajna životna iskustva. Zbog lakoće dolaženja u stanje preplavljenosti, bitno je i da roditelji vode računa o odmoru hipersenzitivnog deteta, odnosno da deo dana bude bez velike stimulacije. Ukoliko dete ima dosta obaveza u toku dana, bitno je da ga roditelji podstiču da češće pravi kratke pauze. Ako hipersenzitivno dete dođe u stanje preplavljenosti, ili ukoliko se oseća uznemireno, bitno je da roditelji uvide šta je dovelo do tog stanja i kako da ovo spreče u budućnosti (Aron, 2002).

Isto tako je važno da nastavnici budu upoznati sa osnovnim karakteristikama hipersenzitivne dece kako dete ne bi pogrešno procenili kao manje inteligentno zbog lošijih rezultata na testovima usled prevelikog uzbuđenja ili kao bezobrazno, zbog problema sa lakšim dolaženjem u stanje preplavljenosti ili zbog više emocionalnosti. Takođe, kada hipersenzitivno dete krene u vrtić, školu ili ukoliko prelazi u novo odeljenje trebaće mu više vremena da se prilagodi novom okruženju nego drugoj deci. Iz ovog razloga je važno da ga nastavnici ne požuruju u ovom procesu, već da mu dozvole da se prilagođava svojim tempom. Nastavnici treba da vode računa i o tome da hipersenzitivna deca lakše dolaze u stanje preplavljenosti ili uznemirenosti od druge dece. Manja je verovatnoća da će do ovoga doći ukoliko nastavnici učenicima ne zadaju previše zadataka koje treba da urade u kratkom vremenskom roku, ukoliko učenici imaju dovoljno odmora i ukoliko nastavnici nisu previše strogi. Nastavnici bi trebalo i da pronađu optimalni nivo u podsticanju hipersenzitivnog deteta da učestvuje u diskusiji na času (Aron, 2002). S obzirom da hipersenzitivna deca predstavljaju manjinski deo u odnosu na njihove vršnjake, može se desiti i da budu značajno manje popularna, ali i prihvaćena (Aron 2002; Chen et al., 1992). Iz ovog razloga, ukoliko dete ima problem da se uklopi u vršnjačke grupe ili da se prilagodi

školskom životu, važno je da mu nastavnici daju odgovarajuću podršku. Ovo će biti moguće jedino ukoliko su oni upoznati sa konceptom hipersenzitivnosti i sa osnovnim karakteristikama hipersenzitivnih ljudi.

Od izuzetnog je značaja i da psiholozi, psihoterapeuti i psihijatri budu upoznati sa osnovnim karakteristikama hipersenzitivnosti kako detetu ne bi dali pogrešnu dijagnozu i kako bi mu bili odgovarajuća podrška. Naime, zbog ponašanja hipersenzitivnih ljudi, kada su oni u stanju preplavljenosti ili kada su uznemireni, hipersenzitivnost može da podseća na neki poremećaj (Aron, 2011). Ponašanje hipersenzitivne dece u stanju preplavljenosti ili uznemirenosti se najčešće poistovećuje sa ponašanjem autistične dece ili dece sa poremećajem pažnje sa hiperaktivnošću. Upravo u situaciji kada roditelji vode hipersenzitivno dete kod stručnjaka ono će najčešće biti uznemireno. Iz ovog razloga, ukoliko stručnjaci nisu upoznati sa osnovnim karakteristikama hipersenzitivnosti, oni mogu izjaviti da je dete manje inteligentno, stidljivo, da ima probleme sa anksioznošću ili, u ekstremnijim slučajevima, dati hipersenzitivnom detetu neku dijagnozu, kao što je autizam ili poremećaj pažnje sa hiperaktivnošću.

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Isidora Rajić[1]

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HIGH SENSITIVITY IN CHILDHOOD

Abstract: This paper presents the existing literature on the development of highly sensitive children from birth to adolescence. The most important traits of highly sensitive children are described, as well as the results of the research on highly sensitive children. Namely, the scientific literature states that there are about 20% of highly sensitive people in the general population. For this reason, it is necessary for professionals (psychologists, psychotherapists, and psychiatrists), as well as parents and teachers, to become better acquainted with the basic characteristics of sensitivity. It often happens that highly sensitive children are diagnosed with a disorder such as autism or attention deficit hyperactivity disorder, or are assessed to be less intelligent simply because the experts are not familiar with the basic characteristics of highly sensitive people. Even though the research on sensitivity has increased worldwide over the last twenty years, this is not the case in our region, and experts working in clinical practice in Serbia are largely unfamiliar with sensitivity and its basic characteristics. However, experts, parents and teachers can adequately support highly sensitive children only if they understand the differences between highly sensitive and non-highly sensitive individuals, the basic characteristics of sensitivity, and the various factors that influence the physical and mental health of highly sensitive children.

Keywords: C*hildhood, sensitivity, behavioral inhibition system, depth of processing*

[1] M.A. Psychology, Department of Psychology, Faculty of Law and Business Studies dr Lazar Vrkatić. Novi Sad, UNION University, Belgrade, email: isidorarajic5995@gmail.com

1. Introduction

Mainstream scientific literature states that highly sensitive people represent a minority part of the population with a more sensitive nervous system compared to the majority, non-highly sensitive part of the population (Aron & Aron, 1997; Gearhart & Bodie, 2012; Greven et al., 2019; Jagiellowicz et al., 2016). The reason for this assumption lies in the results of a number of research showing that highly sensitive people have certain brain areas more active than non-highly sensitive people (Acevedo et al., 2021). For example, some studies have shown that highly sensitive subjects use more parts of the brain associated with deeper information processing (Acevedo et al., 2021; Jagiellowicz et al., 2011). In addition to deeper processing of information, other characteristics of highly sensitive people are: higher emotional reactivity, easily reaching a state of overwhelm and sensitivity to the subtle.

The depth of information processing represents, as the name itself suggests, the tendency to process information more deeply. Highly sensitive people process everything more, connecting and comparing what they observe with their past experiences in similar situations. Many researchers believe that the depth of information processing is the main trait of highly sensitive people (Aron et al., 2005; Liss et al., 2005). Being deeply reflective, it is more likely that highly sensitive people will get physically and mentally tired sooner, subsequently reaching a state of overwhelm more easily. Higher emotional reactivity refers to highly sensitive people having more intense emotional reactions to positive and negative life experiences, as well as to more intense reactions to other people's emotions. Sensitivity to the subtle refers to all those small things noticed by highly sensitive people, but missed by others (Aron, 2011; Baryla-Matejczuk et al., 2020; Boterberg & Warreyn, 2016).

Research on highly sensitive children dates back to the period before the concept of high sensitivity and the basic characteristics of highly sensitive people were defined (Boyce et al., 1996; Gunnar, 1994; Nachmias et al., 1996). Namely, researchers noticed in the past that there was a certain group of children who differed from their peers in terms of their basic traits. The terms used at the time of conducting these studies were higher reactivity, shyness or higher negative emotionality, while

scientists only later realized that what had actually been studied was the heightened sensitivity of a specific group of children (Jagiellowicz et al., 2020). Upon defining the concept of high sensitivity, research conducted specifically on a particular group of highly sensitive children began (Aron & Aron, 1997). Additionally, a large number of characteristics about the development of highly sensitive children, as well as about the influence of the family on highly sensitive children, are stated by Elaine Aron (Elaine N. Aron). Her conclusions, written in the book "Sensitive Child", came from therapeutic work with highly sensitive persons and children, as well as from consultations with developmental psychologists (Aron, 2002; Aron, 2011).

2. Highly sensitive babies and preschool-age children

In order to understand the characteristics of highly sensitive children through different stages of their development, it is necessary to understand the concepts related to the systems of behavioral activation and behavioral inhibition (Aron, 2002). Subsequently, according to Gray's reinforcement sensitivity theory, there are three basic emotional systems. The *fight-or-flight* system regulates avoidance and defense against aggressive behavior in response to unconditional signals of punishment. The behavioral activation system is responsible for controlling active access and behavior which represents a reaction to reward signals. The behavioral inhibition system regulates passive avoidance of punishment signals and incorporates frustration due to absence of reward (Gray, 1991; Gray & McNaughton, 2000). Although every individual is equipped with this behavioral inhibition system, the system is thought to be very active or strong in highly sensitive people (Aron & Aron, 1997; Smolewska et al., 2006). The behavioral inhibition system is also known as the *pause-to-check system* because it affects both the perception of the situation a person is approaching and the comparison of that situation with other similar situations from the past. Because of this, inhibition occurs only for a moment, unless a likely similar situation in the past was not threatening. However, a few bad experiences in approaching new situations can turn a *pause-to-check system* into a *pause-and-do-nothing system*. This reaction can develop as early as at

the age of six months in highly sensitive babies by slowly developing the strategy *The best way to avoid bad things would seem to be avoiding everything*. For example, a baby wants to try something, but is at the same time afraid of the new situation (Aron, 2002). For this reason, it is very important at this age that parents help their child in the regulation of its own emotions, i.e., whether to be afraid of unknown situations or how to approach them. The assumption is that overly protective parents can actually encourage the development of new life situations avoidance strategy in their children. This way, they send their child a message that it should not approach new life situations on its own, but wait for their assistance instead.

Apart from parental support and care, negative stimulation itself can have a particularly strong effect on highly sensitive babies. If a baby is constantly exposed to certain stressors, such as parental quarrels, there may be an increase in negative emotionality in highly sensitive babies as soon as at the age of nine months (Aron, 2002). However, if highly sensitive babies are nourished by caring and responsive parents, their level of negative emotionality will not increase. This, in addition to adequate parental support and care, is also explained by a decreased presence of increased stimulation in a child's life. Namely at this age, all babies attract the attention of their guardians to play with them more. However, unlike other babies, highly sensitive babies easily become overwhelmed, so it is necessary for parents to take this into account (Aron, 2011; Baryla-Matejczuk et al., 2020). Therefore, finding the optimal level of stimulation for highly sensitive children is extremely important.

Of course, the above also applies to non-highly sensitive babies, but the difference is precisely in intensity. Highly sensitive babies will need fewer negative life experiences to slowly increase their negative emotionality by the age of one (Aron, 2002). Differences between highly sensitive and non-highly sensitive babies were also demonstrated in one experiment. Namely, the greater excitement of babies was investigated by measuring the amount of cortisol in the blood after a frightening situation (Gunnar, 1994). Nine-month-old babies with stronger and weaker systems of behavioral inhibition (highly sensitive and non-highly sensitive) were identified and they were separated from their mothers for half an hour. Half of the highly sensitive and half of the non-highly

sensitive babies were left with an attentive babysitter who responded adequately to all the child's needs, while the other half of the highly sensitive and the other half of the non-highly sensitive babies were left with a babysitter who was inattentive and did not respond unless a child cried really hard. The obtained results showed that only highly sensitive babies with a careless babysitter had more cortisol in their saliva (Gunnar, 1994). Based on the results of this study, it appeared that highly sensitive infants with attentive babysitters, as well as both groups of non-highly sensitive infants with attentive and inattentive babysitters, felt that they had the resources to deal with this situation and that there was no need to create a prolonged stress response. (Gunnar, 1994).

The experiment showed how much impact (in)adequate care can have on highly sensitive children. The influence of caretakers on highly sensitive children was also demonstrated in an experiment in which eighteen-month-old children were exposed to unfamiliar situations while they were with their mothers (Nachmias et al., 1996). Before the experiment commenced, both children with secure and insecure affective attachment to their mothers were identified using the unfamiliar situation method. As a first reaction, highly sensitive children had strong heart palpitations and an increased level of adrenaline. In this same research, non-highly sensitive children entered the situation without taking a break. However, highly sensitive children with a secure affective attachment to their mothers only paused to check out the unfamiliar situation. Having assessed the situation as safe, they would start to explore it, just like non-highly sensitive children would. In contrast, highly sensitive children with insecure attachment to their mothers did become fearful, as indicated by the increased blood cortisol levels (Nachmias et al., 1996). It could be concluded from these studies that, if faced with new situations every day, highly sensitive children with an insecure attachment to their caretakers will have a chronically higher cortisol level. An increased level of cortisol can debilitate the immune system and cause sleep problems (Aron, 2002).

In a later study (Lionetti et al., 2019), an assessment was made to establish whether children more influenced by parental behavior and upbringing do exist. In this research, the difference between children aged three to six years was examined in relation to their different sensitivity

to parental care (Lionetti et al., 2019). The parental care was evaluated by the Parenting Styles and Dimensions Questionnaire (Robinson et al., 2001), while parents assessed their children's sensitivity using the Children's Sensitivity Assessment Questionnaire (Lionetti et al., 2019). The sample consisted of children aged three to six years and the results of this research showed that there really are differences in children's sensitivity. Namely, one group of children was very sensitive to both bad and good parental care, while the other group of children was less sensitive. Highly sensitive children who had a lower degree of adequate parental care had more problems in internalized behavior (such as anxiety and depression) and externalized behavior (such as aggression) compared to non-highly sensitive children with the same degree of parental care quality (Lionetti et al., 2019). Also, in another study, it was shown that highly sensitive children aged three to five years residing in a more stressful family and school environment were at a higher risk of becoming ill or being injured compared to their peers. However, in this study, a positive influence of the environment on the health of highly sensitive children was recorded. Namely, highly sensitive children residing in a less stressful family and school environment were at a lower risk of injury or illness than their peers (Boyce et al., 1996).

Based on many research conducted, it can be observed that good parenting and secure attachment to primary caretakers greatly affect the mental and physical health, but also the behavior of highly sensitive children so that they do not develop internalized and externalized problems, nor withdrawing from the outside world. So, in order for highly sensitive children to feel safe to explore new situations during their first few years of life, they need to first feel safe with their caretakers. Although true for all children, this is especially true for highly sensitive children because their behavioral inhibition system is stronger (Aron, 2002).

3. Highly sensitive primary-school-age children

Precisely due to how easy it is to reach a state of overwhelm, which is one of the basic characteristics of highly sensitive individuals, differences in the behavior of highly sensitive and non-highly sensitive children can primarily be observed at primary-school age (Aron, 2002). When

a child is aware of everything that is happening in and around, while deeply experiencing life situations as well as the behavior of other people, a child becomes mentally and physically exhausted more easily than other children. So, reaching a state of overwhelm easily is a consequence of deeper and more thorough processing of information. This characteristic, due to its consequences, is often very difficult for the child, as well as for parents or caretakers (Baryla-Matejczuk et al., 2020).

For instance, situations that are attractive to a child, such as travel or playrooms, can also be a source of overstimulation. The amount and intensity of stimuli in such situations can hinder a child's daily functioning. This means that highly sensitive children are disturbed by things which other children do not notice (Aron, 2002). It is exactly because of reaching a state of overwhelm easily due to external stimulation that high sensitivity can resemble autism (Liss et al., 2008), that is, the reactions of highly sensitive and autistic children can be similar when highly sensitive children are in a state of overwhelm. When in this state, both groups of children may react with increased irritability or withdrawal from other people (Liss et al., 2008). However, highly sensitive children in a more familiar environment have good social skills. In general, there is no overlap between the criteria for high sensitivity and the criteria for autism (Aron, 2011). In addition to autism, when a highly sensitive child is in a state of overwhelm, its behavior can resemble the behavior of a child with attention deficit hyperactivity disorder (ADHD). For example, they have trouble paying attention, they do not listen to other people talking, they do not finish tasks, and they forget things. However, as with autism, there is no overlap between criteria for high sensitivity and criteria for attention deficit hyperactivity disorder (Aron, 2011). It can also happen that highly sensitive children be evaluated by teachers as less intelligent because of worse test results they sometimes achieve due to excessive excitement. This is because of their higher emotional reactivity, which is yet another basic characteristic of high sensitivity. However, when they are not disturbed, this assessment is deemed incorrect (Aron, 2011).

For all these reasons, it is very important for parents to teach their child how to deal with a state of anxiety and overwhelm. Therefore, parents should help their primary-school-age child to develop an adequate

strategy that will help should the child feel it is becoming anxious or overwhelmed due to overstimulation. This is very important, especially in the case of entering a state of overwhelm easily, because this characteristic can make it difficult for the child to socialize with peers and fit into the collective. However, in addition to the fact that parents should help the child develop adequate coping strategies, the family itself can sometimes be a source of excessive stimulation. If parents do not recognize the child's need for a lower level of stimulation, they can lead the child to a state of overwhelm by, for instance, engaging it in a large number of extracurricular activities, insisting on constant socializing with its peers and alike (Aron, 2002; Baryla- Matejczuk et al., 2020).

The negative influence of family on a highly sensitive child has also been observed in some research, showing that highly sensitive adults will have higher neuroticism (Aron & Aron, 1997), be shyer (Aron et al., 2005), exhibit higher depression (Liss et al., 2005) and be less satisfied with their lives (Booth et al., 2015) if they have a more stressful family environment and a lower level of adequate parental care during childhood. All this has not been observed or it has been observed in a lesser extent in non-highly sensitive subjects with an identical environment during childhood. However, many researchers note that, in addition to negative aspects, positive aspects of the environment have a greater impact on highly sensitive children compared to the non-highly sensitive (Greven et al., 2019; Pluess et al., 2018). For example, a study conducted in Great Britain showed a positive influence of the environment on highly sensitive children. Namely, highly sensitive girls benefited more from psychological interventions implemented at school, which were aimed at developing children's socio-emotional skills. Although there were no significant differences in scores on the depression scale between highly sensitive and non-highly sensitive girls before the start of the program, highly sensitive girls had significantly lower scores on the depression scale upon finishing the program. The authors concluded that this had to do with the deeper processing of information by highly sensitive girls, i.e., highly sensitive respondents processed the content of these interventions more deeply, which led to better internalization and application of acquired cognitive-behavioral coping strategies (Pluess & Boniwell, 2015). The results of these studies show that highly sensitive

children are more influenced by both aversive and supportive aspects of the environment compared to non-highly sensitive children (Aron & Aron, 1997; Pluess & Boniwell, 2015).

4. Conclusion

In the last twenty years, research on highly sensitive children have been increasingly numerous in the world, but they are still at the beginning, which indicates the fact that many aspects of highly sensitive children have yet to be sufficiently studied. This especially applies to research on highly sensitive babies and preschoolers. Most of these attempts of research were experimental studies conducted before the concept of high sensitivity was even defined, whereby scientists only later realized that it was highly sensitive children that they had actually been studying. Therefore, it is necessary to conduct more research on highly sensitive children of a younger age.

A higher number of research on older highly sensitive children were focused exclusively on the influence of a family environment on their mental and physical health. However, there is no research on what kind of upbringing and family dynamics would suit highly sensitive children the most, as well as whether parenting can have an effect on the additional increase in sensitivity of a child (Liss et al., 2005). Although the literature states that the positive aspects of the environment have a greater impact on highly sensitive children, they have been studied to a lesser extent compared to the influence of negative aspects of the environment. Finally, no longitudinal study has been conducted on highly sensitive people, and for this reason, many characteristics of highly sensitive people, through their different stages of development, are still unknown.

Regardless of the shortcomings of previous research on highly sensitive children, based on the results of previously conducted research and on the basis of the observations of psychologists, scientists have concluded that high sensitivity represents a dimension of temperament, and that, accordingly, highly sensitive people and children do have certain characteristics that do not relate to the non-highly sensitive part of the population (Aron & Aron, 1997; Jagiellowicz et al., 2016; Licht et al.,

2020; Liss et al., 2005). These characteristics refer to their greater sensitivity to positive and negative aspects of the environment, to greater caution when approaching new life situations, but also to the four basic characteristics of high sensitivity, that is, deeper processing of information, higher emotional reactivity, easily reaching a state of overwhelm and sensitivity to the subtle. The findings of these studies are important because they indicate to parents, teachers and experts the basic characteristics of highly sensitive children.

Parents should be aware of the fact that a good environment is crucial for highly sensitive children. This does not mean that parents themselves need to be highly sensitive in order for a highly sensitive child to be well adapted, it rather means that a family environment should be supportive of the child and its needs. As previously mentioned, it is important for parents to support their highly sensitive child and encourage it to approach new life situations when safe to do so. Namely, highly sensitive children may decide not to try something due to greater caution and thus may miss out on many significant life experiences. Due to easily entering a state of overwhelm, it is also important that parents manage their highly sensitive child's resting periods, that is, to have a part of the day without great stimulation. If a child has a lot of obligations during the day, it is important that parents encourage it to take short breaks more often. If a highly sensitive child becomes overwhelmed, or if it feels anxious, it is important for parents to understand what has led to such a state and how to prevent it from happening in the future (Aron, 2002).

It is also important for teachers to be familiar with the basic characteristics of highly sensitive children so that they do not misjudge the child as being less intelligent due to worse test results caused by excessive excitement, or being rude due to easily becoming overwhelmed or being more emotional. Also, when a highly sensitive child starts kindergarten, school, or moves to a new class, it will require more time to adapt to the new environment than other children. For this reason, it is important that teachers do not rush the child through this process, but rather to allow it to adapt at its own pace. Teachers should also take into account that highly sensitive children become overwhelmed or agitated more easily than other children. This is less likely to happen if teach-

ers do not give students too many tasks to complete in a short period of time, if students have enough rest and if teachers are not too strict. Teachers should also find an optimal level in encouraging the highly sensitive child to participate in class discussion (Aron, 2002). Given that highly sensitive children are a minority compared to their peers, they may be significantly less popular, but also accepted (Aron 2002; Chen et al., 1992). For this reason, if a child has a problem fitting into peer groups or adapting to school life, it is important that teachers give it appropriate support. This will be possible only if they are familiar with the concept of high sensitivity and the basic characteristics of highly sensitive people.

It is extremely important that psychologists, psychotherapists and psychiatrists are familiar with the basic characteristics of high sensitivity so that they do not misdiagnose a child and provide it with appropriate support. Actually, due to the behavior of highly sensitive people when they are in a state of overwhelm or when they are upset, high sensitivity can resemble a disorder (Aron, 2011). Behavior of highly sensitive children in a state of overwhelm or anxiety is most often misinterpreted as that of autistic children or children with attention deficit hyperactivity disorder. It is precisely in the situation when parents take a highly sensitive child to a specialist that it will most often be upset. For this reason, if experts are not familiar with the basic characteristics of high sensitivity, they may connote a child less intelligent, shy, having anxiety problems or, in more extreme cases, diagnose a highly sensitive child with autism or attention deficit hyperactivity disorder.

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Davor Milardović[1]

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IZUZECI U KONTEKSTU TESTAMENTARNOG NASLEĐIVANJA

Rezime: Datiranje svojeručnog testamenta donosi brojne prednosti. Odsustvo datuma povlači razne pravne posledice, te se iste u radu analiziraju. Analiziraju se i pravne posledice netačnog datiranja ovog testamenta. Sagledavaju se i načini datiranja svojeručnog testamenta u brojnim evropskim pravnim sistemima. Posebna pažnja posvećuje se datiranju predmetnog testamenta u Republici Austriji, Saveznoj Republici Nemačkoj i Švajcarskoj Konfederaciji. Kod međunarodnog testamenta ukazuje se na značaj datuma za njegovu pravnu valjanost. Daje se jasan stav u pogledu teorijskih dilema koje prate datiranje međunarodnog testamenta. U drugom delu rada obrađuje se tema zanemarena od strane pravne nauke, odnosno tema testamentarnog nasleđivanja, kao izuzetka u pravnoj praksi. Ukazuje se na moguće uzroke ovog pravnog fenomena kako u pogledu redovnih privatnih testamenata, tako i u pogledu redovnih javnih testamenata.

Ključne reči: *svojeručni testament, međunarodni testament, datiranje testamenta, civilno pravo Evrope, testament kao izuzetak pravne prakse*.

1. Uvod

Svojeručni testament, prema važećim propisima u Federaciji Bosne i Hercegovine, ne mora imati naveden datum testiranja. Prema čl. 66 st. 2 Zakona o nasleđivanju u Federaciji Bosne i Hercegovine - ZN FBiH

[1] Doktor pravnih nauka. E-mail: dmilardovic5@gmail.com

(2014), „za punovažnost svojeručnog testamenta nije nužno da je u njemu naznačen datum kada je sačinjen, ali je poželjno da datum bude naznačen". Prema važećem naslednom pravu u Republici Srpskoj, odnosno prema čl. 68 st. 2 Zakona o nasleđivanju Republike Srpske – ZN RS (2009), navođenje datuma svojeručnog testamenta pravno je obavezno. U tom kontekstu, u naslednom pravu Bosne i Hercegovine (u radu se analiziraju oblici testamenta normirani pozitivnopravnim propisima Bosne i Hercegovine, odnosno njenih entiteta) svojeručni testament ZN FBiH predstavlja izuzetak. Nasuprot redovnim privatnim testamentima, a kada se govori o redovnim javnim testamentima i datiranjima istih, javlja se još jedan izuzetak. Međunarodni testament, prema čl. 82 ZN FBiH, u pravu Federacije Bosne i Hercegovine jedini je testament čija je pravna valjanost uslovljena navođenjem datuma testiranja. Uzevši u obzir prethodno navedeno, od značaja je proučiti kakve su to pravne posledice (ne)datiranja navedenih testamenata (pravne posledice nedatiranja predmetnih testamenata univerzalne su, te se odnose na svaki pravni sistem u čijim odredbama o testamentu postoje svojeručni i međunarodni testament). Inače, podela testamenata na redovne i vanredne predstavlja glavnu podelu u okvirima vrsta testamenata, pored podele na privatne i javne, te pismene i usmene testamente (Blagojević, 1983, str. 254). Privatni su testamenti oni koje sačinjava sam testator, bez prisustva javnih organa ili organa koji u konkretnom slučaju nastupaju kao javni organi (Vedriš & Klarić, 2006, str. 737–738). Javni testamenti su testamenti koji su sačinjeni uz učešće organa javne vlasti i lica javnog poverenja, odnosno lica na koje je država prenela javna ovlašćenja (Bikić & Suljević, 2014, str. 130).

No, kada se govori o izuzecima u okviru testamentarnog nasleđivanja, ne sme se, pre svega, zaobići tema testamenta kao izuzetka u pravnoj praksi, možda još preciznije rečeno – kao najređe korišćenog (uglavnom najjačeg) pravnog osnova nasleđivanja. Fenomen testamentarnog nasleđivanja kao izuzetka u pravnoj praksi biće posmatran u kontekstu regiona, s obzirom na to da se radi o pojavi koja je podjednako prisutna kako u Bosni i Hercegovini, tako i u Republici Srbiji, te Republici Hrvatskoj. Zanimljivo je istaći i da se u naslednom pravu Federacije Bosne i Hercegovine, pored testamentarnog i zakonskog nasleđivanja, pojavljuje i treći pravni osnov nasleđivanja, a to je ugovor o nasleđivanju između

bračnih ili vanbračnih partnera koji ima prednost u odnosu na testamentarno i zakonsko nasleđivanje (v. čl. 5 st. 3 i čl. 125–132 ZN FBiH). No u pravu Republike Srpske, Republike Srbije i Republike Hrvatske tradicionalna podela na dva pravna osnova nasleđivanja je zadržana (v. čl. 5 ZN RS, čl. 2 Zakona o nasleđivanju Republike Srbije (1995) i čl. 4 st. 3 Zakona o nasleđivanju Republike Hrvatske (2003)).

2. Datum svojeručnog testamenta

Kako je već naglašeno, prema ZN FbiH, svojeručni testament se može pravno valjano sačiniti i bez naznačenja datuma testiranja. Navođenje datuma je poželjno, ali nije i neophodno. Posmatrano ranije, kroz istoriju, reč je o rešenju koje je preuzeto od Saveznog zakona o nasleđivanju – SZN (1955). Inače, SZN je donesen, u najvećem delu, po ugledu na švajcarsko nasledno pravo (pre svega materijalnopravni deo), a što je značilo vraćanje kontinentalno-evropskom pravnom krugu sa primetnim ostatkom socijalističkih novousvojenih načela (Gavella i dr., 2005, str. 90–92). Međutim, takvo rešenje korene ima još u austrijskom pravu (Antić & Balinovac, 1996, str. 323).

Najpre, opravdano se može postaviti pitanje: šta će se desiti ako je nadnevak sačinjavanja testamenta naveden, ali radi se o netačnom datiranju? Naime, takav testament neće biti nevaljan, ali sve to pod uslovom da neistinitost datuma ne ukazuje na neki od razloga pravne nevaljanosti, kao što bi npr. bio nedostatak sposobnosti za rasuđivanje (Kreč & Pavić, 1964, str. 204). Nadalje, ukoliko se na kraju sačinjenog testamenta ne navede u celini godina njegovog pisanja, ali se u samom tekstu testamenta navede datum, takav način datiranja neće ni na koji način narušiti pravnu valjanost testamenta (Presuda Vrhovnog suda Republike Hrvatske, Rev-724/00-2 od 25. septembra 2003). Ipak, neophodno je istaći da nenavođenje vremenske odrednice sačinjavanja svojeručnog testamenta može imati uticaja na pravnu valjanost istog.

2.1. Uticaj nenavođenja datuma na pravnu valjanost testamenta

Naznačavanje datuma sačinjavanja svojeručnog testamenta od velike je koristi ukoliko postoji više testamenata, jer se tako može, bez

većih teškoća, utvrditi koji je od dva ili više testamenata noviji, a time i važeći, ukoliko su testamenti u međusobnoj suprotnosti (Kreč & Pavić, 1964, str. 204). Bilo da su svi svojeručni ili samo neki od njih, u slučaju postojanja više testamenata nedostatak datuma otežava primenu pravila da kasniji testament ukida važnost ranijeg u onoj meri u kojoj se sadržaj kasnijeg razlikuje od sadržaja ranijeg testamenta. Većina današnjih naslednih prava polazi od toga da sama činjenica sačinjavanja novog testamenta opoziva raniji testament u obimu u kom su oni međusobno kontradiktorni (Vaquer, 2003, str. 787). Mogućnost pravno valjanog opoziva ranije sačinjenog testamenta važna je za svakog testatora. Posle sačinjavanja testamenta životne prilike se mogu promeniti u manjoj ili većoj meri tako da sačinjeni testament više ne odgovara kreatoru istog, pa on želi na drugačiji način da raspolaže imovinom *mortis causa*. Svestan činjenice da testator ne treba da bude pravno vezan sačinjenim testamentom, zakonodavac predviđa mogućnost njegovog opoziva (Kaladić, 2014, str. 7–8). Zatim, s obzirom na to da kod ovog testamenta nema svedoka u postupku testiranja, u odsustvu datuma komplikuje se i otežava postupak dokazivanja postojanja testamentarne sposobnosti testatora. Testamentarna sposobnost u naslednom pravu Bosne i Hercegovine stiče se sa navršenih 15 godina života uz postojanje i sposobnosti za rasuđivanje (v. čl. 62 st. 1 ZN FBiH i čl. 64 st. 1 ZN RS). U određenim slučajevima biće teško utvrditi godine njegovog života, kao i postojanje same sposobnosti za rasuđivanje u trenutku testiranja. Na kraju, navođenje datuma u svojeručnom testamentu postavlja i vidljivu granicu između nacrta testamenta i poslednje volje testatora, kao završnog, konačnog i, pre svega, valjanog akta (Antić & Balinovac, 1996, str. 323).

Takođe, mora se skrenuti pažnja i na sudsku praksu (Presuda Vrhovnog suda Republike Srbije, Rev-704/84) koja jasno ukazuje na to kako je naznačavanje datuma na svojeručnom testamentu od velikog značaja u slučaju kada postoji više testamenata koji su suprotni po sadržaju, a posebno kada je reč o gubitku testatorove sposobnosti za rasuđivanje nakon testiranja. Zatim i naglašava kako nedostatak datuma neće predstavljati povredu oblika koja povlači nevaljanost testamenta (Todorović & Kulić, 2004, str. 127). Pravna doktrina upozorava na pravnu sigurnost, ukazujući da je ona jedno od ključnih načela na kojima se zasniva svaki pravni sistem. Nepropisivanje obaveze navođenja datuma

može pak dovesti do primene testamenata koji su inače pravno nevaljani (Ćeranić, 2010, str. 49). Prema Ćeraniću (2010), tu su ipak i određeni pravni praktičari koji daju i argumente *contra* obaveznog navođenja datuma sačinjavanja testamenta, odnosno iznosi se tvrdnja da bi se u tom slučaju pojavio veći broj pravno nevaljanih testamenata (str. 49).

3. Datum svojeručnog testamenta u evropskim pravnim sistemima

Nasledno pravo Republike Italije (v. *Art*. 602 *Codice Civile*), Republike Francuske (v. *Art*. 970 *Code Civil des Français* – CC), Kraljevine Španije (v. *Art*. 688 *Código Civil Español*) i Kraljevine Belgije (v. *Art*. 970 *Code Civil Belge*) propisuje da je neophodno, radi pravne valjanosti svojeručnog testamenta, svojeručno navesti datum testiranja. Italijansko i špansko pravo jasno traži da to mora biti u obliku navođenja dana, meseca i godine sačinjavanja testamenta. Obavezno navođenje svih predmetnih elemenata datiranja javlja se i u Republici Francuskoj i u Kraljevini Belgiji (Trninić Vidić, 2016, str. 1265–1267). No, interesantni primeri, u pogledu datiranja testamenta, javljaju se u Republici Francuskoj i Republici Italiji. Francusko pravo dopušta da se svojeručni testament datira i preciznim navodima koji omogućavaju određivanje godine, meseca i dana testiranja, kao što bi npr. bio navod „na dan Božića 2023. godine“ (Babić, 1996, str. 204), dok se u italijanskom pravu priznaje kao pravno valjan i datum koji je pisan delimično svojeručno, npr. računarom i štampačem je ispisana godina a rukom dan i mesec sačinjavanja testamenta (Kašćelan, 2010, str. 148).

3.1. Datiranje u naslednom pravu Republike Austrije, Savezne Republike Nemačke i Švajcarske Konfederacije

Posebna pažnja mora se obratiti na zemlje čiju pravnu tradiciju, kroz istoriju, najviše sledi Bosna i Hercegovina, ali i države regiona. Tako nasledno pravo Republike Austrije propisuje da naznačavanje datuma sačinjavanja svojeručnog testamenta nije neophodno, ali je preporučljivo (Lange & Kuchinke, 2001, str. 373, v i. § 578 *Allgemeines bürgerliches Gesetzbuch für die gesammten deutschen Erbländer der Oesterreichischen Monarchie* – ABGB). Prema tome, ovde se radi o rešenju koje je na

gotovo identičan način inkorporirano i u ZN FBiH. ABGB ukazuje na važnost oblika za pravnu valjanost testamenta, propisujući da ukoliko pri sastavljanju testamenta nije ispunjen obavezni propisani oblik testament neće biti pravno valjan (§ 601 ABGB). Zatim, prema naslednom pravu Savezne Republike Nemačke, u testamentu bi trebalo naznačiti dan, mesec i godinu njegovog sačinjavanja. Ako njihovo nenavođenje dovodi do sumnje u pravnu valjanost testamenta, a takvi podaci se ne mogu utvrditi na drugi način, testament neće biti pravno valjan (v. § 2247 *Bürgerliches Gesetzbuch* – BGB). BGB-om se takođe propisuje da pravni posao koji nema zakonom propisan oblik neće biti pravno valjan (§ 125 BGB). Samo formalno pravno valjan testament može proizvesti pravna dejstva (Frank, 2000, str. 58). Testament spada u pravne poslove za koje se traži najstroži oblik. Zahtevi oblika nisu izraženi ni kod jednog pravnog posla u tolikoj meri kao kod testamenta. Razloga ima nekoliko. Svakako najvažniji se odnosi na to da zakonom propisan oblik opominje testatora na ozbiljnost posla koji preduzima, te ga prisiljava da dobro razmisli pre nego što isti sačini. Zahvaljujući strogim uslovima predviđenog oblika, može se, na pouzdan način, utvrditi prava volja testatora u trenutku kada on više nije živ (Svorcan, 2009, str. 39). Time, svakako, nemački zakonodavac pazi na poštovanje jedne od ključnih karakteristika pravne prirode testamenta.

