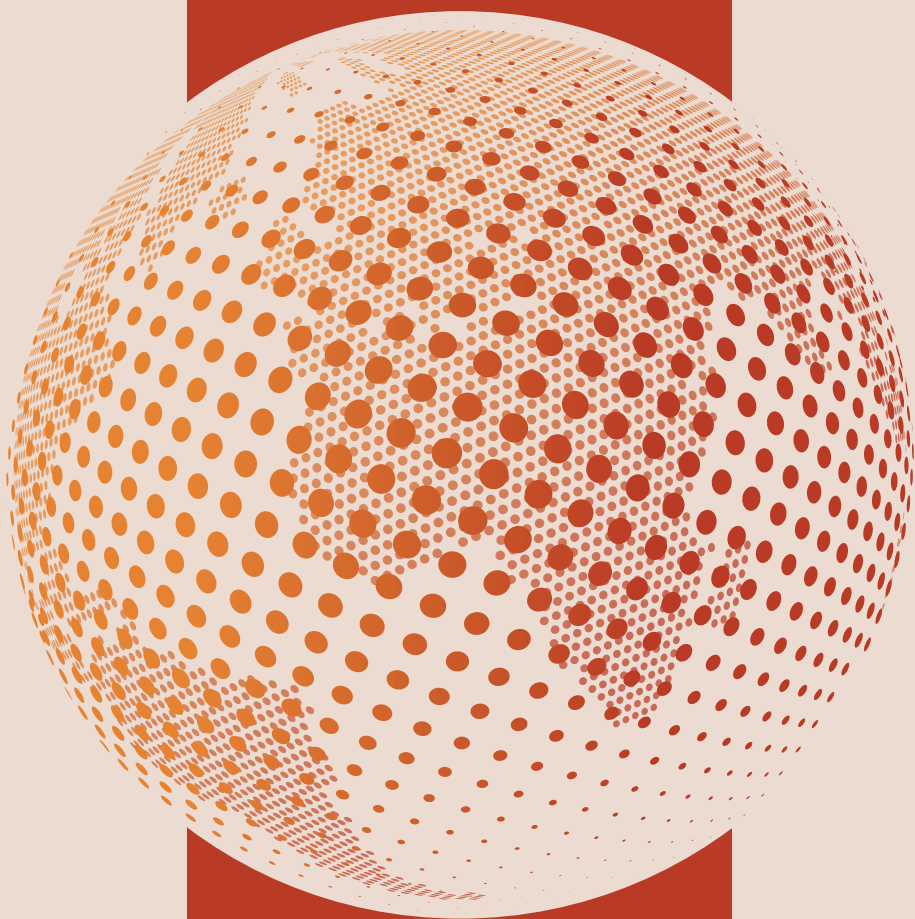


INSTITUT ZA UPOREDNO PRAVO  
INSTITUTE OF COMPARATIVE LAW

# STRANI PRAVNI ŽIVOT



ISSN 0039 2138  
UDK 34  
Broj 3  
Godina LXX  
Beograd, 2026





**INSTITUT ZA UPOREDNO PRAVO**

**UDK 34**

**ISSN 0039 2138**

**ISSN (online) 2620 1127**

# **STRANI PRAVNI ŽIVOT**

**Beograd, 2026/ Broj 3/ Godina LXX**

***Izdavač/ Publisher***

INSTITUT ZA UPOREDNO PRAVO/ INSTITUTE OF COMPARATIVE LAW

Terazije 41, 11000 Beograd, Srbija, tel. + 381 11 32 33 213

***Za izdavača/ For the Publisher***

Dr MILOŠ STANIĆ

***Izdavački savet/ Advisory Board***

Dr Iur. Habil. EDIN ŠARČEVIĆ, Faculty of Law, Leipzig, Germany. Prof. Dr ANDREAS KELLERHALS, Europa Institute at the University of Zurich, Switzerland. Prof. Dr VALENTINA RANALDI, L'Università degli Studi Niccolò Cusano, Italy. Prof. Dr DEJAN ĐURĐEVIĆ, Faculty of Law, University of Belgrade, Serbia. Prof. Dr VLADIMIR ĐURIĆ, Principal Research Fellow, Institute of Comparative Law, Serbia. Prof. Dr MINA ZIROJEVIĆ, Principal Research Fellow, Institute of Comparative Law, Serbia. Dr MILOŠ STANIĆ, Senior Research Fellow, Institute of Comparative Law, Serbia. Dr MIROSLAV ĐORĐEVIĆ, Research Fellow, Institute of Comparative Law, Serbia.

***Glavni i odgovorni urednik/ Editor in Chief***

Assoc. Prof. Dr KATARINA JOVIČIĆ, Senior Research Fellow, Institute of Comparative Law, Serbia

***Zamenica glavnog i odgovornog urednika/ Deputy of Editor in Chief***

Dr VESNA ĆORIĆ, Principal Research Fellow, Institute of Comparative Law, Serbia

***Pomoćnica glavnog i odgovornog urednika/ Managing Editor***

Dr ANA KNEŽEVIĆ BOJOVIĆ, Principal Research Fellow, Institute of Comparative Law, Serbia

***Uredivački odbor/ Editorial Board***

***Članovi iz reda nacionalne naučne javnosti/ National Members***

Prof. Dr LJUBINKA KOVAČEVIĆ, Faculty of Law, University of Belgrade, Serbia. Prof. Dr DARKO SIMOVIĆ, University of Criminal Investigation and Police Studies, Serbia. Prof. Dr SLOBODAN VUKADINOVIĆ, Faculty of Law, University UNION, Serbia. Assoc. Prof. Dr BRANKA BABOVIĆ VUKSANOVIĆ, Faculty of Law, University of Belgrade, Serbia. Prof. Dr JELENA ČERANIĆ PERIŠIĆ, Principal Research Fellow, Institute of Comparative Law, Serbia. Dr MILICA MATIJEVIĆ, Senior Research Fellow, Institute of Comparative Law, Serbia. Dr ALEKSANDRA RABRENOVIĆ, Senior Research Fellow, Institute of Comparative Law, Serbia.

***Članovi iz reda inostrane naučne javnosti/ Foreign Members***

Prof. Dr JIM MOLITERNO, Washington & Lee University School of Law, USA. Prof. Dr ALLAN F. TATHAM, Universidad San Pablo CEU, Faculty of Law, Madrid, Spain. Assoc. Prof. Dr MARKO BEGOVIĆ, Molde University College, Norway. Prof. Dr ALESSANDRO SIMONI, L'Università degli Studi di Firenze, Dipartimento di Scienze Giuridiche, Italy. Prof. Dr ALEKSANDRA ČAVOŠKI, Birmingham Law School, University of Birmingham, United Kingdom. Prof. Dr VELIMIR ŽIVKOVIĆ, University of Warwick School of Law, United Kingdom. Prof. Dr MEILING HUANG, Zhongnan University of Economics and Law, Wuhan, China. Prof. Dr TOBIAS BAUMGARTNER, Europa Institute at the University of Zurich, Switzerland. Prof. Dr ONDREJ BLAŽO, Comenius University Bratislava, Slovakia. Prof. Dr MAJA PROSO, Faculty of Law, University of Split, Croatia.

***Sekretar redakcije/ Secretary of Editorial Board***

Dr ALEKSANDAR MIHAJLOVIĆ, Institute of Comparative Law, Serbia

***Lektura/ Proof Reading***

BILJANA PETROVIĆ

MAJA MEDIĆ

***Štampa/ Print***

Birograf Comp doo Beograd

***Tiraž/ Circulation***

70 primeraka/ 70 copies

***Prilozi objavljeni u časopisu referisani su u bazama/ Abstracted and indexed in***

Directory of Open Access Journals (DOAJ), Central and Eastern European Online Library (CEEOL), European Reference Index for Humanities and Social Sciences (ERIHplus), HeinOnline Law Journal Library, Kooperativni online bibliografski sistem i servisi (COBISS).

***Adresa uredništva/ Address of the Editorial Board***

Terazije 41, 11000 Beograd, Srbija; tel. + 381 11 32 33 213; e-mail: redakcijaspz@gmail.com

Časopis se objavljuje tromesečno uz podršku Ministarstva nauke, tehnološkog razvoja i inovacija Republike Srbije.

INSTITUT ZA UPOREDNO PRAVO  
STRANI PRAVNI ŽIVOT

Broj 3

Godina LXX

jul-septembar 2026.

## SADRŽAJ/ TABLE OF CONTENTS

*Darko Kostadinovski*

|                                                           |     |
|-----------------------------------------------------------|-----|
| CONSTITUTIONAL JUDICIAL ACTIVISM IN NORTH MACEDONIA ..... | 305 |
| USTAVNOSUDSKI AKTIVIZAM U SEVERNOJ MAKEDONIJI             |     |

*Mirjana B. Glintić*

|                                                                                                                                                           |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| AI-ASSISTED LAWYERS' PRACTICE<br>AND PROFESSIONAL INDEMNITY INSURANCE:<br>BETWEEN TRADITIONAL COVERAGE AND EMERGING RISKS .....                           | 327 |
| UPOTREBA VEŠTAČKE INTELIGENCIJE<br>U ADVOKATSKOJ PROFESIJI I OSIGURANJE<br>OD PROFESIONALNE ODGOVORNOSTI:<br>IZMEĐU TRADICIONALNOG POKRIČA I NOVIH RIZIKA |     |

*Ranko P. Sovilj**Sanja N. Zlatanović*

|                                                                                                 |     |
|-------------------------------------------------------------------------------------------------|-----|
| FROM TESTING TO DEPLOYMENT:<br>A COMPARATIVE ANALYSIS<br>OF AUTONOMOUS VEHICLE REGULATION. .... | 351 |
| OD TESTIRANJA DO PRIMENE:<br>UPOREDNOPRAVNI PRISTUP REGULISANJA AUTONOMNIH VOZILA               |     |

*Cvjetana M. Cvjetković Ivetić**Luka O. Baturan*

|                                                                                                   |     |
|---------------------------------------------------------------------------------------------------|-----|
| DIGITAL ASSETS AND PROPERTY TAXATION:<br>COMPARATIVE LAW CHALLENGES AND SERBIAN PERSPECTIVE ..... | 377 |
| DIGITALNA IMOVINA I POREZI NA IMOVINU:<br>IZAZOVI U UPOREDNOM PRAVU I SRPSKA PERSPEKTIVA          |     |

*Đorđe B. Krivokapić**Andrea M. Nikolić**Valerija B. Dabetić*

|                                                                                                     |     |
|-----------------------------------------------------------------------------------------------------|-----|
| JUDGES AND PROSECUTORS ON SOCIAL MEDIA IN SERBIA:<br>EXPLORING CONTROVERSIAL ETHICAL CONCERNS. .... | 389 |
| SUDIJE I TUŽIOCI NA DRUŠTVENIM MREŽAMA U SRBIJI<br>– AKTUELNE ETIČKE DILEME                         |     |

*Miloš R. Vasović*

|                                                                                                                                 |     |
|---------------------------------------------------------------------------------------------------------------------------------|-----|
| OSNIVANJE PORESKOG SUDA IZ UPOREDNOPRAVNE<br>I MEĐUNARODNOPRAVNE PERSPEKTIVE:<br>PUTOKAZI ZA REPUBLIKU SRBIJU. ....             | 413 |
| THE ESTABLISHMENT OF A TAX COURT<br>FROM COMPARATIVE AND INTERNATIONAL LAW PERSPECTIVES:<br>GUIDANCE FOR THE REPUBLIC OF SERBIA |     |

|                         |     |
|-------------------------|-----|
| UPUTSTVO AUTORIMA ..... | 435 |
|-------------------------|-----|



## CONSTITUTIONAL JUDICIAL ACTIVISM IN NORTH MACEDONIA

### *Summary*

The sui generis character of constitutional adjudication in the Republic of North Macedonia derives from the fact that, in Europe, there appears to be no other Constitutional Court whose jurisdiction, organisation, procedures and functioning are regulated exclusively by the Constitution and in its own internal act, without the support of a separate statutory framework. This constitutional peculiarity creates scope for two distinct approaches. The first would be for the Court to adhere to a formalistic interpretation and preserve the existing status quo. Such an approach would undoubtedly provide a comfortable and convenient position for both the Court and other state institutions, including the Assembly, the Government and other public authorities. However, it would contribute little, if anything, to the advancement of the rule of law. The second approach would require the Court to move beyond formalism and demonstrate judicial activism. Such an approach inevitably gives rise to tensions, and at times conflicts, with other state authorities, as well as to pressures and influences of varying nature and intensity, predominantly of a political character. Nevertheless, this approach plays a significantly role in shaping constitutional, legal and political culture and constitutes a substantial contribution to the development of a democratic state founded on the rule of law. This paper examines the concrete consequences arising from the adoption of either of these two approaches.