U pravu Švajcarske Konfederacije svojeručni testament mora imati navedenu godinu, mesec i dan sačinjavanja. Ukoliko nedostatak svojeručnog testamenta leži u činjenici da godina, mesec ili dan nisu navedeni, ili su netačno navedeni, testament se može proglasiti pravno nevaljanim samo ako se potrebni podaci o vremenu ne mogu odrediti na drugi način, pri čemu je datum neophodan za procenu testamentarne sposobnosti, utvrđivanje redosleda, ako ima više raspolaganja, te bilo kog drugog pitanja vezanog za valjanost raspolaganja (v. *Art*. 505, 520a *Schweizerisches Zivilgesetzbuch* – ZGB). ZGB, vodeći računa o obliku kao uslovu pravne valjanosti testamenta, propisuje da će, ako raspolaganje za slučaj smrti sadrži formalni nedostatak, biti proglašeno pravno nevaljanim posle podnošenja tužbe (*Art*. 520 *Abs*. 1 ZGB).

3.2. Istorijski osvrt

U pravnoj literaturi uporednog prava, kada se govori o poreklu pojedinih redovnih testamenata u ABGB-u, posebna pažnja se posvećuje svojeručnom testamentu. Navodi se, naime, kako je predmetni testament, između ostalog, u ABGB došao i iz bečkog Gradskog zakonika iz 1526. godine. Istorijski posmatrano, u Republici Austriji su propisi o obliku testamenta novelirani pet puta u periodu od XIX do XX veka (Zimmermann, 2012, str. 479, str. 499).

Kada se govori o BGB-u, većina naslednopravnih propisa sadržana je u njegovoj knjizi 5 (Brox, 2004, str. 17). Savremeno nemačko nasledno pravo poreklo ima u rimskom, ali i u germanskom naslednom pravu (Du Toit, 2000, str. 380). Gledano uopšteno, testament u BGB-u je pretežno rimski. Kada je pak reč o nešto novijoj istoriji, treba ukazati na francusko pravo putem kojeg je svojeručni testament došao u BGB (Binder, 1923, str. 9). Svojeručni testament je u Saveznoj Republici Nemačkoj ustanovljen u XIX veku, ali najpre na jugozapadu zemlje, koji je bio pod značajnim uticajem francuskog prava. Svojeručni testament se može pronaći u ordonansama iz XVII i XVIII veka, odakle se prenosi u CC (Zimmermann, 2012, str. 479, str. 494). Kada je donet BGB, fokus je bio na pravnoj sigurnosti, a što je javni testament činilo odgovarajućim testamentom. Nemačka pravna doktrina ističe kako zakonodavac nastoji da javni testament unapređuje. Međutim, u isto vreme se ističe i kako svojeručni testament, kao privatni testament, sadrži prednosti za svakog testatora. Njega testator može napisati, izmeniti, ali i opozvati u bilo kom trenutku i na bilo kom mestu, te ga isti pošteđuje raznih vrsta troškova (Lange & Kuchinke, 2001). No, ipak, navodi se i da su kod svojeručnog testamenta nešto veće mogućnosti za falsifikovanje (postoji i rizik da testament nestane ili da se zagubi), međutim, zakonodavac svesno prihvata takav rizik, a zbog pružanja najveće moguće slobode testiranja (Frank, 2000, str. 59), dok, kada se radi o testamentu koji sastavi notar teško može postojati sumnja po pitanju njegove autentičnosti. Inače, Zakonom o notarskoj overi iz 1969. godine (*Beurkundungsgesetz*) iz sudske nadležnosti je izuzeto sastavljanje javnog testamenta (Brox, 2004, str. 17, str. 66).

U uporednoj pravnoj doktrini se za švajcarsko pravo kaže da prati BGB u pogledu normiranja testamentarnih oblika redovnog testamenta (Lange & Kuchinke, 2001, str. 330–331). Kada je npr. reč o svojeručnom testamentu i istorijskom osvrtu na isti, navodi se kako je on ukorenjen u ZGB iako je samo relativno mali broj kantonalnih prava u XIX veku pratio, u pogledu normiranja svojeručnog testamenta, prava zemalja kao što su Republika Austrija ili Republika Francuska (Zimmermann, 2012, str. 480), čiji su pravni sistemi ovaj testament već uveliko poznavali. Ne samo poznavali, već je isti bio i u primeni.

4. Potvrda međunarodnog testamenta i njen pravni značaj

Međunarodni testament se u pravnoj literaturi označava i kao *testamentum internationale* (Todorović & Kulić, 2004, str. 153). Zanimljiva tema, koja se pojavljuje u domaćoj pravnoj nauci i oko koje nema jedinstvenog stava, jeste pitanje globalne rasprostranjenosti međunarodnog testamenta. Iz podataka do kojih se dolazi iz uporednog prava i inostranih izvora može se izvesti zaključak kako međunarodni testament nije globalno jako rasprostranjen. Kada se uzmu u obzir pojedine zemlje članice Evropske unije, vidi se da je ovaj testament prisutan tek u zakonodavstvu Republike Italije, Republike Francuske, Kraljevine Belgije i Republike Portugalije (Zimmermann, 2012, str. 488). Prema podacima koje daje UNIDROIT (2021), ispravnije je izvesti zaključak o ne preterano velikoj globalnoj rasprostranjenosti međunarodnog testamenta.

Kako bi se otklonila svaka sumnja u pravnu valjanost međunarodnog testamenta, odnosno kako bi se olakšalo utvrđivanje činjenice njegovog postojanja i ispunjenosti traženih uslova, posle završetka svih radnji koje se tiču sastavljanja testamenta, relevantnim zakonom je predviđeno izdavanje posebne potvrde od strane ovlašćenog lica, kojom se potvrđuje da su ispoštovane obaveze predviđene za pravnu valjanost testamenta. Prema čl. 90 ZN FbiH, ovlašćeno lice mora priložiti međunarodnom testamentu potvrdu, a u skladu sa odredbama čl. 91 ZN FBiH kojim se utvrđuje da su poštovane obaveze propisane zakonom. Sadržaj potvrde propisan je u ZN FBiH. U predmetnom zakonu sadržan je i formular ove potvrde (v. čl. 91 ZN FBIH) a sve kako bi se olakšalo dokazivanje postojanja testamenta (Blagojević, 1983, str. 297). Ovakva

potvrda ima karakter izjave ovlašćenog lica da su ispunjeni svi zakonski uslovi za sačinjavanje pravno valjanog testamenta (Đorđević & Svorcan, 1997, str. 229–230). Njen pravni značaj leži u tome što ista predstavlja dokaznu javnu ispravu koja, u slučaju spora, olakšava dokazivanje postojanja i formalne pravne valjanosti testamenta (Đurđević, 2012, str. 145). Dakle, ovom potvrdom se pretpostavlja samo valjanost oblika, ali ne i postojanje ostalih pretpostavki valjanosti sačinjenog testamenta (Gavella, 1986, str. 170). Ovlašćeno lice, po slovu zakona, čuva jedan primerak potvrde, a drugi predaje testatoru. Ukoliko se ne dokaže suprotno, potvrda ovlašćenog lica uzima se kao dovoljan dokaz formalne pravne valjanosti pismena, kao međunarodnog testamenta, a u skladu sa ZN FBiH (v. čl. 92–93 ZN FBiH). Zainteresovano lice može osporavati tačnost nekih ili, čak, svih elemenata koji su sadržani u potvrdi, a posebno ako se navodi u potvrdi ne slažu s navodima u sačinjenom testamentu (Blagojević, 1983, str. 298). Može se, prema tome, reći kako je značaj potvrde ograničen. Postojanje iste stvara oborivu pretpostavku da je testament sačinjen u skladu sa pravilima za sačinjavanje međunarodnog testamenta, ali takvu pretpostavku zainteresovano lice može obarati (Svorcan, 2009, str. 64). Međutim, nepostojanje ili nepravilnost potvrde neće biti od značaja za formalnu pravnu valjanost međunarodnog testamenta koji je sačinjen u skladu sa važećim zakonom (čl. 94 ZN FBiH). Propust ovlašćenog lica da izda testatoru potvrdu o formalnoj pravnoj valjanosti testamenta ili netačno navođenje podataka u potvrdi ne mogu dovesti do nevaljanosti testamenta (Antić & Balinovac, 1996, str. 351). Takođe, važno je i zanimljivo istaći da potvrda ne može dopunjavati formalne nedostatke testamenta u pitanju (Marković, 1980, str. 124).

4.1. Datum - *conditio sine qua non* međunarodnog testamenta

Za razliku od drugih redovnih testamentarnih oblika i nevažnosti datuma, kao uslova pravne valjanosti testamenta, kod međunarodnog testamenta datum je njegov bitan element. Osnovni uslov je da isti stavi ovlašćeno lice (Blagojević, 1983). Međunarodni testament u naslednom pravu Federacije Bosne i Hercegovine predstavlja jedini testamentarni oblik koji mora imati naveden datum. Prema navedenom datumu se utvrđuje koji je od više sačinjenih testamenata (ukoliko ih ima) konač-

na, odnosno poslednja volja testatora, te se ceni i testamentarna sposobnost (Antić & Balinovac, 1996, str. 348). Čak i unošenje netačnog datuma otvara put ka proglašenju testamenta pravno nevaljanim (Stojanović, 2011, str. 222). Datum je konstitutivni element međunarodnog testamenta, te bez njega testament ne može biti pravno valjan (Svorcan, 2009, str. 63). Poništenje testamenta, zbog manjkavosti u obliku, nakon otvaranja nasledstva može tražiti samo lice koje ima pravni interes i to u roku od godinu dana od kada je saznalo za testament, a najduže u roku od deset godina od proglašenja testamenta (čl. 65 ZN FBiH, čl. 67 ZN RS).

4.2. Datiranje i teorijske dileme

Važno je analizirati a najpre ukazati na stav koji se javlja u delu teorije. Prema Markoviću (1980), unošenje datuma na međunarodni testament nije neophodno, te njegovo nepostojanje ne može dovesti do pravne nevaljanosti testamenta, ako je ovlašćeno lice datum upisalo na potvrdi koja se prilaže testamentu (str. 122). Od velikog je značaja istaći kako ovakav stav treba kategorički odbaciti. Ranije je pokazano, te je to nedvosmisleno u skladu sa ZN FBiH, da nepostojanje ili nepravilnost potvrde ne utiče na formalnu pravnu valjanost međunarodnog testamenta, a što sa datumom nije slučaj.

5. Testamentarno nasleđivanje kao izuzetak pravne prakse

Testament je u modernom vremenu neka vrsta izuzetka, a ne pravilo (Skubic Žnidaršič, 2017, str. 120). Pravna doktrina, takođe, ističe kako je zakonsko nasleđivanje osnovno i najčešće, te je ono u praksi pravilo, s obzirom na to da se testament koristi ređe (Antić, 2014, str. 85, str. 224). Zatim, ukoliko se analizira sudska praksa, lako se dolazi do zaključka da se u većem broju slučajeva zaostavština raspoređuje po pravilima zakonskog nasleđivanja a ne po testamentu (Svorcan, 2009, str. 95).

Fenomen testamentarnog nasleđivanja, kao izuzetka u pravnoj praksi, simptomatičan je ne samo za Bosnu i Hercegovinu, već i za čitav region. Specifično je, dakle, da pravni pisci kada govore o tome kako je zakonsko nasleđivanje najčešće a da se testament koristi ređe nikada ne

navode razloge zašto je tako. Povremeno se pozivaju na sudsku praksu, kako je prethodno i pokazano, ali je češće da se ne nudi nikakvo dodatno pojašnjenje predmetnog fenomena.

5.1. Uzroci retkog sačinjavanja redovnih privatnih testamenata

Iako je postojanje testamenta, kao pravnog instituta, i mogućnost njegovog sačinjavanja opštepoznata činjenica, uzroke retkog sačinjavanja istog u pravnoj praksi treba potražiti najpre u samom mentalitetu individue. Tako se prosečna osoba, koja vrlo često nije ni pravnik po struci, neće usuditi da sačini testament zbog bojazni da on neće biti pravno valjan, odnosno, pojednostavljeno rečeno, da to neće napraviti kako treba. U pitanju je, dakle, i svojevrsni manjak samopouzdanja. Zatim, ulazeći dublje u psihologiju individue, dolazi se do zaključka kako se sačinjavanjem testamenta pojedinac ujedno miri i sa činjenicom svoje prolaznosti. Možda upravo suočavanje sa takvom činjenicom delimično sprečava pojedinca da sačini testament, te prepušta raspored svoje zaostavštine sudu. Dakle, razlozi koji leže u samom mentalnom sklopu pojedinca, vrlo je izgledno, često dovode do nekorišćenja redovnih privatnih testamenata.

5.2. Uzroci retkog sačinjavanja redovnih javnih testamenata

Kada se pak govori o retkom korišćenju redovnih javnih testamenata u pravnoj praksi treba, pre svega, ukazati na razloge finansijske prirode. Ipak, sačinjavanje bilo kog od javnih testamenata – sudskog, notarskog, proizvodi troškove koji građanima u vremenu sve raširenijeg siromaštva predstavljaju dodatni izdatak na koji često nisu spremni. Tako je notar u npr. Federaciji Bosne i Hercegovine, prema tarifnom broju 10 Tarife o nagradama i naknadama notara (2021), za notarsku obradu testamenta (ili isprave o zakonom dopuštenom ugovoru o nasleđivanju između bračnih ili vanbračnih partnera) dužan da obračuna nagradu u iznosu od 120 BAM (BAM = konvertibilna marka, cca 62 €). Dakle, razlozi finansijske prirode predstavljaju mogući uzrok koji dovodi do retkog korišćenja redovnih javnih testamenata. Ukoliko se uzme u obzir i vrednost prosečne penzije u Bosni i Hercegovini, ali i u državama

regiona, dolazi se do zaključka da npr. testator koji je u poodmaklim godinama života za sačinjavanje jednog pravnog posla treba da izdvoji značajan procenat mesečne penzije. To je, ponovo, izdatak na koji građani često nisu spremni niti su u mogućnosti da podnesu.

6. Zaključak

Naznačavanje datuma sačinjavanja svojeručnog testamenta višestruko je korisno. Najpre ukoliko postoji veći broj testamenata lako se utvrđuje koji je od njih važeći, ako su testamenti u međusobnoj suprotnosti. Još važnija činjenica je da naznačeni datum omogućava dokazivanje postojanja testamentarne sposobnosti, u prvom redu postojanja sposobnosti za rasuđivanje, ali i utvrđivanje godina života testatora u trenutku testiranja. Svako normiranje svojeručnog testamenta koje ne navodi, kao element njegovog oblika, i datum sačinjavanja može se podvesti pod manjkavo normiranje. Svaki argument *pro* nenavođenja datuma svojeručnog testamenta koji potiče od strane pravne doktrine ili pravne struke naučno je neutemeljen argument. Uočljivo je, posmatrano uporednopravno, kako više pravnih sistema kontinentalnog prava Evrope datum normira kao obavezan deo oblika svojeručnog testamenta. Ukoliko se osvrne na zemlje čiji pravnu tradiciju baštini i region, treba najpre skrenuti pažnju na način normiranja datuma svojeručnog testamenta od strane nemačkog i švajcarskog zakonodavca. Zasigurno reč je o normiranju datiranja na način koji pruža zavidan stepen pravne sigurnosti, te načinu koji se lako može inkorporirati i u domaće zakonodavstvo. Rešenja koja sadrži ZGB, kada se radi o datiranju svojeručnog testamenta, više su nego vredna pažnje. Posebno kada je reč je o zahtevu da se navedu dan, mesec i godina sačinjavanja testamenta, odnosno da se navede potpun datum testiranja a ne skraćeni oblik u vidu npr. navođenja samo godine testiranja. Za utvrđivanje pravno relevantnih činjenica, kao što bi bila sposobnost za rasuđivanje, često će biti ključni i dan i mesec, a ne samo godina testiranja.

Unošenje datuma isključivo na potvrdu koja se prilaže uz međunarodni testament ne čini testament pravno valjanim u pogledu oblika. Tako ako je datum naveden na potvrdi, ali ne i na testamentu, a potvrda je u međuvremenu iz bilo kog razloga nestala, testament će opstati kao

pravno valjan bez potvrde. Međutim, on nikako ne može opstati bez datuma koji je u potvrdi bio sadržan, jer datum je konstitutivni element međunarodnog testamenta.

Dužnost pravne nauke, kada se radi o testamentarnom nasleđivanju kao izuzetku u pravnoj praksi, jeste da pokuša da dâ odgovor na pitanje uzroka tog fenomena. Pre svega, jer je reč o temi koja se gotovo po pravilu u pravnoj literaturi svodi na nepojašnjenu frazu „testament je sveden na nivo izuzetka". Mogući uzroci takve pojave, na koju se upućuje u ovom radu, jasno pokazuju da u pojašnjenju i prevazilaženju iste ipak neće biti dovoljno delovanje same pravne nauke, već je potrebno uključiti i druge discipline koje pripadaju društvenim naukama, najpre psihologiju, sociologiju i sl. Obaveza popravljanja stanja i vraćanja sa margina jednog od najvažnijih naslednopravnih instituta stoji i na strani države i zakonodavca, pre svega kroz popularizaciju testamentarnog nasleđivanja putem sredstava javnog informisanja, specijalizovanih internet stranica, kroz ublažavanje troškova sačinjavanja javnih testamenata, te na razne druge, adekvatne načine.

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Davor Milardović[1]

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EXCEPTIONS IN THE CONTEXT OF TESTAMENTARY SUCCESSION

Abstract: Putting a date on a holographic will brings numerous advantages. This paper studies the various legal consequences the absence of the date and incorrect dating entail, as well as the ways of dating a holographic will in numerous European legal systems. Special attention is given to the dating of the last will in the Republic of Austria, the Federal Republic of Germany, and the Swiss Confederation. The importance of the date for its legal validity is indicated in this paper, in terms of an international will. This paper gives a clear position regarding the theoretical dilemmas that accompany the dating of an international will. A topic neglected by legal science, i.e., the topic of testamentary succession as an exception in legal practice is also presented in this paper. Possible causes of this legal phenomenon are pointed out both in terms of regular private wills and in terms of regular public wills.

Keywords: *holographic will, international will, dating a last will, civil law of Europe, last will as an exception in legal practice.*

1. Introduction

According to the applicable regulations in the Federation of Bosnia and Herzegovina, a holographic will does not have to have a date. According to Art. 66 para. 2 of the Law on Inheritance in the Federation of Bosnia and Herzegovina (2014) (hereafter: FB&H inheritance law),

[1] Doctor of Juridical Science, dmilardovic5@gmail.com

"for the validity of a personal will, it is not necessary that it indicates the date when it was drafted, but it is recommended that the date be indicated". According to the applicable inheritance right in Republika Srpska, i.e., according to Art. 68 para. 2 of the Law on Inheritance of Republika Srpska (2009), specifying the date of a holographic will is legally mandatory. In this context, the holographic will of the FB&H inheritance law is an exception. This paper analyzes the types of wills standardized by the legal regulations of Bosnia and Herzegovina, i.e., its entities. Contrary to private wills, there is another exception when it comes to public wills and their dating. An international will, according to Art. 82 of the FB&H inheritance law is the only will whose legal validity is conditioned by whether or not the date is specified. Taking the above into account, it is important to study the legal consequences of not specifying the date of the wills mentioned (the legal consequences of such an act are universal, and they apply to every legal system where provisions on wills include holographic and international wills). Otherwise, the difference between traditional and exceptional circumstances is the main division within the types of wills, in addition to private and public wills, as well as written and oral wills (Blagojević, 1983, p. 254). Private wills are wills made by the testator themselves, without the presence of public authorities or bodies who act as public authorities (Vedriš & Klarić, 2006, p. 737–738). Public wills are made with the participation of public authorities and persons who act as public authorities (Bikić & Suljević, 2014, p. 130).

However, when it comes to exceptions within testamentary succession, it is crucial to mention the last will as an exception in legal practice, i.e., the most uncommonly used (but usually the strongest) legal basis of inheritance. The phenomenon of testamentary succession as an exception in legal practice will be observed in the context of the region, given that it is equally present in Bosnia and Herzegovina, the Republic of Serbia, and the Republic of Croatia. It is interesting to point out that provisions of the FB&H inheritance law, in addition to testamentary and legal succession, allow for a third legal basis of inheritance, i.e., a succession agreement between married or cohabiting partners, which has priority over testamentary and legal succession (Art. 5 para. 3 and Art. 125-132, FB&H inheritance law). However, the laws of Republika

Srpska, the Republic of Serbia, and the Republic of Croatia, retain the traditional division into two legal bases of inheritance (Art. 5, para. 2 of the Republic of Serbia's Law on Inheritance (1995) (hereafter: RS inheritance law) and Art. 4 para. 3 of the Republic of Croatia's Law on Inheritance (2003)).

2. The Date of a Holographic Will

As stated, according to FB&H inheritance law, a holographic will can be legally drafted without specifying the date. Specifying the date is preferable, but not necessary. Observed throughout history, it is a resolution that was adopted from the Socialist Federal Republic of Yugoslavia's Federal Law on Inheritance (1955). This law mostly referenced the Swiss inheritance law (primarily the substantive law part), which meant going back to the continental-European legal circle, with a noticeable impact of the newly adopted socialist principles (Gavella et al., 2005, p. 90–92), but such a resolution has roots tracing back to Austrian law (Antić & Balinovac, 1996, p. 323).

If the date of the will is incorrectly stated, the document will not be invalid, but under the condition that the untruthfulness of the date does not indicate any reasons for legal invalidity, such as the lack of sound mind and memory would (Kreč & Pavić, 1964, p. 204). Furthermore, not specifying the date at the end of a written will, but rather in the text of the will itself, does not impair the legal validity of the will (Judgment of the Supreme Court of the Republic of Croatia, Rev-724/00-2, September 25th, 2003). Still, it is necessary to point out that failure to specify the date of a holographic will may have an impact on its legal validity.

2.1. The Impact of Not Specifying the Date of the Last Will on Its Legal Validity

Indicating the date of a holographic will brings great benefits if there are several wills in question. Thus, it is simple to determine which will is more recent, and therefore valid, in case of conflicting content (Kreč & Pavić, 1964, p. 204). Whether they are all holographic or only some, in the case of several wills, the lack of the date makes it difficult to apply

the rule that states that the more recent will cancels the validity of an earlier version in all cases of conflicting content. Most contemporary inheritance rights are based on the fact that the very fact of drafting a new will revokes the previous will to the extent to which they are mutually contradictory (Vaquer, 2003, p. 787). The possibility of a legally valid revocation of a previously drafted will is important for every testator. After drafting a will, life circumstances can change to an extent, so that the created will no longer suits its creator, in a way where they may want to dispose of their property in a different way *mortis causa*. Aware of the fact that the testator should not be legally bound by the will, the legislator foresees the possibility of its revocation (Kaladic, 2014, p. 7–8). In addition, considering that this will has no witnesses during its drafting, the absence of a date complicates the procedure of proving the existence of the testator's testamentary capacity. In the FB&H inheritance law, testamentary capacity is acquired from the age of 15, under the condition of sound mind and memory (Art. 62 para. 1, FB&H inheritance law and Art. 64 para. 1, RS inheritance law). In certain cases, it will be difficult to determine the testator's age, as well as the existence of sound mind and memory at the time of drafting the will. Stating the date in a holographic will also sets a visible boundary between the first draft of the will and the last will of the testator, as a final and valid act (Antić & Balinovac, 1996, p. 323).

Also, attention must be drawn to the judicial practice (Judgment of the Supreme Court of the Republic of Serbia, Rev-704/84), which clearly indicates that stating the date on a holographic will is of great importance at times when there are several wills that contain conflicting content, and especially when it comes to the testator's loss of testamentary capacity. It should be emphasized that the lack of date does not represent a violation that invalidates the will (Todorović & Kulić, 2004, p. 127). The legal doctrine warns about legal certainty, indicating that it is one of the key principles on which any legal system is based. Failure to prescribe the obligation to specify the date can lead to the execution of wills that are otherwise void (Ćeranić, 2010, p. 49). According to Ćeranić (2010), certain legal practitioners give arguments for the *contra* obligation of specifying the date of drafting the will, i.e., they claim that specifying the date would make a number of void wills appear (p. 49).

3. The Date of Holographic Wills in European Law

The inheritance law of the Republic of Italy *Art.* 602 *Codice Civile*), the Republic of France (Art. 970 *Code Civil des Français*), the Kingdom of Spain (Art. 688 *Código Civil Español*), and the Kingdom of Belgium (Art. 970 *Code Civil Belge*) prescribe that it is necessary to indicate the date of the holographic will, for the sake of its legal validity. Italian and Spanish law clearly require that the date of the will must be in the day, month, and year format. Documentation of all relevant elements is obligatory in both the Republic of France and the Kingdom of Belgium (Trninić, Vidić, 2016, p. 1265–1267). However, interesting examples occur in the Republic of France and the Republic of Italy. The French law allows for a holographic will to be dated with precise statements that enable the identification of the year, month, and day of drafting the will, such as "On Christmas Day, 2023." (Babić, 1996, p. 204), while the Italian law recognizes dates written partially by hand as legally valid, e.g., the year written by a computer and a printer, and the day and month of the will written by hand (Kašćelan, 2010, p. 148).

3.1. The Date of Wills in the Inheritance Law of the Republic of Austria, the Federal Republic of Germany, and the Swiss Confederation

Special attention must be paid to countries whose legal tradition, throughout history, is mostly followed by Bosnia and Herzegovina, but also other countries in the region. Thus, the inheritance law of the Republic of Austria prescribes that specifying the date of a holographic will is not necessary, but it is recommended (Lange & Kuchinke, 2001, p. 373, and § 578, *Allgemeines bürgerliches Gesetzbuch für die gesammten deutschen Erbländer der Oesterreichischen Monarchie* (hereafter: ABGB)). Therefore, this is a regulation that is incorporated in the FB&H inheritance law in an almost identical way. The ABGB indicates the importance of the form for the legal validity of the will, prescribing that if the prescribed form is not fulfilled at the time of drafting, the will is void (§ 601, ABGB). According to the inheritance law of the Federal Republic of Germany, the date of the will should be in the day, month, and year

format. Failure to specify the date leads to doubts about the legal validity of the will, and as such information cannot be determined in another way, the will is void (§ 2247, *Bürgerliches Gesetzbuch* (hereafter: BGB)). The BGB also prescribes that a legal matter that does not have a legally prescribed form is void (§ 125, BGB). Only a formally legally valid will can produce legal effects (Frank, 2000, p. 58). Form requirements are not expressed to such an extent in any legal matter, as in the case of a last will. Among the reasons why wills require the strictest form, the most important one relates to the fact that the form prescribed by law reminds the testator of the seriousness of the work he undertakes, and forces him to think carefully before drafting the will. Thanks to the strict conditions of the prescribed form, the true intention of the testator can be reliably determined as he is no longer alive (Svorcan, 2009, p. 39). This is how the German legislator ensures that one of the key characteristics of the last will's legal nature is respected.

In accordance with the Swiss Confederation law, the date of a holographic will must be in the year, month, and day format. If the invalidity of a holographic will lies in the fact that the year, month, or day is not stated, or is stated incorrectly, the will can be declared void only if the necessary information regarding the time cannot be determined in another way, as the date is necessary for the assessment of testamentary capacity, determining the sequence in the case of numerous disposals, and any other issue related to the validity of the disposal (Art. 505, 520a *Schweizerisches Zivilgesetzbuch* (hereafter: ZGB)). In respect to the form as a condition for the legal validity of the will, the ZGB stipulates that if the disposition in the event of death contains a formal defect, it will be declared void after filing a lawsuit (*Art*). 520 *Abs*. 1 ZGB).

3.2. Historical Review

Concerning the origin of certain wills in the ABGB, special attention is paid to the holographic will in the legal literature of comparative law. Namely, it is stated that the holographic will originated from the Vienna City Code (1526). Historically, in the Republic of Austria, the form of the will regulations were amended five times in the period from the 19th to the 20th century (Zimmermann, 2012, p. 479, p. 499).

Most of BGB inheritance laws are contained in book number 5 (Brox, 2004, p. 17). Modern German inheritance law has its origins in Roman, but also in Germanic inheritance law (Du Toit, 2000, p. 380), but the last will in the BGB is predominantly Roman. When it comes to more recent history, the French law through which the holographic will entered the BGB (Binder, 1923, p. 9) should be emphasized. The holographic will was established in the Federal Republic of Germany in the 19th century, primarily in the southwest, which was significantly influenced by French law. This will can also be found in ordinances from the 17th and 18th centuries, from which it was transferred to the French Civil Code (Zimmermann, 2012, p. 479, p. 494). At the time of the adoption of the BGB, the focus was on legal certainty, which made public will an acceptable will. German legal doctrine points out that the legislator tries to improve the public will. Simultaneously, it is emphasized that as a private will, a holographic will contains advantages for each testator. The testator can write, change, and revoke it at any time and in any place, which saves him from various expenses (Lange & Kuchinke, 2001). It is also stated that a holographic will has slightly greater opportunities for forgery (there is also a risk that the will may disappear or get lost), however, the legislator consciously accepts such a risk, due to the greatest possible freedom in respect to drafting a will (Frank, 2000, p. 59), while there can hardly be any doubt about the authenticity of the will drafted by a notary. Meanwhile, the Law on Notary Certification from 1969. (*Beurkundungsgesetz*) the drafting of a public will is excluded from court jurisdiction (Brox, 2004, p. 17, p. 66).

The parallel legal doctrine asserts that Swiss law follows the BGB in terms of standardizing will forms (Lange & Kuchinke, 2001, p. 330–331). When it comes to the holographic will and its historical review, it is asserted that it is rooted into the ZGB, even though, in terms of standardization of holographic wills, only a relatively small number of 19th century cantonal laws referenced the laws of countries whose legal systems were already executing this type of will, such as the Republic of Austria or the Republic France (Zimmermann, 2012, p. 480). 480).

4. Acceptance of the International Will and Its Legal Significance

The international will is also referred to as *testamentum internationale* in legal literature (Todorović & Kulić, 2004, p. 153). The issue of the global distribution of international wills is an interesting issue that appears in domestic jurisprudence and about which there is no unified position. From the data obtained from comparative law and international sources, it can be concluded that the international will is not particularly widespread globally. When individual member states of the European Union are taken into account, it is evident that this type of will is present only in the legislation of the Republic of Italy, the Republic of France, the Kingdom of Belgium, and the Republic of Portugal (Zimmermann, 2012, p. 488). UNIDROIT's data (2021) point to the limited extent of international wills.

After all actions related to the drafting of the will have been completed, to remove any doubts about the legal validity of an international will, i.e., to facilitate the determination of its existence and the fulfillment of the required conditions, the relevant law prescribes the issuance of a special certificate by an authorized person, which confirms that the obligations prescribed for the legal validity of the will have been fulfilled. According to Art. 90 of the FB&H inheritance law, an authorized person must provide a certificate to the international will, in accordance with the provisions of Art. 91 of the FB&H inheritance law, which establishes that the obligations prescribed by law have been fulfilled. The content of the certificate is prescribed in the FB&H inheritance law. The law in question also contains the form of this certificate (Art. 91, FB&H inheritance law), in order to facilitate proving the existence of a will (Blagojević, 1983, p. 297). Such a certificate has the character of a statement made by an authorized person, that all legal conditions for drafting a legally valid will have been fulfilled (Đorđević & Svorcan, 1997, p. 229–230). Its legal importance lies in the fact that it represents a public document that facilitates proving the existence and the formal legal validity of a will, in the event of a dispute (Đurđević, 2012, p. 145). Therefore, this certificate assumes only the validity of the form, but not the existence of other assumptions concerning the validity of the drafted will (Gavella, 1986, p. 170). In accordance with the law, an authorized person keeps one copy of the certificate and hands the other to the testator. Unless proven differently, the authorized person's certificate is deemed

sufficient proof of the document's formal legal validity as an international will, in accordance with the Federal Law of FB&H (Art. 92–93, FB&H inheritance law). An interested party can dispute the accuracy of some or even all of the elements contained in the certificate, especially if the statements in the certificate do not agree with the statements in the drafted will (Blagojević, 1983, p. 298). Therefore, the significance of the certificate is limited. Its existence creates a presumption that the will was drafted in accordance with the rules for drafting an international will, but such a presumption can be rebutted by an interested party (Svorcan, 2009, p. 64). Nevertheless, the absence or irregularity of the certificate is not principal for the formal legal validity of an international will that was drafted in accordance with the applicable law (Art. 94, FB&H inheritance law). An authorized person's failure to issue a certificate of the will's formal legal validity to the testator, or stating incorrect information in the certificate, cannot lead to the invalidity of the will (Antić & Balinovac, 1996, p. 351). Additionally, it is important and interesting to point out that the certificate cannot supplement the formal defects of the will in question (Marković, 1980, p. 124).

4.1. The Date of an International Will — *conditio sine qua non*

Unlike other will forms, the date is an obligatory element for an international will to be considered legally valid. The essential condition is that the will must be dated by an authorized person (Blagojević, 1983). In FB&H inheritance law, the international will is the only type of will that must have a specified date. In the case of multiple wills, the date indicates which one is final, i.e., the last will of the testator, as well as their testamentary capacity (Antić & Balinovac, 1996, p. 348). An incorrect date also leads to declaring the will void (Stojanović, 2011, p. 222). The date is a constitutive element of an international will, and without it, the will cannot be legally valid (Svorcan, 2009, p. 63). The annulment of the will, due to a deficiency in form, after the inheritance proceeding has commenced, can only be requested by a person who has legal interest, within one year from learning about the will, and at the latest, within ten years from the execution of the will (Art. 65 FB&H, inheritance law and Art. 67, RS inheritance law).

4.2. The Date and Theoretical Dilemmas

Primarily, it is imperative to point out and analyze the theoretical perspective regarding the date of an international will. According to Marković (1980, p. 122), specifying the date on an international will is not necessary, and its absence cannot lead to the legal invalidity of the will if the authorized person specified the date on the certificate attached to the will. It is of great importance to emphasize that this perspective should be categorically rejected. As previously mentioned, in accordance with the FB&H inheritance law, the absence or irregularity of the certificate does not affect the formal legal validity of an international will, which is not the case with the date of the will.

5. Testamentary Succession as an Exception in Legal Practice

In modern times, a will represents a kind of exception, not a rule (Skubic, Žnidaršič, 2017, p. 120). Given that wills are used rarely, the legal doctrine emphasizes that legal succession is basic and most common, hence it constitutes a rule in praxis (Antić, 2014, p. 85, p. 224). If the judicial practice is analyzed, it is easy to conclude that in most cases, the inheritance is distributed according to the rules of legal succession and not according to the will (Svorcan, 2009, p. 95).

The testamentary succession phenomenon, as an exception in legal practice, is symptomatic not only for Bosnia and Herzegovina, but also for the entire region. Therefore, it is interesting that when legal writers talk about how legal succession is more common than the will, they never state the reasons why. As mentioned, these writers sometimes reference the judicial practice, but more often than not no additional explanation of the phenomenon is provided.

5.1. Reasons for the Rarity of Private Wills

Although the existence of the will as a legal concept and the possibility of drafting a will are well-known facts, the reasons for its rarity in legal practice should first be sought in the mentality of individuals. Thus, the average person, who is often not a lawyer by profession, will not dare to

draft a will because of the fear that it will be void. In other words, the person fears that they will not perform the procedure properly, which points to an issue of self-confidence. Further research of the psychology of an individual shows that by drafting a will, the individual reconciles with the fact of his transience. Perhaps facing such a fact is the reason that partially prevents an individual from drafting a will, leaving the distribution of his inheritance to the court. Therefore, the reasons that lie in an individual's mental structure very likely often lead to the non-use of private wills.

5.2. Reasons for the Rarity of Public Wills

When it comes to the rare use of public wills in legal practice, one should primarily point out the reasons of a financial nature. The drafting of any public will, judicial or notarial, represents an additional expense that citizens are often not prepared for in a time of increasingly widespread poverty. For example, a notary in The Federation of Bosnia and Herzegovina is obliged to calculate a reward in the amount of 120 BAM (convertible mark, approx. €62), according to tariff number 10 of the Tariff on Rewards and Charges of Notaries (2021), for the notarial processing of a will (or a legally valid succession agreement between married or cohabiting partners). Therefore, reasons of a financial nature represent a possible cause that leads to the rare use of public wills. Taking into account the value of the average pension in Bosnia and Herzegovina and its neighboring countries, it can be concluded that e.g., the testator who is advanced in age should set aside a significant percentage of their monthly pension for the preparation of any legal work. This example confirms that wills are an expense that citizens are often not ready or able to bear.

6. Conclusion

Specifying the date of drafting a holographic will is useful in many ways. Firstly, if there are numerous wills, it is easy to determine which of them is valid, if the wills are mutually contradictory. An even more significant fact is that the specified date enables proving the existence

of testamentary capacity, the existence of sound mind and memory, but also determining the age of the testator at the time of drafting the will. Norming of a holographic will that does not specify the date of drafting as an obligatory element of the said will form, can be classified as defective norming. Any argument for not specifying the date of a holographic will that originates from legal doctrine or the legal profession is a scientifically unfounded argument. From the point of view of comparative law, it is noticeable how several legal systems of European civil law standardize the date as an obligatory element of the holographic will form. While studying the countries whose legal tradition references its region, attention should first be drawn to the German and Swiss legislators' method of standardizing the date of the holographic will. This method concerns standardizing the date in a way that provides an enviable degree of legal certainty, which can easily be incorporated into domestic legislation. When it comes to the date of a holographic will, the resolutions contained in the ZGB are more than worthy of attention, especially when it comes to the obligation of specifying the day, month, and year of drafting the will, i.e., the full date and not the abbreviated form e.g., specifying only the year of drafting. To establish legally relevant facts, such as testamentary capacity, the full date of drafting the will is often crucial.

Specifying the date solely on the certificate attached to the international will does not make the will legally valid in terms of form. Thus, if the date is stated on the certificate, but not on the will, and the certificate has disappeared for any reason, the will remains legally valid without the certificate. Despite that, the will cannot remain legally valid without the date specified in the certificate, because the date is a constitutive element of an international will.

When it comes to testamentary succession as an exception in legal practice, legal science must try to find an explanation regarding the cause of that phenomenon, as this topic is usually reduced to the ambiguous phrase "the will is reduced to the level of an exception" in legal literature. The possible causes of such a phenomenon, which is referred to in this paper, clearly show that the action of legal science alone will not be enough to explain and overcome it, and that it is necessary to include other disciplines that belong to social sciences,

as in psychology, sociology, etc. The state and the legislator have the obligation to improve the situation and bring back one of the most important concepts of inheritance law from the margins, primarily by calling attention to testamentary succession through means of public information, specialized websites, alleviating the costs of drafting public wills, and in various other, adequate ways.

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Miona Rajić[1]
Filip Mirić[2]

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ODUZIMANJE I PREDAJA DETETA U REPUBLICI SRBIJI SA OSVRTOM NA AUSTRIJSKO ZAKONODAVSTVO

Rezime: U ovom radu biće predstavljen pojam oduzimanja i predaje deteta. Biće opisan izvršni postupak oduzimanja deteta, prema metodi uporednog prava Austrije. Predstaviće se uloga suda u odlučivanju, prema ovom zakonodavnom sistemu. Objasniće se koji su zadaci i obaveze organa starateljstva. Razmotriće se problem koji se pojavljuje u Zakonu o izvršenju i obezbeđenju Srbije. Naime, ovaj zakon prednost daje organu starateljstva, a ne sudiji pojedincu. Takođe, biće prikazane relevantne pravne norme ustavnog, porodičnopravnog i krivičnopravnog karaktera Republike Srbije. Time će biti obrazložena i moguća rešenja u prevazilaženju ovog problema.

Ključne reči: *prava deteta, oduzimanje deteta, najbolji interes deteta, starateljstvo, zaštita deteta.*

1. Uvod

Pravo na porodicu jedno je od najvažnijih ljudskih prava. Ono je, međutim, ipak ograničeno određenim zahtevima. Ako roditelji na svet donose dete, onda je tom biću potrebno obezbediti minimalnu egzistenciju kako bi uživalo pristojan i dostojanstven život. Naime, ovde

[1] Miona Rajić, master pravnik, doktorand, Pravni fakultet Univerziteta Union u Beogradu, miona_rajic@yahoo.com.

[2] dr Filip Mirić, naučni saradnik i samostalni stručnotehnički saradnik za studije i studentska pitanja III stepena, Pravni fakultet Univerziteta u Nišu, filip@prafak.ni.ac.rs.

se ne radi o moći jednog prava na odlučivanje ili slobodi pojedinca, već i na kreaciju života drugog bića. Da li se odraslima zaista čini moralno prihvatljivo, pa i pravično, da oni mogu da ostvare svoja prava a da lice koje se rađa ne može? Da li dete ima mogućnost na ispunjenje samo pojedinih ličnih prava? Da li su preči interesi onoga koji stvara dete od samog deteta, čiji ni osnovni interesi ne bi mogli da se zadovolje ukoliko dete za to ne bi imalo uslove? Satisfakcija prava jedne osobe ne može da bude na štetu druge osobe. Dete ima pravo da jede, pije, na mesto gde da živi, da gleda, da čita, na moralna pravila vaspitanja i na određene kazne. Naime, određene kazne jedino mogu da budu u njegovom (detetovom) najboljem interesu (Archard, 2014, str. 140–141). Prema tezi o prioritetu, Žan Žak Ruso smatra da roditelji, koji se staraju o detetu, treba da poštuju svoju dužnost. U slučaju da nisu sposobni ili da nemaju uslove, oni ne moraju da ispune svoju dužnost. Međutim, detetu se tada mora osigurati neko drugo lice, ono lice koje će o njemu moći da brine na najadekvatniji način (Archard, 2014, str. 149). Pravo na dete, kao i detetovo pravo na dostojanstven život, podrazumeva negu i brigu koja je u njegovom najboljem interesu (Konvencija o pravima deteta 1989, 1997). Prema tome, oduzimanje i predaja deteta drugom licu na staranje u slučaju da dete trpi štetu ne znači ugrožavanje porodičnih ili roditeljskih prava, nego, pre svega, pravo deteta na život i razvoj. Ovaj institut podrazumeva ostvarenje uslova za dobrobit deteta i zaštitu njegovih esencijalnih potreba. Na ovaj način se ne utiče samo na razvoj (ili edukaciju) deteta, nego i na lica koja se o njemu staraju. Cilj ovog postupka nije samo izuzimanje deteta iz porodične sredine, nego zapravo njegova reintegracija u porodicu i pomoć porodici u prevazilaženju životnih nedaća. Kako je ova oblast mnogo osetljiva, potrebna je sudska intervencija, kao visokokvalifikovana i, prema tome, jedina sposobna u donošenju konačnih rešenja u ovoj oblasti. Pri tome, ne isključuju se ostale relevantne institucije ni lica za zaštitu deteta (npr. Centar za socijalni rad, organ starateljstva, škola, psiholog, pedijatar, psihijatar i dr.) koja svojim radom mogu doprineti na kvalitetu ovog postupka. Međutim, u našem zakonodavstvu postoje mane koje ne vode najboljem rešenju kako i na koji način obezbediti detetu siguran život, ukoliko se ono izmešta iz porodice. Prema Zakonu o izvršenju i obezbeđenju Republike Srbije, nadležnost suda je preneta na organ starateljstva. To

zapravo nije najbolji način kako detetu osigurati i pružiti pristojan život i obezbediti pravilan razvoj njegovih sposobnosti. Međutim, ta odredba nije ni u saglasnosti sa Ustavom, kao najvišim pravnim aktom u državi, sa kojim zapravo svi ostali zakonski akti moraju biti u saglasnosti. Uporednom analizom komparativnog prava Austrije pokazaće se uloga suda, kao i u kojim je sve segmentima potrebna sudska odluka a, sa druge strane, pokazaće se i u kojim okolnostima organ starateljstva neminovno treba da pruži svoju pomoć i podršku detetu. Time će se pružiti jasna slika kome dete zapravo treba poveriti na odlučivanje u ovako delikatnom problemu.

2. Istorijski razvoj instituta oduzimanje i predaja deteta

Odnosi u porodici, a posebno kada su u pitanju prava deteta, evoluirali su u skladu sa razvojem ljudskih prava. Punu afirmaciju i značajno mesto u opštim unutrašnjim aktima većine država prava deteta dobijaju u drugoj polovini dvadesetog veka, a konkretan doprinos svakako je činjenica da je u tom periodu usvojen značajan broj međunarodnih akata koji proklamuju prava deteta. Dotada se pravna regulacija uglavnom svodila na prava i dužnosti roditelja prema deci sve dok nije uočena i definisana njihova korelativna veza sa pravima deteta. Sa istorijskopravnog aspekta, odnosi između roditelja i dece doživeli su veliku transformaciju. U tradicionalnim patrijarhalnim društvenim zajednicama dominirala je očinska vlast, da bi sa razvojem ljudskih prava nastupila „demokratizacija" odnosa u okviru porodice i značajna zaštita dečjih prava i interesa (Vavan, 2019, str. 10). U rimskom pravu, najstariji muškarac je, kao starešina porodice – *pater familias*, imao ovlašćenja prema imovini i članovima porodice koja su nazivana *patria potestas*. Prema ovim ovlašćenjima, otac je imao gotovo neograničenu privatnopravnu vlast unutar porodice, živeo je po sopstvenom pravu i jedini je imao pravnu i poslovnu sposobnost. Svi ostali članovi porodice, te tako i deca, bili su doživotno potčinjeni njegovim ovlašćenjima. Muško dete je moglo da postane *pater familias* samo ukoliko su mu svi muški preci pomrli. Ovlašćenja oca su se prostirala na ličnost i imovinu deteta. U pogledu ličnosti, otac je imao pravo da odlučuje o životu i smrti deteta, te ga je mogao prodati, osuditi na sve kazne, ubiti,

oženiti i udati bez njegove posebne saglasnosti, primiti dete u porodicu ili ga odbaciti. Deca nisu imala imovinsku sposobnost, s obzirom na činjenicu da je otac bio titular kompletne postojeće i nasleđene imovine (Vavan, 2019, str. 11). U novom veku, od pada Vizantije, pa sve do 20 veka, usvojeni su značajni akti u velikom broju zemalja, kojima su proklamovana ljudska i građanska prava, poput Deklaracije o pravima čoveka i građanina, Ustava SAD, *Code civila* (Francuskog građanskog zakonika), Austrijskog građanskog zakonika (Allgemeines bürgerliches Gesetzbuch) itd. Međutim, tradicionalno poimanje porodice i odnosa u okviru nje ostalo je i tokom ovog perioda uglavnom slično. Dakle, patrijarhalni sistem sa dominantnom ulogom oca održavao se i dalje u porodičnim zajednicama. Ipak, očinska vlast dobija širi kontekst, prvi put se značajnije pominje uloga majke i definišu obaveze roditelja. Tako, na primer, u Austrijskom građanskom zakoniku utvrđuje se obaveza roditelja da decu vaspitavaju, staraju za njihov život i zdravlje, da ih izdržavaju, razvijaju njihove telesne i duševne moći i da u okviru religijske nastave i korisnih znanja zasnivaju temelj „budućeg dečijeg blagostanja". Imovina koju je dete steklo mogla je postati njegova svojina, ali dok je pod očinskom vlašću upravljanje imovinom je pripadalo ocu (Vavan, 2019, str. 13).

Na području centralne i južne Srbije važio je Srpski građanski zakonik iz 1844. godine i Zakon o starateljstvu iz 1872. godine. Srpski građanski zakonik, u okviru treće glave, uređivao je odnose između roditelja i dece. Otac je imao velika ovlašćenja, ali i obaveze. Roditelji su, između ostalog, bili u obavezi da „svoju decu hrane i odevaju, da se staraju za njihov život i zdravlje, da im tela snaže i podižu, vaspitavaju i duševne sposobnosti razvijaju, u zakonu božijem obučavaju." Ove dužnosti, kako Zakonik navodi, „poglavito na ocu leže". Deca su, sa druge strane, bila dužna da poštuju i slušaju roditelje, te „da protiv volje roditelja ništa ne preduzimaju i čine." Pored ovih akata, porodični odnosi bili su uređeni i verskim sklapanjem braka i za sve bračne sporove važilo je crkveno pravo. Kodifikacija crkvenog prava u oblasti bračnih odnosa izvršena je 1933. godine Bračnim pravilnikom Srpske pravoslavne crkve. U delovima Vojvodine, u Bačkoj i Banatu, u to vreme se primenjivalo ugarsko pravo, na primer, Zakon o braku iz 1894. godine, Zakon o tutorstvu i starateljstvu iz 1877. godine, Zakon o državnim maticama

iz 1894. godine, *Tripartitum* – Verbecijeva zbirka mađarskog pisanog i običajnog prava. Na teritoriji Srema, porodičnopravni odnosi su bili regulisani Austrijskim građanskim zakonikom iz 1811. godine (Vavan, 2019, str. 19). Na teritoriji cele Srbije tokom 20. veka važili su sledeći zakoni: Osnovni zakon o braku iz 1946. godine i Zakon o braku iz 1974. godine, Osnovni zakon o odnosima roditelja i dece iz 1947. i Zakon o odnosima roditelja i dece iz 1974. godine, Zakon o usvojenju iz 1947. godine i iz 1976. godine, Osnovni zakon o starateljstvu iz 1947. godine i Zakon o starateljstvu iz 1975. godine, kao i Porodični zakon iz 2005. god. (Vavan, 2019, str. 20).

Tokom dvadesetog veka doneta su različita dokumenta, poput Ženevske deklaracije o pravima deteta iz 1924. godine, Deklaracije o pravima deteta iz 1959. godine i Konvencije Ujedinjenih nacija o pravima deteta iz 1989. godine. Na osnovu ovih akata, države članice UN se obavezuju da detetu obezbede zaštitu i brigu koja je neophodna za njegovu dobrobit. U zakonskim tekstovima sve više se definiše institut odnosa roditelja i dece, umesto roditeljskog prava. Postupak izvršenja tokom dvadesetog veka se u većini zemalja izdvaja i osamostaljuje u pravnoj regulativi, kao poseban građanski proces uređen opštim aktom. Izvršenje presuda povereno je sudovima ili posebno ovlašćenim licima – vansudskim (javnim, privatnim) izvršiteljima. Postupke izvršenja sudskih odluka iz porodičnih odnosa, te odnosa roditelja i deteta, pored zakona koji regulišu postupak izvršenja, često uređuju i porodični zakoni (Vavan, 2019, str. 13). Godine 2000. donet je novi zakon o izvršnom postupku. Tadašnji zakonodavac je, u nameri da se postigne ubrzanje sudskog postupka, uveo pojedina rešenja koja su bila veoma kritikovana od strane pravne nauke i struke. Kada je reč o odnosima roditelja i dece, značajno je to što se prvi put reguliše jedna vrsta izvršenja sudske odluke iz ove materije a to je predaja deteta. Zakonom je bila predviđena obaveza suda da posebno vodi računa o potrebi zaštite interesa deteta u najvećoj meri, zatim da se ostavlja rok od tri dana od dana dostavljanja rešenja da se dete preda roditelju ili drugom licu, odnosno organizaciji pod pretnjom izricanja novčane kazne. Ukoliko se izvršenje nije moglo sprovesti izricanjem novčane kazne, sud je sprovodio oduzimanje deteta uz pomoć organa starateljstva. Ostali izvršni postupci iz porodičnih odnosa nisu bili posebno uređeni zakonom. Zakon o izvršnom postupku

iz 2004. godine predstavljao je prvi opšti akt kojim je regulisan postupak izvršenja na nivou Republike Srbije. Ovim propisom je proširen obim sredstava izvršenja i detaljnije je regulisan postupak izvršenja radi predaje i oduzimanja deteta, ali i dalje, poput prethodnih normativa iz oblasti izvršnog postupka, pojedine moguće vrste izvršenja iz porodičnih odnosa on posebno ne predviđa niti reguliše (Vavan, 2019, str. 17). Zakon o izvršenju i obezbeđenju donet je 2011. godine. Kada su u pitanju postupci izvršenja iz porodičnih odnosa, ovim aktom je detaljno regulisan postupak oduzimanja i predaje deteta. Član 226 predviđao je da se na osnovu odluke suda o vršenju roditeljskog prava može odrediti i sprovesti izvršenje radi predaje deteta, bez obzira da li je tom odlukom naložena njegova predaja. Ako u odluci suda stranci nije naložena predaja deteta sud je rešenjem o izvršenju izdavao nalog i određivao rok za predaju. Sud je, shodno članu 228, određivao izvršenje oduzimanjem deteta izricanjem novčane kazne ili izricanjem kazne zatvora licu koje odbija da preda dete ili preduzima radnje u cilju onemogućavanja ili otežavanja sprovođenja izvršenja. Sud je, u skladu sa članom 230, rešenje o izvršenju radi oduzimanja deteta i predaje deteta dostavljao organu starateljstva najkasnije 10 dana pre sprovođenja izvršenja, te je psiholog bio dužan da izvrši planiranje aktivnosti i prikupi podatke od značaja za izvršenje, a nakon toga da obavesti sud o tome i dostavi mišljenje o najpodobnijem sredstvu izvršenja. Pored toga, psiholog je bio dužan da se u toku celog postupka stara o najboljem interesu deteta i pruži blagovremenu podršku detetu i roditelju ili licu kome je dete predato. Član 231 je propisivao da samu izvršnu radnju oduzimanja i predaje deteta sprovodi sudija u saradnji sa psihologom organa starateljstva ili psihologom škole, porodičnog savetovališta ili druge specijalizovane ustanove koja se bavi posredovanjem u porodičnim odnosima a po potrebi i uz asistenciju policije. Od ostalih vrsta izvršnih postupaka iz porodičnih odnosa, Zakon je dosta sažeto i skromno uredio postupak izvršenja radi održavanja ličnih odnosa sa detetom, kao i postupak izvršenja radi zaštite od nasilja u porodici, zaštite deteta i drugih odluka u vezi sa porodičnim odnosima (Vavan, 2019, str. 18).

3. Zakonodavstvo Republike Austrije

Prema paragrafu 138 Austrijske građanske kodifikacije (ABGB), „dobrobit deteta", tj. *najbolji interes deteta* treba da bude glavni i vodeći princip u svim sudskim odlukama i radnjama koje se tiču deteta. Zakonsko određenje najboljeg interesa deteta nema konačnu definiciju. Uprkos tome, postoje mnogi parametri koji određuju dobrobit deteta, kao što su: odgovarajuća briga, poštovanje prava i interesa deteta, izbegavanje opasnosti po dete itd. (Grabner et al., 2018, str. 7). Najbolji interes deteta znači, pre svega, nega i vaspitanje deteta. Nega (staranje) podrazumeva čuvanje telesnog dobra i zdravlja deteta. Obaveza nadzora i vaspitanja označava: odgovornost za razvoj i školovanje deteta; podsticanje razvoja sposobnosti i sklonosti deteta, kao i razvijanje telesnih, duhovnih i moralnih snaga deteta. Obaveze prema detetu uključuju i upravljanje imovinom deteta. Imovinu deteta treba čuvati u svom celovitom obliku i, po potrebi, umnožavati (kao što je to npr. imovina veće vrednosti: to mogu biti veća suma ili nasledstvo jednog stana, ali ne i svakodnevna legitimna primanja deteta ili jednog učenika). Pri staranju o detetu neophodno je omogućiti pravo na dohodak, kao i ostvariti zahtev za izdržavanje. U okviru brige o detetu treba navesti i zakonsko zastupanje deteta. Potrebno je da roditelj, ili drugi zakonski staratelj, može u ime deteta doneti zakonski bitne odluke prema trećim licima (npr. pristajanje, odobravanje ili zahtevanje...). Radnje zakonskog zastupnika u ime maloletnika podrazumevaju odobravanje određenih radnji, a posebno onih koje maloletnik sâm preduzme. Tek nakon saglasnosti zakonskog zastupnika određeni pravni poslovi koje maloletnik preduzme mogu postati punovažni (Grabner et al., 2018, str. 8). Zakonsko zastupanje, pored ovih oblasti, odnosi se još, prema paragrafu 169 Austrijske građanske kodifikacije, i na promenu imena deteta, njegovu pripadnost određenoj religiji, zastupanje u građanskim postupcima, kao i na pravo azila. Roditelji su u obavezi da tokom perioda staranja o detetu obezbede određena sredstva kako bi dete moglo da uživa svoja osnovna prava. Prema paragrafu 1 Zakona o privrednim društvima (*Unternehemsgesetzebuch*), ako staratelj nije u mogućnosti da pruži određeni novčani iznos za podizanje deteta, onda se određena primanja mogu zatražiti i od države (Grabner et al., 2018,

str. 9). Prema paragrafu 177 ff, staratelji mogu biti: roditelji (neudata majka), baka i deda, hraniteljska porodica, odgovarajuća osoba sa odlukom suda (ako nema u prvoj liniji rođaka), a na kraju (lestvice) i sâm sud može dodeliti starateljstvo Agenciji za zaštitu dece i mladih (*Kinder-und Jugendhilfeträger*). To se veoma često odobrava, posebno u slučaju nepraćenih maloletnih migranata. U tom slučaju, Agencija za zaštitu dece i mladih treba da podnese zahtev sudu i da sud odobri starateljstvo u slučaju nepraćene dece migranata (Grabner et al., 2018, str. 11).

Ako su roditelji onemogućeni da vrše svoje pravo starateljstva i time povređuju prava deteta, u tom slučaju odluku donosi Sud za starateljstvo: da li, ili kojem licu (baki i dedi ili samo jednom), ili hraniteljskoj porodici (ili samo jednom hranitelju) treba da pripadne pravo starateljstva (parag. 178 Austrijske GK). Agencija za zaštitu dece i mladih poziva se u slučaju kada ovih lica nema, tj. kada se na njih ne može preneti pravo starateljstva. Sud prvenstveno mora da odlučuje prema navedenoj lestvici/skali (skala odgovara pravnom poretku prvenstva), pošto ovaj princip čuva i štiti porodicu. Međutim, Sud za starateljstvo odlučuje i u mnogim drugim važnim situacijama. U slučaju razvoda roditelja pravo na posetu može jednoglasno da se dogovori ili uz posredstvo suda. Ako roditelji ne mogu da se dogovore, onda, prema § 180 Austrijske GK, odlučuje sud. Ako je samo majka staratelj, pa se zatim oba roditelja saglase za starateljstvo, oni su u obavezi da tu odluku prilože Sudu za starateljstvo, prema parag. 177 stav 2 AGK. Postoje obaveze prema detetu i od strane trećih lica. Svaka osoba koja živi u istom domaćinstvu s jednim od roditelja i detetom zapravo je u obavezi da učestvuje u starateljstvu (Grabner et al., 2018, str. 12). Da čuva interes deteta, takođe je obavezan i očuh ili maćeha, (nevenčani) partner jednog roditelja ili punoletni rođaci. Potrebna je njihova briga u svakodnevnim roditeljskim obavezama, nije dovoljno da samo ostvaruju zajednički život sa detetom. Paragraf 90 Austrijske GK takođe uređuje obavezu pružanja pomoći od strane osobe koja živi sa jednim od roditelja. To znači da supružnik mora što bolje izdržavati i podržavati roditelja u njegovoj/njenoj obavezi starateljstva, a, ako je potrebno, treba da ga zastupa i u svakodnevnoj brizi za dete. Ako roditelji ne mogu da budu staratelji i za to nema odgovarajuće osobe koja bi mogla da preuzme tu obavezu onda,

prema parag. 209 AGK, starateljstvo vrši Agencija za zaštitu deteta i mladih. Agencija za zaštitu deteta i mladih (KJHT) u svom radu redovno koristi odgovarajuće nezavisne (npr. privatne ustanove za zaštitu dece i mladih) ili samostalne pomagače kako bi mogla da što bolje izvršava svoje obaveze oko starateljstva. To, naime, podrazumeva faktičko vršenje obaveze starateljstva (Grabner et al., 2018, str. 13). Međutim, i mnoge druge odluke koje su u najboljem interesu deteta može da donese jedino sud. Prema tome, Sud uređuje i sledeće određene oblasti: 1) ako je potrebna promena mesta stanovanja deteta, a to mesto je udaljeno više od 600 km u državi, to može predstavljati razlog za zahtev za novu sudsku odluku o starateljstvu (prema odluci Vrhovnog suda, OGH 60b19/17p); 2) sud može nevenčanom ocu da uskrati starateljstvo u slučaju svađe ili nekog nedostatka komunikacije između roditelja, ako bi to vodilo ugrožavanju i pretnji dečjeg dobra (tekst odluke AUSL EGMR 03. 12. 2009. Bsw 22028/04); 3) ako dvanaestogodišnjak odlučno odbija kontakt sa ocem, a njihov odnos je već odavno prekinut, te određene posete oca nisu doprinele poboljšanju njihovog odnosa i ne odgovaraju dobrobiti deteta, onda se npr. četrnaestodnevne posete mogu ukinuti sudskim putem uprkos tome što otac želi da ostvari kontakt (prema odluci Vrhovnog suda, OGH 25. 08. 2016, 5 Ob 129/16f); 4) ako roditelji svojim ponašanjem škode detetu i njihovo ponašanje nije u njegovom najboljem interesu, a ipak starateljstvo ostane u njihovim rukama, onda sud može da odredi roditeljima određene obaveze, kao što su obaveze savetovanja, terapije ili redovnog kontakta sa Agencijom za zaštitu dece i omladine (prema odluci Vrhovnog suda, OGH 5Ob17/17m) (Grabner et al., 2018, str. 14).

Prema maloletnim migrantima, koji dolaze u Austriju bez pratnje i koji su podnosioci zahteva za azil, takođe postoji zakonska obaveza za zaštitu njihovih osnovnih prava, potreba i interesa. Oni imaju pravo i na zastupanje u postupku za odobravanje azila. Prema tome, i njima je potreban odgovarajući staratelj. Njihova prava su uređena prema zakonskim propisima o pravima i obavezama starateljstva koji se odnose na strance i one koji nisu državljani Austrije (prema odluci Vrhovnog suda, OGH 7 Ob 209/05v, 4Ob7/06t). I u ovim navedenim slučajevima odlučuje sud. Kod ovih lica prevashodno je potrebno da se zaštita njihovih prava prenese na odgovarajuću osobu/instituciju (većinom na

AZDM/KJHT). Uprkos tome što su njihovi roditelju odsutni u ovom postupku, oni ipak zadržavaju pravo na saslušanje (član 6 EKLJP). Ako je roditelje nemoguće pronaći (tzv. kvalifikovano odsustvo), tada se dodeljuje tzv. kustos odsutnosti (prema odluci Vrhovnog suda, OGH 4Ob150/16m) (Grabner et al., 2018, str. 15). Maloletne izbeglice, koje nemaju pratnju, navršavanjem 14. godine mogu same da zatraže azil, ali posle, u svim ostalim radnjama postupka, moraju imati zastupnika (u postupku za azil ili u postupku za strance) (Grabner et al., 2018, str. 34). U slučaju da roditelji nepraćenih maloletnika migranata/izbeglica dođu u zemlju, sud može opet formalno da vrati/prenese starateljstvo na roditelje (Grabner et al., 2018, str. 20).

Za proveru zakonitosti intervencija ili oduzimanja starateljstva u Austriji nadležan je Sud za starateljstvo. Uvek kada se sigurnost deteta, njegovo dobro i njegov najbolji interes dovedu u pitanje, Sud za starateljstvo može da ukine ili ograniči starateljstvo na jedno lice ili da sudskim rešenjem odobri jednoglasnu odluku ili sporazum roditelja. U slučaju kašnjenja ili moguće opasnosti po dete (kada se ne može čekati na sudsku odluku), Agencija za zaštitu dece i mladih, kako bi otklonila opasnost, može da primeni odgovarajuće mere, što znači da se sudski nalog može zatražiti u roku od osam dana. Starateljski sud može da prenese starateljstvo na AZDM u sledećim slučajevima: kada je dobrobit deteta u opasnosti, kada je neophodno da se maloletnik izmesti iz dotadašnjeg okruženja, kada staratelj ne sprovodi odgovarajuće mere, kada nema mogućnosti da se starateljstvo prenese na bliže rođake ili druga bliska lica ili druga odgovarajuća lica. AZDM treba da napravi plan pomoći detetu i da donese najneophodnije mere za dete, nezavisno od detetovog porekla ili stambenog (boravišnog) statusa (Grabner et al., 2018, str. 17). U slučaju opasnosti po dete, tj. ako postoji sumnja da su dete i njegovo dobro ugroženi, svako je obavezan (stručna lica u skladu sa svojom profesijom) da kontaktira AZDM (parag. 37 Saveznog zakona za pomoć deci i mladima /B-KJHG). Naime, ograničenje starateljstva mora da bude poslednje sredstvo u postizanju cilja, a to je, pre svega, dobrobit deteta. Želja deteta treba da se uzme u obzir pri odlučivanju o ukidanju ili ograničenju starateljstva. Želja se meri prema detetovom dobu i neophodnoj „sposobnosti za odlučivanje“ (više o ovome u tekstu Zakona o zaštiti odraslih pod pojmom „sposobnost odlučivanja“ –

Erwachsenenschutzgesetz, Begriff: „Entscheidungsfähigkeit"!). Koliko je jedan maloletnik zreliji, toliko se više cene njegove odluke. U sudskom postupku o nezi (staranju), vaspitanju i pravu na posetu, pravo na učestvovanje u postupku imaju stariji maloletnici (od 14. godine). Oni mogu biti stranka u sudskom postupku i mogu sami da podnesu zahteve ili određena pravna sredstva protiv sudske odluke. Od 10. godine života deca mogu da se izjasne pred sudom. Mlađa deca mogu da se izjasne u određenim institucijama ili centrima za zaštitu dece (parag. 104 ff Zakon o vanparničnom postupku/AussStrG) (Grabner et al., 2018, str. 18). Lica koja sprovode mere, kao pomoć pri vaspitanju dece, iste mogu da primene sa ili bez volje zakonskog zastupnika. Ako roditelji moraju da ispune odgovarajuće obaveze (npr. određeno savetovanje ili da primene određenu terapiju) ili ako je neophodna pomoć porodice, onda nega i vaspitanje deteta ostaju na strani roditelja. Ako se dete nalazi u nepoznatoj situaciji (stanju krize ili postoje dugi periodi neviđanja), onda nega (staranje) i vaspitanje deteta prelaze na Agenciju na zaštitu dece i mladih, tj. prenose se sve obaveze, i obaveza nege i vaspitanja deteta (Grabner et al., 2018).

Postoje dve vrste oduzimanja i predaje deteta – sporazumno i prinudno. Oduzimanje deteta više se koristi kao termin kod sudskih odluka a predaja kod sporazuma između roditelja i trećeg lica. Dobrovoljna pomoć pri staranju o detetu reguliše se na osnovu § 27 Saveznog zakona o pomoći deci i mladima/B-KJHG. Roditelji mogu da se dogovore sporazumno sa Agencijom oko predaje deteta. Agencija tada preuzima obavezu nege i vaspitanja deteta, a roditeljima ostaje obaveza izdržavanja deteta. Oni tada snose sve odgovarajuće troškove. Prinudno vaspitanje dece reguliše se prema § 28 Saveznog zakona za pomoć deci i mladima. Ako roditelji nisu saglasni sa neophodnim merama oko podizanja deteta i njegovog vaspitanja, Agencija za zaštitu dece i mladih može biti ovlašćena od strane suda da preduzme sve neophodne mere za negu i vaspitanje deteta. Ovu odluku jedino može da ukine sud, ukoliko više ne postoje razlozi za opasnost i ugrožavanje dečjeg dobra. Na Agenciju se zapravo prenosi samo obaveza nege/staranja i vaspitanja, zakonskog zastupanja u ovim oblastima, dok pravo na roditeljsko starateljstvo u okviru obrazovne pomoći ostaje na snazi. Ovakve smernice u osnovi podržavaju rad sa porodicom radi dobrobiti

deteta. Svrha i cilj oduzimanja deteta u osnovi znači reintegraciju deteta u porodicu (kao i očuvanje same porodice). Agencija može da prenese prava i obaveze na treća lica, ali samo na ona koja se nalaze u njenoj službi (Grabner et al., 2018, str. 20). Sud može ponovo da odobri vraćanje deteta u porodicu iz koje je oduzeto, ali tek nakon pažljivog razmatranja svih važnih okolnosti i uslova za dete. Pre svega, potrebno je prvo ispitati da li još uvek postoji opasnost po dobrobit deteta. Isto tako potrebno je razmotriti kako je uticala promena životnih uslova na dete (kod procesa vraćanja deteta uvek stoji dobrobit deteta iznad prava roditelja). Ako bi staranje deteta i briga o njemu bila bolja kod treće osobe nego kod roditelja, to ipak ne može biti glavni razlog da se dete izmesti iz porodice (Grabner et al., 2018, str. 21).