**Keywords:** Departure from Formalism, Judicial Activism, Juris-tocracy, Living Constitutionalism, Formal and Substantive Constitutionalality, Conflict of Laws.

---

\* PhD, President of the Constitutional Court of the Republic of North Macedonia.

E-mail: [dkostadinovski@ustavensud.mk](mailto:dkostadinovski@ustavensud.mk)

ORCID: <https://orcid.org/0009-0003-0780-5768>

## USTAVNOSUDSKI AKTIVIZAM U SEVERNOJ MAKEDONIJI

### Sažetak

*Sui generis* karakter ustavnosudskog odlučivanja u Republici Severnoj Makedoniji proizilazi iz činjenice da u Evropi verovatno ne postoji drugi ustavni sud čija su nadležnost, organizacija, način rada i funkcionisanje utemeljeni direktno u Ustavu i sopstvenom poslovanju, bez posebnog zakonskog okvira. Ova ustavna specifičnost suštinski otvara prostor za dva moguća pristupa. Prvi je da se Sud prepusti formalizmu i zadrži *status quo*, što bi nesumnjivo rezultiralo komfornom i lagodnom pozicijom za sam Sud, kao i za Skupštinu, Vladu i druge državne organe; međutim, takav pristup ni na koji način ne bi doprineo razvoju vladavine prava. Drugi pristup jeste da Sud odstupi od formalizma i pokaže sudski aktivizam. Međutim, ovaj pristup neizbežno stvara tenzije, pa čak i konflikte sa drugim državnim organima, kao i pritiske i uticaje različite prirode i intenziteta, pretežno političke. Ipak, ovaj pristup značajno oblikuje ustavnu, pravnu, pa čak i političku kulturu, i nesumnjivo predstavlja ozbiljan doprinos izgradnji demokratske države zasnovane na vladavini prava. Ovaj rad posvećen je konkretnim rezultatima koji proističu iz izbora između jednog od ova dva pristupa.

**Ključne reči:** odstupanje od formalizma, sudski aktivizam, juristokratija, živi ustavni kontinuitet, formalna naspram materijalne ustavnosti, sukob zakona.

### 1. Introduction

“The Constitution is not a museum exhibit, but a document that must live and breathe together with the people.” In contemporary conditions, the role of constitutional courts has expanded beyond the traditional understanding associated with Kelsen’s model of the ‘negative legislator’. The defensive function of constitutional courts, namely the protection of the Constitution, is no longer the sole, nor necessarily the most significant, function performed by such courts. Alongside this role, some constitutional courts, by departing from strict formalism, have assumed a more active position in shaping, designing and structuring the legal order as a whole. When this reality is considered in conjunction with the distinctive position of the Constitutional Court of North Macedonia as a *sui generis* institution, whose

jurisdiction, organisation, procedures and functioning are regulated directly in six constitutional provisions and in its own Act, a number of significant challenges and dilemmas inevitably arise. Such a development may prove to be ‘a good news’ for the rule of law, and it may be an attractive idea for those who perceive it as an ‘open door’ to ‘juristocracy’.

However, under contemporary conditions, the Constitutional Court cannot remain merely a passive interpreter of constitutional norms. Rather, it must function as an institution that understands the Constitution as a living system of values, capable of being applied within real and often complex social circumstances. To achieve this, constitutional judges must, in the process of constitutional interpretation, draw upon the approach commonly referred to in constitutional theory and practice as ‘living constitutionalism’ (Kostadinovski, 2024a, p. 46). The application of this interpretative approach, in combination with a more pronounced degree of judicial activism, particularly within the *sui generis* framework of self-regulation, inevitably leads to positive outcomes. The question, therefore, arises as to what concrete results have been achieved by Macedonian constitutional judiciary in less than two years. These developments may be observed in two principal directions.

The first concerns situations in which the Constitutional Court has explicitly expanded its own jurisdiction through the actions of the judges themselves. In this regards, the Act of the Constitutional Court of the Republic of North Macedonia, which entered into force on 1 September 2024, introduced two significant innovations: interpretative decisions (Kostadinovski, 2025, pp. 56–62) and special reports on the state of constitutionality and legality within the constitutional order (Kostadinovski, 2025, pp. 60–62).

The introduction of interpretative decisions<sup>1</sup> is neither incidental nor surprising, nor does it constitute a departure from the Court’s constitutional position. On the contrary, this mechanism arises from the need to ensure effective protection of constitutionality while preserving the stability of the legal order. Through interpretative decisions, the Court does not limit itself to repealing or annulling legal

---

<sup>1</sup> Article 36 of the Act of the Constitutional Court of North Macedonia provides: (1) Proceedings for reviewing the conformity of laws with the Constitution, the conformity of other regulations and collective agreements with the Constitution and laws, and the conformity of the programmes and statutes of political parties and citizen’s association with the Constitution shall be initiated by a resolution of the Constitutional Court. (2) In the cases referred to in paragraph 1 of this Article, the Court may, at its discretion, set a time limit not exceeding six months for the adopter of the act to amend and/or supplement the act in accordance with the legal positions expressed by the Court in its decision. (3) If the adopter fails to comply with the time limit determined by the Court, the proceedings shall continue, Act of the Constitutional Court – Уставен суд на Република Северна Македонија

provisions found to be incompatible with the Constitution. Rather, it interprets those provisions, situates them within constitutionally permissible parameters and, where appropriate, affords the legislature an opportunity to take corrective action. In this manner, the creation of legal gaps that could directly jeopardise the rights and freedoms of individuals is avoided. This model establishes a distinct legal condition of ‘provisional constitutionality’ and, at the same time, a particular relationship between the Court and the legislature, one founded not upon superiority, but upon constitutional dialogue. The significance of this innovation lies not in an expansion of the Court’s powers, but in its capacity to overcome a practical and important limitation of the classical model. In many instances, the immediate repeal of a statutory provision does not automatically restore a ‘state of constitutionality’; rather, it may create a legal vacuum. Such a vacuum may have far-reaching consequences: it may undermine legal certainty, impede the effective exercise of rights, and potentially jeopardise broader public interests.

Accordingly, the interpretative decision constitutes a mechanism designed to balance the requirements of constitutionality, the democratic legitimacy of the legislature and the stability of the legal order. The model follows a clearly defined structure: first, the Court establishes a suspicion of unconstitutionality and articulates its legal positions; secondly, it grants the legislature a period of up to six months within which to bring the contested provision into conformity with the Constitution; and thirdly, if the legislature fails to act within the prescribed time limit, the Court proceeds to adopt a traditional repressive decision. Where the legislature either fails to act within the period prescribed by the Court or disregards the Court’s legal positions, the Court activates its traditional constitutional function by repealing or annulling the unconstitutional provision. In such circumstances, responsibility for the ensuing consequences no longer rests with the Court.<sup>2</sup>

In addition to interpretative decisions, the second innovation introduced by the Act of the Constitutional Court is the institution of special reports on constitutionality and legality, provided for in Article 13. Through these reports, the Court does not adjudicate upon an individual case; rather, it identifies broader systemic deficiencies and highlights the need for their remediation. As such, these reports

---

<sup>2</sup> Thus, the model possesses both preventive and repressive dimensions. Of particular importance is the fact that interpretative decisions do not substitute the will of the legislature; rather, they guide and shape legislative action by defining the constitutionally permissible meaning of legal provisions, without creating new law. In simple terms, the Court interprets and indicates, the legislature acts, and the legal order is preserved without disruption. Interpretative decisions were applied for the first time in the cases U. No. 137/2017, U. No. 162/2023, U. No. 163/2023 and U. No. 22/2026 of the Constitutional Court of North Macedonia. Available at: <https://ustavensud.mk/archives/30896>; <https://ustavensud.mk/archives/32824>; <https://ustavensud.mk/archives/38037>, 9. 5. 2026.

constitute a distinct form of institutional dialogue. They do not impose binding obligations, but provide guidance. They do not entail sanctions, but serve as a warning. Nevertheless, their significance derives from the constitutional position of the Court as the ultimate guarantor of constitutionality.<sup>3</sup>

The second direction relates to the implicit expansion of the Court's competences. In addition to the explicit expansion, the Constitutional Court has, over the past two years, broadened the scope of its constitutional authority through judicial activism<sup>4</sup> and evolving interpretative evolution, particularly in relation to the fundamental values of the constitutional order.

- The Court has deepened the scope of constitutional review, extending its scrutiny beyond the substantive constitutionality of legislation to encompass questions of formal constitutionality as well.
- The Court has increasingly relied upon so-called 'meta-legal' arguments, assessing the legitimacy of the objectives pursued by the legislature, the societal justification underlying legislative solutions, and the proportionality of those solutions in achieving their intended objectives.
- The Court has also commenced adopting decisions in situations involving conflict of laws, that is, instances of collision of legal provisions. In this regard, the Court does not have an explicit competence. However, by interpreting the rule of law as a fundamental value of the constitutional order, The Court has held that, in circumstances where conflicting statutory provisions may give rise to arbitrariness in their application – where the authority charged with their application is effectively afforded a discretionary choice between competing legal norms – such situations undermine legal certainty and foreseeability and, consequently, constitute a breach of the rule of law itself.
- Moreover, the Court is increasingly approaching the activation of what has hitherto remained a 'dormant norm', namely a provision of its Act (Article 88) concerning the determination of the manner and time limit for the execution of its decisions. In this respect, the Court is giving growing consideration

---

<sup>3</sup> This innovation was first applied in cases in which the Court notified the issuers of regulations that its constitutional practice had evolved and that the Court no longer regarded *vacatio legis* as a merely a 'technical' issue, but as a substantive matter. The same approach was adopted with regard to exceptions concerning the entry into force of laws. In this context, the Court recommended that whenever the legislature determines that a law shall enter into force on the day of its publication in the *Official Gazette*, or within a period shorter than that constitutionally prescribed, this must be duly reasoned, providing specifying the grounds, necessity and legitimate aim underlying the application of the exception.

<sup>4</sup> For further discussion on the origins and meaning of judicial activism, see Sunstein, 1984, pp. 51–59; Kmiec, 2004, pp. 1442–1476.

to the adoption of decisions on the merits with deferred legal effect, that is, decisions repealing or annulling provisions with postponed application.<sup>5</sup>

The purpose of this paper is to provide a more detailed examination of this evolution in constitutional judiciary, with particular emphasis on two of the aforementioned implicit competences: the constitutional review of the formal constitutionality of laws and the review of cases involving conflicts of laws.

## **2. Formal and Substantive Constitutionality**

Earlier constitutional-court practice indicates that the Constitutional Court adopted the position that it lacked competence to review the constitutionality of the procedure for the adoption of laws, advancing the argument that its review extends only to the constitutionality of laws once they have been duly enacted. This gives rise to a fundamental constitutional dilemma: which authority is competent to prevent potential arbitrariness on the part of the Assembly, or the President of the Assembly, in the legislative process?

The 'binding force' of the Constitution upon the actions of all state authorities constitutes one of the cornerstones of the principle of the rule of law. The Constitution both establishes and limits state power, delineating the boundaries of politics and political possibility. It is the Constitution that creates and defines the State's internal order in a manner that, through the coherence and harmony of legal norms, establishes predictability and stability, fosters legitimate expectations, safeguards and reinforces state unity, moderates the exercise of political power, and subjects it to legal, that is, constitutional constraints. In this context, the Constitutional Court, as a body of the Republic entrusted with the protection of the Constitution, namely constitutionality and legality, bears an imperative duty to secure such a coherent and harmonious order.<sup>6</sup> From this follows the necessity of a proper understanding and interpretation of Article 108 of the Constitution, in the sense that 'constitutionality' and its protection must be construed in their broadest and most purposive meaning, encompassing not only the substantive conformity of legal norms with the Constitution, but also their formal constitutionality. Such an interpretation of Article 108 implies that even a democratically legitimised legislature, within a constitutional state founded on the rule of law, is

<sup>5</sup> The author has publicly expressed this position in relation to the proceedings concerning Article 218 of the Law on Enforcement, with respect to which the Constitutional Court initiated proceedings for the review of constitutionality.

<sup>6</sup> In German legal literature, constitutional adjudication is rightly described as the 'crowning of the legal system' (see further Kostadinovski & Gjorgievska, 2023a).

not omnipotent. Rather, it is bound not only by the limits expressly prescribed by the Constitution, but also by its underlying requirements and value orientations, as ascertained through judicial interpretation.

The essence of ‘constitutionality’, thus understood, lies in ensuring that, within a constitutionally ordered state, law prevails over politics. The delineation of the limits of political authority through the Constitution, and their supervision by constitutional courts, constitute the very core of the rule of law and its foundational principle.