Sud za starateljstvo generalno ima obavezu da daje uputstva i da se brine o deci i mladima kako bi se i njihova procesna prava uzela u obzir. Na taj način sud može da upućuje decu i mlade na mogućnosti njihovog savetovanja. Savetovanje dece i mladih treba da odgovara odgovarajućoj formi i životnoj dobi maloletnika i njegovoj sposobnosti razumevanja. Ova obaveza treba veoma ozbiljno da se prihvati (shvati), tako da se jednom maloletniku koji podnese zahtev mora objasniti smisao i svrha tog zahteva. Deci do 14. godine, u određenim slučajevima do 16. godine, sud može da dodeli pomoć, tj. takozvanu zaštitu deteta (prema § 104a Zakona o vanparničnom postupku/Außerstreitgesetzt). Na taj način, dete se prati kroz postupak i podržava tamo gde je neophodno. Lice koje pruža pomoć detetu ne predstavlja stranku u postupku niti je zakonski zastupnik deteta. Određivanje „zaštite deteta" u sudskom postupku može samo da se dodeli *ex officio*. Za zaštitu deteta u postupku ne može da se podnese zahtev (Grabner et al., 2018, str. 22). Sa druge strane, postoji i pomoć porodici. Da bi se sudski postupak skratio i da bi se strane u sukobu pomirile, kao i da bi se kvalitet i održivost porodično-sudskog postupka poboljšao, ustanovljena je sudska zaštita porodice (prema § 106a Zakona o vanparničnom postupku). Sudska zaštita porodice podrazumeva određena ovlašćenja (npr. pravo na uvid u dokumenta, pravo da se razgovara sa detetom). Međutim, najveća vrednost tog postupka jeste najbolji interes deteta (Grabner, Paumgartten, Grasl. op. cit., str. 22). Sposobnost za starateljstvo odmerava se prema dobu i celokupnom razvojnom stanju deteta (prema odluci Vrhovnog suda,

OGH 1Ob37/16x). Sudska odluka o oduzimanju deteta (starateljstva) donosi se u slučaju kada je dete izloženo nasilnim metodama vaspitanja, kada treća osoba vrši nasilje ili kada je staranje deteta npr. prepušteno nekoj sekti (prema odlukama Vrhovnog suda/Oberste Gerichtshof: 2Ob593/92, 1Ob593/92, 1Ob2078/96m) (Grabner et al., 2018, str. 23). Na primer, ako jedna petnaestogodišnja devojčica dâ do znanja da ne želi kući jer su tamo svakodnevne svađe i pritom kaže da ju je pre godinu dana majka zaključavala, ne može se oduzeti i predati drugom licu na staranje bez prethodnog majčinog objašnjenja, naročito ako se zna da se radi o tipičnoj porodičnoj konfliktnoj situaciji, sukobu bez nanošenja štete po dečje dobro (prema odluci OGH 5Ob33/15m) (Grabner et al., 2018, str. 23).

Neophodne mere oko oduzimanja i predaje deteta na Agenciju za zaštitu deteta i mladih zalaze u oblast prava na poštovanje privatnosti i prava na porodični život (član 8 EKLJP). Prema pravnoj praksi, to se može opravdati samo ukoliko je to u interesu deteta i u slučaju otklanjanja opasnosti po njegovo dobro. U ovoj oblasti nije odlučujuće koja je bolja statusna ponuda (materijalni uslovi života) za dete, nego o tome koje je lice najbolje za brigu, staranje i vaspitanje deteta. Postoje problemi u vezi sa uklapanjem deteta u sredinu, pa je, prema tome, neophodno ustanoviti program za ponovno vraćanje deteta. Svaki program treba rangirati prema detetovom dobu (prema odluci Vrhovnog suda, OGH 1Ob99/16i). Ako je dete bolje snabdeveno u socijalnoj ustanovi ili kod treće osobe nego što je kod svojih roditelja, još uvek ne mora da znači ograničenje roditeljskog staranja (prema RS0048704) (Grabner et al., 2018, str. 23). Pravo na posetu, prema parag. 188 Austrijske GK, sud može da ograniči ili da zabrani ako za to postoje razlozi koji ukazuju da posete vode nasilju ili da se dete navodi protiv osobe kojoj je dete povereno na staranje (u ovom slučaju dete se obično može naći u stanju duševnog konflikta, što, naravno, pogrošava stanje u kojem se nalazi) (Grabner et al., 2018, str. 25). Ako staratelj ne ispunjava svoju obavezu o tome da se informiše o detetu (da pita za dete) u periodu u kom je dete oduzeto, sud može drugog roditelja da ovlasti da se direktno informiše kod treće osobe (prema odluci Vrhovnog suda, OGH 4O 104/15w). Odluka suda je takođe bitna za dete i u sledećem slučaju. Domicilni roditelj (zakonski staratelj) treba drugog roditelja neodložno da informiše o preseljenju u

inostranstvo kako bi drugom roditelju dao mogućnost da se oko toga izjasni pred sudom ili da podnese zahtev za zabranu ako smatra da je potrebna zabrana iseljenja. Ako saglasnost suda izostane, radi se o nezakonitom iseljenju deteta (prema odluci Vrhovnog suda, OGH 9 Ob 8/14p) (Grabner et al., 2018, str. 27).

Svako dete ima pravo da se staranje o njemu vrši na najodgovorniji način, a da roditelji pri tome ne smeju da deluju nasilno. Kao što je navedeno, ako se roditelji uzajamno ne slažu oko zakonskog zastupanja, mogu se obratiti Sudu za starateljstvo. Prema parag. 161 Austrijske GK, za roditelje postoji zabrana nasilja i obaveza lepog i dobrog ponašanja, dok za maloletnike postoji obaveza poslušnosti prema roditeljima, ali sve dok je ta poslušnost u okvirima zakona (ne predstavlja krivično delo) (Grabner et al., 2018, str. 29). Najzanimljivija odredba zakona je upravo ta da dete može da se obrati sudu po pitanju svojih prava. Volja deteta se mora uzeti u obzir, ali samo do one granice dokle se time ne narušava dobrobit deteta i dok se time ne narušavaju njegove životne obaveze. Detetova volja je utoliko važnija ukoliko dete može više da sagleda važnost i značenje mera koje se preduzimaju i ukoliko može da izgradi svoje sopstveno mišljenje na osnovu svojih sposobnosti o odlučivanju. Prilikom izvršenja naloga o oduzimanju deteta potrebno je uzeti u obzir dob deteta, razvoj i ličnost deteta. Dete, takođe, ima pravo da se izjasni, odnosno da određene zahteve podnese sudu u slučaju da se roditelji (ili jedan od njih) protive njegovoj volji. Deca su od rođenja nosioci osnovnih prava i sloboda. Prema parag. 137 Austrijske GK, u okviru staranja i vaspitanja, primena nasilja, telesnih ili duhovnih patnji su nedopustivi. Mere koje ograničavaju slobodu, a koje se sprovode u okviru obaveza vaspitanja (npr. obaveza čuvanja, podsticanje socijalnih sposobnosti, vaspitanje nezavisnosti) dopuštene su. Međutim, samovoljno lišavanje slobode je nedopustivo (Grabner et al., 2018, str. 30). Sa druge strane, dete može, mimo njegove volje, da bude stacionirano u psihijatrijsku ustanovu, ali u slučaju da je ono opasno za drugoga (za treće lice) ili za samoga sebe. Pritom moraju biti ispunjeni svi potrebni uslovi. Stariji maloletnici mogu jednoglasno, sa zakonskim zastupnikom, da zatraže mesto u klinici, dok mlađi maloletnici mogu samo na osnovu pristanka staratelja biti smešteni u kliniku (Grabner et al., 2018, str. 36).

Postoje i druge bitne oblasti za koje je takođe potrebno odobrenje Suda za starateljstvo: dete ima pravo na državljanstvo, brak, boravište, preseljenje u inostranstvo, školovanje, promenu imena, odabir religije (veroispovesti), pravo na lične podatke i na ličnu fotografiju/sliku (Grabner et al., 2018, str. 37). Prema tome, organ starateljstva može da (za)traži dozvolu od Suda za starateljstvo i u sledećim slučajevima: za promenu imena ili prezimena deteta, za pripadnost jednoj religiji, za predaju u hraniteljsku porodicu ili za državljanstvo deteta i dr. Kod raspolaganja imovinom maloletnika, osim kod svakodnevnih životnih potreba, takođe je potrebna dozvola Suda za starateljstvo (kao što je navedeno npr. kada je u pitanju veća suma novca ili osnivanje firme). Roditelj, takođe, može da odgovara pred sudom za nanetu štetu detetu u slučaju uvredljivih izjava ili u slučaju podsticanja na neko protivpravno delo (prema odluci Vrhovnog suda, OGH 10Ob27/15s) (Grabner et al., 2018, str. 31). Ako mlađi maloletnik učini neko delo kojem preti kazna, Agencija za zaštitu dece i mladih može da zatraži mere oduzimanja i predaje deteta. Sa druge strane, stariji maloletnik odgovara sam za sebe (Grabner et al., 2018, str. 35). Onako kako nalažu zahtevi za staranje i vaspitanje deteta, zakonski staratelj može da odredi i boravište deteta. Ako se dete nalazi negde drugo (kod drugog roditelja), zakonski staratelj može da zatraži vraćanje deteta. Za predaju deteta, kako je navedeno, prevashodno su nadležni državni organi, tj. potrebno je doneti sudsko rešenje, dok je samopomoć dopuštena u izuzetnim slučajevima i u slučaju kada preti neposredna opasnost. U svakom slučaju, pravo na određeno boravište deteta ne sme da bude protivno dobrobiti deteta (prema odluci Vrhovnog suda, OGH 10Ob31/04p) (Grabner et al., 2018, str. 39).

4. Zakonodavstvo u Republici Srbiji u oblasti oduzimanja i predaje deteta

Ova oblast je u pozitivnom zakonodavstvu Republike Srbije uređena normama ustavnog, porodičnog, izvršnog i krivičnog prava. Tako, prema Ustavu Republike Srbije, u članu 65 stav 2 navodi se da je za lišenje roditeljskog prava nadležan sud: „Sva ili pojedina prava mogu

jednom ili oboma roditeljima biti oduzeta ili ograničena samo odlukom suda, ako je to u najboljem interesu deteta, u skladu sa zakonom" (član 65 Ustava Republike Srbije, 2006). Prema članu 261 stav 1 Porodičnog zakona, „dete može podneti tužbu u sporu za zaštitu svog prava i u sporu za vršenje, odnosno lišenje roditeljskog prava pred sudom opšte mesne nadležnosti ili pred sudom na čijem području ono ima prebivalište, odnosno boravište" (Porodični zakon, 2015). U članu 273 stav 1 Porodičnog zakona navodi se, takođe, da je lišenje roditeljskog prava jedino omogućeno odlukom suda. „Sud može presudom u sporu za zaštitu prava deteta odlučiti i o vršenju odnosno lišenju roditeljskog prava" (Porodični zakon, 2015). Oduzimanje i predaja deteta uređeni članom 376 Zakona o izvršenju i obezbeđenju. Međutim, ta odredba izmenjena je na način koji nije odgovarajući u rešavanju ovako osetljivih i važnih problema, kao što je to oblast zaštite deteta i porodice. Odredba glasi: „Sud obaveštava stranku koja je podnela predlog za izvršenje i lice kome treba da se preda dete o vremenu i mestu oduzimanja i predaje deteta, po pravilima o ličnom dostavljanju. Dete prinudno oduzima i predaje organ starateljstva uz prisustvo i nadzor suda. Psiholog organa starateljstva je dužan da u toku oduzimanja i predaje deteta prati ponašanje i reakcije deteta i lica kome se dete oduzima, da utiče na sprečavanje ili smanjenje ponašanja koja mogu izazvati sukob ili traumatsko reagovanje deteta, da savetuje sud kako da se oduzimanje i predaja deteta ostvare sa što manje štete po rast i razvoj deteta i da sam preduzima sve potrebne radnje u te svrhe i da unese svoja zapažanja u zapisnik o oduzimanju i predaji deteta i potpiše ga" (Šarkić & Nikolić, 2021, str. 665).

Dana 1. januara 2020. godine značajno je izmenjena uloga organa starateljstva u izvršnom postupku prilikom oduzimanja i predaje deteta, kao najvažnijeg izvršnog postupka u oblasti porodičnih sporova. Zakonodavac nije napravio preciznu distinkciju između organizacije centra za socijalni rad, kao upravno-stručnog organa, i postojanja organa starateljstva, kao stručnog organa u organu (Šarkić & Počuča, 2020, str. 21). U članu 2 Zakona svakako bi trebalo naznačiti jezičku razliku između centra za socijalni rad i organa starateljstva, a potom i različite procesne položaje u kojima organ starateljstva može da bude prisutan u toku odlučivanja i sprovođenja izvršenja (Šarkić & Nikolić, 2020, str.

265). Organ starateljstva učestvuje u porodičnopravnim sporovima. To su sporovi iz okvira odnosa roditelja i dece, poput utvrđivanja ili osporavanja očinstva ili materinstva, lišavanje roditeljskog prava, sporovi u postupku sprečavanja nasilja u porodici i sl. „Organ starateljstva ne samo da ima pravo da pokrene postupak nego je i dužan da to učini čim sazna da su ispunjeni zakonski uslovi za zaštitu prava deteta, vršenje odnosno lišenje roditeljskog prava, kao što ima obavezu da hitno preduzme mere za zaštitu ličnosti, prava i interesa deteta pošto sazna za mogućnost nastupanja razloga za lišenje roditeljskog prava" (Šarkić & Nikolić, 2020, str. 265). Međutim, organ starateljstva procesnu poziciju u izvršnom postupku ipak može da ima na različite načine. To može da odgovara položaju izvršnog poverioca, izvršnog dužnika, punomoćnika, zastupnika, trećeg lica, obaveznog učesnika ili fakultativnog učesnika. Kao zakonski zastupnik deteta u parničnom postupku, veća ovlašćenja u izvršnom sudskom postupku crpi kao izvršni poverilac osnovom zakonom utvrđenog prava na podnošenje izvršne isprave, a sve u cilju zaštite deteta. Zakonodavac je dao ovlašćenje organu starateljstva za podnošenje zahteva za privremene mere u izvršnom postupku opet imajući u vidu obezbeđenje prava i interese deteta. Dakle, jasno je da centar za socijalni rad, kao organ starateljstva u izvršnom postupku, najčešće učestvuje kao izvršni poverilac u sudskim postupcima iz porodičnopravnih odnosa. „Uspešnost izvršenja odluka iz porodičnih odnosa najviše zavisi od organa starateljstva" (Šarkić & Počuča, 2020, str. 23). Naravno, specifičnost položaja centra za socijalni rad bi, na primer, bila kada bi roditelj koji smatra da su ispunjeni uslovi za vraćanje roditeljskog prava, a postupak za lišavanje roditeljskog prava je vodio centar za socijalni rad podnošenjem tužbe, dobio spor protiv ovog centra, te kada bi, nakon izdejstvovanja izvršne isprave, kao izvršnog dužnika označio organ starateljstva. Naročito u situaciji ukoliko je organ starateljstva dete smestio u kolektivni smeštaj (ustanovu za zbrinjavanje dece bez roditeljskog staranja) ili u porodični smeštaj – hraniteljsku porodicu. U ovakvim slučajevima, po našem mišljenju, organ starateljstva je izvršni dužnik (Šarkić & Nikolić, 2021, str. 256).

Jedna od najspornijih odredaba u Zakonu o izvršenju i obezbeđenju, po mišljenju autora, prof. Šarkića i prof. Počuče, jeste odredba člana 376 stav 2. Ona doslovce predviđa „dete prinudno oduzima i predaje

organ starateljstva uz prisustvo i nadzor suda". Naime, organ starateljstva ne predstavlja pravno lice kome je u Zakonu, kojim se uređuje pitanje izvršenja i obezbeđenja, propisano da će se sprovođenje izvršenja oduzimanjem deteta poveriti u nadležnost organa starateljstva. Čini se da je ova odredba suprotna konceptu sudskog izvršnog postupka. Krajnje je neprimereno i neprikladno, po mišljenju istih autora, da se sud, koristeći odredbe Zakona o izvršenju i obezbeđenju, oslobađa tako delikatne obaveze, kao što je to postupak oduzimanja deteta (Šarkić & Počuča, 2020, str. 26). Oduzimanje deteta, zbog svoje specifičnosti, treba da bude u isključivoj nadležnosti suda, te da ovaj postupak ne može obavljati čak ni pomoćni organ suda (na primer sudski izvršitelj ili sudski saradnik, sudski pomoćnik i sl.), već isključivo sudija. Iako ovih postupaka nema mnogo, sudija mora biti taj koji će preuzeti odgovornost u najdelikatnijim i najspecifičnijim sporovima, kao što je razdvajanje dece od njihovih roditelja, uspostavljanje novog sistema odnosa u kome se biološki odnos roditeljstva prekida (u potpunosti ili delimično – sa oba roditelja ili samo sa jednim roditeljem) i uspostavlja pravni odnos. Naravno da ovo ne spada u kategoriju represivnih mera, već se ovo i čini u cilju zaštite maloletnika, te ostvarivanja najviših svetskih standarda koji podrazumevaju obezbeđivanje najviših kriterijuma zaštite prava deteta (Šarkić & Počuča, 2020, str. 26). Ustavnim konceptom obezbeđuje se da sudske odluke obezbeđuje sud, te da se sud ne može osloboditi odgovornosti za sprovođenje izvršenja. Postupak prinudnog oduzimanja deteta je faktička radnja u kojoj, radi zaštite interesa deteta, sudija uz pomoć psihologa, pedagoga, zdravstvenih radnika, ministarstva unutrašnjih poslova i sl. oduzima dete od roditelja koji ne žele da dobrovoljno pristupe predaji deteta. Tada se mora primeniti imperijum sile i dete oduzeti. Organ starateljstva nije organ prinude. Ovo nije represivna mera, već mera zaštite deteta. Sudija ima obavezu da neposredno rukovodi izvršenjem i da odluči da li će se i u kom trenutku dete uzeti od roditelja, da li će se postepeno izvoditi iz kuće, da li će se koristiti medicinska pomoć prema njemu, izvršnom dužniku ili trećim licima. Sudija mora da odluči u kojoj situaciji i u kojoj meri će primeniti silu (na primer da liši slobode onoga ko ometa izvršenje, da udalji onoga ko podstiče na nasilje ili ometa izvršenje, da uđe u zatvorenu prostoriju u kojoj se dete krije ili čuva i sl.) (Šarkić & Počuča, 2020, str. 30). Član 1

Zakona o izvršenju i obezbeđenju uređuje postupak u kome sudovi i javni izvršitelji prinudno namiruju potraživanje izvršnog poverioca. Zatim, član 4 Zakona predviđa da je sud isključivo nadležan za izvršenje činjenja koje može preuzeti samo izvršni dužnik, nečinjenja ili trpljenja [...] i sl. Dalje, član 368 stav 2 ZIO predviđa da prinudno oduzimanje deteta sprovodi sud na čijem se području dete zatekne, po službenoj dužnosti, ili na zahtev stranke koja je podnela predlog za izvršenje. U stavu 3 je predviđeno da sud koji je nadležan za odlučivanje o predlogu za izvršenje može određene izvršne radnje da poveri sudu koji nije nadležan za sprovođenje izvršenja. Uvođenje obaveze, ali i ovlašćenja organa starateljstva da prinudno oduzima dete (sâm čin, odnosno radnju oduzimanja i predaje), najblaže rečeno, veoma je diskutabilno, a u krajnjem slučaju i nedelotvorno. To je pravno neutemeljeno i samim tim neodrživo. Tim organa starateljstva (psiholog, pedagog, socijalni radnik, pravnik i sl.) čini stručni tim koji na bazi ovog iskustva i znanja pomaže sudu u realizaciji najdelikatnijih odluka iz porodičnih odnosa (Šarkić & Nikolić, 2020, str. 262). Sud se ne može osloboditi obaveze i lišiti ovlašćenja, kada je reč o oduzimanju i predaji deteta, niti može preneti ovo ovlašćenje u sprovođenje izvršenja na organ starateljstva. Potpuno je besmisleno da se ovako krupno ovlašćenje prenese na organ starateljstva zakonom kojim se uređuje izvršna materija u građanskim stvarima. Po mišljenju autora, organi starateljstva nisu ni osposobljeni ni prikladni za sprovođenje izvršenja, odnosno čina oduzimanja i predaje deteta, jer se radi o najsuptilnijim porodičnim odnosima. U postupku sprovođenja izvršenja moraju se koristiti drugi mehanizmi, kao što su novčano kažnjavanje, nalog za udaljenje lica koje sprečava sprovođenje izvršenja, privremeno lišenje slobode lica koje, ometajući izvršenje, dovede u opasnost život deteta ili drugih učesnika u postupku, posredovanje u rešavanju sporova i sl. Organ starateljstva nema ovakve moći ni znanja za korišćenje ovih sredstava. To je razlog zašto ostajemo kategorički pri tvrdnji da se ovo ovlašćenje nije moglo preneti na organ starateljstva iz sudske nadležnosti (Šarkić & Nikolić, 2020, str. 263). Organ starateljstva može da pomogne sudiji pri sledećim pitanjima: da li je reč o faktičkom stanju ugroženosti deteta kada treba pristupiti prinudnom izvršenju; da li se efekat može postići razgovorom sa roditeljem ili roditeljima; kada bi novčano kažnjavanje ili zaprećivanje

zatvorskom kaznom bilo delotvorno; u koje vreme je najbolje započeti izvršenje; da li praviti prekid u postupku izvršenja; da li odložiti izvršenje; da li nam je potrebna medicinska pomoć urgentne medicine, psihijatra, psihologa i sl.; kada i na koji način okončati sâm postupak i sl. Svrha označavanja sudije, kao nosioca odgovornosti, postojala je i u prethodnim zakonima i podrazumevala je logičan koncept u kom stoji obaveza personalnog određivanja odgovornog lica za sprovođenje ove veoma složene procedure. Sudija pojedinac mora pažljivo da prouči okolnosti u okviru kojih će se sprovoditi izvršenje, da sa stručnim timom organa starateljstva, psihologom škole, meštanima sredine u kojoj dete živi, proceni šta je najdelotvornije za dete, te da li se mora izvršiti brzo, efikasno oduzimanje deteta da bi se egzistencija deteta zaštitila ili se može raditi na postepenom uveravanju roditelja da je ovakvo rešenje za dete najcelishodnije (Šarkić & Nikolić, 2021, str. 667). Organ starateljstva, dakle, ima uvek ovlašćenja da pokrene postupak i da učestvuje u postupku, kada se radi o pravima deteta. Ono što je za naš tekst zanimljivo jeste da sud može rešenjem, protiv koga je dozvoljen prigovor, izreći kaznu zatvora koja traje sve dok se dete ne preda, a najduže do 60 dana (Šarkić & Počuča, 2020, str. 28). Odredba kojom je predviđeno da prigovor odlaže izvršenje, takođe, dodatno „razvodnjava" celu situaciju, jer je svrha ovih postupaka da se oni sprovedu brzo, te da se onemogući zloupotreba prava i nanese nenadoknadiva šteta detetu. Mogućnost ulaganja prigovora, te odlučivanje o prigovoru je dovoljan vremenski period u kome izvršni dužnik ili treće lice koje opstruiše izvršenje može preduzeti radnje da se privremeno ili trajno onemogući sprovođenje izvršenja (sakrivanje deteta, odvođenje deteta u inostranstvo, izdejstvovanje pasoša ili drugih odluka državnih organa kojima bi se omogućilo napuštanje zemlje i sl.) (Šarkić & Počuča, 2020, str. 29). U stavu 1 člana 375 Zakon predviđa da se najkasnije deset dana pre početka izvršenja rešenje o izvršenju dostavlja nadležnom organu starateljstva u čije ime u izvršnom postupku učestvuje psiholog. Čini se da je ovu odredbu osmislio neko ko možda nije radio ovakvu vrstu predmeta. Deset dana može biti čitava večnost u postupku predaje i oduzimanja deteta (Šarkić & Nikolić, 2020, str. 261). U ovom postupku uloga psihologa je od presudne važnosti za dobrobit deteta. Psiholog treba da obavi informativno-savetodavni rad sa licima sa kojima dete

živi, te da pokuša da izdejstvuje dobrovoljnu predaju deteta. Tom prilikom svakako je preporučljivo upoznati izvršnog dužnika sa tim da bi dobrovoljna predaja deteta bila mnogo prikladnija i da bi se na taj način izbegle brojne traumatične situacije. Organ starateljstva može predložiti sudu podrobnije uslove uređivanja prostora u kome se sprovodi izvršenje, te način predaje deteta. Ovo će učiniti nakon ranije obavljenih radnji, analitičke procene stanja na terenu, te psihološkog profila deteta. Psiholog organa starateljstva dužan je da se i pre izvršenja i u toku samog izvršenja rukovodi zaštitom najboljeg interesa deteta, što je već utvrđeno u članu 371 Zakona i što predstavlja standard u ovoj vrsti postupka (Šarkić & Nikolić, 2020, str. 262). Međutim, zakonodavac nije našao za shodno da propiše kako će se sprovoditi odluke koje se odnose na uređivanje načina viđanja dece, promenjene okolnosti u pogledu načina viđanja dece, uređivanje odnosa između roditelja i dece i slično. Porodični zakon uređuje privremene mere, kada se radi o zaštiti od nasilja ili trpljenju nenadoknadive štete. Nažalost, sa stanovišta izvršnog prava, u Republici Srbiji ne postoje nikakvi mehanizmi koji će urediti način sprovođenja izvršenja recimo privremenih mera niti govore o ulozi suda u postupku izvršavanja odluka o povredi deteta (Šarkić & Nikolić, 2020, str. 264). I na kraju, bitno je navesti da u Zakonu treba da se uredi obaveza utvrđivanja najboljih interesa deteta u izvršnom postupku, da se ne sme ograničiti samo na sud, već se mora proširiti na sve subjekte koji učestvuju u izvršnom postupku – na javne izvršitelje, kada oni postupaju kod naplate izdržavanja, organe starateljstva, zdravstvene radnike, pripadnike Ministarstva unutrašnjih poslova, veštake ili davaoce stručnih mišljenja, prevodioce i tumače i sl. (Šarkić & Nikolić, 2020, str. 265).

Na kraju ovog izlaganja o pozitivnom pravu u Republici Srbiji u oblasti oduzimanja i predaje deteta treba istaći da poseban problem može da predstavlja i otmica deteta. U krivičnom zakonodavstvu Republike Srbije posebno težak oblik krivičnog dela otmice postoji u slučaju ako je oteto lice zadržano duže od deset dana ili je prema njemu postupano na svirep način ili mu je teško narušeno zdravlje ili su nastupile druge teške posledice. Ko ovo krivično delo učini prema maloletnom licu kazniće se zatvorom od tri do petnaest godina (član 134 KZ, 2019). Kada govorimo o zaštiti dece i maloletnika treba pomenuti i odredbu člana 59 Zakona

o policiji, prema kojoj policija, odmah po saznanju, sprovodi mere traganja za licima i predmetima (Zakon o policiji, 2018). Zajedno sa odredbama ustavnog, porodičnog i izvršnog prava, i norme krivičnog prava doprinose potpunijoj zaštiti dece od oduzimanja, čineći zajedno jedinstven pravni poredak.

5. Zaključak

Kroz rad smo videli koliko je zapravo materija u oblasti oduzimanja i predaje deteta kompleksna. Naime, svaka odluka koja se tiče detetovog blagostanja ne trpi odsustvo sudske vlasti. Sudska vlast je prioritet u donošenju konačnih rešenja po pitanju zaštite deteta. Ona jedino u svom odlučivanju može da koordinira i da se saglašava sa radom drugih institucija, kao što su to Centar za socijalni rad ili organ starateljstva, a nikako da se traži zamena njenoj nadležnosti. Ovaj izvršni postupak je kreacija i oblikovanje života deteta, etapa koja je nezamenljiva nekoj drugoj vrsti pomoći u postupku izmeštanja deteta iz porodične sredine. Drugi oblik pomoći ne bi mogao da prati agilnost, hitnost, zaštitu, kao ni prosperitetnost ovog postupka. Ako nedostaju neophodni mehanizmi zaštite, onda nije moguće ostvariti ni konačan cilj. Taj cilj ne znači samo trenutno zbrinjavanje dece koja pate ili se nalaze u teškim okolnostima, već znači proces koji na dete može da ostavi dugotrajne posledice ako se ne odreaguje adekvatno i na vreme. Prema tome, pronaći odgovarajući način kako prevazići ove probleme ne znači samo ispuniti propisanu zakonsku proceduru, nego time moći uspostaviti direktan balans između građana (roditelja, dece i dr.), državnih vlasti i socijalnih ustanova, a pre svega obezbediti detetu uslove koji su u njegovom najboljem interesu. Prema zakonu Austrije, nije samo uređeno zbrinjavanje dece državljana, nego i dece stranaca koja u zemlju dolaze bez pratnje. Time je njihov zakon vrlo koherentan međunarodnom pravu, kao i Konvenciji UN o pravima deteta. Značajno je istaći da je i u ovom slučaju prednost data nadležnosti Suda za starateljstvo. Vrlo je interesantno napomenuti da austrijsko pravo uređuje i način vaspitanja deteta, kao što i sankcioniše vulgarno ponašanje roditelja. Austrijsko zakonodavstvo, što je vrlo bitno, definiše i pojmove kao što su sposobnosti rasuđivanja deteta. Time je zakonodavac pokazao ozbiljnu nameru u poštovanju najboljeg interesa

deteta. Izvršni postupak u Austriji je vrlo kompaktan. Naime, sud odlučuje u kontinuitetu i obavezno prema redosledu zakonske lestvice ili skale, odnosno kom licu je prvo neophodno dati dete na staranje. Sud ispituje sve moguće okolnosti smeštaja i razmatra da li iste odgovaraju detetovom dobu, njegovom shvatanju (poimanju), kao i razvoju. Time se samo pokazuje koliko je sudska procedura zapravo ozbiljna i koliko brine o pravima deteta. U navedenom postupku, isto tako, učestvuju i drugi subjekti (činioci) koji su od velike važnosti za zdravlje deteta, kao što su to Agencija za zaštitu dece i omladine, doktori, psiholozi i dr. To pokazuje doslednost u jednoj dobroj interagencijskoj saradnji. Sa druge strane, prema tekstu odredbe Zakona o izvršenju i obezbeđenju RS, dolazi zapravo do jedne vrste konfuzije. U ovom slučaju dolazi do obrnute uloge suda i organa starateljstva. Sud, naime, ne može da vrši npr. funkciju „monitoringa" (posmatranja), jer je to radnja koja pripada organu starateljstva, a pre svega psihologa organa starateljstva. Ove uloge moraju biti detaljnije regulisane, precizno opisane, objašnjene, jasne, jer mi ovde ipak govorimo o dobrobiti dece, zapravo o osnovama i temeljima na kojima deca zasnivaju svoju budućnost. Svaki nedostatak u ovom procesu ne znači ništa drugo do nesrazmerne posledice po dete. Dete je osetljivo biće, dete u postupku odvajanja od porodice može da doživi katarzične promene, a društvena zajednica je ipak ta koja može da stane na put nepodobnim i neprimerenim zakonskim rešenjima. Prema tome, zakon je potrebno uskladiti ne samo sa međunarodnim dokumentima ili rešenjima uporednog prava, nego pre svega i sa Ustavom Republike Srbije, u kom se, takođe, navodi da se lišenje ili ograničenje roditeljskog prava može odobriti jedino sudskim putem. U Republici Srbiji je potrebno regulisati i pojam *najbolji interes deteta*, obezbediti njegovu klasifikaciju, kao i njegovo uvažavanje od strane svih stručnih lica. U skladu sa tim, potrebno je učvrstiti odnos deteta i njegove porodice. Ta oblast se, prema Konvenciji UN o pravima deteta, uvek ističe kao glavna i osnovna u radu sa decom i naglašava se kako je nužno implementirati istu u nacionalno zakonodavstvo na najbolji mogući način.

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Miona Rajić[1]
Filip Mirić[2]

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CHILD REMOVAL AND CHILD SURRENDER IN SERBIAN AND AUSTRIAN LEGISLATION

Abstract: This paper explores the concept of the removal and surrender of children. It describes the execution procedure of child removal in accordance with the Austrian comparative law and examines the court's role in decision-making within this legislative framework. It elaborates on the tasks and responsibilities of the custodial authority. An issue in the Law on Enforcement and Security Interest of the Republic of Serbia, which favors the custodial authority over individual judges, is also examined. Additionally, relevant legal norms pertaining to constitutional, family, and criminal law in the Republic of Serbia are discussed. The paper concludes by suggesting potential remedies to address the identified issue.

Keywords: *child rights, child removal, child's best interests, guardianship, child protection.*

1. Introduction

The right to family life stands as one of the most fundamental human rights, albeit constrained by certain demands. When parents bring a child into the world, it becomes imperative to ensure the provision of basic necessities for the child for it to lead a dignified and decent life.

[1] Miona Rajić, MA in Law, PhD student, Union University School of Law, miona_rajic@yahoo.com.

[2] Filip Mirić, PhD, Research associate and independent expert technical associate for PhD studies and student affairs, Faculty of Law, University of Niš, filip@prafak.ni.ac.rs.

This right extends beyond the individual's power of decision-making or individual freedom; it encompasses the creation of another life. Is it morally acceptable, even just, for adults to exercise their rights while the newborn cannot? Does the child possess the opportunity to fulfill only select personal rights? Are the interests of those who bring the child into existence deemed more important than the child itself, whose fundamental interests could not be met without suitable conditions? The satisfaction of one person's rights cannot come at the expense of another. A child is entitled to basic necessities such as food, water, shelter, education in moral principles, but it should also face certain disciplinary measures. Certain punishments are deemed to be solely in the child's best interest (Archard, 2014, pp. 140–141). According to Jean-Jacques Rousseau's thesis on priority, parents, as the primary caregivers, bear the responsibility to fulfill their duties towards the child. If they are unable or lack the means to do so, they are not obliged to fulfill that duty. However, in such cases arrangements must be made for another individual who can adequately care for the child (Archard, 2014, p. 149). The right to have a child, as well as the child's right to a dignified life, entails care and nurture that is in the best interest of the child (Convention on the Rights of the Child, 1989, 1997). The right to a child, along with the child's entitlement to a dignified life, implies care and nurture that aligns with its best interests (Convention on the Rights of the Child, 1989, 1997). Therefore, the process of removal and surrender of a child under the care of another individual, in cases where the child faces harm, does not compromise familial or parental rights; instead, it prioritizes the child's right to live and grow. This institute entails protecting the child's essential needs and ensuring the conditions necessary for its well-being. This not only impacts the child's development (or education) but also that of its caregiver. The objective of this procedure is not to merely remove the child from the family environment but to support the family in overcoming life's challenges and then reintegrate the child into the family. Given the sensitivity of this matter, court intervention is necessary, as the most qualified and capable authority to make final decisions in this domain is the court. This does not exclude other relevant institutions or individuals involved in child protection (such as the Center for Social Work, custodial authority, school, psychologist, pedi-

atrician, psychiatrist, etc.), who can all contribute to the quality of this process. However, the existing deficiencies in Serbian legislation hinder the optimal resolution of the issue of separating the child from its family, particularly in terms of ensuring the child is provided with a safe and secure living environment. According to the Law on Enforcement and Security Interest of the Republic of Serbia, the jurisdiction of the court has been transferred to the custodial authority. However, this is not the most effective means to ensure the child's well-being and proper development of its abilities. Furthermore, this provision is also not in line with the Constitution, which serves as the highest legal document in the country, with which all other legal acts must comply. Through a comparative analysis of Austrian comparative law, we aim to present the role of the court and the specific scenarios necessitating judicial decisions. Additionally, we will illustrate the circumstances wherein the custodial authority must inevitably provide assistance and support to the child. By doing so, we aim to provide clarity regarding who should actually be entrusted with decision-making in such a delicate issue concerning the child.

2. Historical development of the institute of child removal and surrender

The evolution of family dynamics, particularly regarding child rights, has paralleled the advancement of human rights. Child rights gained full recognition and significance within the general legal frameworks of most nations during the latter half of the twentieth century when numerous international agreements affirming these rights were adopted. Prior to this, legal regulations primarily centered on the rights and duties of parents towards children until the correlative connection of these rights with the rights of the child became recognized and articulated. From a historical-legal perspective, parent-child relations have undergone a profound transformation. In traditional patriarchal societies, paternal authority was predominant. However, the development of human rights brought about a "democratization" of relationships within the family and substantial protection of children's rights and interests (Vavan, 2019, p. 10). In Roman law, the patriarch of the family, known as the *pater familias*, held extensive authority over both the property and

family members, a concept termed *patria potestas*. With nearly boundless private legal power within the household, the father lived by his own law and was the only family member with legal and business capacity. All other family members, including children, were subject to his authority throughout their lives. A male child could only assume the role of *pater familias* if all his male ancestors had died. The father's authority extended over to the child's person and possessions. In terms of the child's person, the father had the right to make life-or-death decisions, sell the child, impose any punishment, arrange marriages, accept or disown the child from the family, all without the child's explicit consent. Children, on the other hand, lacked property rights, as the father was the title holder of all current and inherited assets (Vavan, 2019, p. 11). From the fall of the Byzantine Empire until the 20th century, numerous countries adopted important acts proclaiming human and civil rights, such as the Declaration of the Rights of Man and of the Citizen, the U.S. Constitution, the Napoleonic Code (French Civil Code), the Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch), and others. Despite these developments, the traditional view of family and its dynamics largely persisted unchanged. The patriarchal system, characterized by the dominant role of the father, remained prevalent within family communities. Nevertheless, paternal authority acquired a broader context, with the increased acknowledgment of the mother's role and the establishment of parental obligations. For instance, in the Austrian Civil Code, parents are obligated to rear their children, care for their lives and health, provide for them, facilitate the development of their physical and mental abilities, as well as lay the foundation for "future child welfare" through religious education and passing of useful knowledge. While property acquired by the child could become their own, during paternal authority, the management of such property remained under the father's control (Vavan, 2019, p. 13).

In central and southern Serbia, the Serbian Civil Code of 1844 and the Guardianship Act of 1872 were in effect. The Serbian Civil Code, within its third chapter, regulated the relationships between parents and children. The father held significant authority as well as obligations. Parents were mandated, among other responsibilities, to ensure the provision of food and clothing, care for the lives and health of their children,

facilitate their physical and mental development, and provide religious instruction. Importantly, these duties were primarily attributed to the father, as specified in the Code. Children, on the other hand, were expected to respect and obey their parents and refrain from actions contrary to their parents' will. In addition to the aforementioned acts, family relations were also governed by religious marriage ceremonies, and all marital disputes were subject to ecclesiastical law. The Serbian Orthodox Church's Marriage Regulation of 1933 marked the codification of ecclesiastical law concerning marital relations. At that time in the Bačka and Banat regions of Vojvodina, Hungarian law was applied, some examples include the Marriage Act of 1894, the Guardianship Act of 1877, the State Registry Act of 1894, and the *Tripartitum* – Verbecius's Collection of Hungarian written and custom law were among the laws enforced in this region. In the region of Srem, family law matters were regulated by the Austrian Civil Code of 1811 (Vavan, 2019, p. 19). Throughout the 20th century, Serbia implemented a series of laws, these included the Basic Marriage Law of 1946 and the Marriage Law of 1974, the Basic Parent-Child Relationship Law of 1947 and the Parent-Child Relationship Law of 1974, the Adoption Law of 1947 and 1976, the Basic Guardianship Law of 1947 and the Guardianship Law of 1975, as well as the Family Law of 2005 (Vavan, 2019, p. 20).

Throughout the 20th century, several significant documents were created, such as the Geneva Declaration on the Rights of the Child in 1924, the Declaration on the Rights of the Child in 1959, and the United Nations Convention on the Rights of the Child in 1989. These instruments bind UN member states to provide protection and necessary care for the well-being of children. Consequently, legal frameworks increasingly define the institute of parent-child relations instead of emphasizing parental rights. During the twentieth century, legal systems in many countries began to recognize the enforcement procedure as a distinct and independent process regulated by the General Act. The power to enforce judgments was given to either courts or specially authorized individuals, known as extrajudicial (public or private) enforcers. Family laws often supplemented enforcement laws, particularly regarding the execution of court decisions concerning family dynamics and parent-child relations (Vavan, 2019, p. 13). In 2000, a new law on the en-

forcement procedure was introduced with the intention of expediting judicial processes. However, some of the decisions were heavily criticized by legal scholars and professionals.

In the context of parent-child relations, a significant milestone was reached with the initial introduction of child surrender, a novel form of enforcement of award. The law stipulated that the court must prioritize the protection of the child's interests to the greatest extent possible. Furthermore, a three-day deadline from the date of the decision's delivery was set for surrendering the child to the parent or another designated individual or organization, with the possibility of facing monetary penalties for non-compliance. If the enforcement could not have been achieved through monetary penalties, the court would proceed with child removal with the assistance of custodial authority. The enforcement procedures regarding other aspects of family relationships were not specifically regulated by law. Serbia's Enforcement Procedure Act of 2004 marked the first general act governing the enforcement procedure at the country level. This law broadened the range of enforcement measures and regulated the execution process for child surrender and removal in more detail; nonetheless, akin to previous regulations in the domain of enforcement procedures, the law does not specifically anticipate or regulate certain potential types of enforcement within family relations (Vavan, 2019, p. 17). The Law on Enforcement and Security Interest was enacted in 2011. When it comes to enforcement procedures related to family relations, this legislation regulates the process of child removal and surrender in detail. Article 226 specifically stated that enforcement for the surrender of the child could be determined and executed based on a court decision regarding parental rights, regardless of whether the decision explicitly ordered the surrender or not. If the court decision had not explicitly ordered the surrender of the child, the court would have issued an enforcement order and set a deadline for the surrender. Pursuant to Article 228, the court had the power to enforce the surrender by imposing fines or imprisonment on individuals who refused to comply or who took actions to obstruct the enforcement process. According to Article 230, the court would have delivered the enforcement order for the removal and surrender of the child to the custodial authority at least 10 days before the enforcement took place.

A psychologist would have been responsible for planning the activities and collecting relevant data for the enforcement, after which they would have informed the court and provided an opinion on the most appropriate means of enforcement. Additionally, the psychologist had the responsibility to consistently prioritize the best interests of the child throughout the entire process and offer timely support to both the child and the parent or the individual to whom the child was surrendered. Article 231 stipulated that the actual execution of the child removal and surrender process was to be conducted by a judge in collaboration with a psychologist affiliated with the custodial authority, school, family counseling center, or another specialized institution dealing with family relationship mediation, and if necessary, with the assistance of the police. Out of all the execution procedures related to family relations, the Law offers a rather modest regulation regarding the enforcement process for maintaining personal relationships with the child, as well as procedures addressing protection from domestic violence, child protection, and other decisions concerning family relations (Vavan, 2019, p. 18).

3. Legislation of the Republic of Austria

According to paragraph 138 of the Austrian Civil Code (ABGB), the paramount consideration in all judicial decisions and actions involving a child is the child's well-being or its *best interest*. The legal concept of the best interest of the child lacks a singular definition. Nonetheless, several parameters contribute to assessing the well-being of the child, such as providing appropriate care, respecting the child's rights and interests, ensuring the child's safety from harm etc. (Grabner et al., 2018, p. 7). The best interest of the child primarily entails its care and upbringing. Care involves safeguarding the child's physical well-being and health. The duty of supervision and rearing includes fostering the child's development, education, abilities and inclinations, as well as nurturing their physical, spiritual, and moral strengths. Furthermore, it includes managing the child's property, preserving it in its entirety, and, potentially, increasing it (such as in cases involving substantial assets like significant sums of money or inheritance of real estate, but not everyday legitimate earnings or a student's income). **In terms of caring for the**

child, it is essential to ensure its right to financial support. Legal representation of the child should also be provided within the scope of caring for the child. It is necessary for a parent or other legal guardian to be able to make legally significant decisions on behalf of the child with third parties (e.g., consenting, approving, or demanding...). The actions of the legal representative on behalf of the minor also involve approving certain actions, especially those initiated by the minor itself. The validity of legal transactions initiated by the child is contingent upon the consent of its legal representative (Grabner et al., 2018, p. 8). Legal representation, in addition to these domains, also extends, according to paragraph 169 of the Austrian Civil Code, to changing the child's name, its affiliation with a specific religion, representation in civil proceedings, as well as the right to asylum. Parents are required to ensure certain financial means during the period of child care to enable the child to enjoy its fundamental rights. According to paragraph 1 of the Company Law (*Unternehemsgesetzebuch*), if the guardian is unable to provide a specific amount of money for raising the child, certain benefits can be sought from the state (Grabner et al., 2018, p. 9). As per paragraph 177 ff, guardianship can be assigned to various parties including parents (unmarried mothers), grandparents, foster families, suitable individuals appointed by the court (in the absence of first-line relatives), and ultimately, the court may grant guardianship to the Agency for Child and Youth Welfare (*Kinder-und Jugendhilfeträger*). This arrangement is frequently approved, particularly for unaccompanied minor migrants. In such cases, the Child and Youth Protection Agency (CYPA) must submit a request to the court which then approves guardianship for unaccompanied migrant children (Grabner et al., 2018, p. 11).

If parents are unable to fulfill their guardianship responsibilities, which results in the infringement of the child's rights, the Guardianship Court decides whether guardianship rights should be granted to the grandparents (either one or both) or to the foster family (or a single foster parent) (paragraph 178 of the Austrian Civil Code). In cases where the designated individuals are unavailable or unable to assume guardianship rights, the CYPA is contacted. The court's decision-making process primarily adheres to the specified scale (corresponding to the legal order of priority) to ensure the preservation and protection of the family

unit. However, the Guardianship Court also adjudicates in many other important situations. In cases of parental divorce, the issue of visitation rights can be resolved either through unanimous agreement between the parents or through court mediation. If parents cannot reach an agreement, then, according to § 180 of the Austrian Civil Code, the court is the one to decide. If initially only the mother holds guardianship and later both parents agree to share it, they must present this decision to the Guardianship Court, as per paragraph 177(2) of the Austrian Civil Code. Third parties can also bear obligations towards the child. Any individual residing in the same household as one of the parents and the child is essentially obligated to participate in the guardianship process (Grabner et al., 2018, p. 12). In addition to parents, step-parents, (unmarried) partners of one parent, or adult relatives are also obligated to safeguard the child's interests. They are required to assist with parental duties in everyday life rather than just cohabiting with the child. Additionally, paragraph 90 of the Austrian Civil Code stipulates the obligation of assistance by an individual residing with one of the parents. This entails the duty of the spouse to provide optimal support and aid to the child's parent in fulfilling his or her guardianship duties, including helping the parent in the daily care of the child if necessary. In cases where the parents are unable to act as the child's guardians and no suitable person is available to assume this role, custody is entrusted to the CYPA in accordance with paragraph 209 of the Austrian Civil Code. The CYPA effectively fulfills its custodial duties by regularly involving suitable independent entities (such as private institutions for child and youth protection) or individual assistants; this approach ensures that guardianship responsibilities are executed optimally. This is what fulfilling the obligation of guardianship de facto entails (Grabner et al., 2018, p. 13). However, there are numerous other situations where only the court can make decisions that serve the child's best interests. In this regard, the court oversees specific domains: 1) instances where a change of the child's residence is necessary and the new location exceeds a distance of 600 km within the country, which may prompt a request for a new court decision regarding guardianship (as per the Supreme Court ruling, OGH 60b19/17p); 2) in cases of parental conflict or communication breakdown, the court has the authority to deny support to an un-

married father, if such circumstances pose a threat to the well-being and safety of the child (based on the decision text AUSL EGMR 03.12.2009. Bsw 22028/04); 3) if a twelve-year-old child firmly rejects contact with its father, and their relationship has long been broken, with visits from the father not improving the bond and not being in the child's best interest, then, for example, fourteen-day visits can be terminated by court order despite the father's desire to maintain contact (based on the decision of the Supreme Court, OGH 25.08.2016, 5 Ob 129/16f); 4) in cases where parental conduct is harmful to the child and not in its best interest, yet the guardianship remains with the parents, the court may impose specific obligations on the parents, such as counseling, therapy sessions, or regular engagement with the CYPA (according to the decision of the Supreme Court, OGH 5Ob17/17m) (Grabner et al., 2018, p. 14).

Under Austrian law, unaccompanied minor migrants arriving in the country and seeking asylum are afforded protection for their basic rights, needs, and interests. They are entitled to legal representation during the asylum approval process and thus need appropriate guardianship. Their rights are regulated by legal ordinances concerning guardianship rights and duties tailored for foreigners and non-Austrian nationals (as determined by decisions of the Supreme Court, OGH 7 Ob 209/05v, 4Ob7/06t). In such instances, the court again holds the ultimate authority to make decisions. It is crucial to ensure that the safeguarding of these individuals' rights is entrusted to a suitable individual or institution (typically the AZDM/KJHT). Despite the absence of their parents in these proceedings, these minors retain the right to be heard (Article 6 of the European Convention on Human Rights). In cases where parents cannot be located (referred to as qualified absence), a *curator in absentia* is appointed (as determined by the Supreme Court's decision, OGH 4Ob150/16m) (Grabner et al., 2018, p. 15). Unaccompanied minor refugees who are 14 years old or older have the autonomy to apply for asylum independently; however, during all other proceedings related to asylum-seeking or immigration, they must have a legal representative (Grabner et al., 2018, p. 34). In the event that the parents of unaccompanied minor migrants/refugees arrive in the country, the court has the authority to formally transfer guardianship back to the parents (Grabner et al., 2018, p. 20).

In Austria, the Guardianship Court is responsible for verifying the legality of interventions or terminating the guardianship. Whenever concerns arise regarding the child's safety, well-being, and best interests, the Guardianship Court has the authority to terminate guardianship or limit it to a single individual or approve, through a judicial decree, a unanimous agreement reached by the parents. In situations where there is a delay or the child is at risk and waiting for a court decision is impractical, the CYPA can take immediate action to address the danger; this implies that a court order can be requested within eight days. The guardianship court may transfer guardianship to the CYPA in the following circumstances: when the child's well-being is at risk, when it is necessary to remove the minor from his or her current environment, when the guardian fails to implement appropriate actions, when there are no close relatives or other close/suitable individuals available to assume guardianship. The CYPA is mandated to develop a plan of assistance to the child and implement the necessary measures, irrespective of the child's origin or residential status (Grabner et al., 2018, str. 17). In situations where a child's safety is at risk or there are concerns about its well-being, everyone (professionals will act in accordance with their fields) is obliged to contact the CYPA (Article 37 of the Federal Law on Assistance to Children and Youth /B-KJHG). Limiting guardianship should only occur as a last resort in ensuring the child's welfare, which is the ultimate goal. When deliberating the termination or limitation of guardianship, the child's wants should be considered and weighed against its age and capacity for decision-making (more information can be found in the Adult Protection Act under the concept of "decision-making capacity" – Erwachsenenschutzgesetz, Concept: "Entscheidungsfähigkeit"!). The level of maturity exhibited by a minor directly influences the weight his or her decisions carry. Minors aged 14 and older have the right to actively participate in legal proceedings concerning care, rearing, and visitation rights. They can act as parties in legal proceedings and independently submit requests or pursue certain legal remedies against court decisions. From the age of 10, children can express their views before the court, while younger children can do so in specific institutions or child protection centers (Article 104 ff of the Law on Non-Contentious Proceedings /AussStrG) (Grabner et al., 2018,

p. 18). The measures aimed at assisting in the upbringing of the child can be applied either with or without the consent of the legal guardian. If parents must meet specific obligations (such as attending counseling sessions or undergoing therapy) or if family assistance is necessary, the responsibility for the child's care and rearing remains with the parents. However, if the child faces unfamiliar situations (such as a crisis or prolonged periods of absence), all responsibilities including the child's care and rearing are transferred to the CYPA (Grabner et al., 2018).

There are two primary methods of child removal and surrender – voluntary and involuntary. The term child removal is typically used in relation to court-ordered decisions, while surrender pertains to agreements made between the parents and a third party. Voluntary caregiving assistance is regulated by § 27 of the Federal Child and Youth Support Act/B-KJHG. Parents can mutually agree with the Agency on the surrender of the child and in such cases the agency assumes responsibility for the care and upbringing of the child, while the parents retain the obligation of supporting the child financially by covering all the necessary expenses. Involuntary child rearing is regulated by § 28 of the Federal Child and Youth Support Act. If parents oppose the necessary child rearing measures, the court may authorize the CYPA to take all the necessary actions for the child's care and rearing. The court alone has the power to revoke this decision when the reasons for endangerment of or risk to the child's welfare cease to exist. The agency only assumes responsibility for the child's care and rearing as well as for providing legal representation in these matters, while the parents retain the duty to provide educational support to the child. These guidelines fundamentally imply working with families to ensure the child's welfare. The objective of child removal is primarily to reintegrate the child into the family (as well as safeguarding the family unit). The agency has the authority to transfer rights and delegate duties to third parties, but only to those within its purview (Grabner et al., 2018, str. 20). Should the court consider returning the child to the original family, it must carefully weigh all pertinent circumstances and conditions affecting the child. Foremost among these considerations is whether the child's well-being is still at risk. Additionally, the impact of the changes in living conditions on the child must be thoroughly examined (in the process of deciding on the

child's return, the child's welfare always takes precedence over parental rights). It is essential to note that the potential for better care and nurturing with a third party compared to the parents cannot be the primary reason for removing the child from the family.

The Family Court is responsible for providing guidance and support to children and adolescents to ensure their procedural rights are respected. In fulfilling this role, the court may refer minors to available counseling options. Counseling sessions for minors should be tailored to their specific developmental stage, cognitive abilities, and levels of comprehension. This obligation must be taken (and approached) with utmost seriousness so that minors seeking assistance understand the purpose and significance of their request. Children up to the age of 14, and in some cases up to 16, may receive assistance or what is termed child protection by the court (as per § 104a of the Law on Non-Contentious Proceedings/Außerstreitgesetzt). This involves guiding and supporting the child throughout the process as deemed necessary. Those providing assistance to the child are not considered parties to the proceedings nor the child's legal representatives. The appointment of "child protection" in court proceedings can only be assigned *ex officio*. One cannot file a request for child protection during the proceedings (Grabner et al., 2018, p. 22). On the other hand, family support mechanisms also exist. Designed to expedite legal proceedings, reconcile disputing parties, and improve the quality and sustainability of family-court processes, the concept of family court protection has been introduced (according to § 106a of the Law on Non-Contentious Proceedings). Family court protection entails a specific set of rights, such as access to documents and the right to communicate with the child. However, the primary focus of this process is the best interests of the child (Grabner, Paumgartten, Grasl. op. cit., p. 22). The ability to provide guardianship hinges on the child's age and overall developmental stage, (according to the decision of the Supreme Court, OGH 1Ob37/16x). In cases where a child is subjected to violent disciplinary methods, is faced with violence from a third party, or for example, when the child's care is entrusted to a cult, judicial intervention may lead to the removal of the child (guardianship) (according to decisions of the Supreme Court/Oberste Gerichtshof: 2Ob593/92, 1Ob593/92, 1Ob2078/96m) (Grabner et al., 2018, p.

23). For instance, if a fifteen-year-old girl expresses reluctance to return home due to ongoing conflicts and reports being locked in by her mother a year prior, guardianship cannot be transferred to another person/entity without a prior explanation from the mother. This is especially significant if the situation reflects a typical family conflict without posing harm to the child's well-being, as indicated in the OGH 5Ob33/15m ruling (Grabner et al., 2018, p. 23).

The necessary measures regarding the transfer of custody to the CYPA encroach upon the realms of the right to privacy and the right to family life (Article 8 of the European Convention on Human Rights). In legal practice, such measures are only justified when they are in the child's best interest and when there is a need to avert potential harm to their well-being. In this context, the pivotal factor is not the material standard of living for the child, but rather identifying the most suitable individual to provide care, nurture, and rear the child. Challenges persist regarding the child's integration into the new environment, which necessitates the establishment of reunification programs. Each program should be ranked according to the child's age (as per the Supreme Court's ruling, OGH 1Ob99/16i). Even if a child receives better care in a social institution or with a third party compared to their parents, that fact on its own does not necessarily imply that parental guardianship should be limited (according to RS0048704) (Grabner et al., 2018, p. 23). According to paragraph 188 of the Austrian Civil Code, the court has the authority to restrict or prohibit visitation if there are indications of violence during visits or if there is evidence of parental alienation (in such cases, the child may experience emotional distress leading to the exacerbation of its overall well-being) (Grabner et al., 2018, p. 25). Furthermore, if a custodial parent fails to fulfill his or her obligation to keep informed (inquire) about the child during the period of separation, the court may allow the non-custodial parent to obtain information directly from a third party (as established by the Supreme Court ruling, OGH 4O 104/15w). The court's decision also holds significance in situations where the domiciliary parent (the legal guardian) intends to relocate internationally, in such cases the domiciliary parent must promptly inform the other parent about the planned relocation, so as to allow him or her an opportunity to address the matter in court or file a request

for an injunction if deemed necessary. Failure to obtain court approval before relocating the child constitutes unlawful removal, as underscored by the Supreme Court ruling (OGH 9 Ob 8/14p).

Each child has the right to be cared for in the most responsible manner possible and parents must not resort to violent behavior. As stated, if parents disagree on legal representation, they can bring the matter to the Guardianship Court. According to paragraph 161 of the Austrian Civil Code, parents are prohibited from engaging in acts of violence and are obliged to behave in a kind and proper manner, while minors are obligated to obey their parents as long as such obedience remains within the bounds of the law (i.e., does not constitute a criminal offense) (Grabner et al., 2018, str. 29). The most intriguing provision of the law is that a child can appeal to the court regarding its rights. The child's wants must be considered, but only to the extent that it does not compromise the child's well-being or disrupt its life. The child's wants are particularly significant if the child can comprehend the importance and implications of the measures taken and if it can form its own opinions based on decision-making abilities. When executing an order for the removal of a child, the child's age, development, and persona must be taken into account. Additionally, the child has the right to file certain requests with the court if its parents (or one of them) oppose its wishes. Children are holders of fundamental rights and freedoms from birth. Under paragraph 137 of the Austrian Civil Code, the use of violence, physical or mental suffering within caregiving and upbringing, is impermissible. On the other hand, some restrictive measures implemented as part of the upbringing responsibility (e.g., supervision, fostering social skills, fostering independence) are allowed. However, arbitrary deprivation of freedom is impermissible (Grabner et al., 2018, str. 30). On the other hand, a child may, against its will, be placed in a psychiatric institution, but only if the child poses a danger to others (third parties) or to itself, provided that all necessary conditions are met. Older minors can request placement in a clinic, alongside their legal guardian, while younger minors can only be placed in a clinic with the guardian's consent (Grabner et al., 2018, p. 36).

There are other important areas requiring the Guardianship Court's approval: a child's right to citizenship, marriage, residence, relocation

abroad, education, name change, religious affiliation, right to personal data, and personal photograph/image (Grabner et al., 2018, str. 37). Consequently, the custodial authority may seek permission from the Court in cases such as the change of the child's name or surname, adherence to a specific religion, placement in foster care, or obtaining of citizenship, among others. When it comes to handling a minor's assets, except for daily life necessities, the Guardianship Court's permission is also necessary (e.g., significant sums of money or the establishment of a company). Parents can also be held accountable in court for damage caused to the child due to offensive statements or incitement to unlawful acts (according to the decision of the Supreme Court, OGH 10Ob27/15s) (Grabner et al., 2018, p. 31). If a minor commits an offense punishable by law, the CYPA can request measures for the removal and surrender of the child. Conversely, older minors are personally responsible for their own actions (Grabner et al., 2018, p. 35). In compliance with the requirements for the care and rearing of the child, the legal guardian may decide on the child's residence. If the child is elsewhere (with the other parent), the legal guardian may request the child's return. The surrender of the child, as emphasized, primarily falls under the jurisdiction of state authorities, i.e. it necessitates a court decision, while self-help is permissible in exceptional circumstances or in the case of imminent danger. In any case, the child's right to a specific residence must not contravene its best interests (according to the decision of the Supreme Court, OGH 10Ob31/04p) (Grabner et al., 2018, p. 39).

4. Legislation in the Republic of Serbia concerning the removal and surrender of the child

In the positive law of the Republic of Serbia, this field is regulated by constitutional, family, executive, and criminal law norms. According to Article 65, paragraph 2 of the Constitution of the Republic of Serbia, the court is the institution responsible for terminating parental rights: "All or individual rights may be revoked from one or both parents only by the ruling of the court if this is in the best interests of the child, in accordance with the law." (Article 65 of the Constitution of the Republic of Serbia, 2006). According to Article 261, paragraph 1 of the Family Law,

"the child may initiate action in a dispute over the protection of his/her rights and in a dispute over the exercise or deprivation of parental rights before a court of general territorial jurisdiction or before a court on the territory of which the child has residence or a dwelling place" (Family Law, 2015). Article 273, paragraph 1 of the Family Law also states that the deprivation of parental rights is only possible by a court decision. "In its judgment on a dispute over the protection of a child's rights the court may decide on the exercise or deprivation of parental rights." (Family Law, 2015). The removal and surrender of the child are regulated by Article 376 of the Law on Enforcement and Security Interest. However, this provision has been amended in a manner unsuitable for addressing such sensitive and important issues as the protection of children and families. The provision reads: "The court notifies the party that filed the motion for enforcement and the person to whom the child is to be surrendered of the time and the place of apprehension and surrender of the child, according to the rules that govern the service of process in person. The child shall be apprehended and surrendered by the custodial authority in the presence and with supervision of the court. The psychologist of the custodial authority shall, during removal and surrender of the child, monitor the behavior and reactions of the child and the person from whom the child is seized, provide support with the aim of preventing or restraining behavior that could cause conflict or traumatic reaction of the child, advise the court how to carry out removal and surrender of the child with the least amount of damage to the growth and development of the child, and take, on his own, all measures necessary for the said purposes and enter his observations into the minutes on removal and surrender of the child and sign it." (Šarkić & Nikolić, 2021, p. 665).

On January 1st, 2020, significant changes were made regarding the role of custodial authorities in the process of removal and surrender of children, the most crucial enforcement procedure in family dispute resolution. However, the legislature did not provide a precise distinction between the Center for Social Work, as an administrative and expert body, and the existence of the custodial authority as a professional body within this body. Article 2 of the Law should indicate the linguistic difference between the Center for Social Work and the custodial authority as well as different procedural scenarios where the guardianship author-

ity may be present during decision-making and enforcement (Šarkić & Nikolić, 2020, p. 265). The custodial authority participates in family law disputes, a type of dispute concerning parent-child relationships such as establishing or contesting paternity or maternity, revoking parental rights, handling disputes in the prevention of domestic violence, etc. The custodial authority not only has the right to initiate legal proceedings but is also obligated to do so as soon as it becomes aware that the legal conditions for protecting the child's rights or for exercising or abolishing parental rights are met; the custodial authority must also take urgent measures to protect the child's person, rights, and interests upon learning about possible reasons for deprivation of parental rights (Šarkić & Nikolić, 2020, p. 265). However, the custodial authority may hold various procedural positions in the enforcement process. This could correspond to the position of the enforcement creditor, enforcement debtor, proxy, representative, third party, mandatory participant, or optional participant. As the child's legal representative in litigation, the custodial authority derives greater powers in the enforcement court proceedings as the enforcement creditor based on the legally determined right to submit an enforcement instrument, all aimed at protecting the child. It is thus clear that the Center for Social Work, as a custodial authority in the enforcement process, is most commonly present in the capacity of an enforcement creditor in court proceedings pertaining to family relationships. The success of implementing decisions in familial relationships depends primarily on the custodial authority (Šarkić & Počuča, 2020, p. 23). Of course, the specificity of the position of the Center for Social Work can be seen in the scenario where a parent who believes that the conditions for regaining parental rights have been met – and the process for depriving parental rights was initiated by the social welfare center through a lawsuit – won the case against the center and subsequently designated the custodial authority as the debtor after obtaining an enforcement order. This becomes even more pronounced in cases where the custodial authority has placed the child in institutional care (a facility for children without parental care) or in foster care settings. In such situations, in our opinion, the custodial authority should assume the role of the debtor (Šarkić & Nikolić, 2021, p. 256).

One of the most contentious provisions in the Law on Enforcement and Security Interest, according to authors Professors Šarkić and Počuča, is Article 376, paragraph 2. It literally stipulates that the child should be forcibly taken and handed over by the custodial authority in the presence and under the supervision of the court. The custodial authority is not identified as a legal entity to which the execution of the removal of the child is to be entrusted under the law regulating enforcement and security matters. It seems that this provision is contrary to the concept of judicial enforcement proceedings. Professors Šarkić and Počuča consider it highly inappropriate and unsuitable for the court to exempt itself, by applying the provisions of the Law on Enforcement and Security Interest, from such a delicate obligation as the child removal procedure (Šarkić & Počuča, 2020, p. 26). The removal of a child, given its unique nature, ought to fall solely within the jurisdiction of the court. This process should not be delegated to auxiliary court entities (such as court executors, court associates, judicial assistants, etc.), but rather should be exclusively handled by a judge. While these instances may not be common, it remains imperative that the judge assume responsibility in the most sensitive and specific disputes such as in cases involving the separation of children from their parents and the establishment of new familial dynamics, where the biological parent-child bond is (either fully or partially severed, with both parents or only one) and a legal relationship is established instead. Undoubtedly, these actions do not constitute repressive measures; rather, they are undertaken to protect minors and uphold the highest global standards, which emphasize the establishment of the strictest criteria for the protection of children's rights (Šarkić & Počuča, 2020, p. 26). The constitution ensures that judicial decisions are enforced by the court and the court cannot absolve itself of responsibility for executing judgments. The process of involuntary child removal is a practical action taken to protect the child's interests. During this process, with the assistance of psychologists, educators, healthcare professionals, the Ministry of Internal Affairs, among others, the judge intervenes to remove the child from parents who are unwilling to voluntarily surrender the child. In such situations, the use of coercive measures may be necessary to remove the child. It is important to note that the custodial authority is not an enforcement entity. This measure is not

repressive, but protective of the child's welfare. The judge is obliged to directly oversee the execution and determine whether and when the child should be removed from its parents, should the removal from the home be gradual, would there be need for medical assistance for the child, the debtor, or third parties. The judge must decide in which situation and to what extent force should be applied (for example, to detain those obstructing execution, to remove those inciting violence or hindering execution, to enter a closed room where the child is hiding or being kept, etc.) (Šarkić & Počuča, 2020, p. 30). Article 1 of the Law on Enforcement and Security Interest outlines the process by which courts and public bailiffs enforce the claims of the enforcement creditor through compulsion. Additionally, Article 4 of the same law specifies that the court holds exclusive jurisdiction over the enforcement of actions that can only be undertaken by the enforcement debtor, such as non-compliance or endurance [...], and similar situations. Additionally, according to Article 368, paragraph 2 of the Law on Enforcement and Security Interest, the court within whose jurisdiction the child is situated is responsible for the involuntary removal of the child; this action is initiated either ex officio or upon request from the party submitting the enforcement proposal. Paragraph 3 states that the court in charge of adjudicating the enforcement proposal may transfer certain enforcement actions to a court not directly authorized for the execution process. The inclusion of both the obligation and the power granted to the custodial authority for the forcible removal of a child (the act itself, i.e., the action of removal and surrender) is, at best, highly contentious and, ultimately ineffective. Such a practice lacks legal basis and is thus unsustainable. The expert panel, comprised of custodial authority members (psychologists, pedagogists, social workers, lawyers, and the like), assists the court in implementing the most delicate decisions regarding familial relationships by drawing upon its members' expertise and knowledge (Šarkić & Nikolić, 2020, p. 262). The court cannot be absolved of responsibility or lose authority concerning the removal and surrender of the child, nor can it transfer such powers to the custodial authority. It is legally nonsensical for such a substantial authority to be conferred upon the custodial authority through legislation governing civil enforcement matters. We believe that custodial authorities are neither suitable nor qualified

for executing enforcement actions, specifically the act of removing and surrendering a child, given the delicate dynamics of familial relationships. In the context of enforcement proceedings, alternative mechanisms such as monetary penalties, directives for the removal of individuals obstructing enforcement, temporary detention of those who pose a risk to the safety of children or other participants in the process by obstructing enforcement, mediation in dispute resolution, among other measures, ought to be employed. The custodial authority lacks the requisite expertise and capacity to employ such measures effectively. Hence, we maintain that this authority should not have been transferred from judicial jurisdiction to the custodial authority (Šarkić & Nikolić, 2020, p. 263). The custodial authority can assist the judge in the following matters: assessing whether the child is defacto in danger, which necessitates coercive enforcement; evaluating the potential effectiveness of dialogue with parents; determining when monetary penalties or the threat of imprisonment would be effective; advising on the optimal timing to initiate enforcement actions; considering whether to suspend the enforcement process; considering whether to delay the enforcement process; assessing the need for urgent medical assistance, psychiatrists, psychologists, and other medical professionals; determining when and how to conclude the enforcement proceedings etc. The designation of the judge as the responsible entity has been a practice in prior legislations as well, whereby a specific party would have been tasked with the responsibility of overseeing this intricate procedure. According to Šarkić & Nikolić (2021), the individual judge bears the responsibility of meticulously assessing the circumstances surrounding the execution process. Collaborating with the custodial authority's expert pannel, school psychologists, and local community members, the judge evaluates the most effective course of action for ensuring the child's well-being. This includes determining whether in given circumstances prompt and efficient removal of the child is more appropriate than gradual persuasion of the parents (p. 667). Therefore, the custodial authority can at any point initiate and engage in proceedings concerning children's rights. What is particularly relevant to our paper is that the court has the power to impose a prison term (this decision is subject to appeal) lasting until the child is surrendered and with a maximum duration of 60 days

(Šarkić & Počuča, 2020, p. 28). The provision permitting appeals to postpone enforcement adds further complexity to the situation, as the primary aim of these procedures is to facilitate prompt execution, safeguard against rights abuse, and prevent any irreparable harm to the child. The option to lodge an appeal and the subsequent decision-making period provide sufficient time during which the debtor or a third party obstructing the enforcement can take actions to temporarily or permanently prevent the enforcement proceedings (hiding the child, taking the child abroad, obtaining passports or other official documents enabling departure from the country, etc.) (Šarkić & Počuča, 2020, p. 29). In paragraph 1 of Article 375, the Law mandates that the enforcement decision be transmitted to the competent custodial authority no later than ten days before the commencement of enforcement, with a psychologist acting on behalf of the custodial authority in the enforcement process. This provision appears to have been crafted by someone lacking firsthand experience in such matters. Ten days can be an eternity in the context of surrendering or removing a child (Šarkić & Nikolić, 2020, p. 261). In this process, the role of the psychologist is crucial for the child's well-being. The psychologist is tasked with attempting to facilitate the voluntary surrender of the child and conducting informative and advisory sessions with the individuals with whom the child resides. It is advisable to inform the enforcement debtor beforehand that voluntary surrender would be much more beneficial for the child and would help avoid numerous traumatic situations. The custodial authority is allowed to advise the court on suitable methods of child surrender as well as suitable arrangements concerning the physical environment where the enforcement procedure is to take place. Beforehand, a thorough on-site assessment and evaluation of the child's psychological profile must be conducted. The custodial authority's psychologist is obliged to prioritize the protection of the child's best interests both prior to and during the enforcement process, as stipulated in Article 371 of the Law, which sets the standard for this type of procedure (Šarkić & Nikolić, 2020, p. 262). The legislature has not stipulated procedures for implementing decisions related to arranging child visitation, changes in visitation terms, managing parent-child relationships, and the like. The Family Law addresses temporary measures for protection of the child against violence

or prevention of irreparable harm. Regrettably, from the perspective of enforcement law in the Republic of Serbia, there are no mechanisms in place to govern the enforcement of temporary measures, nor is the court's role in the process of enforcing decisions concerning children's rights violations clearly delineated (Šarkić & Nikolić, 2020, p. 264). And lastly, it is crucial to emphasize the necessity for the Law to define the obligation of determining the child's best interests within the context of enforcement proceedings; this obligation should not be restricted solely to the court but should encompass all parties engaged in the enforcement process—public enforcement officers tasked with enforcing child support obligations, custodial authorities, healthcare practitioners, members of the Ministry of Internal Affairs, experts or providers of expert opinions, translators, interpreters, and others (Šarkić & Nikolić, 2020, p. 265).