‘Protection of constitutionality’, conceived in this manner, undeniably presupposes, requires and demands not constitutional judicial restraint, but rather determination and resolve, that is, judicial activism on the part of the Constitutional Court.<sup>7</sup>

The question of reviewing formal constitutionality, which is the subject of this analysis, is by no means straightforward; rather, it is complex and multi-layered, as it touches upon a central pillar of democracy, namely the relationship between law, politics and the rule of law, the interaction between law and a democratically elected legislature, and the inherent risk of ‘judicial supremacy’.

The conduct of the legislature in accordance with the principle of constitutionality may be understood in both a narrow and a broader sense. The narrower understanding is grounded in a static and isolated conception of parliamentary competence, of the representative function, and of the manner in which these are exercised within the constitutional order. By contrast, the broader understanding of the principle of constitutionality is based on a systemic approach that takes account of the constitutional system as a whole and the integrity of the Constitution, including the institutional framework within which Parliament operates in interaction with other state authorities, and, in particular, the value of political pluralism as a fundamental principle of the constitutional order. This broader perspective is of particular importance where the question of formal constitutionality is examined through the lens of living constitutionalism (see Kostadinovski & Gjorgievska, 2023b), according to which the constitutional system is conceived as a ‘living’ system, in constant motion and development. Within this framework, the Parliament itself develops an evolutionary and dynamic approach, which, while often following a linear trajectory, may at times exceed the value orientations and limits established by the Constitution. Such transgressions of constitutional boundaries inevitably generate consequences within society and in the interaction among the branches

---

<sup>7</sup> In the words of the former President of the Federal Constitutional Court, Dr Ernst Benda: “The Court cannot limit its power and function; it must perform its tasks. In relation to the relevant law, it must not extend the separation of powers beyond constitutional limits” (see further Kostadinovski & Gjorgievska, 2023a).

of government – namely the judicial and executive branches – including the Constitutional Court as the bearer of a fourth, constitutional-judicial power.<sup>8</sup>

A fundamental value of the Constitution, frequently regarded as the guarantee for the realisation and affirmation of all other foundational values enshrined in Article 8, is the rule of law. This constitutes a value of such central importance that it gives rise to a series of principles defining its very essence, most notably the principle of legal certainty, which requires that laws be consistent with the Constitution and that all subordinate legislation be consistent with both the Constitution and laws, thereby ensuring harmony, coherence and consistency within the constitutional and legal order. In essence, it is a value that carries the imperative to guarantee, secure and affirm all other fundamental values, constitutional principles and norms. The relationship between the rule of law and the fundamental value of the separation of powers is inherently causal, mutually interdependent and reciprocal. The separation of powers into legislative, executive and judicial branches, together with clearly delineated constitutional competences, their demarcation, and mutual control mechanisms in accordance with the principle of ‘checks and balances’, constitutes a precondition for the rule of law. Conversely, the rule of law itself is the foundational value that ensures the limitation and distribution of powers as a defining characteristic of a constitutional state governed by the rule of law. Adherence to the constitutionally prescribed limits of each branch of government, together with their mutual oversight, aimed at securing a substantively balanced constitutional order rather than the imbalance often observable in constitutional practice, constitutes a prerequisite both for the limitation of power and for the functioning of a state governed by the rule of law. Finally, above the three branches of government, the Constitution establishes the Constitutional Court, which, by

---

<sup>8</sup> Such examples are numerous in Macedonian constitutional and parliamentary practice. More prominent examples, well known to the wider public, include the Law on the Special Public Prosecutor’s Office (in respect of which the Constitutional Court exercised restraint and did not rule on its constitutionality; the Law on the Public Prosecutor’s Office (in respect of which the Court refrained from reviewing formal constitutionality), (see U. No. 22/2020 and U. No. 231/2020 of the Constitutional Court of the Republic of North Macedonia); and the Decree promulgating the Law on Ratification of the Final Agreement for the settlement of the differences described in United Nations Security Council Resolutions 817 (1993) and 845 (1993), for the termination of the Interim Accord of 1995 and for the establishment of a strategic partnership between the parties (U. No. 8/2019, U. No. 16/2019, U. No. 26/2019, U. No. 40/2019 and U. No. 47/2019, Constitutional Court of the Republic of North Macedonia), in respect of which Judge Dr Darko Kostadinovski delivered a separate opinion, arguing that the Court failed to address a serious constitutional gap (Separate Opinion in cases U. No. 8/2019, U. No. 16/2019, U. No. 26/2019, U. No. 40/2019 and U. No. 47/2019, Constitutional Court of the Republic of North Macedonia). In these examples, both material and formal constitutionality of the legislative solutions were subjected to rigorous scrutiny.

virtue of its constitutional position and competences, may be regarded as a fourth constitutional-judicial authority uniquely entrusted with the mandate to guarantee, ensure and protect constitutionality and legality within the legal order.

It follows from the foregoing that the Assembly, as the holder of legislative power, must, in the exercise of its constitutional competences and powers, act within the constitutional framework and refrain from exceeding the constitutional limits, including those embodied in the fundamental values of the constitutional order,<sup>9</sup> which are framework-oriented and capable of diverse normative expressions and formulations. This, in turn, undoubtedly requires that the Constitutional Court should not engage in self-restraint with respect to its authority, but rather exercise its competences and functions with determination and resolve. Such an approach necessarily entails the acceptance of a broader understanding of the principle of constitutionality, grounded in a systemic approach that respects the entirety of the institutional framework of the constitutional system, that is, the integrity of the Constitution. One of the defining features of the relationship between the Assembly and the Constitutional Court lies in the specificity of their institutional dialogue, reflected in the nature of the Court's competences and its influence on the legislative process. This dimension of their interaction, both justifiably and predictably, shifts the balance in favour of the Constitutional Court by recognising its authoritative role in ensuring the constitutionality of legislation, in substantive and in formal terms.

In this sense, the exercise of the legislative function is substantially shaped by the influence of the Constitutional Court, and its case law, together with its established jurisprudence and constitutional-legal positions, operates as a constraint upon political will in the legal regulation of social relations.

Hence, the requirement that a law must comply with the Constitution extends beyond its substantive content to encompass its formal dimension, including adherence to the essential procedural requirements governing its adoption.

---

<sup>9</sup> This is a frequent argument and position advanced by Judge Dr Darko Kostadinovski in his separate opinions:

“The Constitutional Court, as the guardian of the Constitution, is obliged to ensure the realisation of the highest fundamental values, principles, and guarantees of the constitutional order. It is precisely through its interpretations that the Constitutional Court gives content and meaning to these fundamental values, principles, and constitutional guarantees, specifying them in their various manifestations. The Court fulfils its duty towards the highest constitutional values by interpreting all other constitutional norms through them, considering that the remaining constitutional provisions represent a normative expression of these fundamental values and principles. The freedom of interpretation enables constitutional judges to decide not only on the facts but also on the law in a manner that, through the prism of the entirety of the highest constitutional values, principles, and guarantees, prevents the consequences arising from the application of provisions that do not meet constitutional standards.”

The procedural aspect of law-making requires adherence to the elements that ensure the legal validity of a statute and determine its legal force and legal effect within the hierarchy of legal acts. The fundamental elements of the legislative procedure regulated by the Constitution include the entities entitled to propose legislation, the voting majorities required for deliberation and decision-making, and the procedures governing the promulgation and entry into force of enacted laws. In all other respects, the procedure is regulated partly by the Law on the Assembly and, more comprehensively, by the Rules of Procedure of the Assembly. The full and unconditional observance of these requirements ensures the formal constitutionality of a law. In our view, deficiencies of a formal nature in the enactment of legislation, by their very nature, require its annulment in its entirety (*annulation totale*), since formal or procedural unconstitutionality constitutes a ‘failure to comply with the Constitution’, that is, a discrepancy between the manner in which a law was enacted and the procedure prescribed by the Constitution. Accordingly, such deficiencies must be subject to constitutional judicial sanction.<sup>1011</sup>

Constitutional practice in the Republic of North Macedonia, for a considerable period, refrained from undertaking constitutional judicial analysis or imposing constitutional sanctions in response to increasingly frequent departures from the general rules of procedure, whether as a consequence of the perceived political urgency of particular legislative solutions or as an expression of the political supremacy of the parliamentary majority. These deviations became particularly evident in the determination of the type of legislative procedure, and in the increasingly problematic recourse, from the standpoint of societal necessity and justification, to shortened and urgent procedures, as well as procedures conducted under the so-called ‘European flag’. They were also apparent in departures from the general rule governing the entry into force of laws and in procedural deficiencies, such as the rejection of duly submitted amendments. It is not an exaggeration to suggest that, in practice, the ordinary legislative procedure has, to a significant extent, been

<sup>10</sup> For example, at its session held on 14 May 2020, the Constitutional Court adopted a Decision repealing the Law on Prevention and Protection against Discrimination, *Official Gazette of the Republic of North Macedonia*, No. 101/2019, on the ground that, following a presidential veto, the law had been adopted for a second time in violation of Article 75(3) of the Constitution. Specifically, instead of being adopted by the constitutionally required majority of the total number of Members of Parliament, the law was adopted with the support of only 55 Members (U. No. 115/2019-1, Constitutional Court of the Republic of North Macedonia).

<sup>11</sup> In this particular case, the question arises whether the President of the Republic, by signing the decree promulgating a law adopted by an unconstitutional majority, and thereby effectively declining to assess its formal constitutionality and allowing such a law to enter the legal order, notwithstanding its subsequent repeal by the Constitutional Court, acted in accordance with the Constitution or in violation of it.

supplanted by its exceptions, most notably through the use of the ‘European flag’, purportedly justified by considerations of political urgency. Such frequent derogations from the general procedural framework governing the legislative process have naturally brought to the fore the question whether such conduct on the part of the legislature is compatible with the Constitution, that is, whether it satisfies the requirement of constitutionality. In other words, the key issue is whether decisions concerning the (mis)use of the aforementioned procedural mechanisms fall exclusively within the imperative and sovereign competence of the legislature and, as such, are in substance exempt from constitutional judicial review. The views among the judges themselves have been markedly divided. Those who advocate a review of constitutionality in its broadest sense, aimed at ensuring genuine and effective constitutional protection and the meaningful exercise of constitutional judicial review, both substantive and formal, align themselves with what may be termed the doctrine of substantive constitutional protection. By contrast, others subscribe to what may be described as a ‘deferential or merely cosmetic’ constitutional protection. The author’s own adherence to a model of substantive constitutional judicial protection is particularly justified when account is taken of the fact that a passive and restrained role of the Constitutional Court, as reflected in its established case law, may in effect operate as an incentive for the legislature to resort to the misuse of prescribed procedural rules.

What follows is an overview of the Constitutional Court’s cases in which it has declined competence to review the formal constitutionality of laws:

In case U. No. 14/2020, the Law on the Public Prosecutor’s Office was challenged in its entirety, together with certain of its provisions and the Decree promulgating the Law. In this case, which involved multiple applications, the applicants alleged a number of violations of a formal nature. Notwithstanding the seriousness of these claims, the Court, by a majority of votes, relied upon its long-standing practice, stating: “The constitutional provisions do not regulate the procedure preceding the adoption of laws, nor do they govern issues such as by whom a draft law was signed, how many times it was considered and by which parliamentary committees, whether it was adopted under a shortened or regular procedure, how many readings it underwent, whether it was adopted under the so-called ‘European flag’, and so forth. These issues fall outside the competences of the Constitutional Court for the purposes of constitutional judicial review, since such a review would entail an assessment of the conformity of the law with the Rules of Procedure of the Assembly, which, in Chapter IX (Articles 132–162), regulate the legislative procedure, and such matters do not fall within the Court’s jurisdiction. Accordingly, from a constitutional standpoint, the only issue that may be subject to constitutional judicial review in assessing the constitutionality of a specific law is whether, at the stage of

voting, it obtained the constitutionally prescribed special majority. The Constitutional Court has no competence to review whether the procedure for the adoption of the challenged law was conducted in conformity with the Rules of Procedure of the Assembly, nor to re-evaluate the conduct of the competent authorities during the procedure preceding the adoption of the law, which position has been consistently expressed in cases U. No. 161/2011, U. No. 20/2013, U. No. 53/2013, and others.”

Throughout these proceedings, the Court has consistently relied upon the same reasoning in declining competence, as evidenced by Resolutions U. No. 161/2011, U. No. 20/2013, U. No. 53/2013, and others.

From the cited positions, it is evident that the Court displayed a reluctance to engage in a substantive examination of allegations concerning serious violations of procedural rules in the enactment of legislation. This approach was consistently maintained until 2025, and such self-limitation, in effect, directly legitimised the conduct and omissions of the legislature, including practices that may properly be characterised as abuses. The legislature increasingly appeared to benefit from this institutional deference afforded by the Constitutional Court, treating it as a form of ‘acquired constitutional-legal territory’. The latitude granted by the Constitutional Court to the Assembly, through the recognition of virtually complete autonomy in this domain, departs from the very purpose and essence of constitutional judiciary and of the Constitutional Court as the guardian of the Constitution.