In conclusion of this exposition on the positive legal framework in the Republic of Serbia regarding the removal and surrender of children, it is important to emphasize that child abduction is a significant and separate problem. Within the criminal legislation of the Republic of Serbia, a particularly severe form of the crime of abduction is when the abducted person is detained for over ten days or subjected to cruel treatment or experiences severe health deterioration or suffers other grave consequences. Perpetrators of this criminal act against a minor will be sentenced to imprisonment for a period of three to fifteen years (Article 134 of the Criminal Code, 2019). When discussing the safeguarding of children and minors, it is crucial to mention Article 59 of the Police Act, which mandates that the police promptly initiate search measures for individuals and objects upon receiving information (Police Act, 2018). In conjunction with provisions within constitutional, family, and enforcement laws, the principles of criminal law also enhance the overall protection of children from abduction and they all collectively form a distinctive legal framework.

5. Conclusion

In this study, we have observed the inherent complexity surrounding the issues of child removal and surrender. Namely, every decision pertaining to the welfare of the child necessitates the presence of judicial authority. Judicial authority takes precedence in making final decisions regarding child protection and while it may coordinate and collaborate with other institutions, such as the Center for Social Work or the custodial authority, its power must never be transferred to another entity. This enforcement procedure entails designing and shaping the child's life, it is a stage that cannot be replaced by any other form of assistance in the process of relocating the child from its family environment. No other form of assistance could provide the same agility, urgency, protection, or prosperity as this procedure. If essential protective mechanisms are lacking, achieving the ultimate goal becomes impossible. This goal is not only the act of providing immediate care for the children in dire circumstances, but also a process that can have long-term consequences for the child if the situation is not addressed adequately and promptly. Hence, addressing these issues appropriately entails more than simply adhering to the prescribed legal procedure; it involves establishing a balance among citizens (parents, children, and others), between governmental bodies and social institutions, and, above all else, it means facilitating conditions that serve the child's best interests. The Austrian law mandates the care of not only citizen children but also unaccompanied foreign children entering the country. This demonstrates a high level of consistency with international law as well as the UN Convention on the Rights of the Child. It is significant to emphasize that, in this case as well, precedence is given to the jurisdiction of the Guardianship Court. It is noteworthy that Austrian legislation regulates child-rearing methods as well as penalizes vulgar conduct by parents. Significantly, Austrian law defines concepts such as the child's capacity for discernment, which demonstrates lawmakers' serious intent to respect the best interests of the child. The enforcement procedure in Austria is very compact, this means the court makes decisions in a continuous manner and follows a legal hierarchy/scale to determine the most suitable custodian for the child. It thoroughly evaluates the child's accommodation to

ensure it aligns with the child's age, understanding of the situation, and developmental stage. This underscores the gravity of the judicial process and the commitment in safeguarding the child's rights. Various other subjects, including the CYPA, doctors, psychologists, etc., participate in the process, which shows consistent and collaborative interagency efforts. On the other hand, according to the provisions of the Law on Enforcement and Security Interest of the Republic of Serbia, there is a kind of confusion between the roles of the court and the custodial authority, i.e., they are are reversed. The court, for instance, cannot perform functions such as monitoring because that task belongs to the custodial authority, primarily the psychologists within it. These roles need to be more clearly defined, accurately outlined, explained, and clear, as they impact the welfare of the child and form the basis for its future life. Any shortcomings in this process result in disproportionate repercussions for the child. The child is a sensitive being, and the experience of being separated from its family can be deeply emotional. However, it is the collective responsibility of society to prevent the implementation of unsuitable and inappropriate legal solutions. Consequently, aligning the law with international documents, comparative law decrees, and, most importantly, the Constitution of the Republic of Serbia is crucial. The Constitution stipulates that the loss or restriction of parental rights must be authorized exclusively through judicial processes. In the Republic of Serbia, there is a need to legally regulate the concept of *the child's best interests*, classify it, and ensure its recognition by all relevant professionals. Accordingly, it is crucial to strengthen the relationship between the child and its family. As per the UN Convention on the Rights of the Child, this aspect is consistently highlighted as paramount in child-related work and the significance of its integration into national legislation in the most effective manner is underscored.

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Zdravko Skakavac[1]
Olivera Milutinović[2]
Dragan Manojlović[3]

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UVOĐENJE MENTORSTVA I RADNOG DOSIJEA U POLICIJU – NUŽNA POTREBA

Apstrakt: U radu se istražuju mentorstvo i radni dosije, kao gradivni elementi razvoja karijere ljudskih resursa – policijskih službenika u Republici Srbiji. Pitanje mentorstva i radnog dosijea treba razumeti u kontekstu ukupne karijere ljudskih resursa u policiji. Nadalje, mentorstvo i radni dosije se ne mogu razumeti i svesti samo na razradu početnog profesionalnog sazrevanja u vremenu pripravničkog staža, staža praktikovanja, već je to mnogo dublje i kreće se zajedno sa kretanjem policijskog službenika u karijeri, odnosno utiče na njegov celokupan razvojni put profesionalnog sazrevanja i usavršavanja rada sve do odlaska u penziju. Potreba karijernog sazrevanja pod palicom mentora i sadržajem radnog dosijea posmatra se u kontekstu inoviranja znanja i veština stalnog samoreformisanja koje ono podržava i inicira. Mentorstvo je proces, a radni dosije pouzdani instrument u policijskoj karijeri kroz koji od početka – pripravničkog staža službenici policije ostaju posvećeni profesionalnom cilju. Konkretno, radni dosije i mentorstvo treba da budu uvedeni od samog početka, tj. zasnivanja radnog odnosa. Specifičnost kod mentorstva u odnosu na radni dosije jeste da mentorstvo ne mora uvek biti započeto od pripravnika. Da li mentori i radni dosije mogu inicirati uspešnost u profesionalnoj karijeri počev od vremena započinjanja karijere ili je veća verovatnoća da će unaprediti karijeru nekog službenika,

[1] Univerzitet Union-Beograd, Fakultet za pravne i poslovne sudije dr Lazar Vrkatić, Novi Sad, zskakavac@useens.net

[2] Univerzitet Union-Nikola Tesla, Fakultet za menadžment, Sremski Karlovci, olivera.milutinovic@famns.edu.rs

[3] Univerzitet MTU, Beograd, Pravni fakultet, e-mail:sradovi2020@gmail.com

koji se već upoznao sa profesionalnim poslom policije? Istraživanjem je potvrđeno da mentorstvo vodi kroz proces profesionalnog sazrevanja, da službenici policije veruju da bi im mentorstvo pomoglo da se njihova karijera kreće ka višim nivoima karijerne uspešnosti ne samo kod mlađih, već i kod službenika sa višegodišnjim radnim stažom, a da je radni dosije instrument za uravnoteženo ocenjivanje učinka policijskih službenika u izgradnji njihove karijere. Takođe, rezultati pokazuju da postoji potreba za uvođenjem mentorstva i radnog dosijea, kao elemenata za karijerni razvoj policijskih službenika.

Ključne reči: *mentorstvo, radni dosije, policija, ljudski resursi, policijski službenik, karijera.*

1. Uvodno razmatranje

Kao što se može saznati iz literature, uvod se često označava kao krovna konstrukcija rada. Sledeći ovo shvatanje, najpre postavljamo problem istraživanja. U policijskoj delatnosti u svetu policijske agencije su uvele mentore, dajući im zadatak da preduzimaju mere kako bi osigurali da se novi službenici pridržavaju smernica za obuku na terenu i mandata za obuku, koji nameću pravila u radu policije, i radni dosije, kao instrument pouzdanog vrednovanja karijernog rada. U stručnoj literaturi i savremenoj policijskoj praksi u svetu veruje se da je pomisliti ili tvrditi da uspešno završeno školovanje na bilo kom nivou, od osnovnog, srednjeg ili fakultetskog, odmah može da izgradi osnov da lice nakon zaposlenja stekne poslovnu sposobnost te profesije i bude sposobno da obavlja policijske poslove bez posebnog – daljeg strukturisanog vođenja, zabluda su i osnov da se u budućnosti službenika odvijaju neželjeni procesi u karijeri (Jihong, Quint, & Ni, 1999, str. 162).

Nakon zaposlenja u tako značajnoj oblasti poslova za društvo i istraživanja koja se sprovode među policijskim službenicima dolazi se do rezultata koji pokazuju da policijski službenici ukazuju da se zaposlenjem kod njih menja stil života na koji oni nisu odmah spremni, a što je jedinstveno za ovu profesiju, te da bi taj „prelaz“ uz pomoć men-

tora lakše savladali (Reese & Goldstein, 1986). Mentorima je ostavljeno i dato, kao zadatak, ovlašćenje da upravljaju rezultatima kretanja lica nakon zaposlenja u policiji, da učestvuju u rešavanju različitih problema tokom tog kretanja, kao što su: učenje policijskih poslova, kontrola stresa, rešavanje ili pomoć u rešavanju porodičnih problema, dimenzioniranje službenika na zakonito, legitimno i etično neugrožavajuće kretanje u radu, karijeri i disciplini (Skolnick, 2011). Prisustvo mentora ima za cilj da uvede i „vodi" službenika ka poštovanju utvrđenih smernica kod primene tzv. tvrdih veština, kao što su: primena sredstava prinude, upotreba vatrenog oružja, defanzivne taktike ili vožnja službenih vozila i dr. (Brian, 2005). Zašto je potreban mentor? Zato što, može se primetiti, nemali broj građana ima primedbe na rad policijskih službenika, verujući da nisu adekvatno obučeni za posao ili da nisu dovoljno upoznati s veštinama koje su neophodne za obavljanje ove profesije (Creasey, Jarvis, & Berk, 1998, str. 119; Saracho, Spodek, 1998, str. 323).

Zahtevani mandati obuke u stručnim školama ili pri sprovođenju kurseva samo minimalno pripremaju policijske službenike za potrebna znanja u vezi sa obavljanjem njihovih dužnosti (Stotland, 1986, str. 521–525). Mentori upravo u tome imaju mesto i odgovornost da kontinuirano prate razvoj novih naučnih saznanja i veština u svetu kako u literturi, tako i u stručnoj praksi i da za vreme rada, putem kratkih dnevnih seminara, prenose zaposlenima ona znanja i veštine koje smatraju neophodnim za efektivnije izvršavanje policijskih poslova (Rendena, Nieuwenhuysb, Savelsberghac, & Oudejansa, 2015, str. 14). Ove veštine se mogu nazvati kognitivnim ili „mekim veštinama" i u njih ubrajamo efikasnu komunikaciju i etički zasnovano ponašanje, a postoje i „tvrde veštine", kao što je primena novih metoda i tehnika u radu policije (Johnson, 2002, str. 91). Kako se primećuje u literaturi, najveća nepoznanica su meke veštine, koje se najmanje mere, što može proizvesti lažnu percepciju policijske kulture. Novi (tek zaposleni) i policijski službenici koji su u radnom odnosu već neko vreme treba kontinuirano da imaju dostupnog mentora da bi jasno razumeli posao i probleme koji mogu uticati na efektivnost njihovog rada.

Teorija i stručna praksa primećuju da je obuka policijskih službenika sa naglaskom na važnosti samo „tvrdih" veština pogrešna ili nedovoljna (Reese & Harvey, 1986). Kada želite da poboljšate efikasnost

i uspeh mlađih zaposlenih nužno je omogućiti im obuku o „mekim" veštinama, kroz mentorske programe (Johnson, 2005, str. 26). Mentori koji poseduju znanje i iskustvo i koji su se uspešno bavili pitanjima vezanim za posao, mogli bi biti izvor podrške i ohrabrenja za rad mlađih zaposlenih (Tyler & McKenzie, 2011, str.522). Istraživanje, koje će biti predstavljeno u ovom radu, pokazuje da bi mentori trebalo da podele znanje i stručno iskustvo sa učesnicima u programu. Strukturirani ili formalni program mentorstva mogao bi biti resurs koji donosioci odluka o policijskoj obuci novih i zaposlenih policijskih službenika previđaju (Arter, 2006, str. 92). Takođe, neformalno strukturirani programi u kojima bi učestvovali penzionisani policijski službenici u svetu su zlatno pravilo (Hill, Snell, & Sterns, 2015, str. 101). Većina policijskih službenika, prema iskazima do kojih se došlo, ne može da se identifikuje sa osobom koja je imala značajan uticaj na njihov profesionalni razvoj i karijeru u policiji u Srbiji. Prema Darvinu (2000), na ovu osobu (mentora) bi se gledalo kao na savetnika, korektora ili edukatora koji bi bio angažovan za prenošenje znanja, održavanje kulture, podržavanje talenata i obezbeđivanje profesionalne karijere službenika kroz program mentostva (str. 197).

2. **Koncepti u teoriji o mentorstvu**

Podučavanje je oblik prenošenja znanja učenicima. Čak i danas većina vlada i mnoge organizacije smatraju da je kontinuirano (tzv. celoživotno) učenje neophodno za sve zaposlene (O'Neil Patricia, 1986), što se može olakšati kroz mentorstvo. Prema Larsonovoj (2002), termin *mentor* potiče iz grčke legende u kojoj je opisano kako se Odisejev prijatelj povremeno brinuo za njegovog sina dok je ovaj bio odsutan, tj. na dalekim putovanjima. Mentor je bio kao staratelj, neko na koga je Odisejev sin uvek mogao da računa da će mu dati mudar savet i usmeriti ga kroz život (str. 12). Iz ove legende je, dakle, proizašao termin mentor sa značenjem mudar i pouzdan savetnik ili učitelj (McKinsey, 2016, str.29).

Mentor je trener, tj. neko ko pomaže zaposlenom od početka njegove karijere, pa sve do penzije, neko ko se efikasno nosi sa preprekama u razvoju službenika i njegove karijere, neko ko pomaže u rešavanju problema koji ometaju asimilaciju službenika u radnu sredinu (Kogler &

Hilton-Bahniuk, 1998, str. 6). Kako navode Hant i Majkl (1983), „mentorski odnosi su ključni resurs u karijeri za zaposlene u organizacijama" (str. 479). Mentori su, veruje Pamuk (2008), „pojedinci sa naprednim iskustvom i znanjem koji su posvećeni pružanju podrške i mobilnosti u karijeri onih članova – zaposlenih, koji su u programu mentorstva" (str. 15). Mentor koji je aktivno uključen u razvoj službenika, neposredno je, prema rezultatima istraživanja, povezan sa pozitivnim rezultatima u njegovoj karijeri (Dreher-George, 1990). Ragins i Katon (1999) tvrde da su mentori pojedinci koji pomažu službenicima pružanjem dve podrške, prva je razvoj karijernih funkcija koje omogućavaju napredovanje u organizaciji, a druga je razvoj psihosocijalnih funkcija koje doprinose unapređenju ličnosti službenika i profesionalnom razvoju u organizaciji (str. 535).

Tokom prve faze ranog formiranja karijere mlade odrasle osobe mentor je angažovan na razvoju njenog profesionalnog identiteta i formiranju vizije za buduće planove (Levinson, Danziger, Levinson, & McKee, 1978). Ovaj proces može uključivati ispitivanje kompetencija, delotvornosti ili sposobnosti te mlade, tek zaposlene osobe sa ciljem sticanja saznanja da li se ti planovi mogu postići (Nowell, White, Benzies, & Rosenau, 2017). Na osnovu ovih saznanja, koja se grade u formi profila službenika, i budućih poslova u karijeri, metor traži odnos koji bi pružio mogućnosti za usmeravanje ka rešavanju ovih dilema (Noe, 1988).

U stručnoj i naučnoj literaturi se veruje da ne samo početnik, već i iskusnija odrasla osoba (osoba koja je već u programu razvoja karijere pod palicom mentora) u srednjem životnom dobu i/ili na sredini karijere, takođe može biti u nedoumici i imati potrebe za ponovnim procenama i preispitivanjima dostignuća i pravaca za buduće poduhvate u karijeri (Levinson, Danziger, Levinson, & McKee, 1978). Ulazak u program karijernog razvoja, koji razvija i prati mentor, „odnos" sa mladom osobom na samom početku njene karijere ili u fazi odmaklog profesionalnog razvoja pruža priliku licu da u sredini radnog „života" preusmeri svoju energiju na kreativniji i produktivniji posao (Dane & Hendricks, 1991). Sprovedena su istraživanja o mentorstvu u mnogim javnim sektorima, gde je primećeno da mnoge državne agencije pripisuju uspeh svojih službenika inovativnom sistemu mentorstva (Fagan & Glen, 1982). Naročito se ukazuje na značaj „mentora inovacija" koji

se stalno usavršavaju da bi mogli da pruže kvalitetnija, inovirana znanja zaposlenima (Correia Maria, 2020). Neke policijske agencije se okreću mentorstvu kako bi „ciljale" najbolje studente koje je „teško" pronaći, pa mentori istovremeno imaju i obeležja regrutera (Kupchik, Curran, Fisher, & Viano, 2020). Bez obzira na njihovu „upotrebu ili primenu", mentori nužno poseduju određene karakteristike i kvalitetete da bi sprovodili mentorske programe (Carter, Sapp, & Stephens,1989).

3. **Kvaliteti i karakteristike mentora**

Prema istraživanjima, koja se mogu konsultovati, policija u svetu želi da mentori budu osobe službenici: srednjeg životnog doba; sa radnim stažom koji je najmanje dostigao sredinu profesionalne krijere; koji imaju visoko obrazovanje; koji žele da se razvijaju ne samo u profesionalnom, već i u naučnom znanju; koji imaju „strast" za promenom; koji poznaju veštine upravljanja; koji su kreativni i inovativni; koji imaju sposobnost da „vode" druge; koji grade „odnose" i poseduju opšta i posebna poslovna znanja na najvišem nivou (Cutler, 2003).

Primarna briga svakog mentorskog programa jeste da je koristan za zaposlenog službenika. Ako je mentorski odnos otežan, zbog nemogućnosti njegovih članova da efikasno komuniciraju, kaže se da je prisutna neusklađenost i odsutnost odgovarajućeg „poklapanja" vrednosti i osobina ličnosti, što je ključno za mentora (Lee, Dougherty, & Turban, 2000). Opisujući suštinu „pravog" i efikasnog mentora, Gulardo (2000) izjavljuje „da mentor evocira najviše ideale obuke, obrazovanja i uspeha, u kombinaciji sa ličnim i profesionalnim razvojem" (str. 8). Isti autor je u sprovedenim istraživanjima našao da bi mentor, dok podučava zaposlene službenike, trebalo da poseduje sledećih deset kvaliteta:

Izazivač	Podstiče zaposlenog da postavi ambiciozne ciljeve.
Dizajner	Pomaže zaposlenom da nauči kako da se pripremi za nove izazove.
Strateg	Zna kako da nauči zaposlenog umetnosti strateškog razmišljanja.
Inspektor	Orijentisan je na detalje i identifikuje oblasti potrebe za zaposlenog.
Istoričar	Pozicija do koje se dolazi kroz mudrost, iskustvo, uspeh i greške.
Prijatelj	Stiče poverenje zaposlenog tako što je ranjiv i otvoren.
Vodič	Pomaže zaposlenom u navigaciji kroz nova iskustva.
Partner	Slavi uspeh zaposlenog i na mnogo načina učestvuje u njemu.
Primalac	Mentor dobija koliko i zaposleni i zahvalan je.
Oslobodilac	Podstiče zaposlenog da preuzme veću odgovornost i nezavisnost.

Prema: Gualardo, 2000.

Razrađujući ponuđene karakteristike koje treba da poseduje mentor, Gualardo (2014) veruje da mentor mora da prenese različite uloge i odgovornosti tako što „on ili ona treba da budu osoba koja izaziva zaposlenog službenika da postavi ambiciozne ciljeve" (str. 32). Ovakav pristup razvija preduzimljivost kod službenika da stekne interpersonalne veštine i, takođe, pomaže mu u dizajniranju budućnosti, pripremajući ga za buduće izazove (Gualardo, 2014). Mentor treba da bude uzor, onaj koji zna kako da nauči druge „umetnosti" strateškog razmišljanja, da ima moć zapažanja detalja koji su potrebni za analizu razvoja profesionalne karijere, što je posebno važno kada je u pitanju budući razvoj ciljeva korisnika programa. Prijateljstvo između mentora i zaposlenog službenika je neophodno da bi se izgradilo poverenje i eliminisao strah službenika od ranjivosti koja se može preneti ili sa mentora na službenika ili sa službenika na mentora, što je obostrano štetno. Efikasan mentor treba da služi kao vodič službeniku dok se kreće kroz različita iskustva na

poslu. Mentor treba da uživa u uspesima službenika. U idealnom slučaju, partnerstvo bi trajalo čitavog života. Konačno, mentor je taj koji službenika, putem treninga, ohrabruje da krene ka preuzimanju pune odgovornosti, te da bude osposobljen za punu samostalnost (Gualardo, 2008).

4. Formalni i neformalni mentorski odnosi sa zaposlenima u programu mentostva

Mentorski odnosi ili programi koje sprovode mentori mogu se, prema Edmundsonu (1999), kategorisati kao „formalni i neformalni, sa glavnom razlikom u načinu na koji su započeli" (str. 16–18). Uočavajući razliku između formalnih i neformalnih odnosa kod mentorstava, Daglas tvrdi da postoje dve razlike, odnosno „da se neformalni odnosi razvijaju spontano, a formalni uz organizacionu pomoć ili intervenciju – obično u obliku dodeljivanja ili usklađivanja mentora i zaposlenog službenika, a druga je da formalni odnosi obično traju mnogo kraće od neformalnih" (str. 26).

Neki od autora veruju da je formalni mentorski odnos strukturirane implementacije i vremenski ograničen pošto program obično traje od šest meseci do godinu dana za početnike u karijeri, da ih pažljivo prate supervizori ili koordinatori mentorskog programa (Ragins Belle & Cotton, 1999). Ima autora, kao što su Osoji i Adeu (2003), koji primećuju „da se neformalni mentorski odnosi razvijaju i često počinju kao prijateljstva, onda kada se pre ulaska službenika u program mentorstva uspostavi međusobna identifikacija i ispunjavanje potreba u karijeri izumeđu budućeg mentora i budućeg učesnika u programu, što je ključno za njihov zajednički uspeh" (str.381). Takođe, istraživanja potvrđuju da mentori biraju zaposlene službenike koji izgledaju kao mlađa verzija njih samih, a takav odnos pruža mentorima osećaj doprinosa budućim generacijama (Eisenberg, 2005). Sa druge strane, službenici u najvećem broju slučajeva biraju mentore na koje gledaju kao na uzore u profesiji, gde se odnosi razvijaju na osnovu uočene kompetencije profesije i međuljudske shvaćenosti i slobode/udobnosti u izražavanju (Ragins Belle & Cotton, 1999).

5. Uticaj mentorstva na uspeh zaposlenog

Iako navedeni oblici mentorstava imaju jedinstvene aspekte koji promovišu uspeh, mora se najpre razmotriti šta predstavlja uspeh u mentorstvu, tj. odnosu između mentora i zaposlenog službenika koji je u programu mentorstva? Van Ek i Sandi (2000) priznaju taj posao u karijeri zaposlenih službenika jer, kako su primetili u svojim istraživanjima, u poslednje dve decenije uspeh službenika je često postignut kroz mentorstvo (str. 556). Isti autori uočavaju, kroz razgovore sa službenicima koji su u mentorskim programima, da postoje propusti u pronalaženju mentora. Naime, tradicionalna definicija mentorskih odnosa gleda na mentora kao na nekoga ko je u istoj organizaciji u kojoj je i službenik, te učesnici u programu često nisu u mogućnosti da biraju svog budućeg mentora sa spiska svih mentora, jer neki od njih nisu u istoj organizacionoj jedinici agencije, što je bitan nedostatak (str. 554). Sa druge strane, pojedini autori, kao što su Sorcineli i Jung (2007), primećuju drugi nedostatak, a to je „da se istraživanje mentorstva, prvenstveno fokusira na objektivne mere uspeha, kao što su: koliku je platu ostvario službenik za vreme učešća u programu" (str.59). Istovremeno, Van Ek i Sandi (2000) tvrde „da je uspeh u karijeri dvodimenzionalan i da su ispitanici isticali i druge kriterijume za merenje uspeha programa, kao što su subjektivni, npr. lična osećanja uspeha koja su im podjednako važna kao i plata ili promotivni rezultati" (str. 556). Ovi autori zaključuju da je mentorstvo pozitivno uticalo na buduća dostignuća i lično zadovoljstvo učesnika u programu i da razvoj programa mentorstva i uspeh službenika u njemu zavise od izabranog mentora (Van Eck & Sandy, 2000).

6. Formalno i neformalno mentorstvo: prednosti i nedostaci

Primarna prednost formalnih mentorskih odnosa je u mogućnosti da se neposredno prati napredovanje učesnika u programu mentorstva. Koordinatori, koji su zaduženi za mentorski program i njegove proizvode, izrade upitnike prilagođene profilima ličnosti zaposlenih u programu i dostave ih učesnicima, čime se smanjuju greške u podudaranju različitih ličnosti, i postave smernice za učešće u programu tako da mentorski parovi znaju šta se od njih očekuje i šta je potrebno za

ostanak u programu, kao i koji su njegovi ciljevi (Gaskill, 1993). Muraj (1991) veruje „da je formalno mentorstvo važno i zbog ugovora koji se potpisuje zbog obaveza u programu, a ne samo zbog učešća" (str. 256).

Mentorski program	Prednosti	Nedostaci
Formalni odnosi	- organizacija može pratiti napredak u programu - postoje formalne i utvrđene smernice - potpisani ugovor od strane svih strana - utvrđen vremenski okvir - posebno strukturiran sistem	- može inhibirati puni potencijal - manje je verovatno da će se zasnivati na međusobnom poverenju - stvara prinudnu interakciju - ometa napredovanje individualnim tempom - nedostaje prirodni elemenat
Neformalni odnosi	- međusobno razumevanje - mentor je motivisan, a službenik željan učenja - mentor je iskreno odan u najboljem interesu službenika - postoji lično zadovoljstvo mentora - mentor pomaže službeniku u izbegavanju stagnacije u karijeri	- nadgledanje je malo verovatno - mentor može ohrabriti službenika u programu da nastavi ciljeve u drugim oblastima - mogući gubitak resursa uloženih u razvoj karijere službenika - razvijaju sklonosti prema drugim poslovima

Prema: Douglas & Schoorman, 1988.

Ima autora koji zastupaju stanovište da formalni mentorski odnosi imaju i svoje negativne strane, jer se mogu posmatrati kao prisilna interakcija između mentora i učesnika u programu mentorstva (Walker & Katz, 2002). I Regins i Caton (1999) objašnjavaju neke od nedostataka: „Mentor i štićenik se ne sastaju sve dok se ne obavi određeni posao. Dakle, za razliku od neformalnih odnosa, identifikacija, modeliranje i međuljudski komfor ne igraju ulogu u razvoju formalnih odnosa; manje je verovatno da će se zasnivati na međusobnoj percepciji kompetencije i poštovanja" (str. 541). Razumno je očekivati da će prihvatanje i potvrda mentorske funkcije od strane učesnika biti manja u formalnom nego u neformalnom mentorstvu (Sprafka & April, 2008).

Pledirajući na neformalnim mentorskim odnosima, u literaturi se ukazuje da oni sadrže elemente međusobnog razumevanja. Mentori na učesnike u programu gledaju kao na sebe u mlađem životnom dobu i sopstvenom profesionalnom razvoju (Chandler, Kram, & Yip, 2011). No to isto tako može biti i opasnost, odnosno nedostatak, pošto su u tom odnosu sa službenicima u programu mentori ostvareniji u svojim profesijama, pa izazovi novih poduhvata mogu da blede i mentor može doživeti osećaj stagnacije. Sa druge strane, smatra se da se uočeni nedostatak može prevazići time što bi službenici u programu, željni učenja, motivisali mentore (aktivirali ih). Takođe, veruje se da službenici u neformalnom programu mentorstva mogu svojim predlozima i aktivnostima da usade nove stavove mentorima, što ih, kako primećuju neki autori, dovodi do „podmlađivanja u aktivnostima" (Ragins Belle & Cotton, 1999). Istraživači su takođe primetili „da je ova motivacija neophodna da bi se i mentor i policijski službenik u programu mentorstva pomerili u sledeću fazu života i profesionalnog napretka u karijeri" (Tyler & McKenzie, 2011, str. 528).

Nedostatak neformalnog mentorskog odnosa može se najbolje okarakterisati pitanjem: šta je najbolje za polaznika u programu mentorstva? Pošto se veza prirodno javlja, „može se pretpostaviti da mentor ima opšte blagostanje o uspehu učesnika u programu. Ako, na primer, mentor sazna da polaznik u programu mentorstva poseduje kvalitet ili talenat (kao resurs) koji bi bio korisniji u drugoj organizaciji ili poslu, on bi ohrabrivao učesnika da sledi takve ciljeve. Iako ovo može koristiti učesniku u programu na duži rok, to bi bilo u suprotnosti sa željom tre-

nutnog rukovodstva, jer znači gubitak uloženih sredstava u zaposlenog" (Ragins Belle & Cotton, 1999, str. 543).

Suprotno tome, „ako je mentor posedovao vrednosti ili etiku koja bi bila štetna za napredovanje u karijeri zaposlenog, ne bi bilo strukturalnih sredstava da se efikasno reši problem. Mentor, može zapravo biti prepreka da se postigne uspeh" (Ragins Belle & Cotton, 1999, str. 545). Prema Kramu (1983), ne razmatrajući da li je ishod programa pozitivan ili negativan, „postoje četiri glavne faze formalnog mentorskog odnosa: inicijacija, kultivacija, odvajanje i redefinisanje, i svaki napredak je propisan internim ili eksternim pravnim pravilom" (str. 612).

7. **Naučno utemeljenje mentorstva u policiji**

Potpunije naučno istraživanje o vrednostima mentorstva su, na osnovu svog istraživanja, dokumentovali Grin i Bauer (1995), predstavljajući studiju koja traga za odgovorima na pitanje: odakle je istinska korist od mentorstva? Ovi autori tvrde da ulaskom u program mentorstva osoba donosi lične talente, veštine i znanja u mentorski odnos, a koji pomažu mentoru jer dobija kredit za izgradnju njenog profila (str. 547). Ima i suprotih stanovišta, kao što je autora Jakobija, koji tvrdi „da učesnik ulaskom u program mentorstva sa sobom unosi ono što već poseduje, sposobnost za učešće u poslovima, posvećenost i organizacionu pamet i karakteristike koje bi verovatno učinile tu osobu uspešnom sa ili bez mentora" (str. 524).

Skandura i Skresim (1994) uveli su koncept koji se naziva nadzorno mentorstvo (str. 1593). Interesantno je istraživanje koje su tim povodom sproveli Peglis, Grin i Bauer (2018) „proučavajući odnos mentora i korisnika, odnosno usluge mentora u mentorskom programu tokom obuke. Studija je bila osmišljena da proceni da li mentorske funkcije dodaju ili ne novu vrednost korisniku programa, nakon što osoba unese sopstvene talente i radne stavove u program mentorstva i oni se uzmu u obzir? Rezultati su pokazali da mentor bitno doprinosi napretku osobe i njenoj novoj vrednosti koju je u programu usvojila kao novu vrednost, uzevši u obzir i ono što je ona unela ulaskom u program mentorstva" (str. 209).

U mnogim zemljama je već decenijama prisutno mentorstvo u policiji. Ono se stalno razvija i primenjuje ne samo na početnike, već je kontinuirano prisutno u celokupnoj radnoj (profesionalnoj) karijeri službenika. Konkretna naučna literatura u vezi sa mentorstvom u sprovođenju zakona na prostoru Republike Srbije je ograničena, može se reći da nije ni u fragmentima. Međutim, zbog prirode policijskog posla, tako važnog za društvo i državu, sprovedeno je istraživanje koje pokazuje da su zaposlenima potrebni: prisustvo mentora, uputstvo o mentorstvu, zakonska regulativa i mentorski programi na svim nivoima – od početka do završetka profesionalne karijere.

Istorijski kotekst pokazuje da je još u drugoj polovini prošlog veka autor Goldstajn (1977) postavio osnove za uvođenje mentora u karijeru policijskih službenika (str. 273). Naime, sprovodeći istraživanja, konstatovao je da urpkos tome što su prilikom hapšenja, izdavanja saobraćajnog naloga ili bilo koje druge situacije koja zahteva intervenciju službenici dužni da reaguju na odgovarajući zakonit način, to uglavnom nije bilo dovoljno, jer nisu imali savremena komunikaciona, informaciona znanja iz tih oblasti. Službenik je primenjivao ono što je pre više godina naučio tokom školovanja, a što nije dovoljno (str. 273). U međuvremenu je bilo nekoliko istraživanja, a u jednom od njih, koje su sproveli Toč i Grant (1991), među službenicima policije koji su imali više godina radnog staža primetili su „da je kod tih policijskih službenika postojao naglasak, koji je postavljen pre više od deset godina kada su bili na školovanju i započinjali policijsku dužnost, da budu kruti i beskompromisni, te da su sami sugerisali da bi im mentorstvo moglo biti od pomoći u vođenju u celoživotnom profesionalnom učenju i usvajanju novih znanja i veština, što je ključ za uspešnu karijeru“ (str. 296). Pored iznetog, mnogi istraživači smatraju da se od rukovodilaca policije često traži da donose odluke koje nisu u potpunosti razumljive njihovim podređenima, što kod policijskih službenika izaziva zabrinutost, a uloga mentora u ovakvim situacijama je da umanji stres i ukaže na procedure koje treba primeniti (Gaines & Roger LeRoy, 2000).

U literaturi se mogu pronaći rezultati istraživanja, prema kojima policajci početnici brzo shvate „da je priručnik po kome rade samo vodič koji ima malo snage“ (Marenin, 2004, str. 111). Na terenu „policajci donose odluke zasnovane na slutnji, što je oblast gde moral, vrednosti

i karakter postaju važni" (Toch, Douglas, 1991, str. 27). Podržavajući iznete nalaze, Hefernan i Strop (1985) ukazuju da to objašnjava „da policajac postupa ne samo u skladu sa zakonom, već i kao agent zakona" (str. 20). Isti autori primećuju da je službenik na poslu u svakom trenutku više od policajca čak i kada je na dužnosti (Hefernan & Strop, 1985, str. 21). On može biti i nositi u sebi ono što karakteriše roditelja, verujuću osobu, a može biti i „đavo" ili u bilo kojoj drugoj ulozi u trenutku dok izvršava policijske dužnosti, što utiče na sprovođenje pravila, a gde mentor ima značajnu ulogu (Fagan & Glen, 1982). Mentor tada, svojim savetima, utiče „da se službenik izgradi kao celovita ličnost, a ne samo kao nosilac ove ili one uloge u obavljanju poslova policije" (Hefernan & Strop, 1985, str. 29). Sledeći izneto, Garido, Jame i Carmen (2004) iznose da verovanja da postoji idealan policijski oficir nisu ravnoznačna sa radnim iskustvom, nego su formirana na osnovu utisaka koji se stvaraju u javnosti i u policiji (str. 257). Prihvatljivije je, a to pokazuju i istraživanja, da idealni policijski službenici imaju nerealna uverenja o veštinama i sposobnostima koje su dostigli i znanjima koja su usvojili. Preciznije je reći „da oni u kasnijim fazama svog profesionalnog rada mogu dostići potrebna znanja, veštine i sposobnosti, ali isto tako sve to za njih može da bude nedostižno bez pomoći mentora" (Loader, 1997, str. 266).

Ahern i Lindsi (1972) objašnjavaju „da je prvi zadatak policijskog mentora da razbije predrasude početnicima o radu policije" (str. 62). Ovi autori dalje objašnjavaju „da mladi regruti, trebaju biti podučeni od mentora da zaborave policajce koje su viđali u stvarnom životu, kako regulišu saobraćaj, kako hapse, kako upotrebljavaju vatreno oružje i obavljaju mnogo drugih svakodnevnih dužnosti, koje su manje nego uzbudljive" (Ahern & Lindsay, 1972, str. 69).

Dokle seže uloga mentora u vođenju službenika koji su u programu mentorstva? Njegova uloga je važna iz više razloga. Naime, on ima zadatak da prati i nadgleda napredak mladih službenika, ali je isto tako svestan da njihovo odsustvo od kuće često vodi ka umoru i pravljenju grešaka pri izvršavanju poslova koje mogu imati ozbiljne posledice. Službenik na početku karijere može upasti u zamku sopstvenog uverenja da se uz obavljanje policijskog posla ne mogu realizovati neke druge društvene aktivnosti. U takvim situacijama je ključna uloga mentora koji treba da spreči razvoj samoizolacije kod službenika u odnosu na društveni život (Valencia, 2009).

Ako ovi izvori „sukoba“ ostanu nerešeni, oni mogu da utiču i na nestabilnost braka službenika, jer njegova supruga trpi pritiske zbog profesije svog muža. Javlja se pojava „osećaja zarobljenosti porodice usled njegovog posla koji obavlja; supruga je ostavljena kod kuće sa decom – dok on učestvuje u policijskim aktivnostima“ (Eisenberg, 2005, str. 23).

Na osnovu istraživanja, prepoznato je da bi mentor trebalo da aktivno učestvuje u rešavanju problema koji se pojavljuju u vezi sa policijskim poslom, a koji se odražavaju na porodicu i razvod braka u prvim godinama kod policijskog službenika, gde se razvede u proseku razvede šest od deset brakova (Glick, 1984). Ova stopa neuspeha, kako su pokazala istraživanja, u neposrednoj je vezi sa „visokim rizikom stila života osobe usled rada u policiji“ (Bibbins, 1986, str. 425). Kako primećuje Peri (1999), profesija policajca utiče na najveću stopu razvoda u odnosu na bilo koje drugo zanimanje, što svakako predstavlja izazov za budućnost policijskih regruta i njihovih porodica, gde mentor ima svoje mesto i ulogu (str. 32).

Program mentorstva koji je formiralo Odeljenje policije grada Lansinga (Mičigen, SAD) krajem 20. veka, priznalo je Međunarodno udruženje šefova policije kao model za uvođenje i u drugim zemljama. Program je dizajniran „ne samo da razvija karijeru, već je dizajniran da zadrži novozaposleno osoblje“ (Williams, 2000, str. 23). Ovaj model je omogućio da 86% službenika u policiji prođe prvi nivo obuke u odnosu na 82% bez mentorskog programa. Program je omogućio da nakon tri godine provedenih na poslovima policajca na terenu, 88% službenika nastavi da radi u policiji, što je šest procenata više pre nego pre uvođenja programa (Shepard, Worden, 2003). Procenat se povećavao naročito posle sedme godine, kada je pre uvođenja programa ostajalo na radu 76% a po uvođenju programa 87% novozaposlenih policajaca (Getty, Worrall, & Morris, 2016). Bez obzira da li regrutima nedostaju veštine ili samopouzdanje, neki jednostavno ne bi mogli sami, bez mentora, da prežive probni radni rok. „Bilo da regruti sami daju otkaz ili je radni staž prestao aktom policijske agencije, policija ostaje bez regruta na koje je trošila vreme i novac pri izboru i školovanju“ (Williams, 2000, str. 20). Sagledavajući učešće osoba ženskog pola i iz manjinskih zajednica

u policiji, Seklecki, Paniš i Jeni (2007) napominju „da su žene[4] i manjine posebno skloni odlasku iz policijske agencije, i to predstavlja značajan problem za policijsku profesiju" (str. 23). Mentorski programi su, prema Inzeru i Krafordu (2005), bitno uticali na rešavanje navedenog problema, jer su olakšali službenicima da se asimiluju u policiji, da stiču i poboljšaju svoje policijske veštine, identifikuju svoje ciljeve u karijeri i uspešno završe probni rad, a povratne informacije policajaca su bile veoma pozitivne (str. 39). Oni dalje ističu da kada mentori pomažu, zaposleni službenici policije su pozitivno motivisani – njihova policijska agencija napreduje, a time i stanovnici dobijaju/uživaju svoja građanska prava u ličnoj i imovinskoj bezbednosti (Inzer & Crawford, 2005, str. 42).

Neki autori primećuju da je za policijske organizacije „prvi korak u sprovođenju mentorskog programa identifikovanje ciljeva" (Karcher, Kuperminc, Portwood, Sipe, & Taylo, 2006, str. 716). Naime, pojedine policijske organizacije su najpre formirale grupu od zaposlenih službenika koji su posedovali više nivoe obrazovanja, koji su polagali testove za mentora i kurseve za razvijanje mentorskih veština. Na ovaj način pripremljeni mentori su sačinili izveštaje na osnovu ankete koja je sprovedena među policijskim službenicima koji su imali tri ili više godina

[4] Prva žena zaposlena je u američkoj policiji 1845. godine na poslovima nadzornika u ženskom zatvoru. U: Tomić J. Marta (2016): Žene u policijskoj profesiji: vertikalna pokretljivost i integracija – studija slučaja policijske uprave Beograda, mup rs. Doktorska disertacija, Filizofski fakultet u Beogradu, 63. Prema nekim drugim autorima, prva žena prema dostupnoj literturi u uniformisanom sastavu policije otpočela je rad 1883. godine u policiji Metropoliten. Garcia Venessa (2003): "Difference" in the police department: Women, policing, and "doing gender." *Journal of Contemporary Criminal Justice*,19.3, 330–344. Metropolitenska policija zaposlila je svoje prve dve policajke 1883. godine, a do 1890-ih ima dokaza o njima u policiji Mančestera. One su vrlo često bile supruge policajaca. Prva službenica policije u Sjedinjenim Američkim Državama bila je Mari Ovens, koja se pridružila policiji Čikaga 1891. godine. U Nemačkoj su žene prvi put zaposlene u policiji od 1903. godine, kada je Henriet Arent bila zaposlena kao policajka. Od 1908. prve tri žene, Agda Halin, Marija Anderson i Erika Strom, bile su zaposlene u švedskoj policijskoj upravi. Prva žena koja je imenovana za policajca sa punim ovlašćenjima za hapšenje bila je Edit Smit (1876–1923), koja je položila zakletvu policiji Grantham Biroa u avgustu 1915. Levine Philippa (1994): Walking the Streets in a Way No Decent Woman Should: Women Police in World War I. *The Journal of Modern History*, 66.1, 34–78.

staža, a koja je obuhvatila pitanja vezana za potencijalne prepreke za implementaciju, dostupnost i prihvatljivost mentorstva (Greenberg, 2005). Vilijams (2000) je, na osnovu svojih istraživanja, naglasio da mentorski program ne može uspeti bez pune podrške organizacije i posebno višeg menadžmenta, a primetio je i da se mentorstvo pokazalo kao koristan predlog za pojedince i organizacije. Pitanje koje rukovodioci u policiji moraju da postave nije više zašto koristiti mentorstvo, već zašto ga ne koristiti (str. 21).

8. **Radni dosije: teorija i praksa**

Istraživanja potvrđuju da je radni dosije element koji u karijeri zaposlenog dovodi do efekta koji poboljšava ravnotežu između posla, učinka i karijere. Može se, takođe, primetiti da su koristi od radnog dosijea na lestvici karijernog rada i napredovanja zaposlenih veoma visoke (Paje, Escobar, Ruaya, & Sulit, 2020). On, prema autorima, „eliminiše prisustvo samoizbora od strane osobe koja ocenjuje rad službenika i povećava verovatnoću da će time biti značajno povećano zadovoljstvo službenika, te da će biti manje pritužbi prilikom ocenjivanja njihovog rada" (Mohr & Cindy, 2008, str. 276).

Pojedine studije pokazuju da se usled nepostojanja radnog dosijea rejtingom učinka često manipuliše (Poon, 2004). Naime, zaposleni percipiraju da se učinak često ocenjuje na osnovu pristrasnosti ocenjivača i namere da se pojedini podređeni kazne, usled nepostojanja dokumenta kojim bi se drugačije potvrdilo. To dalje utiče na smanjenje zadovoljstva poslom, manje interesovanje za karijerno napredovanje, a dešava se i da službenici žele da napuste posao; dakle, manipulacija ocenama za posledicu ima demotivaciju zaposlenih (Poon, 2004).

Ocena rada predstavlja centralnu funkciju ljudskih resursa i upravljanja, a radni dosije je njen pouzdani nediskriminatorni temelj (Dulebohn & Gerald, 1999, str. 297). Sâmo ocenjivanje u potpunosti treba da se oslanja na pouzdan pokazatelj rada službenika, na radni dosije, jer je radni dosije u stanju da pruži tačne podatke o učinku zaposlenih (Bretz, Milkovich, & Read, 1992; Lefkowitz, 2000). Od posebnog značaja je i rezultat istraživanja prema kojem tačnost ocene određuje i posebna motivacija ocenjivača (Cleveland & Kevin, 1992). Postoje, naime, dokazi

da ocenjivači, iz različitih razloga, namerno ocenom iskrivljuju sliku učinka podređenih (Longenecker, Sims, & Gioia, 1987). Prema Marfiju i Klivlendu (1992), često se ciljevi ocenjivača kojima teže mogu podeliti na: 1) ciljeve zadatka i učinka (npr. motivisanje ili održavanje učinka); 2) interpersonalne ciljeve (npr. održavanje pozitivne klime u radnoj grupi); 3) strateške ciljeve (npr. unapređenje nečijeg položaja u organizaciji) i 4) internalizovane ciljeve (npr. održavanje nečijih vrednosti).

9. **Rezultati istraživanja**

Istraživanje na prostoru Republike Srbije imalo je za cilj da se ispita nekoliko segmenata u vezi sa mentorstvom i radnim dosijeom, a sprovedeno je putem ankete među aktivnim i penzionisanim policijskim službenicima. Uzorak je formiran slučajnim odabirom nekoliko policijskih poslova i to iz domena javnog reda i mira, saobraćaja i istrage kriminala (N = 36) i penzionisanih službenika policije (N = 36). Rukovodioci nisu bili uključeni u istraživanje i analizu radi dobijanja verodostojnijih rezultata.

Anketa se sastojala iz šest delova: 1) postojanje mentorstva i radnog dosijea ili ne; 2) polje programa sadašnjeg stanja o praćenju karijere zaposlenih; 3) definisanje potreba za formalnim programom mentorstva; 4) potrebe za uključivanjem u mentorstvo; 5) kategorije mentorstva; 6) potrebe za uvođenjem radnog dosijea. Pitanja su koncipirana u formatima zatvorenog tipa (prinudni izbor), otvorenog tipa i dihotomnog. Anketa je uključivala pitanja o implementaciji mentorskog programa i radnog dosijea, na primer mišljenje ispitanika o postojanju mentorskog programa i radnog dosijea u njihovoj policijskoj jedinici pozitivno i/ili negativno. Od ispitanika je zatraženo da prijave svoj nivo zadovoljstva ili stepen slaganja/neslaganja sa uvođenjem formalnog programa mentorstva i radnog dosijea u policiju. Pošto se u istraživanju nastojalo da se dobije što više informacija, ispitanici su podsticani da iznesu svoje mišljenje ili da kroz otvoreni tip pitanja dodaju druge komentare koje smatraju odgovarajućim. Istraživanje je sprovedeno u tri talasa, između 2019. i 2022. godine, direktnim kontaktom sa ispitanicima. Zaključeno je da je anketa upotrebljiva.

10. **Analiza i diskusija**

Obe grupe ispitanika su bile iste veličine, po 36 učesnika u svakoj. Nakon analize uzorka, dobijeni su sledeći rezultati: 68 ispitanika ili 94,44% izjavilo je nikad nije imalo mentorski program za razvoj karijere, a svih 36 anketiranih učesnika koji su trenutno zaposleni u policiji su naveli da nisu u takvom programu. Penzionisani službenici policije, ukupno 32, izjavili su da nisu imali takav program tokom karijere, a njih 11%, odnosno četiri ispitanika iz statusa penzionera su izjavili da su imali, u nekom trenutku, osobu koja ih je vodila kroz karijeru, ali samo u prvoj godini zaposlenja. Interesanatan podatak za istraživanje je da su ovi službenici radili u policiji ranih sedamdesetih godina i da su pre ulaska u prvo zvanje bili „pristavi", a „vođa" je svake godine pisao karakteristiku i predavao je višem rukovodstvu, kako kažu, „starešini".

Polje sadašnjeg stanja o praćenju karijere zaposlenih policijskih službenika ocenjeno je kao nepouzdano za merenje učinka i za praćenje karijere u policiji od strane svih anketiranih učesnika koji su aktivni policijski službenici. Na otvorena i dihotomna pitanja u anketi, 34 ispitanika ili 94,4% od ukupnog broja anketiranih aktivnih policijskih službenika odgovorilo je da je sadašnji sistem merenja rezultata za napredak u karijeri: pristrasan i proizvoljan, da omogućuje samovolju, privrženost i favorizovanje, da su greške prisutne i vidljive, da se ne sprečavaju moguće radnje viših rukovodilaca u smeru namernosti i pogrešne upotrebe diskrecionog prava, te da se ne omogućava osećaj izvesnosti kapitalizacije postignutog rezultata u radu svakog službenika individualno.

U otvorenoj anketi, penzionisani službenici policije, svih 36, koliko ih je i učestvovalo u istraživanju, izjavilo je da je model ocenjivanja rada bio uravnotežen, mada veruju da je mogao biti i konkretnije određen, u smislu da svaki službenik ima svoj radni dosije, a ne samo personalni – u kadrovskoj službi. Radni dosije, veruju u svojim iskazima, trebalo bi da bude takav (mogao bi biti i sada uveden u funkciju) da ocenu može dati svako ko bi imao uvid u rezultate koji su pohranjeni u radni dosije, a istovremeno bi se tako mogla vršiti kontrola od strane nezavisnih kontrolora. Nadalje, ukazuju da nije u potpunosti postojala izvesnost da će biti pravilno ocenjena razlika u izvršenim poslovima tokom godine između službenika. Navode da se težilo tome, ali nije postojao jasan mehanizam kao što bi to mogao biti radni dosije.

Zaposleni policijski službenici, njih 36 ili 100% anketiranih iz ove grupe ispitanika, izjavili su da kada službenici žele da potraže pomoć u rešavanju problema nije im jasno kome da se obrate za to, jer su problemi koje bi trebalo da predstave, vrlo često mešavina službenog i privatnog stanja. Svi anketirani (N = 36) veruju da bi za zaposlene u policiji bilo korisno da se uvede formalni program mentorstva koji bi mogao da pomogne u rešavanju ovakvih stanja.

Penzionisani službenici policije, njih 36 ili 100% učesnika u istraživanju, misle da bi uvođenje programa mentorstva umnogome moglo da utiče na službenika kada želi da se obrati za pomoć u rešavanju problema koji ima, bilo da je profesionalne ili lične prirode, a koji može da utiče na njegov rad i karijeru.

Zaposleni službenici policije, svi anketirani (N = 36), prihvatili bi da budu uključeni u program mentorstva, ali im to niko nije ponudio. Svi anketirani penzionisani pripradnici policije misle da bi prihvatanje i uvođenje programa mentorstva bilo korisno ne samo učesnicima u ovom programu, već celokupnom sistemu policije. Stavovi u anketi, koje su izneli zaposleni službenici policije, njih 36, jednoglasni su da je potrebno uvođenje formalnog mentora. Formalni metor trebalo bi da bude glavni u iznošenju zapažanja, smatra 66% ispitanika, dok 34% ispitanika podržava uvođenje formalnog mentora, ali u kombinaciji sa neformalnim mentorstvom kao korektivnim činiocem u karijeri.

Ispitujući stanovišta o tome ko bi mogao da učestvuje u programu neformalnog mentorstva ili da bude mentor, 29 ispitanika (aktivnih službenika policije) ili 80,55% smatra da bi to mogli da budu penzionisani policijski službenici koji imaju naučne titule ili rade kao predavači na različitim nivoima obrazovanja, a dokazali su se u policijskoj profesiji. Treba istaći i stav ispitanika, prema kojem bi neformalni mentori trebalo da budu aktivni ili penzionisani policijski službenici koji uživaju ugled u policijskoj profesiji i među kolegama, dakle ne rukovodioci, jer, prema njihovom mišljenju, rukovođenje je jedno, a kompetentan policijski službenik je ono što osećaju bez mandatnog autoriteta, takav mentor utiče na profesiju autoritetom svog znanja.

Sve učesnici u istraživanju veruju da bi uvođenje radnog dosijea, nezavisno od personalnog, bio veliki napredak za karijere policijskih

službenika i kredibilitet policijske hijerarhije. Postojanje radnog dosijea i mentora bi, veruju ispitanici, omogućilo nepristrasnost u ocenjivanju rada, ali i uverenje policijskih službenika da ulaganje dodatnih napora u izvršavanje policijskih poslova može pozitivno da se odrazi na njihovu karijeru. Svi ispitanici podržavaju da se radni dosije uvede odmah u upotrebu u policiju, jer bi se time uveli sigurnost i izvesnost da će ocena biti zasnovana na činjenicama sadržanim u njemu. To bi bio najveći pomak u eliminaciji diskrecionog prava rukovodilaca prilikom ocenjivanja rada službenika.

Ispitanici – penzionisani službenici policije smatraju, na osnovu tri decenije rada u policiji, da je rad policijskog službenika, na neki način, svesno ili nesvesno (namerno ili nenamerno), bio ugrožen percepcijom starešine, tj. načinom kako ih je naredređeni gledao. Ovo mišljenje deli 100% učesnika u istraživanju. U skladu sa tim, radni dosije bi eliminisao nekad vidljivu neravnomernost prema poželjnosti i ličnom osećaju, a istovremeno bi učvrstio kredibilitet policije. Ne bi bilo ocena na osnovu sećanja, već na osnovu činjenica pohranjenih i uloženih u radni dosije, što bi među policijske službenike uvelo razumevanje, poverenje i prijateljstvo. Svi su saglasni u stavu da u policiju treba odmah uvesti radni dosije i mentorstvo.

11. **Zaključna razmatranja**

Sprovedeno istraživanje podržava ideju da je uvođenje formalnog mentorskog programa i radnog dosijea u policiju Srbije imperativ. Svi ispitanici, takođe, veruju da bi i formalni mentorski program i radni dosije doprineli kredibilitetu policijske profesije i policijskih službenika i etičnosti.

Rezultati istraživanja su pokazali da ispitanici očekuju da se u Republici Srbiji uvedu mentorstvo i radni dosije u policiju i to ne samo radi pomoći u rešavanju problema na koje službenik može naići, već radi postizanja pravičnosti u ocenjivanju prilikom praćenja razvoja karijere policijskog službenika.

Formalizovani program mentorstva sa mentorima koji su završili policijsku, ali su nastavili da grade naučnu karijeru mogao bi biti ključni elemenat za izgradnju samopouzdanja kod aktivnih policijskih službenika.

Naročito je značajno što ispitanici traže hitno uvođenje radnog dosijea i mentorstva, smatrajući da bi se na taj način izgradio pravedan sistem ocenjivanja. Uvođenje ovih sadržaja u policiju ne bi bio samo bio korektivni faktor, već prevashodno temelj za izvesnost karijere svih policijskih službenika o kojoj bi odlučivale samo činjenice u radnom dosijeu.

Održavanje nivoa ljudskih resursa (znanja i veština policijskih službenika) jedan je od najvećih izazova sa kojim se danas suočavaju policijske organizacije. Dugoročno gledano, potražnja za kvalifikovanim službenicima se menja s vremenom, porastom zahteva zajednice i razvojem kriminalnih aktivnosti, proširenjem odgovornosti za primenu zakona i smanjenjem ljudskih resursa. Neki se pitaju da li će se nastaviti dugoročna posvećenost sadašnjih službenika? Da bi pomogao u rešavanju ovih izazova i pružio pouke policiji, ovaj rad nudi konkretna rešenja, sumirajući mišljenja policijskih praktičara. Nalazi do kojih se došlo su pokazali da se treba fokusirati na uvođenje mentorstva i radnog dosijea što pre, jer će to pomoći etičkoj raspodeli atributa i kvaliteta osoblja i u napredovanju u karijeri policijskih službenika.

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Zdravko Skakavac[1]
Olivera Milutinović[2]
Dragan Manojlović[3]

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IMPLEMENTATION OF MENTORING AND PERFORMANCE RECORDS IN POLICE DEPARTMENTS: A NECESSITY?

Abstract: This paper explores mentoring and performance records as a basis for the career development of police officers in the Republic of Serbia. The issue of mentoring and performance records should be approached in the context of a career in the police force. Furthermore, mentoring and performance records cannot be reduced solely to the initial professional development undertaken during internships, as the development process is much deeper than that — it changes with the progress of the police officer in their career, i.e., it affects their entire professional development path of maturing and specializing until retirement. The necessity for career maturity under the guidance of a mentor and the content of the performance record is studied in the context of acquiring knowledge and skills of constant self-reformation that career maturity initiates and reinforces. While mentoring denotes a process, the performance record represents a reliable tool in a police officer's career through which police officers remain committed to their professional goal from the beginning of their internship. In particular, performance records and mentoring should be implemented from the very beginning of employment. Unlike performance records, mentoring does not always have to be initiated by the intern. This paper studies whether

[1] Union University Belgrade, Faculty of Law and Business Studies dr Lazar Vrkatić, Novi Sad, zskakavac@useens.net

[2] Union University Nikola Tesla, Faculty of Management, Sremski Karlovci, olivera.milutinovic@famns.edu.rs

[3] MTU University, Faculty of Law, Belgrade, sradovi2020@gmail.com

mentors and performance records initiate success at the beginning of a professional career, or are they more likely to advance the career of an officer who has already become familiar with the professional work of the police. Research confirms that mentoring leads through the process of professional maturation, and that both young and experienced police officers believe that it would help them move towards higher levels of career success, as well as that the performance record is a tool used for a balanced performance relating to police officers' career development. Additionally, the results show that there is a necessity for introducing mentoring and performance records as elements for the career development of police officers.

Keywords: *mentoring, performance records, the police, human resources, police officer, career.*

1. Introduction

Per relevant literature, the introduction is often the basis of a paper. Accordingly, the research problem is primarily presented. Police agencies around the world have introduced mentors with the task of taking precautions to ensure that new officers adhere to field training guidelines and training mandates, which impose rules on police work, and the performance record, as a reliable career assessment tool. In professional literature and modern police practice, the belief that completed education at any level (primary, secondary, or university) provides a basis for acquiring the business skills of that profession, as well as the ability to perform police work without specially structured guidance immediately upon employment, is a misconception and the foundation of unwanted career processes taking place the officer's future (Jihong, Quint, & Ni, 1999, p. 162).

Research conducted among police officers shows that after employment in a socially important field, the police officers' lifestyles change, which is a transition they are not immediately ready for, specific for the police profession, and would be easier to overcome with the help of a

mentor (Reese & Goldstein, 1986). Mentors were authorized and tasked with managing the results of newly employed officers' activity, along with participating in solving various problems during that activity, such as: learning police work, stress control, solving or helping to solve family problems, rating officers in legal, legitimate and ethical non-threatening activities related to work, career and discipline (Skolnick, 2011). The presence of the mentor aims to introduce and "guide" the officer towards complying with the established guidelines when it comes to the application of the so-called hard skills, such as: the application of means of coercion, use of firearms, defensive tactics or driving official vehicles, etc. (Brian, 2005). The mentor is needed because a considerable number of citizens have objections to the work of police officers, believing that they are not adequately trained for the job, or that they are not sufficiently familiar with the skills necessary for this profession (Creasey, Jarvis, & Berk, 1998, str. 119; Saracho, Spodek, 1998, str. 323).

The required training mandates in schools or courses minimally prepare police officers for the necessary knowledge related to the performance of their duties (Stotland, 1986, p. 521–525). This is the reason mentors have a responsibility to both continuously monitor the development of new scientific knowledge and skills in literature and professional practice, and to transfer their employees the knowledge and skills they consider necessary for the better execution of police work, by means of short daily seminars (Rendena, Nieuwenhuysb, Savelsberghac, & Oudejansa, 2015, p. 14). These skills can be called cognitive or "soft skills" and include effective communication and ethically based behavior, while on the other hand "hard skills" include the application of new methods and techniques in police work (Johnson, 2002, p. 91). Relevant literature deems soft skills to be the biggest unknowns, as they are the least measured skills, and can produce a false perception of police culture. Both newly employed police officers and officers with tenure should continuously have a mentor available in order to clearly understand the work and problems that may affect the effectiveness of their work.

Theory and professional practice note that training police officers with an emphasis on "hard" skills only is deemed as flawed or insufficient (Reese & Harvey, 1986). To improve the efficiency and success of younger employees, it is necessary to provide them with training on "soft"

skills through mentoring programs (Johnson, 2005, p. 26). Mentors who have knowledge and experience and who have successfully dealt with work-related issues could be a source of support and encouragement for younger employees and their work (Tyler & McKenzie, 2011, p.522). The research presented in this paper shows that mentors should share knowledge and professional experience with participants in the mentoring program. A structured or formal mentoring program could be a valuable resource that is overlooked by those who make decisions on police training of new and tenured police officers (Arter, 2006, p. 92). In addition, informally structured programs in which retired police officers would participate are the golden rule all over the world (Hill, Snell, & Sterns, 2015, p. 101). According to the testimonies obtained, the majority of police officers in the Republic of Serbia cannot identify with a person who had a significant influence on their professional development and career in the police. According to Darwin (2000), the mentor should be seen as an advisor, corrector, or educator assigned with the task of imparting knowledge, maintaining culture, supporting talents, and ensuring the professional career of the employee through the mentoring program (p. 197).

2. Concepts in Mentoring Theory

Teaching is a form of imparting knowledge to students. Even today, most governments and many organizations believe that continuous (i.e., lifelong) learning, which can be facilitated through mentoring, is necessary for all employees (O'Neil Patricia, 1986). According to Larson (2002), the term *mentor* comes from a Greek legend that describes how a friend of Odysseus occasionally cares for his son while he is away on distant travels. The mentor was like a guardian, someone Odysseus' son could always count on to give him wise advice and guide him through life (p. 12). Therefore, this legend is where the term mentor stems from, symbolizing a wise and reliable advisor or teacher (McKinsey, 2016, p.29).

A mentor is a coach, i.e., someone who helps the employee from the beginning of their career until retirement, someone who effectively deals with obstacles in the development of the employee and their career, someone who helps to solve problems that hinder the employ-

ee's assimilation into the work environment (Kogler & Hilton-Bahniuk, 1998, p. 6). According to Hunt and Michael (1983), mentoring relationships are a critical career resource for employees in organizations (p. 479). Pamuk (2008) believes that mentors are individuals with advanced experience and knowledge, who are dedicated to providing support and mobility in the career of those members (i.e., employees) involved in the mentoring program. 15). Research has shown that a mentor who is actively involved in the development of an employee is directly associated with positive results in their career (Dreher-George, 1990). Ragins and Katon (1999) claim that mentors are individuals who help employees by providing two types of support, the first being the development of career functions that enable advancement in the organization, and the second one being the development of psychosocial functions that contribute to the improvement of the employee's personality and professional development in the organization (p. 535).

During the first phase of the early career formation of a young adult, the mentor is engaged in the development of their professional identity and the formation of a vision for future plans (Levinson, Danziger, Levinson, & McKee, 1978). This process may include examining the competencies, effectiveness, or abilities of the young, newly employed individual, in order to learn whether those plans can be achieved (Nowell, White, Benzies, & Rosenau, 2017). Based on the knowledge built in the form of employee profiles, and future tasks in the career, the mentor seeks a relationship that would provide opportunities for solving these dilemmas (Noe, 1988).

In professional and scientific literature, it is considered that not only a beginner, but also a more experienced adult (a person who is already in a career development program under the baton of a mentor) in their middle age and/or in the middle of their career, can also be in doubt and require reappraisals and reconsiderations of achievements, as well as directions for future career endeavors (Levinson, Danziger, Levinson, & McKee, 1978). Due to the relationship a mentor has with a young person at the very beginning of their career, or an individual at an advanced stage of their professional development, entering a career development program developed and monitored by a mentor provides the person with the opportunity to redirect their energy to more creative and pro-

ductive work in the middle of their working life (Dane & Hendricks, 1991). Research on mentoring has been conducted in numerous public sectors, where it has been noted that many government agencies attribute the success of their employees to an innovative mentoring system (Fagan & Glenn, 1982). In particular, an emphasis is put on the importance of innovative mentors, who constantly improve in order to be able to provide better, innovative knowledge to employees (Correia Maria, 2020). Some police agencies turn to mentoring so as to identify the best students who are hard to find, hence mentors also have the characteristics of recruiters (Kupchik, Curran, Fisher, & Viano, 2020). Regardless of their purpose, mentors possess certain characteristics and qualities necessary for implementing mentoring programs (Carter, Sapp, & Stephens, 1989).

3. Qualities and Characteristics of a Mentor

Studies have shown that police departments around the world want mentors to be officers who are: middle-aged with work experience that has reached at least the middle of their professional career; have higher education; want to develop not only their professional, but also their scientific knowledge; have a passion for change; have management skills; are creative and innovative; have the ability to lead others; can build relationships and possess general and specific business knowledge at the highest level (Cutler, 2003).

The primary concern of any mentoring program is that it is beneficial for the employee. If the mentoring relationship has difficulties due to the inability of its members to communicate effectively, there is a mismatch and the absence of appropriate matching values and personality traits, which is crucial for the mentor (Lee, Dougherty, & Turban, 2000). Whilst describing the essence of a true and effective mentor, Gulardo (2000) denotes that the mentor evokes the highest ideals of training, education, and success, combined with personal and professional development (p. 8). The same author found that a mentor should possess the following ten qualities at the time of mentoring the employees:

Challenger	Encourages the employee to set ambitious goals.
Designer	Helps the employee learn how to prepare for new challenges.
Strategist	Knows how to teach the art of strategic thinking to the employee.
Inspector	Is detail oriented and identifies areas of need for the employee.
Historian	Position reached via wisdom, experience, success and mistakes.
Friend	Gains trust of employee by being vulnerable and open.
Guide	Assists the employee in navigation through new experiences.
Partner	Celebrates employee success and in many ways, shares in it.
Recipient	Mentor gains as much as the employee in the relationship and is thankful.
Liberator	Encourages the employee to assume greater responsibility and independence.

Gualardo, 2000.

While elaborating on the proposed characteristics that a mentor should possess, Gualardo (2014) suggests that a mentor must convey different roles and responsibilities, because they should be the person who challenges the employee to set ambitious goals (p. 32). This approach develops entrepreneurship and interpersonal skills, but it also facilitates the employee in designing their future, which prepares them for future challenges (Gualardo, 2014). A mentor should be a role model, someone who knows how to convey the arts of strategic thinking, and has the power to identify details that are needed for the analysis of professional career development, which is especially important when it comes to the future development of the program user's goals. Fellowship between the mentor and the employed officer is necessary for building trust and eliminating the officer's fear of vulnerability, that can be transmitted either from mentor to officer or from officer to mentor, which is mutually harmful. An effective mentor should serve as a guide to the employee as they navigate through various experiences on the job. The

mentor should take pleasure in the employee's successes. Ideally, the partnership should last a lifetime. Finally, the mentor is the one who encourages the employee to take full responsibility and gain full independence through training (Gualardo, 2008).

4. Formal and Informal Mentoring Relationships With Employees in the Mentoring Program

According to Edmundson (1999), mentoring relationships or programs conducted by mentors can be categorized as formal and informal, with the main difference being the nature of their initiation (p. 16–18). While noting the difference between formal and informal relationships in mentoring, Douglas (1997) claims that the main difference between the two is that informal relationships develop spontaneously, whereas formal relationships develop with organizational assistance or intervention — usually in the form of assigning or matching of mentors and employees; another distinction is that formal relationships are usually of much shorter duration than informal ones (p. 26).

Some authors believe that the formal mentoring relationship has structured implementation and time limitations, since the program usually lasts from six months to a year for those at the beginning of their career, and consists of being closely monitored by supervisors or mentoring program coordinators (Ragins Belle & Cotton, 1999). Oyesoji and Adeyoju (2003) note that informal mentoring relationships often begin and develop as friendships, before the employee enters the mentoring program, when the future mentor and future participants in the program establish mutual identification and fulfillment of career needs, which is crucial for their joint success (p. 381). Additionally, research confirms that mentors choose employees who look like a younger version of themselves, and such a relationship gives mentors a sense of contribution to future generations (Eisenberg, 2005). On the contrary, officers mostly choose mentors whom they see as role models in their profession, where relationships develop based on perceived professional competence, interpersonal understanding, and freedom and comfort in expression (Ragins Belle & Cotton, 1999).

5. The Impact of Mentoring on Employee Success

Although the mentioned forms of mentoring have unique aspects that promote success, one must first consider what constitutes success in mentoring, i.e., the relationship between the mentor and the employee who is in the mentoring program. Van Eck and Sandy (2000) note that employee success has often been achieved through mentoring over the past two decades (p. 556). The same authors found oversights in the search for a mentor, through conversations with officers who are in mentoring programs. Namely, the traditional definition of mentoring relationships looks at the mentor as someone who is in the same organization as the employee, which means that the participants in the program are often not able to choose their future mentor from the list of mentors because some are not in the same organizational unit, which is an important disadvantage (p. 554). Contrarily, Sorcinelli, and Jung (2007) indicate another disadvantage, which is that mentoring research primarily focuses on objective measurements of success, such as employee income at the time of participating in the program (p. 59). Meanwhile, Van Eck and Sandy (2000) claim that career success is two-dimensional and that respondents emphasized other criteria for measuring the success of the program, e.g., subjective criteria, or personal feelings of success that are as important to them, such as salary or promotional results (p. 556). Van Eck and Sandy (2000) conclude that mentoring has a positive effect on future achievements and personal satisfaction of program participants, as well as that the development of a mentoring program and the success of its employees depend on the chosen mentor.