Living constitutionalism (McBain, 1928, pp. 1–271), as a theory whose non-application under contemporary conditions would render constitutional judiciary virtually ‘meaningless’, does not merely entail the normative adaptation of the Constitution to evolving social realities; it also requires the adaptation of the Constitutional Court itself through a broader interpretation of its own competences, the embrace of judicial activism, and the alignment of its case law with contemporary constitutional realities. Otherwise, legitimate questions inevitably arise as to who is to restrain potential arbitrariness on the part of the legislature and its majority. In this context, after three decades of restraint, the Constitutional Court ultimately demonstrated resolve and, in 2025, decided to bring this deficiency in constitutional judiciary to an end. Judicial convictions prevailed to the effect that the principles of constitutionality and legality should not be interpreted in a strictly formalistic and restrictive manner, as requiring only conformity of lower-ranking legal norms with higher-ranking ones, to the exclusion of any ‘meta-legal’ approach to interpretation, including, where appropriate, recourse to criteria extending beyond the text of the Constitution itself (Jovičić, 2006, p. 65).

The meta-legal dimension finds its most significant application in the sphere of the development, as well as the limitation, of human rights and freedoms. The profound transformations that have occurred across all areas of social life, together

with the challenges accompanying such changes, have generated new paradigms and, at the same time, a complex relationship between the development and the limitation of human rights and freedoms, one that was not foreseen by written constitutions and that requires careful balancing and deliberation, extending, in part, beyond the scope of constitutionally prescribed norms. In this regard, categories such as the ‘essence of the guaranteed right’, ‘necessity in a democratic society’, ‘the proportionality of limitations (or of measures contained in legislative solutions) to the attainment of a legitimate aim’, and ‘societal justification’ inevitably require a more complex understanding of social reality, as well as of the legal and political environment as a whole. This constitutes not only an obligation of the legislature but, to an even greater extent, a responsibility of constitutional judges.<sup>12</sup>

The departure from this decades-long practice occurred through the following two cases, in which the Court adopted such an approach. The Court’s reasoning is of particular significance, most notably for its synthesis of so-called meta-legal arguments and its interpretative engagement with the fundamental values of the constitutional order.

Acting in case U. No. 186/2024, on 20 May 2025, the Constitutional Court repealed Articles 17 and 18 of the Law Amending the Electoral Code. In its reasoning, the Court, *inter alia*, explained the evolution of its approach in the following terms: “Political pluralism, as a fundamental value of the constitutional order, constitutes the foundation of a democratic society and is expressed primarily through the multi-party system, within which political parties, as representatives of diverse political options, compete for the exercise of power through periodic elections at both national and local levels. However, political pluralism is not exhausted solely through multi-partyism; it extends far beyond it and encompasses the direct participation of citizens in the exercise of power, as well as a plurality of political views

---

<sup>12</sup> Material conformity with the Constitution is closely linked to formal conformity, since any material contradiction of a law with the Constitution in essence constitutes a violation of the Constitution, that is, its amendment in a constitutionally prohibited manner. In other words, material unconstitutionality simultaneously constitutes formal unconstitutionality, as a materially unconstitutional law regulates a matter already regulated by the Constitution, and its unconstitutional operationalisation leads to a so-called ‘soft amendment’ or revision of the Constitution. Accordingly, material unconstitutionality may be understood not only as a breach of the Constitution but also as its amendment, which may be legally effected if the Constitutional Court shows restraint and fails to sanction and remove such a violation. Thus, the material unconstitutionality of a law may be subsumed under the concept of formal unconstitutionality of constitutional revision. The adoption of a law materially contrary to the Constitution constitutes a so-called ‘concealed formally unconstitutional revision of the Constitution’. In other words, by adopting such a law without constitutional-court sanction, the Constitution is effectively altered without amending its text. In this case, the unconstitutionality of the law is both material and formal in nature (for further analysis, see Rajić, 2017).

and options. These are not necessarily articulated exclusively through political parties, but may also find expression through the political engagement and activism of citizens acting as individuals, outside political parties, nominated and supported by groups of citizens or by civil society organisations...”

The Court considers it necessary to reiterate that the practice of submitting draft legislation to the Assembly without a reasoned explanation for significant proposed amendments is impermissible in a democratic society founded upon the principle of the rule of law, as it undermines legal certainty and the foreseeability of legal norms, which constitute essential elements of that principle.

The Court considers that the legislature, in preparing amendments relating to the number of required supporting signatures, ought to have adopted a more rigorous approach. It should have undertaken a prior analysis of the relevant legislative provisions and their practical application, and provided a reasoned justification for the objectives and purposes sought to be achieved by the proposed amendments. However, they failed to do so in the present case. Instead, the proposed amendments to the Electoral Code were adopted under a shortened procedure, in respect of the contested provisions, in an entirely non-transparent manner and without public debate, and indeed without any substantive discussion at a session of the Assembly, immediately preceding the 2024 elections. This approach likewise departs from the international standards articulated by the Venice Commission, which recommend that fundamental aspects of electoral law should not be subject to amendment within at least one year prior to elections. In its *Code of Good Practice in Electoral Matters*, the Venice Commission emphasised that electoral legislation must serve to promote, rather than restrict, the pluralism of political views and opinions. It must create the conditions for a pluralistic political environment, for fair electoral competition, and for a framework in which participation is encouraged not only for political parties, but also for other groups and individuals in political and public life. Such a framework should enable citizens, acting as individuals and as independent candidates, to freely express and advance their views and opinions (Venice Commission, *Code of Good Practice in Electoral Matters*, 2002).

In the Court’s assessment, the contested legislative provisions do not serve the realisation of the aforementioned objectives of electoral legislation. By increasing the number of supporting signatures required for the nomination of independent candidates, they effectively exclude such candidates from the electoral process, thereby depriving them of the ability to exercise the right to stand for election as an element of passive suffrage. Consequently, the electoral rights and the right to political participation of the citizens who support them are likewise curtailed, as their choice is reduced solely to party-affiliated candidates and to political engagement within the framework of political parties. The restriction of the number of

potential electoral subjects participating in the electoral process deprives elections of their democratic character as free and fair contests, directly endangering and weakening political pluralism as a fundamental value of the constitutional order under Article 8, paragraph 1, indent 5 of the Constitution.

The second case is U. No. 163/2023, decided on 12 February 2025, in which the Court adopted an interpretative decision. In this case, the Court initiated proceedings for the review of the constitutionality of the Law Amending the Criminal Code and set a time limit of six months for the Assembly to amend and/or supplement the Law in accordance with the Court's positions articulated in the reasoning of the Resolution. The Court's reasoning, set out below, reveals a significant departure from its long-standing constitutional case law: "Having regard to Article 108 of the Constitution, according to which the Constitutional Court is a body of the Republic that, in safeguarding the Constitution, bears the imperative duty to ensure a state of constitutionality and legality, thereby securing a coherent and harmonious legal order, the interpretation of that provision must be undertaken in its broadest and most purposive sense. This entails the necessity that laws, in addition to satisfying the requirement of substantive constitutionality, must also fulfil the requirement of formal constitutionality. Such an interpretation of Article 108 implies that even a democratically legitimised legislature in a constitutional state governed by the rule of law 'is not omnipotent', as it is bound not only by the limits of its competences as determined by the Constitution, but also by the requirements and value orientations inherent therein. The essence of constitutionality, thus understood, lies in ensuring that, within a constitutionally regulated state, law prevails over politics. In this context, it is the Constitutional Court that is entrusted with ensuring that all branches of government, together with their regulations, acts, procedures and actions, remain bound by the Constitution and its value framework, both in substantive and formal terms. The delineation of the limits of political power by the Constitution, and their supervision by the Constitutional Court, constitute the very core of the rule of law and the foundation of a constitutional state. It follows that the fundamental duty of the legislature, in the exercise of its constitutionally prescribed competences, is to act in accordance with the principle of constitutionality."

The procedural aspect of the enactment of legislation entails compliance with the elements that ensure the legal validity of a law, in the sense that the procedures and processes through which legislation is enacted themselves confer legitimacy upon it. These elements include the existence of a constitutional basis and authorisation for the adoption of the law, the participation of constitutionally authorised proposers, and compliance with the constitutional, statutory and procedural requirements governing the legislative process. The full and unconditional observance of these elements ensures the formal constitutionality of the law.

The essence of pluralism as a fundamental value of our constitutional order is not exhausted merely by the positive obligation of the state, as guarantor of pluralism, to enable citizens to have diverse political options effectively expressed through participation, under equal and fair conditions, in free and democratic elections. Accordingly, in the Court's view, the essence of pluralism is equally relevant in the process of law-making itself, that is, in the legislative procedure through which the citizen's representatives, by means of a diversity of political proposals and ideas, participate in the regulation of social relations, as well as in the amendment of existing legal arrangements governing those relations.

The decision to implement amendments to the Criminal Code through a procedure employing the 'European flag', justified on the basis that the amendments were intended to align domestic law with European legislation, is constitutionally permissible and acceptable only insofar as it concerns criminal offences in respect of which the legislature relies upon a specific, clear and precise European directive. This cannot be said of the amendments relating to abuse of official position and authority, negligent performance of official duties, and criminal association, as no such clear and precise directive was identified in respect to these matters. Thus, the legislature, in altering penal policy, an area undoubtedly of significant public interest, acted without providing an adequate justification or sufficient arguments concerning the legitimate aim pursued, the societal justification of such changes, or their necessity in a democratic society. The sole explanation advanced for these amendments was that they sought to align domestic law with the practices of certain European states in the sphere of penal policy relating to abuses of public office. In such circumstances, according to the Court, the very substance of political pluralism is narrowed and constrained, as significant legislative changes of this nature are enacted through a shortened procedure, without the possibility of broader public, professional and expert debate, and without affording the public an opportunity to present arguments and engage in meaningful discussion.

Furthermore, the adoption of amendments to the Criminal Code through a shortened procedure, where the use of the so-called 'European flag' is manifestly unfounded and constitutes an abuse, and where no legitimate aim, broad societal justification, or necessity has been demonstrated, gives rise, in the Court's view, to a well-founded suspicion regarding the formal constitutionality of the law and, consequently, compliance with the principle of constitutionality as a whole. Such formal deficiencies of the law constitute a 'failure to comply with the Constitution' and a discrepancy between the manner in which the law was enacted and the constitutionally prescribed procedure for its adoption, which must be subject to constitutional judicial review and sanction."

### **3. Conflict of Laws**

In a manner analogous to its restraint in reviewing the formal constitutionality of legal acts, the Constitutional Court has, over several decades, developed a consistent practice of declaring itself incompetent in cases involving a conflict of laws. As the Court has stated: “With regard to the allegations contained in the initiatives, which seek a review of the mutual consistency of provisions within the same law, a review of the conformity of a challenged law or its provisions with provisions of other laws, or a review of their conformity with the Rules of Procedure of the Assembly or the Rules of Procedure of the Government, this Court, pursuant to Article 110 of the Constitution, has no competence to act” (U. No. 14/2020, U. No. 36/2020 and U. No. 192/2020). Such reasoning has typically underpinned the Court’s reluctance to engage in judicial activism and its failure to apply the theory of living constitutionalism as a method of interpreting the fundamental values of the constitutional order. As a consequence, the Court has refrained from constitutionally sanctioning provisions that are in conflict, whether within the same law or across separate laws, even where such conflicts directly infringe fundamental values, in particular the rule of law and its core principles of legal certainty, legal foreseeability, and the prohibition of arbitrariness.

However, as previously indicated, a significant shift has emerged in case U. No. 113/2022-1 of 21 March 2023, in which the Court repealed Article 4 of the Law Amending the Law on Salaries and Other Allowances of Elected and Appointed Officials in the Republic of Macedonia, as well as Article 1 of the Law Amending the Law on Salaries and Other Allowances of Elected and Appointed Officials in the Republic of Macedonia. Of particular significance is the reasoning of the Court’s decision: “The determination of the method for calculating the remuneration of elected and appointed officials undoubtedly constitutes a matter of statutory regulation, and in that regard, it is for the legislature to decide whether the base for calculation shall be determined by reference to the average salary earned, or whether the amount of the base shall be fixed directly in the law itself.

Nevertheless, irrespective of the approach adopted, the legal norms governing this matter must be clear, unambiguous and foreseeable, and must not permit divergent interpretations that could give rise to uncertainty and inconsistent application in identical situations. Indeed, the requirement of clarity and precision constitutes one of the fundamental elements of the principle of the rule of law, as a foundational value of the constitutional order enshrined in Article 8, paragraph 1, indent 3 of the Constitution.

However, in the Court’s assessment, the contested legislative regulation of this matter is not consistent with this principle. The amendments to the method

for determining the base for the calculation of salaries of elected and appointed officials have resulted in a situation in which two norms, that is, two legal rules for determining the salary base, exist simultaneously. The first, under Article 11 of the Law, provides that the base is to be determined according to the average salary earned in the previous year, as established by the State Statistical Office. The second rule, contained in the contested provision of Article 4 of the Law Amending the Law on Salaries and Other Allowances of Elected and Appointed Officials in the Republic of Macedonia, fixes the base at 25,726 North Macedonian Denars, which, following the 4 per cent adjustment provided for in the second contested provision, amounts to 26,755 North Macedonian Denars as the base currently in force and applied. At the same time, the provision of Article 11 of the Law remains in force.”

In essence, this means that the Court established that, within one and the same law, there exist two different legislative solutions governing the same legal matter and regulating the exercise of the same right in divergent ways, thereby creating a situation of arbitrariness for those charged with applying the law in specific cases. Such a situation, viewed from a constitutional perspective through the prism of the rule of law and its fundamental principles of legal certainty and the prohibition of arbitrariness, is not merely unacceptable, but also constitutionally impermissible. Moreover, the unconstitutionality of such legislative solutions gives rise to a violation of the principle of equality of legal subjects before the Constitution and the laws.

#### **4. Conclusion**

Both the explicit and the implicit expansions of competences, conditionally speaking, represent significant innovations in Macedonian constitutional judiciary. The dilemma among judges as to whether this approach constitutes an expansion of competences, or rather their substantive fulfilment through judicial activism informed by the theory of living constitutionalism, undoubtedly persists. In the author's view, however, the answer is unequivocal: it does not.

For it is precisely here that the essence of contemporary constitutional adjudication lies. The Court is no longer merely a negative legislator. It is also an interpreter, a corrector, and a guide of the legal order; it shapes and directs its development. Nevertheless, this evolution must have its limits.

In conditions in which the Court possesses the capacity for self-regulation and for the development of both explicit and implicit competences,<sup>13</sup> there is always a

---

<sup>13</sup> In essence, through these significant developments, both explicit and implicit, the Constitutional Court is aligning itself with contemporary trends in European neo-constitutionalism.

risk of a transition into juristocracy – a state in which the Court assumes the role of the legislature. Such a development would not strengthen constitutionality, but rather undermine it. The key challenge, therefore, is not whether the Court should be active, but how far its activity may legitimately extend. The balance between the protection of the Constitution and respect for the democratic legitimacy of the legislature constitutes the very essence of constitutional judiciary. Without such a balance, no institution can preserve its constitutional role.<sup>14</sup> This significantly increases the responsibility borne by constitutional judges. In the contemporary constitutional system, this relationship is not one of hierarchy, but of mutual cooperation. The Court does not assume the role of the legislature; rather, it influences legislative actions, sets constitutional standards, and defines the limits imposed by the Constitution. This influence may be direct, through repeal or annulment; indirect, through reports; or combined, as in the case of interpretative decisions.

It is only natural that, under such new circumstances, tensions will arise between the legislature and the Constitutional Court, and this is entirely to be expected, given that, over a prolonged period, the Constitutional Court remained passive or excessively deferential, thereby affording the legislature a certain degree of constitutional comfort. Undoubtedly, the legislature will require time to adapt to these new conditions, that is, to the changes taking place within the Constitutional Court. The Assembly is already experiencing the pressure resulting from these developments, but over time and with the further development of constitutional culture, it will adjust accordingly.

All these innovations represent a new model of constitutional-judicial action, a new mode of communication with the legislator, and a new phase in the development of constitutional judiciary. Their essence, notwithstanding the fact that they

---

In a nutshell, this entails a departure from strict formalism, that is, a movement away from the rigid Kelsenian concept of the Constitutional Court as a ‘negative legislator’, towards a model in which the boundaries between the negative and the positive legislator become increasingly blurred. Accordingly, the Constitutional Court actively participates in shaping the development of the legal order, naturally within the limits imposed by the Constitution.

<sup>14</sup> The common denominator of both the explicit and the implicit developments, and their ultimate objective, is inherently linked to the independence and autonomy of the Constitutional Court. At the Sixth Congress of the World Conference on Constitutional Justice, the Madrid Declaration affirmed that constitutional justice can fulfil its role only where the autonomy and independence of constitutional courts are fully guaranteed. Such independence is not an end in itself, but a necessary condition for ensuring the supremacy of the Constitution, the effective protection of fundamental rights, and the maintenance of the balance of powers in a state governed by the rule of law. The reason for this is simple yet fundamental: judicial independence constitutes a human right, inseparably linked to the individual’s right of access to justice, the right to a fair trial, and the right to equal legal protection, as recognised in the Declaration adopted at the Ninth High-Level Meeting in Cairo.

may also be understood as a form of 'soft revision' of the Constitution, is directed towards safeguarding the Constitution without disrupting the legal order, and towards correcting the legislature without supplanting its role. Their purpose is to ensure constitutionality without generating legal uncertainty. Ultimately, these instruments pursue a single objective: the construction of a constitutional order grounded in dialogue, responsibility, and respect for the Constitution. There can be little doubt that these developments will contribute to a higher level of constitutional culture.

However, this new model also carries risks and challenges. Judicial activism does not mean arbitrariness. These mechanisms must therefore be applied with caution, supported by well-reasoned justification and guided by a clear awareness of their limits.

The core of this thesis is the affirmation of the concept of 'moderate living constitutionalism' (see Strauss, 2015, pp. 16–18) through the acceptance of the essential characteristics of the 'living Constitution' as a theory of constitutional interpretation, while at the same time incorporating elements of 'moderate originalism'. Within this seemingly complex symbiotic relationship, the fundamental point of connection is the 'principle of limitation'. It is precisely this principle that generates the requisite moderation in the interpretation of constitutional provisions. According to this principle, in interpreting the constitutional meaning of a provision, three conditions must be satisfied. First, the minimum original meaning of the constitutional text must be respected. Second, strong and reasonable arguments must be provided concerning both the original meaning of the provision under interpretation and the degree of its constitutional indeterminacy. Third, equally strong and reasonable arguments must be advanced in support of the evolved meaning of that provision, that is, the necessity of interpreting and understanding the provision in the light of, and in response to, changed social realities. The same applies in the sphere of constitutional jurisprudence (Kostadinovski, 2024b, p. 1092).

Within the model the author advocates, the reconciliation of the two competing approaches, originalism and living constitutionalism, is achieved through two essential elements. The first is the principle of limitation, which prevents judges from construing the Constitution on the bases of their personal moral, ethical, ethnic, religious, or political convictions and ideologies, and confines constitutional interpretation to minimum objective capable of verification in a specific case, such as limitations deriving from generally accepted norms of international law or standards developed by the European Court of Human Rights. The second is the requirement of reasoned, robust, and compelling argumentation in support of the evolved meaning of a constitutional provision. It is the strength of

the reasoning that confers authority upon a court's decision, whereas the absence of reasoned and substantiated decision adopted through the prism of living constitutionalism can only reinforce the concerns of originalists regarding 'constitution-making from the bench'.<sup>15</sup>

*"The legislator is bound by the Constitution; the constitutional court is bound by its interpretation of the Constitution."* - Hans Kelsen

In addition to these imperative constraints on judicial activism, a further safeguard against judicial arbitrariness lies in the following consideration: the two competences through which the Court extends its authority by means of the implicit interpretation of constitutional norms do not entail their mechanical application in every case involving a violation of formal constitutionality or a conflict of laws. Rather, it is the duty of constitutional judges to assess, in each individual case, the significance of the alleged violation of formal constitutionality or legislative conflict, its consequences, and the public interest involved, in order to determine whether judicial intervention is warranted. Within this additional form of judicial self-restraint, one may discern the growing importance of so-called meta-legal arguments.

## References

- Jovičić, M. 2006. *Ustav i ustavnost*. Beograd: Službeni glasnik, Pravni fakultet Univerziteta u Beogradu.
- Kmieć, K. D. 1984. Origin and Current Meanings of 'Judicial Activism'. *California Law Review*, 92(5), pp. 1442–1476. <https://doi.org/10.2307/3481421>
- Kostadinovski, D. & Gjorgievska, V. 2023a. *Loyalty towards the Constitution 2 – Interpretation of the Constitution*. Skopje: Kultura.
- Kostadinovski, D. & Gjorgievska, V. 2023b. *Loyalty towards the Constitution 3 – Living Constitutionalism*. Skopje: Kultura.
- Kostadinovski, D. 2024a. Theory of Living Constitutionalism and human rights. *Centrum*, No. 22, pp. 44–64.
- Kostadinovski, D. 2024b. Human rights and interpretation of the Constitution. *Knowledge – International Journal*, 67(6), pp. 1089–1096.

<sup>15</sup> "The scales of justice rest in the hands of judges. It is the most delicate scale in the world. To hold it properly, knowledge of the law alone is not sufficient, a refined sense of conscience and high moral integrity are also required. Judges must, above all, possess conscience, respect the law, and act with integrity. I define conscience as an inner human quality, an inner sense that enables one to distinguish right from wrong. Although abstract, it is a universally recognised concept. In my view, conscience does not deceive. It neither advises nor compels improper conduct. Conscience is always oriented towards truth." — Kadir Özkaya

- Kostadinovski, D. 2025. Interpretative decisions of the Constitutional Court of North Macedonia in the function of protecting human rights and freedoms. *Balkan Social Science Review*, 26(26), pp. 53–71. <https://doi.org/10.46763/BSSR25262653k>
- McBain, L., H. 1928. *The Living Constitution: A Consideration of the Realities and Legends of Our Fundamental Law*. New York: The Macmillan Company.
- Rajić, N., N. 2017. *Odnos parlamenta i Ustavnog suda u ostvarivanju i zaštiti ustavnosti zakona*. Doktorska disertacija. Beograd: Pravni fakultet Univerziteta u Beogradu.
- Strauss, D. 2015. Does the Constitution Means What Says It Means. *Harvard Law Review*, 61 (1), pp. 1–61.
- Sunstein, C. R. 1984. A In Defense of the Hard Look: Judicial Activism and Administrative Law. *Harvard Journal of Law and Public Policy*, 7(1), pp. 51–59.

## AI-ASSISTED LAWYERS' PRACTICE AND PROFESSIONAL INDEMNITY INSURANCE: BETWEEN TRADITIONAL COVERAGE AND EMERGING RISKS\*\*

### *Summary*

The growing use of artificial intelligence (AI) by lawyers is transforming the delivery of legal services. AI can improve efficiency, reduce costs, and enable lawyers to process large volumes of information more rapidly. However, the integration of AI also raises significant legal and professional issues, as AI systems may generate inaccurate or fabricated information, potentially giving rise to claims of professional negligence and liability.

This paper examines whether damage arising from the use of AI falls within the scope of professional indemnity insurance, given that AI-related risks are not yet explicitly excluded, despite the lack of information necessary for adequate risk assessment. The author argues that coverage may depend on whether the lawyer's conduct qualifies as a covered 'professional service' and whether the technology was reasonably supervised. Consequently, insurers are likely to place greater emphasis on lawyers' AI governance, verification procedures, data protection, and technological competence when underwriting professional liability risks, drawing on comparative legal solutions.

**Keywords:** Artificial Intelligence, Insurance, Professional Indemnity Insurance, Lawyer, Liability.

---

\* PhD, Senior Research Associate, Institute of Comparative Law, Belgrade, Republic of Serbia.

E-mail: [m.glintic@iup.ac.rs](mailto:m.glintic@iup.ac.rs)

ORCID: <https://orcid.org/0000-0001-8551-4999>

\*\* This article is the result of research conducted at the Institute of Comparative Law in 2026, with financial support from the Ministry of Science, Technological Development and Innovation (Contract No. 451-03-33/2026-03/200049).

## UPOTREBA VEŠTAČKE INTELIGENCIJE U ADVOKATSKOJ PROFESIJI I OSIGURANJE OD PROFESIONALNE ODGOVORNOSTI: IZMEĐU TRADICIONALNOG POKRIĆA I NOVIH RIZIKA

### *Apstrakt*

Sve veća upotreba veštačke inteligencije (AI) od strane advokata menja način na koji se pružaju pravne usluge. AI može doprineti povećanju efikasnosti, smanjenju troškova i omogućiti advokatima da brže obrađuju velike količine informacija. Istovremeno, primena AI otvara značajna pravna pitanja, budući da AI sistemi mogu generisati netačne ili izmišljene informacije, što potencijalno može dovesti do odgovornosti advokata i povrede standarda dužne pažnje.