6. Formal and Informal Mentoring: Advantages and Disadvantages

The primary advantage of formal mentoring relationships is the ability to directly monitor the progress of participants in the mentoring program. The coordinators in charge of the mentoring program and its results create and distribute questionnaires adapted to the personality profiles of the employees participating in the program, thereby reducing errors in matching different personalities, whilst setting guidelines regarding participation, so that the mentoring pairs become familiar

with their obligations, program requirements and goals (Gaskill, 1993). Murray (1991) considers formal mentoring important because of the contract that is signed due to program obligations, and not just for the purpose of participation (p. 256).

Mentoring program	Advantages	Disadvantages
Formal relationships	- the organization can track progress in the program - there are formal and established guidelines - signed contract by all parties - established time frame - specially structured system	- can inhibit the full potential - it is less likely to be based on mutual trust - creates a forced interaction - hinders progress - at an individual pace - the natural element is missing
Informal relationships	- mutual understanding - the mentor is motivated, and the officer is eager to learn - the mentor is sincerely devoted to the best interest of the employee - existence of mentor's personal satisfaction - the mentor helps the employee avoid career stagnation	- monitoring is unlikely - the mentor can encourage the officer in the program to pursue goals in other areas - possible loss of resources invested in the career development of officials - developing affinity towards other jobs

Douglas & Schoorman, 1988.

Certain authors advocate for the standpoint that formal mentoring relationships have negative sides, because they can be seen as a forced interaction between the mentor and the participants in the mentoring program (Walker & Katz, 2002). Ragins and Cotton (1999) explain some of the disadvantages: "The mentor and protégé do not even meet until after the match has been made. Thus, in contrast to informal relationships, identification, role modeling, and interpersonal comfort do not play a role in the development of formal relationships. Formal mentoring relationships are also less likely to be founded on mutual perceptions of competency and respect." (p. 541). It is reasonable to expect that acceptance and confirmation of the mentoring function by the participants will be lower in formal, than in informal mentoring (Sprafka & April, 2008).

Relevant literature indicates that informal mentoring relationships contain elements of mutual understanding. Mentors view program participants as themselves at a younger age and relate to their own professional development (Chandler, Kram, & Yip, 2011). This is also a risk, i.e., a disadvantage, since the mentors are more professionally accomplished in the mentor–officer relationship, so the challenges of new ventures can fade and the mentor can experience a feeling of stagnation. Conversely, it is considered that the observed disadvantage can be overcome by the fact that the officers in the program, eager to learn, would motivate, i.e., activate the mentors. Furthermore, it is considered that officers in an informal mentoring program can instill new attitudes in mentors through their suggestions and activities, which leads to ''rejuvenation" as some authors note (Ragins & Cotton, 1999). Researchers also note that this type of motivation is necessary for both the mentor and the police officer in the mentoring program, in order for them to move to the next stage of life and professional career development (Tyler & McKenzie, 2011, p. 528).

The lack of an informal mentoring relationship can best be characterized by studying what is best for the participant in the mentoring program. Because the relationship occurs naturally, one can assume that the mentor is in a state of general comfort in regards to the success of the program participant. If, for example, a mentor learns that a participant in the mentoring program possesses a quality or a talent (as a resource)

that would be more useful in another organization or job, he would encourage the participant to pursue such goals. Although this may benefit the program participant in the long term, it would be contrary to the wishes of the current management, as it means a loss of funds invested in the employee (Ragins & Cotton, 1999, p. 543).

On the contrary, if the mentor has values or ethics that would be detrimental to the employee's career advancement, there would be no structural means to effectively address the problem. A mentor can actually be a barrier to success (Ragins Belle & Cotton, 1999, p. 545). According to Kram (1983), regardless of whether the outcome of the program is positive or negative, there are four main stages of a formal mentoring relationship: initiation, cultivation, separation, and redefinition, and each progression is prescribed by an internal or external legal rule (p. 612).

7. Scientific Foundation of Mentoring in the Police

More complete scientific research on the value of mentoring was documented by Green and Bauer (1995) based on their own research, presenting a study that seeks to answer where the true benefit of mentoring comes from. These authors claim that by entering a mentoring program, an individual brings personal talents, skills, and knowledge to the mentoring relationship, which helps the mentor because he gets credit for building the person's profile (p. 547). There are opposing points of view, such as the author Jacobi, who claims that the participant brings what they already have when they enter the mentoring program, such as the ability to participate in work, commitment, and organizational savvy and characteristics that would probably make that individual successful with or without a mentor (p. 524).

Scandura and Schriesheim (1994) introduced a concept called supervisory mentoring (p. 1593). An interesting study related to this concept was conducted by Paglis, Green and Bauer (2018), by way of studying the relationship between the mentor and the user, i.e., the mentor's services in the mentoring program during training. The study was designed to evaluate whether or not the mentoring functions add new value to the program user, after considering the talents and work attitudes

the person brings to the mentoring program. The results showed that the mentor significantly contributes to the person's progress and their new value, which is adopted as new during the course of the program, taking into account what the participant brought into the mentoring program (p. 209).

In many countries, mentoring in police departments has been present for decades. It is constantly developing and is applied not only to beginners, but is continuously present in the entire working (professional) career of an officer. Specific scientific literature related to mentoring in law enforcement in the Republic of Serbia is extremely limited. However, due to the nature of police work, which is important to the state and its society, research has shown that employees need the presence of mentors, guidance on mentoring, legal regulations, and mentoring programs at all levels, from the beginning to the end of their professional career.

The historical context shows that in the second half of the last century, the author Goldstein (1977) laid the foundations for the introduction of mentors into police officers' careers (p. 273). Specifically, while conducting research, he concluded that despite the fact that during an arrest, issuance of a traffic warrant, or any other situation that requires intervention, officers are obliged to react in an appropriate and legal manner, which was generally not enough, because they did not have modern communication and information skills relating to those fields. Rather, the officer was applying what they had learned many years ago during his education, which is not enough (p. 273). In the meantime, several studies were conducted. Whilst studying police officers who had tenure, Toch and Grant (1991) noted that these police officers had a tendency — set more than ten years ago when they were in school and starting police duty — to be rigid and uncompromising, thus they themselves suggested that mentoring could help guide them in lifelong professional learning and acquiring new knowledge and skills, which is the key to a successful career (p. 296). In addition to the above, many researchers believe that police chiefs are often asked to make decisions that are not fully understood by their subordinates, which causes concern among police officers — the role of mentors in such situations is to reduce stress and indicate which procedures should be applied (Gaines & Roger LeRoy, 2000).

Research results can be found in relevant literature, according to which newly employed police officers quickly realize that the manual they obey is only a guide with little power (Marenin, 2004, p. 111). In the field, police officers make decisions based on suspicion, which is an area where morals, values, and character become important (Toch, Douglas, 1991, p. 27). In support of the above findings, Heffernan and Strop (1985) indicate that this explains that a police officer acts not only in accordance with the law, but also as an agent of the law (p. 20). The same authors note that an officer at work is more than a police officer at all times, even when on duty (Heffernan & Strop, 1985, p. 21). They can be and carry in themselves a thing that characterizes a parent, a believer, and they can also be a "devil", or any other role at the time of performing police duties, which affects the implementation of the rules, and here the mentor has a significant role (Fagan & Glen, 1982). The mentor advises and influences so that the officer becomes a formed person, and not only a bearer of various roles in the performance of police work (Heffernan & Stroup, 1985, p. 29). Based on the above, Garrido, Jame and Carmen (2004) state that the belief that there is an ideal police officer is not equivalent to working experience, but is formed on the basis of impressions created by the public and the police itself (p. 257). The idea that ideal police officers have unrealistic beliefs about their attained skills, abilities, and knowledge has been found as more acceptable. The most precise notion is that in the later stages of their professional work, officers can achieve the necessary knowledge, skills, and abilities, but this can also be unattainable without the help of a mentor (Loader, 1997, p. 266).

Ahern and Lindsay (1972) explain that the first task of a police mentor is to break the newly employed officers' preconceptions about police work (p. 62). These authors further explain that young recruits should be mentored to forget the police officers they have seen in real life, the way they control traffic, make arrests, use firearms, as well as any other everyday duties that are less than exciting (Ahern & Lindsay, 1972, p. 69).

The mentor's role in guiding the officers who are in the mentoring program is important for numerous reasons. Specifically, the officer has the task of monitoring and supervising the progress of young officers, but they are also mindful of the fact that their absence from home often leads to fatigue and errors in work, which potentially have serious con-

sequences. An officer at the beginning of their career may fall into the trap of their own belief that some other social activities cannot be carried out while performing police work. In such situations, the key role of the mentor is to prevent the development of self-isolation in relation to the employee's social life (Valencia, 2009).

If these sources of "conflict" remain unresolved, they can also affect the instability of the officer's marriage, as their significant other suffers pressures due to their partner's profession. The work triggers feelings of being trapped by one's own family; the partner is left at home with the children, while the other partner participates in police activities (Eisenberg, 2005, p. 23).

Research has found that the mentor should actively participate in solving problems that arise in connection with police work, which are reflected in family life and lead to divorce during the first few years of a police officer's employment, where an average of six out of ten marriages end in divorce (Glick, 1984). Studies have shown that this failure rate is directly related to the high risk of a person's lifestyle as a result of police work (Bibbins, 1986, p. 425). As noted by Perry (1999), the police profession has the highest divorce rate in relation to any other occupation, which certainly poses a challenge for future police recruits and their families, which is where the mentor's role comes into place (p. 32).

A mentoring program established by the Lansing Police Department (Michigan, USA) at the end of the 20th century was recognized by the International Association of Chiefs of Police as a model for implementation in other countries. The program was designed to not only develop officers' careers, but to retain newly hired personnel as well (Williams, 2000, p. 23). This model enabled 86% of police officers to pass the first level of training, compared to 82% of police officers without a mentoring program. The program enabled 88% of officers to continue working in the police force after three years in the field, which is six percent more than before the implementation of the program (Shepard, Worden, 2003). The percentage especially increased after the seventh year, as before program implementation 76% of newly hired police officers remained at work, while after the implementation the percentage has gone up to 87% (Getty, Worrall, & Morris, 2016). Whether the recruits lack skills or confidence, some simply could not withstand the

probationary period on their own without a mentor. Whether the recruits quit on their own, or their tenure is terminated by the act of a police agency, the agency is left without the recruits they already spent time and money recruiting and training (Williams, 2000, p. 20). Studying the participation of women and persons from minority communities in the police, Seklecki, Paniš and Jeni (2007) note that women[4] and minorities are particularly inclined to leave the police agency, and this represents a significant problem for the police profession (p. 23). According to Inzer and Crawford (2005), mentoring programs had a significant impact on solving this problem, because they made it easier for officers to assimilate into the police, acquire and improve their police skills, identify their career goals, and successfully complete their probationary period, all of which made the police officers' feedback very positive (p. 39). The authors further point out that when mentors are there to help, employed police officers are positively motivated — their police agency advances, and the citizens get to invoke their personal and property rights (Inzer & Crawford, 2005, p. 42).

When it comes to police organizations, certain authors note that the first step in implementing a mentoring program is to identify goals

[4] The first woman employed by the American police in 1845 was a supervisor in a women's prison. Tomić J. Marta (2016): *Women In The Police Profession: Vertical Mobility and Integration — a Case Study of the Belgrade Police Department*. mup.rs. PhD dissertation, Faculty of Philosophy, Belgrade, 63. According to other studies, the first uniformed policewoman started working in 1883 in the Metropolitan Police. Garcia Vanessa (2003): *"Difference" in the police department: Women, policing, and "doing gender."* Journal of Contemporary Criminal Justice, 19.3, 330–344. The Metropolitan Police employed their first two policewomen in 1883, and by the 1890s there was evidence of them in the Manchester Police. They were very often the wives of police officers. The first female police officer in the United States was Marie Owens, who joined the Chicago Police Department in 1891. In Germany, women were employed in the police force for the first time since 1903, when Henriette Arendt was employed as a policewoman. From 1908, the first three women employed by the Swedish police department were Agda Hallin, Maria Anderson, and Erika Strom. The first woman to be appointed as a police officer with full powers of arrest was Edith Smith (1876–1923), who was sworn into the Grantham Bureau police in August 1915. Philippa Levine (1994): *Walking the Streets in a Way No Decent Woman Should: Women Police in World War I*. The Journal of Modern History, 66.1, 34–78.

(Karcher, Kuperminz, Portwood, Sipe, & Taylo, 2006, p. 716). Some police organizations primarily formed a group of employed officers who had higher levels of education, but also took mentoring tests and courses to develop their mentoring skills. These trained mentors prepared reports based on a survey conducted among police officers who had three or more years of service, which included questions related to potential obstacles to the implementation, availability, and acceptability of mentoring (Greenberg, 2005). Based on his research, Williams (2000) emphasized that a mentoring program cannot succeed without the full support of the organization, especially senior management, and noted that mentoring has proven to be a useful proposition for individuals and organizations. At this point, police chiefs should not wonder why they should implement mentoring programs, but rather why not to do so. (p. 21).

8. **Performance Records: Theory and Practice**

Research confirms that a performance record is an element in an employee's career that leads to an effect that improves the balance between work, performance and career. It can also be noted that there are many benefits of performance records in regards to the career ladder and employee advancement (Paje, Escobar, Ruaya, & Sulit, 2020). According to Mohr and Zoghi (2008) performance records remove the presence of self-selection by the person who rates the work of employees, and increase the probability of significant employee satisfaction, as well as lower the number of complaints in relation to the assessment (Mohr & Cindy, 2008, p. 276).

Some studies show that performance ratings are often manipulated due to the absence of a performance record (Poon, 2004). Namely, employees perceive that performance is often rated based on the assessor's bias and the intention to punish certain subordinates, due to the absence of a document that would confirm otherwise. This further affects the decrease in job satisfaction, less interest in career advancement, and even resignations; therefore, the manipulation of ratings results in the demotivation of employees (Poon, 2004).

Performance assessment is a central function of human resources and management, and the performance record is its reliable, non-discriminatory foundation (Dulebohn & Gerald, 1999, p. 297). Ratings should rely entirely on a reliable indicator of employee performance, the performance record, because it is able to provide accurate data on employee performance (Bretz, Milkovich, & Read, 1992; Lefkowitz, 2000). The research result according to which the accuracy of the rating is determined by the special motivation of the rater is particularly important (Cleveland & Kevin, 1992). There is evidence that suggests that, for various reasons, raters intentionally distort the picture of their subordinates' performance through ratings (Longenecker, Sims, & Gioia, 1987). According to Murphy and Cleveland (1992), the goals that the raters strive for can often be divided into: 1) task and performance goals (e.g., motivating or maintaining performance); 2) interpersonal goals (e.g., maintaining a positive climate in the work group); 3) strategic goals (e.g., improving one's position in the organization), and 4) internalized goals (e.g., maintaining one's values).

9. **Research Results**

The research in the territory of the Republic of Serbia aimed to examine several segments related to mentoring and the performance record, and was conducted through a survey among active and retired police officers. The sample was formed by randomly selecting several police jobs from the domain of public order and peace, traffic, and crime investigation (N = 36), as well as retired police officers (N = 36). Police chiefs were not involved in research and analysis in order to obtain credible results.

The survey consisted of six parts: 1) the existence of mentoring programs and performance records; 2) the current state of career monitoring programs; 3) the need for a formal mentoring program; 4) the need for involvement in mentoring; 5) categories of mentoring; 6) needs for introducing performance records. The questions were designed in close-ended (forced choice), open-ended, and dichotomous formats. The survey included questions about the implementation of the mentoring program and the performance record, e.g., whether the respondents

see the existence of the mentoring program and the performance record in their own unit as positive and/or negative. Respondents were asked to report their level of satisfaction or degree of agreement/disagreement with the implementation of a formal mentoring program and performance records in police departments. Since the research sought to obtain as much information as possible, the respondents were encouraged to express their opinions or to add comments they considered appropriate through open-ended questions. The research was conducted in three waves, between 2019 and 2022 via direct contact with the respondents. It was concluded that the survey was usable.

10. **Analysis and Discussion**

Both groups of respondents were the same size, with 36 participants in each group. After analyzing the sample, the following results were obtained: 68 respondents or 94.44% stated that they had never had a mentoring career development program, and all 36 surveyed participants who are currently employed in the police indicated that they were not in such a program. Retired police officers, a total of 32, stated that they did not have such a program during their career, and 11% of them, i.e., four respondents from the retired status, stated that they had, at some point, a person who guided them through their career, but only in the first year of their employment. An interesting discovery is that these officers worked in the police in the early 1970s, and that before entering the first rank they were "deputies". Their "leader" wrote about their characteristics every year and submitted it to senior management, i.e., "the elder".

The current state of monitoring tenured police officers' careers was rated as unreliable for performance measurement, as well as for career monitoring in police departments by all surveyed participants who are active police officers. When it comes to open and dichotomous questions in the survey, 34 respondents, or 94.4% of the total number of active police officers surveyed, answered that the current system for measuring career development results is: biased and random, that it allows arbitrariness, partiality, and favoritism, that mistakes are present and visible, that potential actions of senior managers in regards to intentional and wrongful use of discretion are not prevented, as well as that the

feeling of certain capitalization in relation to the work of each employee is not provided.

In the open survey section, all 36 of the retired police officers surveyed stated that the rating model was balanced, although they believe that it could have been more specifically defined, in a sense that each officer has their own performance record, and not just a personnel file in the human resources department. The participants stated that the performance record should be formed in such a way (that it could be implemented momentarily), that anyone who has insight into the results stored in the performance record can provide a rating, and that it can be controlled by independent controllers at the same time. Furthermore, they indicate that there was no certainty that there would be a correct rating of the difference in the work performed by officers during the year. They state that it was an aspiration, but that there was no clear mechanism towards it, e.g., a performance record.

36 or 100% of tenured police officers surveyed stated that when officers want to seek help in solving a problem, they are not clear on who to reach out to, because the problems bothering them are very often a mixture of official and private nature. All respondents (N = 36) believe that it would be useful for employees to introduce a formal mentoring program that could help solve such situations.

36 or 100% of retired police officers surveyed think that the introduction of a mentoring program could greatly influence an officer if they want to seek help in solving a problem of a professional or personal nature, which can affect their work and career.

All tenured respondents (N = 36) would accept to be included in a mentoring program, but have never been offered a chance to do so. All retired officers surveyed think that the acceptance and implementation of a mentoring program would be beneficial not only to the participants in this program, but to the entire police system. All 36 tenured respondents are unanimous in that the introduction of a formal mentor is necessary. According to 66% of the respondents, a formal mentor should be the main one in presenting observations, while 34% of the respondents support the introduction of a formal mentor, but in combination with informal mentoring as a corrective factor in one's career.

29 or 80.55% of respondents who are active police officers believe that retired police officers who have scientific titles or work as lecturers at various levels of education, and have proven themselves in the police profession, could participate in an informal mentoring program or be a mentor. It should also be noted that the respondents believe informal mentors should be active or retired police officers who have gained respect in the police profession and among their colleagues, and not managers, because a competent police officer represents someone who functions without mandated authority, and such a mentor influences the profession with the authority of his knowledge.

All participants surveyed believe that the introduction of a performance record, independent of the personal file, would be a great improvement for the careers of police officers and the credibility of the police hierarchy. The respondents believe that the existence of a performance record and a mentor would enable impartiality in work rating, as well as that it would ensure police officers that investing additional efforts in performing police work can have a positive impact on their career. All respondents agree that performance records should be immediately introduced into police departments, because this would provide security and certainty that the assessment will be based on the facts contained in the record. This would be the biggest progress in eliminating the discretionary right of managers in the course of rating the work of employees.

Based on a three-decade-long tenure, retired respondents believe that the work of a police officer is, consciously or unconsciously (intentionally or unintentionally), threatened by the perception of their superior, i.e., the way in which the superior viewed them. This opinion is shared by 100% of the respondents. Accordingly, performance records would eliminate the once visible inequality in terms of desirability and personal feelings, while at the same time strengthening the credibility of the police. There would be no ratings based on memory, but based on facts stored and entered into the performance record, which would further introduce understanding, trust, and friendship among police officers. All survey participants agree that the police should immediately introduce performance records and mentoring.

11. **Conclusion**

The conducted study supports the idea that the introduction of a formal mentoring program and a performance record is imperative in the Serbian police. Moreover, all respondents consider that a formal mentoring program and performance records would contribute to the credibility of the police profession, police officers, and ethics.

Research results showed that respondents expect mentoring and performance records to be implemented in the police in the Republic of Serbia, not only to help solve problems that an officer may encounter, but also to achieve fairness in the context of monitoring the career development of a police officer.

A formalized mentoring program with mentors who have completed police training, but continued to build a scientific career could be a key element in building self-confidence among active police officers.

Respondents must request the urgent implementation of performance records and mentoring, with the belief that this is a way to build a fair rating system. This implementation would not only represent a corrective factor, but primarily, the foundation for the certainty of police officers' careers, which would be decided upon only by the facts in their performance record.

Maintaining the level of human resources (knowledge and skills of police officers) is one of the biggest challenges police organizations currently face. In the long term, the demand for qualified officers changes with time, with increasing community demands and developing criminal activities, expanding law enforcement responsibilities, and diminishing human resources. Some question whether the long-term commitment of current officers will persevere. To help address these challenges and provide useful lessons for the police, this paper offers concrete solutions, summarizing the ideas of police practitioners. The findings have shown that there is a need to focus on the implementation of mentoring and performance records as soon as possible, considering that it will help the ethical distribution of attributes, the quality of personnel, and the police officers' career development.

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Prikazi
Reviews

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Dragan Stojić[1] UDC368“20“(049.32)

PRIKAZ KNJIGE

INSURANCE AND REINSURANCE FOR THE 21ST CENTURY: FROM DISRUPTION TO EVOLUTION

Teoriju osiguranja danas obrađuje veliki broj udžbenika sa tematikom osiguranja. Nedostaju, međutim, monografije koje se bave specifičnim oblastima i problemima koji su od velikog značaja kako za teoriju tako i praksu osiguranja. Monografija „Osiguranje i reosiguranje za 21. vek: od poremećaja do evolucije“ autora prof. Vladimira Njegomira, objavljena u izdanju Fakulteta za turizam i ugostiteljstvo iz Ohrida, Univerziteta „Sv. Kliment Ohridski“ iz Bitolja, pisana je na engleskom jeziku i jedna je od uspešnijih koje povezuju teoriju i praksu osiguranja. Ona je nastala kao rezultat nastojanja i težnje aturoa da se popuni identifikovana nepokrivenost literaturom u pogledu izazova koji opredeljuće utiču na promene u osiguranju i reosiguranju. Monografija obezbeđuje teorijsku podlogu i daje praktični uvid u faktore koji utiču na poremećaje u obavljanju delatnosti osiguranja kao i na prilagođavanja delatnosti osiguranja ovim izazovima. Ona ukazuje na sve relevantne trendove koji karakterišu delatnost osiguranja i reosiguranja i koji će odrediti njenu budućnost u čitavom 21. veku. Ova knjiga je namenjena prvenstveno profesionalcima u oblasti osiguranja i reosiguranja, ali i preduzetnicima, privrednicima, studentima, kao i svima onima koji žele da spoznaju trendove koji će opredeljivati razvoj osiguranja i reosiguranja u 21. veku.

[1] Vanredni profesor, Ekonomski fakultet u Subotici, Univerzitet u Novom Sadu, email: dragan.stojic@ef.uns.ac.rs

Knjiga predstavlja skladno komponovanu celinu iz 18 poglavlja pisanih sa uobičajenim proredom i fontom. Takođe, knjiga sadrži predgovor, sadržaj, napomene, literaturu i kratke informacije o autoru. Autor je materiju obradio na 457 stranica A4 formata, zajedno sa korišćenom literaturom od 440 dela.

U prva tri poglavlja autor se bavi izazovima koje katastrofalni događaji imaju na osiguranje i reosiguranje, a sa posebnim naglaskom na događaje uzrokovane klimatskim promenama, kao i uticaj pandemije. Autor uvodi pojam katastrofalnih šteta, determinante katastrofalnih rizika, određenje uticaja katastrofalnih događaja, rizike koji uzrokuju nastanak katastrofalnih događaja, modeliranje i upravljanje katastrofalnim događajima, rizicima i štetama kao i pretpostavke mogućih budućih katastrofa.

Četvrto poglavlje se odnosi na analizu integracionih procesa u osiguranju i reosiguranju. Ovo poglavlje *čitaocu osvetljava pojmove* globalizacije, stvaranje globalnog osiguranika i globalnog rizika, konsolidaciju i konvergenciju osiguranja i drugih finansijskih usluga.

Peto poglavlje odnosi se na inkluzivnost osiguranja. U okviru ovog poglavlja autor razmatra određenje i značaj inkluzivnosti u osiguranju i analiziraju inovativne oblike inkluzivnosti osiguranja – mikroosiguranje i takaful i retakaful.

U poglavljima šest-osam autor obrađuje uticaj demografskih promena, digitalizacije i društvene odgovornosti na osiguranje i reosiguranje.

Deveto, deseto i jedanaesto poglavlje obrađuju metode upravljanja i strategije u osiguranju, sa naglaskom na korporativno preduzetništvo i permanentnu edukaciju.

Dvanaesto poglavlje posvećeno je trendovima upravljanja rizicima i osiguranju poljoprivrede. U okviru ovog poglavlja autor razmatra značaj poljoprivredne proizvodnje, rizike kojima je ugrožena poljoprivredna proizvodnja i metode upravljanja proizvodnim rizicima poljoprivredne proizvodnje, specifičnosti osiguranja poljoprivrede i vrste osiguranja poljoprivrede, tradicionalne i alternativne.

U *trinaestom poglavlju* obrađuje se energetika i osiguranje. Autor u okviru ovog poglavlja razmatra energetske izvore i vrste osiguranja energetike.

Četrnaestom, petnaesto i šesnaesto poglavlje obrađuju investicione aktivnosti osiguravača kroz strukturu finansijskog sistema i poziciju osiguravajućih društava, regulaciju institucionalnog investiranja osiguravača i Solvency II, značaj institucionalnog investiranja, pitanja optimizacije portfelja reosiguranja osiguravača za ekonomski rast, kao i problematiku konkurentnosti u osiguranju i reosiguranju.

U *sedamnaestom poglavlju* autor razmatra ulogu države na tržištu osiguranja.

U poslednjem, *osamnaestom poglavlju* autor razmatra rizike koji utiču na osiguranje i reosiguranje u 21. veku, i to političke rizike, rizik terorizma, ekonomske rizike, tehnološke rizike, rizike prekida kontinuiteta poslovanja, rizike prekida lanaca snabdevanja, rizike profesionalne odgovornsoti, rizik odgovornosti za proizvode, kao i rizik odgovornosti za okruženje.

Pozitivnu ocenu monografija je dobila od tri ugledna recenzenta, doajena u oblasti osiguranja: prof. emeritus dr Borisa Marovića, Akademika Univ. Prof. Dr.phil. Dr.habil. Wolfganga Rohrbacha i prof. dr Zdravka Petrovića. Recenzenti su istakli da je autor analizirao, ukazao i opisao ključne izazove koji karakterišu savremenu delatnost osiguranja i reosiguranja i koji oblikuju evoluciju poslovanja osiguravača i reosiguravača. Recenzenti su istakli međunarodni karakter tematike monografije.

Monografija predstavlja izvorni autorski doprinos, materija je izložena logički, jednostavnim ali stručnim jezikom. Teorijska utemeljenost i praktična primenjivost izloženih problema, u kombinaciji sa dugogodišnjim uspešnim profesionalnim iskustvom i akademskim istraživanjima autora, garantuju teorijsku i praktičnu vrednost ove monografije.

Zaista sam uživao čitajući knjigu i definitivno je mogu preporučiti svima zainteresovanim za osiguranje i reosiguranje. Knjiga pruža sveobuhvatan prikaz svih ključnih izazova za delatnost osiguranja i reosiguranja. Složenost delatnosti osiguranja i reosiguranja će se verovatno dalje povećavati, što od teoretičara i praktičara vezanih za ovu delatnost zahteva širu perspektivu. Ova knjiga pruža upravo to i stoga nudi osiguravačima i reosiguravačima razumevanje izazova i načina prilagođavanja što omogućava da ostanu uspešni u svetu koji je sve izazovniji.

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Dragan Stojić[1]

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INSURANCE AND REINSURANCE FOR THE 21ST CENTURY: FROM DISRUPTION TO EVOLUTION

Book Review

Insurance theory is a subject of many textbooks and coursebooks that are available today. However, the monographs that deal with specific areas and issues related to the theory and practice of insurance have been few. The monograph entitled *Insurance and Reinsurance for the 21st Century: From Disruption to Evolution*, authored by Professor Vladimir Njegomir and published by the Faculty of Tourism and Hospitality Ohrid, University of "St. Kliment Ohridski" in Bitola, effectively links the insurance theory and practice. Written in English, the book is the result of the author's efforts to fill the gap in the existing body of literature related to the challenges that decisively affect insurance and reinsurance changes. The monograph provides a theoretical basis and provides practical insight into the factors that influence disruptions in the performance of insurance activities, as well as the adaptation of insurance activities to these challenges. It discusses all the important trends in the insurance and reinsurance industry that will determine its future in the 21st century. This book is intended primarily for professionals in the field of insurance and reinsurance, but also for entrepreneurs, business people, students, and for all those who want to learn more about the trends that will determine the development of insurance and reinsurance in the 21st century.

[1] Associate Professor, Faculty of Economics Subotica, University of Novi Sad, email: dragan.stojic@ef.uns.ac.rs

The book consists of 18 chapters written with the usual spacing and font and contains a preface, table of contents, notes, bibliography and a brief note about the author. The book is 457 A4 pages long, including a list of 440 bibliography items.

In the first three chapters, the author discusses the challenges that catastrophic events have on insurance and reinsurance, with special emphasis on the events caused by climate change, as well as the impact of the COVID-19 pandemic. The author introduces the concept of catastrophic damages, catastrophic risks determinants, determining the impact of catastrophic events, risks that cause catastrophic events, modeling and management of catastrophic events, risks and damages, as well as the implications for possible future disasters.

Chapter 4 deals with the analysis of integration processes in insurance and reinsurance. This chapter explains the concepts of globalization, the creation of a global insured and global risk, consolidation and convergence of insurance and other financial services.

Chapter 5 deals with the inclusivity of insurance. In this chapter, the author discusses the definition and importance of inclusive insurance and analyzes the innovative forms of inclusive insurance – microinsurance and takaful/retakaful.

In chapters 6 to 8, the author deals with the impact of demographic changes, digitalization and social responsibility on insurance and reinsurance.

Chapters 9, 10 and 11 deal with management methods and strategies in insurance, with an emphasis on corporate entrepreneurship and permanent education.

Chapter 12 is dedicated to trends in risk management and agricultural insurance. In this chapter, the author discusses the importance of agricultural production, risks that threaten agricultural production and methods of managing those risks, properties and types of agricultural insurance, both traditional and alternative.

Chapter 13 deals with energy and insurance. In this chapter, the author discusses energy sources and types of energy insurance.

Chapters 14, 15 and 16 deal with the investment activities of insurers from several aspects: financial system structure, insurance companies position, regulation of institutional investment by insurers and *Solvency II*, importance of institutional investment, issues of optimizing the insurer's reinsurance portfolio for economic growth, as well as the issue of competitiveness in insurance and reinsurance.

In Chapter 17, the author discusses the role of the state in the insurance market.

In the last chapter, the author discusses the risks that affect insurance and reinsurance in the 21st century, such as: political climate, terrorism, economy, technology, business continuity, supply chain interruption, professional liability, product liability, and environmental liability.

The book received favourable reviews from three distinguished experts in the field of insurance: Professor Emeritus Boris Marović, Academician Wolfgang Rohrbach, PhD and Professor Zdravko Petrović. The reviewers agree that the author analyzed and described the key challenges for modern insurance and reinsurance that shape the evolution in the industry. The reviewers also emphasized that the book deals with a globally relevant topic.

This book is the result of original research, which gives it both academic and practical value. The issues presented are discussed within the theoretical framework and then practical solutions are offered. The book is written in a straightforward but adequately technical language, due to the author's long experience in both research and practice.

I truly enjoyed reading the book and can therefore recommend it to anyone interested in insurance and reinsurance. The book provides a comprehensive overview of all key challenges for the insurance and reinsurance industry. The complexity of the insurance and reinsurance business is likely to continue to increase, which requires a broader perspective from theorists and practitioners related to this business. This book provides just that and, therefore, offers insurers and reinsurers an understanding of the challenges and how to adapt, enabling them to remain successful in an increasingly challenging world.

POZIV I UPUTSTVO AUTORIMA

Pozivamo sve zainteresovane autore da pošalju radove iz oblasti društvenih istraživanja ukoliko isti ranije nisu objavljivani u drugim časopisima. Rok za prijem kompletnih radova za prvi broj je **01. april** a za drugi broj je **01. oktobar**.

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Posle navođenja literature, pišu se **naslov rada, rezime i ključne reči** na engleskom jeziku ukoliko je rad na srpskom ili srpskom jeziku ukoliko je rad na engleskom. Naslov rada piše se velikim slovom, podebljano, fontom Times New Roman 14 pt a rezime i ključne reči pišu se fontom Times New Roman 10 pt.

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Za navođenje izvora koji nisu navedeni u ovom dokumentu molimo autore da konsultuju zvaničnu stranicu Američke psihološke asocijacije: https://apastyle.apa.org.

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	U tekstu	U spisku literature
Knjiga		
Knjiga s jednim autorom	Prema Dimitrijeviću (1999, str. 64), … Kako navodi Dimitrijević (1999), „pomoću testova pokušava se utvrditi koliko su učenici savladali izvesno nastavno gradivo (testovi dostignuća). Cilj testiranja je, dakle, konačni rezultat procesa učenja i predavanja. U određenim prilikama to je i dovoljno" (str. 64).	Dimitrijević, N. (1999). *Testiranje u nastavi stranih jezika*. Zavod za udžbenike i nastavna sredstva.
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: Kako navode Rokai, Đere, Pal i Kasaš (2002), … KOD SVAKOG SLEDEĆEG NAVOĐENJA IZVORA: Kako navode Rokai i dr. (2002), …	Rokai, P., Đere, Z., Pal, T., & Kasaš, A. (2002). *Istorija Mađara*. Clio.

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Book		
Book with one author	As mentioned by Brown (2010, p. 64), … When considering the possibility for foreign language learners to acquire native-like pronunciation, Brown (2010), says: "This conclusion lends support for a neurologically based critical period, but principally for the acquisition of an authentic (nativelike) accent, and not very strongly for the acquisition of communicative fluency and other "higher-order" processes" (p. 64).	Brown, D. (2006). *Principles of language learning and teaching* (5th edition). Pearson Education.

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Book with three and more authors	UPON THE FIRST MENTION: As suggested by Tsagari, Vogt, Froehlich, Csépes, Fekete, Green, Hamp-Kyons, Sifakis, and Kordia (2018), … UPON SUBSEQUENT MENTIONS: 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.
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Book with corporate authorship	As claimed by UNICEF (2007), …	UNICEF. (2007). *Promoting the rights of children with disabilities*. UNICEF Innocenti Research Centre.

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Magazine	As Browne (2021) warns, … 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), … 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
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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
Dissertation/Thesis		
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Presentation		
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Prof. dr Željka Bojanić, Faculty of Law and Business Studies dr Lazar Vrkatić, Union University, Novi Sad, Serbia.

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