Rad je posvećen analizi pitanja da li je šteta nastala upotrebom AI pokrivena osiguranjem od profesionalne odgovornosti, budući da osiguravači još uvek nisu isključili svoju obavezu za rizike povezane sa upotrebom AI, uprkos nedostatku informacija neophodnih za adekvatnu procenu rizika. Autor smatra da pokriće po osnovu ovog proizvoda osiguranja u najvećoj meri zavisi od toga da li se korišćenje AI alata od strane advokata u konkretnom slučaju može kvalifikovati kao osigurana „profesionalna usluga“ i da li je primena tehnologije bila podvrgnuta odgovarajućem nadzoru. Posledično, osiguravači će sve veću pažnju posvećivati upravljanju rizicima povezanim sa AI, postupcima provere, zaštiti podataka i tehnološkoj osposobljenosti advokata prilikom procene i preuzimanja rizika osiguranja, što potvrđuju i predstavljena uporednopravna rešenja.

**Ključne reči:** veštačka inteligencija, osiguranje, osiguranje od profesionalne odgovornosti, advokat, odgovornost.

### 1. Introduction

The use of AI tools for legal purposes, including by lawyers, has been the subject of discussion for several years.<sup>1</sup> Attitudes towards emerging technologies have evolved considerably, from initial scepticism to a growing willingness to embrace the opportunities they offer.<sup>2</sup> This shift has been driven, in part, by the emer-

<sup>1</sup> For example, the AI chatbot DoNotPay was widely used in 2021 to draft appeals against parking fines. (The Guardian, 2016).

<sup>2</sup> In 2023, Thomson Reuters conducted a survey among lawyers concerning the use of AI, with

gence of increasingly sophisticated technological capabilities that promise greater efficiency, more extensive and comprehensive legal research, more effective document retrieval, improved assessment of potential outcomes, cost reductions, and more efficient decision-making, while also enabling lawyers to delegate or automate a substantial proportion of their routine work (Hodge, 2023, p. 226).

Initially, AI tools were primarily used to streamline internal operations, with law firms themselves developing them for client communication, HR processes, and other administrative functions.<sup>3</sup> Their role has since expanded considerably, as the legal technology market has increasingly turned to specialised AI applications designed to support core functions of legal practice.<sup>4</sup> Examples of AI tools used by lawyers include Beck-Noxtua,<sup>5</sup> Juris, ANITA, Wolters Kluwer Online, Libra.ai, Bryter, Beamon AI, Justin Legal, JUPUS, and JUNE (GC AI, 2026).<sup>6</sup> The functionality offered by these tools ranges from rapid searches of legal databases and deadline management to the identification of potential lines of judicial reasoning and the drafting and analysis of contracts. Their value is particularly evident in document review, where they can assist in processing, assessing, and summarising large volumes of complex materials, including contracts, due diligence documents, and other transaction-related materials in the context of mergers and acquisitions.<sup>7</sup>

---

a large proportion of respondents indicating no interest in using such tools in their law firms. Only 3% reported using AI tools in their firms, 33% stated that they were considering their use, while more than 60% indicated that they were not interested in implementing these tools in the performance of their professional activities (Thomson Reuters Institute, 2023).

<sup>3</sup> One example is Traverse AI, an AI tool developed by the law firm Traverse Law. Companies such as Baker McKenzie and Reed Smith have also developed their own AI tools. There are also examples of law firms using chatbots to triage requests for legal representation within the firm by assigning matters to a particular lawyer or team, as well as to respond to clients using existing templates based on available data and files containing previous responses. Microsoft Copilot, for example, can draft emails, analyse Word or Excel documents, and record Teams meetings.

<sup>4</sup> The scale of development and the capabilities of these tools have become such that there is already considerable debate as to whether AI lawyers will eventually replace human lawyers (Swisher, 2023, pp. 828-831).

<sup>5</sup> This is a joint project of C.H. Beck and Noxtua, combining Noxtua's AI technology with exclusive content provided by the publisher C.H. BECK. Designed for law firms and corporate legal departments, it provides automated legal research, analysis of matrix documents, and drafting capabilities, while ensuring strict compliance with the GDPR and maintaining data sovereignty (Beck-Noxtua, 2026)

<sup>6</sup> The list is far from exhaustive, as other tools include Harvey AI, Casetext CoCounsel, Kira Systems, Spellbook, Lex Machina, and ChatGD. There are also numerous projects jointly undertaken by academic institutions, such as the Berkeley Business Law Journal, and AI companies.

<sup>7</sup> Tools such as Harvey Vault analyse large volumes of contracts for specific elements, such as liability clauses or change-of-control provisions, including termination rights triggered by a

AI-assisted contract analysis has become especially significant in recent years, as AI tools can identify potential contractual deficiencies or unfair provisions, assess their relative severity, and present lawyers with a structured overview of the most significant findings, often accompanied by suggestions for improvement.<sup>8</sup> AI tools are also increasingly being incorporated into litigation preparation, for example, to generate summaries of the procedural history, assist in developing arguments for an upcoming hearing, and identify relevant statutory provisions and case law supporting those arguments.

The growing reliance on AI in legal practice is driven, to a significant extent, by the potential of these tools to enhance efficiency and by the increasing confidence placed in their reliability. Vals AI, a platform specialising in the evaluation of AI systems and their performance, conducted a study assessing specialised AI tools. These tools achieved higher accuracy rates, ranging from 74% to 78%, compared with 69% for lawyers (Artificial Lawyer, 2025). Particularly noteworthy is the finding that specialised AI tools performed only marginally better than general-purpose AI tools.<sup>9</sup> Lawyers nevertheless retained an advantage when addressing questions that required deeper contextual understanding, complex multinational analysis, and the exercise of human judgement.

There is little doubt that the capabilities of AI may extend to the point where they surpass even those of the most competent professional. Yet the inherent and inevitable limitations of AI raise a fundamental question for any professional relying on such technology: should AI be used to augment and enhance professional capabilities, or should it be allowed to replace them altogether, as Hatfield (2019, p. 1061) points out? The absence of active oversight and management of AI creates room for uncontrolled use, thereby providing fertile ground for a wide range of risky practices. Indeed, uncontrolled reliance on AI, coupled with increasing client demand for greater efficiency in the delivery of legal services,<sup>10</sup> is far more concern-

---

change in majority ownership.

<sup>8</sup> Some tools also allow the text of a contract to be compared against specified benchmarks, identifying, for example, embedded contractual limitations of liability or breaches of confidentiality clauses.

<sup>9</sup> These so-called large language models are trained on vast quantities of textual data. They analyse texts, identify linguistic patterns, calculate probabilities for sequences of words, and generate new documents within seconds in response to appropriate commands, or prompts, as they are commonly referred to by specialists. These applications, also known as generative AI tools, are particularly well suited to texts that follow recurring structures, as is often the case in legal contexts.

<sup>10</sup> It should be borne in mind that AI does not merely make lawyers providing advice 'smarter'; it also makes their clients more informed. Whereas Google searches were previously the first port of call, clients now also use AI to prepare for consultations. As a result, their expectations of

ing from the perspective of professional conduct than the deliberate and regulated use of new technologies. The legal profession therefore finds itself at a complex juncture: on the one hand, there are numerous examples of uncritical reliance on AI,<sup>11</sup> while, on the other, growing ethical and legal concerns have generated increasing caution about its use.<sup>12</sup> Professional indemnity insurance (PI insurance) constitutes an important, yet often overlooked, dimension of this development. Insurers face the considerable challenge of redefining PI insurance products so as to maintain adequate protection for third parties against losses arising from lawyers' professional conduct, while at the same time avoiding restrictions that could impede incentives for further and inevitable technological development.

## **2. Risks Associated with Lawyers' Use of AI**

Contemporary advances in AI development are no longer based on a finite sequence of 'if-then' commands, but rather on algorithms that analyse datasets on which they are trained and that evolve through self-learning. When a computer system is provided with precise instructions governing its decision-making and is subsequently capable of adjusting those instructions on the basis of its experience with previous outcomes, its behaviour may change over time, enabling the system to learn autonomously. Most generative AI systems are based on so-called large language models (LLMs). These models are trained on vast quantities of textual data, including material drawn from legal databases and the internet, from which they derive complex statistical representations of language. AI tools do not, in fact, 'understand' either the material on which they have been trained or the texts they generate in the manner in which humans understand them (Surden, 2024, p. 1942). Rather, they employ mathematical and statistical techniques to predict which sequence of words is most likely to follow a particular prompt, based on linguistic patterns identified in the training data (Surden, 2024, p. 1945). This mode of operation inherently creates a risk of inaccurate or fabricated outputs which,

---

lawyers have increased significantly. In practice, it can also be observed that clients are increasingly insisting that lawyers use AI tools to perform routine tasks traditionally carried out by trainee lawyers, as this can reduce legal fees.

<sup>11</sup> '... the concern will be determining the line between professional reliance on AI and unprofessional over-reliance on AI' (Hatfield, 2019, p. 1071).

In fact, an environment is emerging in which even non-professionals may be able to engage in the practice of law (McGinnis & Pearce, 2014, p. 3048).

<sup>12</sup> Of more than 1,500 companies surveyed across 10 different countries, more than 40% reported that they had stopped using AI because of these concerns (Sayre, 2024, p. 367).

in the context of legal practice, may result in a breach of a lawyer's professional duties owed to a client. Any reliance on AI tools must therefore be accompanied by an awareness of the risk of so-called hallucinations, a risk that stems from the probabilistic nature of LLMs and their reliance on statistical prediction rather than independently verifiable truth (Warraich, 2025, p. 604).

The risks associated with such reliance are not merely theoretical. A U.S. attorney encountered precisely this problem in 2023 when he submitted a legal filing to a New York court based on unverified research conducted using ChatGPT, which generated references to fabricated judicial decisions (AP News, 2023).<sup>13</sup> The presiding judge subsequently drew attention to the dangers of excessive reliance on AI-generated results, particularly in the absence of specific rules governing its use and effective mechanisms for preventing such practices before they result in harm. Under the existing framework, meaningful intervention may therefore occur only once actual harm has been suffered.

This case is by no means an isolated example of the problems arising from the use of AI tools in legal practice. In addition to fabricated precedents,<sup>14</sup> there have been instances involving the oversimplification of legal doctrines, the late filing of legal remedies, the drafting of contracts containing unfair clauses, the provision of erroneous legal advice (CIO, 2025), and the misinterpretation of contractual provisions (Snell, 2025, p. 266). Studies conducted using Lexis+ AI and Westlaw AI Assisted Research have likewise demonstrated that, despite the considerable reliability of these systems, they continue to produce errors in approximately 17–34% of cases. This finding demonstrates that technological safeguards alone are insufficient and that human oversight remains essential to ensure the reliability of AI-assisted legal work (Warraich, 2025, p. 606).

Furthermore, the use of LLMs may entail the processing of personal and confidential information where such information is included in prompts or uploaded documents. Depending on the model and its configuration, information submitted to an AI system may be retained and used for further training, potentially making it retrievable or accessible to third parties,<sup>15</sup> thereby rendering the protection of privacy an exceptionally challenging task in the twenty-first century (Gordanić & Bećirović Alić, 2026, p. 231). Moreover, some LLM providers reserve the right to access users' prompts and interaction histories for purposes such as monitoring misuse, including the detection of criminal activity or violations of the applicable

<sup>13</sup> It is the case *Mata v. Avianca, Inc.*, 678 F. Supp.3d 443 US District Court, S.D. New York.

<sup>14</sup> As a consequence of such misuse of AI tools, an Australian lawyer was struck off the roll and ordered to pay all costs incurred (The Guardian, 2025).

<sup>15</sup> Some AI tools expressly guarantee that data will neither be transferred to the model operators nor used for model training. One such example is Libratech.ai.

terms of service. In more complex cases, company employees may also gain access to such content (Leben, 2026, pp. 1-20). The way in which AI tools operate and are trained therefore means that their use may expose confidential information to third parties (Tasić, 2026, p. 27). This risk materialises, for example, where a lawyer enters a client's personal data into an AI tool to generate a draft contract or submits a contract for AI-assisted analysis. Such practices may compromise the confidentiality of client information and, consequently, place the lawyer's duty of professional secrecy at risk (Białkowska, 2021, pp. 79-86).

All these risks associated with AI use may ultimately translate into various forms of both pecuniary and non-pecuniary loss to third parties, most commonly lawyers' clients (Petrović Tomić, 2012, pp. 26-27). Where the damage is attributable to a lawyer's professional conduct, the lawyer may be held liable and required to compensate the affected party, either from personal assets or through PI insurance.

### **3. PI Insurance in the Age of AI**

The practice of law as a liberal profession requires lawyers to balance several distinct interests. Foremost among these is the public interest, given that the legal profession constitutes an integral component of the justice system, even though lawyers do not exercise judicial power directly.<sup>16</sup> Lawyers must also safeguard the interests of the profession as a whole by exercising their professional duties with competence and independence, thereby preserving public confidence in the legal profession. Equally important is the client's interest. As a non-professional, the client must be able to place substantial reliance on the lawyer's expertise, diligence, and independent professional judgement.

At the same time, the mere fact that a client has suffered an unfavourable outcome does not necessarily indicate that the lawyer has acted negligently or failed to take all reasonable steps to protect the client's interests. Lawyers could, however, face claims from clients whenever litigation does not end as desired. If every adverse outcome were to expose a lawyer to such a claim, lawyers would face the prospect of repeatedly having to defend themselves against their own clients. Accordingly, PI insurance for lawyers has been made compulsory in a significant number of jurisdictions (Szpyt, 2022, pp. 301-302). This requirement aims to reconcile the lawyer's personal responsibility towards the client with the professional autonomy inherent

---

<sup>16</sup> Principle 12 of the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August–7 September 1990, similarly describes lawyers as 'essential agents of the administration of justice'.

in the practice of law. Such autonomy allows lawyers considerable discretion in determining how to handle a matter and in selecting the means, methods, and techniques best suited to carrying out the mandate entrusted to them (Poll, 1994, p. 164). PI insurance serves to protect clients from the financial consequences of losses arising from a lawyer's professional activities, thereby ensuring that their ability to obtain compensation is not dependent on the lawyer's own financial resources (Morgan & Hanrahan, 2017, p. 354). At the same time, PI insurance contributes to the internal regulation of the legal profession, since the availability of coverage is linked to the lawyer's compliance with the professional duties and standards governing the practice of law.

PI insurance primarily covers the lawyer's liability towards third parties for losses caused in the course of providing legal services. Depending on the circumstances of the case, the insurance may cover both fault-based and strict liability, as well as contractual and tortious liability (Čolović & Crnjanski, 2025, p. 172). The scope of coverage, however, is generally limited to pecuniary losses resulting from omissions or other professional misconduct in the practice of law, provided that such losses do not arise from the death or bodily injury of a person, or from the destruction, damage, or loss of property. Thus, the insurance covers neither property damage nor personal injury, nor consequential losses arising from such harm. In other words, professional liability insurance covers only the financial risk to which clients and other users of legal services are exposed (Petrović Tomić, 2012, p. 30).

Against this background, the increasing use of AI tools by lawyers raises an important question: to what extent are losses resulting from AI-related risks<sup>17</sup> already encompassed by existing PI insurance? In order for coverage under a lawyer's PI insurance policy to arise, the damage must have resulted from the practice of law, and the lawyer's liability must be based on rules of private law.<sup>18</sup> These requirements follow from the fundamental purpose of PI insurance, namely, to cover risks inherent in the professional practice of law. Accordingly, coverage may arise only where the lawyer is held liable for a breach of one of their professional duties (Schnyder, 2007, p. 153) recognised under private law,<sup>19</sup> regardless of whether that liability has been established in judicial proceedings (Ćurković, 1997, p. 40), and where a causal link has been established between the breach of duty and the

---

<sup>17</sup> Although the use of AI may result in both material and non-material damage (Glantić & Bezbradica, 2025, p. 170), as noted above, this insurance covers only pecuniary losses suffered by third parties as a result of the lawyer's professional conduct.

<sup>18</sup> It follows that the coverage does not extend to claims based on contract, unlawful conduct, or rules of public law (Petrović Tomić, 2012, p. 28).

<sup>19</sup> Examples of such activities include legal representation, legal advice, the provision of legal opinions, and the drafting of documents, statements of claim, and appeals.

damage suffered by the third party (Petrović Tomić, 2012, p. 28). Where these conditions are satisfied, the insurer's obligation to indemnify may arise under the insurance contract.

It follows that determining whether PI insurance will respond to losses arising from the use of AI depends on several issues that remain unsettled and to which the insurance industry has, at least to date, provided only partial answers. First, how should the requirement that the loss arise from the 'practice of law' or 'providing legal services' be interpreted in the context of AI-assisted legal services? Second, under what circumstances should a lawyer be held liable for loss caused by the use of an AI tool? Third, are insurers prepared to provide coverage for such losses at all? Fourth, are there any policy exclusions that would preclude coverage in these circumstances? Fifth, is additional or specialised insurance coverage necessary to address AI-related risks?

### ***3.1. Coverage for the Provision of Legal Services***

The first issue in determining the scope of PI insurance is whether the loss can be regarded as having arisen in the course of the lawyer's professional activities of providing legal services (Petrović Tomić, 2012, p. 28; Čolović & Crnjanski, 2025, p. 172). This raises a particular question in the context of AI: does the use of an AI tool remain sufficiently connected to the provision of legal services for any resulting loss to fall within the scope of PI coverage? Under the definitions of the provision of legal services by a lawyer found in comparative law,<sup>20</sup> a legal service essentially involves the legal subsumption of a particular set of facts and, as such, requires professional authorisation or a licence. Both generative and specialised AI systems are capable of performing functions that closely resemble this aspect of legal work: they independently classify legal issues arising in individual cases and assess them from both legal and contextual perspectives. The accuracy of the resulting analysis, however, is a separate matter. The use of AI tools by lawyers also involves a range of technical operations that complicate the question of whether the resulting loss can be attributed to the provision of legal services. These difficulties can be illustrated by a simple example. If a loss occurs because a lawyer loses the password used to access an AI tool, or because the lawyer gives the password to a trainee who subsequently misuses it, can the resulting loss still be regarded as having arisen in the course of providing legal services? The same issue arises where the loss is caused by incorrect data being entered into an AI system or by errors in its programming. Such programming or other technical errors would ordinarily

---

<sup>20</sup> See, for example, §2.1 Gesetz über außergerichtliche Rechtsdienstleistung – RDG, BGBl. 2023 I Nr. 64.

fall outside the activities traditionally associated with the legal profession, raising doubts as to whether the resulting loss should be covered by PI insurance. In such circumstances, although the lawyer may be liable for the loss, the loss may not have resulted from the provision of a legal service as such. Instead, it may be attributable to a technical error, a defect in the technology, or the AI system's autonomous or unintended operation.

The technical dimension inherent in the use of AI tools may become one of the most significant, and potentially most common, sources of claims under PI policies. This raises the broader question of whether existing insurance arrangements remain adequate for the risks associated with contemporary legal practice. Although AI systems may reduce the incidence of errors in substantive legal analysis, they are likely to increase the risk of technical errors. Lawyers will therefore increasingly need to combine legal expertise with a sufficient level of technical competence to ensure that the services they provide remain accurate, reliable, and professionally appropriate.<sup>21</sup>

At present, AI tools are used primarily to assist lawyers in performing their core professional activities rather than to replace them entirely (Swisher, 2023, p. 834). PI insurance should therefore also respond to losses caused by the failure or malfunction of technical tools used in the provision of legal services. Such activities remain part of the services provided by the lawyer to the client, while the lawyer remains ultimately responsible to the client for those services. This, in turn, brings into focus the related question of how liability for losses arising from the use of AI tools should be allocated.

### ***3.2. Lawyer's Liability for AI-Related Damage***

A further condition for coverage under a lawyer's PI insurance is the lawyer's liability for loss or damage suffered by a third party as a consequence of the lawyer's (un)professional conduct. Determining whether damage resulting from the use of AI in legal practice can likewise give rise to professional liability therefore requires consideration of the nature of, and preconditions for, a lawyer's professional liability.

A lawyer may incur either contractual or tortious liability towards a client, depending primarily on the existence of a contractual relationship and, where such a relationship exists, on whether an obligation arising from that relationship has been breached. Regardless of whether the liability is contractual or tortious

---

<sup>21</sup> If Samsung employees could inadvertently disclose confidential information while using OpenAI's ChatGPT to troubleshoot technical problems, it is reasonable to ask what level of technical competence can realistically be expected of lawyers, who may possess even more limited technical knowledge (Gizmodo, 2023).

in nature, it is fault-based, meaning that a lawyer may be held liable for damage only where the damage is attributable to culpable conduct, whether intentional or resulting from gross negligence (Jovičić & Vukadinović, 2018, p. 650), including a culpable breach of a professional or ethical rule.

Among the most fundamental are a lawyer's duties to provide legal services competently and diligently, in accordance with the law and the rules governing the legal profession, and to preserve professional secrecy.<sup>22</sup> Lawyers may also be under a continuing professional obligation to acquire new knowledge and develop the skills required to practise independently, competently, and effectively.<sup>23</sup> This gives rise to a question that is particularly relevant to the present analysis: might the requirement of competent and diligent legal practice eventually extend to an obligation to acquire sufficient knowledge of modern technologies, including AI tools? An additional challenge in addressing this question lies in the fact that a lawyer's obligation towards a client may constitute either an obligation of means or an obligation of result (Jovičić & Vukadinović, 2018, p. 652).

The obligation owed by a lawyer to their client is generally an obligation of means, as it requires the lawyer to bring their professional expertise and skills to bear and exercise the degree of care reasonably required to protect the client's rights. The lawyer does not, merely by failing to secure a favourable outcome, become liable for damage resulting from an unsuccessful proceeding. Since the lawyer's obligation is one of means, the lawyer is required to perform all professional activities in accordance with the standard of due care, which entails knowledge of and compliance with the rules of the profession, as well as adherence to the heightened standard of due care expected in the performance of professional duties.<sup>24</sup>

There are nevertheless circumstances in which the lawyer's undertaking may amount to an obligation of result, which may be breached either by failure to achieve the intended outcome, by achieving it with delay, or which may be breached either

---

<sup>22</sup> From a comparative-law perspective, these obligations are reflected in numerous national codes of conduct for lawyers, as compiled by the Council of Bars and Law Societies of Europe (CCBE, 2026), as well as in the Code of Conduct for European Lawyers adopted by the CCBE.

<sup>23</sup> This obligation is reflected in paragraph 3.3 of the SRA Code (England and Wales), ABA Model Rule 1.1 (USA), Article 6.2 of the Code of Professional Ethics, and Article 253 of the Statute of the Bar Association of Serbia. In France and Germany, various bar associations have adopted guidelines for lawyers that expressly state that lawyers must acquire AI-related skills.

<sup>24</sup> One example would be a failure to attend a hearing because an AI tool incorrectly calculated the relevant dates and failed to send a reminder. As a result of the failure to attend the hearing, the claim may be withdrawn or dismissed, potentially giving rise to an obligation to reimburse the opposing party's costs. These costs constitute damage suffered by the client, which the lawyer would be required to compensate for as a consequence of failing to meet the applicable standard of due care.

by failing to achieve the intended outcome, by achieving it with delay, or where the outcome is affected by certain material or legal defects. In these circumstances, the lawyer cannot avoid liability merely by asserting that they acted in accordance with due care and arguing that the failure to achieve the required result was therefore not attributable to them.<sup>25</sup> The reason is that, where an obligation of result exists, the professional undertaking itself requires the lawyer to deliver an outcome that is not affected by the relevant legal or material defects, and compliance with the standard of due care does not, by itself, discharge that obligation. The lawyer could avoid liability only by invoking force majeure (Jovičić & Vukadinović, 2018, p. 653).

When using AI tools, it is clear that lawyers must act responsibly (Pierce & Goutos, 2024, p. 487). The real difficulty lies in defining what responsible use entails and, more importantly, in identifying the circumstances in which a lawyer's conduct involving AI becomes sufficiently deficient to attract liability for the resulting damage. Where a lawyer's obligation is conceived as an obligation of result, which is the less common situation, the lawyer will be liable whenever the agreed result has not been achieved, irrespective of whether AI was involved in the performance of the service. Uncertainty arises where the lawyer's obligation is an obligation of means, as is generally the case, because the lawyer may seek to defend themselves by arguing that they acted with due care. This is where the use of AI introduces a new layer of complexity, because the standard developed over decades through judicial practice and codes of legal ethics may increasingly require lawyers not merely to possess traditional legal expertise, but also to have sufficient competence to use AI tools appropriately. Courts have already begun to confront this issue, with some judges taking the view that a lawyer cannot rely on a lack of familiarity with AI or an inability to use such tools as a legitimate defence against liability for damage caused through their use.<sup>26</sup>

This development presents several challenges for both lawyers and the courts. First, the average lawyer will not have sufficient knowledge or understanding of AI to recognise when an AI system is particularly prone to error, which in turn raises the question of whether the lawyer can realistically be expected to determine the level of care required in each individual case. Second, even the exercise of a high degree of care cannot necessarily prevent an AI system from generating an

<sup>25</sup> An example would be a situation in which a lawyer is instructed to prepare a particular legal document that is subsequently rendered invalid because the required formalities have not been observed, resulting in the loss of a right belonging to the client or another person.

<sup>26</sup> As indicated by Maute (2014, p. 369): 'One, deliberate ignorance of technology is inexcusable. Two, if a lawyer cannot master the technology suitable for that lawyer's practice, the lawyer should either hire tech-savvy lawyers tasked with responsibility to keep current, or hire an outside technology consultant who understands the practice of law and associated ethical constraints'.

erroneous output or causing damage. A further difficulty concerns the very content of the duty of care: it remains uncertain whether that duty should extend beyond the lawyer's professional judgement to encompass technical safeguards against the manipulation or misuse of AI systems, such as checking and controlling the data supplied to the system. Ultimately, if the scope of the duty continues to expand in this manner, as is likely to be the case, the resulting standard may become so demanding and technically complex that compliance is difficult to achieve in practice, potentially discouraging lawyers from using AI technologies at all.

#### **4. Challenges for PI Insurance for Lawyers**

The challenges surrounding the definition of the standard of due care and the scope of the provision of legal services are directly relevant to the question of coverage under lawyers' PI insurance, since it remains unclear whether, and under what circumstances, a lawyer should be regarded as professionally liable where the loss or damage has resulted from the use of AI tools.

Insurance policies have generally not yet been adapted to address these developments. As a result, the position regarding AI-related losses remains uncertain. Existing policies typically neither expressly cover nor expressly exclude losses arising from the use of AI,<sup>27</sup> while insurance policies specifically designed to cover AI-related risks are still at an early stage of development.<sup>28</sup>

##### ***4.1. Coverage under PI Insurance – the Grey Area***

PI insurance for lawyers was developed on the assumption that lawyers themselves would conduct legal research and analysis and prepare the documents forming part of their professional work. The growing reliance on AI challenges that model of legal practice, while insurers have yet to fully adjust their approach to this changing working environment (Jungk, 2024). This creates a degree of uncertainty as to the extent of existing coverage, which may remain unnoticed until a claim is actually

---

<sup>27</sup> Insurers have so far been reluctant to take this step out of concern that policyholders might move to competitors that have not excluded AI-related risks from their coverage.

<sup>28</sup> One of Swiss Re's business partners, Armilla Assurance, has introduced an insurance policy specifically designed to address AI-related risks in the U.S. market. It is not, therefore, a traditional insurance policy that merely refers to AI-related risks; rather, it provides coverage for losses resulting from AI performance failures, including hallucinations, model errors, and disruptions to expected functionality. The policy also covers generative AI tools and established machine-learning systems used in sectors such as financial services and supply-chain management (Reinsurance News, 2025).

made, at which point a policyholder may discover that the relevant loss falls within an uncertain or contested area of coverage.<sup>29</sup> Existing policies generally do not contain provisions specifically addressing the use of AI, leaving the interpretation of the policy largely in the hands of insurers. A policyholder may argue that, because the policy does not expressly exclude losses resulting from the use of AI, such losses should fall within the coverage provided,<sup>30</sup> although insurers may dispute such an interpretation. Aware of the potential reputational risks involved, insurers are now increasingly clarifying the scope of coverage afforded by their policies.<sup>31</sup>

This silent coverage (or silent exclusion) of AI-related risks is not necessarily advantageous or disadvantageous in itself, but it may generate disputes and leave policyholders uncertain as to whether their use of AI is covered or whether they need to purchase additional insurance (Szpyt, 2021, p. 313). What is certain is that insurers will have to review and, where necessary, supplement or amend their existing policies (Necz, 2024, p. 477), particularly because PI insurance does not provide all-risk coverage, requiring the boundaries of the insured risk to be defined with sufficient precision.

Insurers should therefore reassess their existing policies, as these may prove to provide coverage for AI-related losses even though this was never their intention. The same task lies ahead for policyholders, who should seek clarification from their insurers about the extent of the protection available to them. This assessment should not be limited to PI policies but should also extend to other types of insurance, such as cyber insurance, that may provide coverage for certain AI-related losses. The interaction between different insurance policies is particularly important because insurers may seek to shift responsibility to other insurers, potentially resulting in delays in the settlement of claims, disputes, and, ultimately, gaps in coverage for the loss sustained.

The insurance response will also have to evolve as the use of AI in legal practice changes. Recently, it has become apparent that several prominent European insurers, including AXA, Allianz, and Zurich, have incorporated questions concerning AI-related risks into their existing underwriting questionnaires for cyber

---

<sup>29</sup> Research conducted by the American Bar Association in 2025 indicates that the majority of claims made against insurers providing lawyers' PI insurance were related to the use of AI (ABA, 2025).

<sup>30</sup> One possible argument is that, just as liability may arise for damage caused by an employee, liability may likewise arise for damage caused by an AI system.

<sup>31</sup> In 2024, the London-based insurer Lloyd's issued guidance identifying the use of AI in the context of PI insurance as an emerging risk. It subsequently developed a dedicated AI endorsement aimed primarily at AI developers, but also applicable to those who use AI in the course of their professional activities (LMA, 2026).

insurance and PI insurance. This may result in higher premiums, the exclusion of coverage for certain forms of AI use, and the introduction of specific endorsements (Agent Insured, 2026).

#### ***4.2. Exclusions of Insurers' Liability for AI-Related Losses***

As previously noted, only a limited number of insurers have so far expressly excluded AI-related risks from their policies.<sup>32</sup> There are, however, several reasons to expect this approach to become more common. AI-related risks remain highly unpredictable, particularly given the potentially significant scale of the losses resulting from their materialisation. Insurers also lack sufficient historical claims data (Kenneally, 2026, p. 690) to assess these risks reliably and, consequently, to price the corresponding insurance coverage. The lack of reliable assessments of the risks associated with individual AI models presents an additional challenge.<sup>33</sup> A meaningful assessment of insurance risk requires the AI tools used by lawyers to be classified and evaluated according to their functions and degree of autonomy, because some AI tools may serve merely as tools assisting lawyers in providing professional services, whereas others may perform tasks with a considerably greater degree of autonomy, requiring different approaches to insurance coverage. The inherent unpredictability of AI systems, the difficulty of estimating the scale of the harm they may cause, and the absence of reliable methods for assessing their maximum potential exposure make it difficult for insurers to design and price appropriate coverage.

The problem is further complicated by the fact that AI-related risks may affect several different actors involved in the development and use of AI in legal practice, including lawyers, AI developers, and AI operators. Although the same harmful outcome may ultimately result, these actors have fundamentally different

---

<sup>32</sup> The U.S. insurance market has already shown some movement in this direction. Insurers such as Philadelphia Insurance, Hamilton Select, and Berkley's have begun introducing exclusions for risks arising from the use of AI. (See Insurance Journal, 2024). In addition, ISO Endorsements CG 40 47 and CG 40 48 introduce express exclusions for claims arising from the use of generative AI under Commercial General Liability (CGL) policies. CG 40 47 excludes both bodily injury/property damage and personal and advertising injury coverage, while CG 40 48 excludes only personal and advertising injury coverage. This clearly indicates that insurers are slowly abandoning silent AI coverage and are moving to express contractual allocation of AI-related risks.

<sup>33</sup> The outcome of these evaluations is likely to play an important role in shaping the insurance industry's response. AI systems that fail to meet an acceptable level of safety may prove difficult or impossible to insure until the risks associated with their use have been reduced to an acceptable level. This could, in turn, create an additional incentive for the development of safer AI systems.

risk profiles and therefore belong to separate risk pools (Silver, 1996, p. 239). This provides a further rationale for excluding AI-related risks in order to preserve the homogeneity of the relevant risk pools.

However, the introduction of new exclusions is often accompanied by the development of specialised forms of coverage designed to address coverage gaps. Specialised AI policies may ultimately provide protection against risks that traditional insurance products, developed before the widespread adoption of AI, were not designed to accommodate.

### ***4.3. New Insurance Products for AI-Related Losses***

The significant gaps and uncertainties in existing insurance coverage, together with the growing prospect of express exclusions for AI-related risks, are likely to drive demand for specialised AI insurance products, regardless of whether such coverage ultimately becomes mandatory. The unpredictability of AI systems and the limited understanding of how they operate may expose a wide range of actors to liability, which is likely to increase demand for additional financial protection, since the causal link between the loss and their conduct may ultimately determine whether they are held liable.

The same applies to lawyers, whose PI insurance is unlikely to provide comprehensive protection on its own. For the time being, the absence of an adequate legal and regulatory framework leaves lawyers to bear much of this uncertainty themselves (Shamov, 2025, p. 535). They therefore face a difficult choice: either use AI tools while accepting the risks and uncertainties associated with their use, or refrain from using them and potentially lose the benefits that AI may offer to legal practice.

Available data, the current understanding of AI-related risks, and emerging approaches to AI liability provide a basis for outlining a possible insurance product to cover liability for AI-related harm caused by lawyers to third parties. Such insurance would most likely be voluntary rather than compulsory, since these AI systems are not fully autonomous and remain subject to a degree of human control. The design of such a product would also need to take into account that AI systems used by lawyers do not fall within the category of high-risk AI systems under the AI Act,<sup>34</sup> unlike the AI systems identified in Annex III of the AI Act as high-risk when used in the administration of justice. Those provisions are primarily concerned with systems used by judicial authorities. Since lawyers do not act ‘on behalf of a judicial authority’, their AI tools falls outside this category and therefore is not subject to the enhanced regulatory requirements.

---

<sup>34</sup> Regulation (EU) 2024/1689.

These AI systems are intended to assist human decision-making rather than replace it. Liability should consequently remain primarily with the person making the decision, in this case, the lawyer, who retains meaningful control over the associated risks.<sup>35</sup> The reliability of the outcome depends to a significant extent on how the lawyer, as its user or operator, interacts with it: the lawyer formulates the prompt, determines the relevant parameters and conditions, and must critically assess the accuracy and reliability of the system's output. In such circumstances, it would therefore be appropriate to recognise fault-based liability on the part of the lawyer using the AI system.<sup>36</sup> Bar associations and professional organisations will have an important role to play in developing practical guidance on the appropriate use of AI tools, together with protocols for verifying their outputs, including the accuracy of factual and legal statements, the soundness of the system's reasoning, and the level of human oversight required. These measures would help lawyers use AI responsibly while also providing them with a benchmark against which their conduct could be assessed, strengthening their position when facing claims from clients and when seeking coverage from an insurer.

## **5. Comparative Experience: the German Approach to AI Use and PI Insurance for Lawyers**

The German insurance market provides a useful example of how PI insurance may adapt to the use of AI at the underwriting stage, rather than addressing AI-related risks only once a claim has arisen. This approach has developed against the background of Germany's mandatory PI insurance regime for lawyers, with a minimum coverage limit of €250,000 per insured event and an annual aggregate limit of €1 million.<sup>37</sup> A client's claim for damages may be brought under § 280 of the

---

<sup>35</sup> The liability of a lawyer acting as an AI operator should be distinguished from the liability of an AI developer or manufacturer for defects in the product. The latter may arise under different circumstances and be subject to a different liability regime.

<sup>36</sup> This approach is also broadly consistent with the concept reflected in the Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (the AI Liability Directive). Under the proposed framework, the operation of AI systems other than high-risk systems may give rise to fault-based liability on the part of the operator, while the position of the injured party may be strengthened through a presumption concerning the causal link between the use of AI and the damage suffered. The proposed approach was intended to facilitate the protection of the interests of manufacturers, suppliers, and users of AI systems. In practical terms, this would ease the injured party's evidentiary burden by allowing the defendant to avoid liability only by demonstrating that the AI system was operated with the requisite degree of care.

<sup>37</sup> §51 Bundesrechtsanwaltsordnung – BRAO (BGBl. 2025 I Nr. 34). In practice, law firms may

German Civil Code,<sup>38</sup> which provides a basis for compensation where a contractual obligation has been breached. In the context of professional liability, this provision operates in conjunction with the fault standard established by §276 BGB. A lawyer may avoid liability by demonstrating due care, a standard developed and refined through case law that is necessarily more demanding<sup>39</sup> than the level of care expected of an ordinary person.<sup>40</sup>

The German framework is particularly relevant to the use of AI because lawyers are required to perform their professional duties independently and personally (§ 43 BRAO and § 613 BGB). AI tools may therefore be used to assist lawyers in performing their professional duties, but cannot substitute their professional judgement or relieve them of liability. The same principle is reflected in the general and special terms governing PI insurance, which treat AI as a technical aid.<sup>41</sup> Accordingly, AI-assisted legal work may fall within the scope of PI insurance where the resulting loss is attributable to the lawyer's negligence.<sup>42</sup> Under the approach articulated by Jungk (2024), AI-assisted legal work remains within the conceptual scope of lawyers' PI insurance where AI functions merely as an auxiliary tool and the lawyer remains responsible for and exercises professional control over the resulting legal service. Where these conditions are met, lawyers may continue to rely on their PI insurance for losses arising from their use of AI tools.

As is generally the case across European insurance markets, German insurers have not yet introduced specific exclusions for AI-related damage. The existing rules on exclusions and limitations of coverage therefore continue to apply. An insurer may deny coverage where the lawyer has acted intentionally,<sup>43</sup> while coverage may be subject to limitations where the loss results from the lawyer's gross negligence.

---

obtain substantially higher limits depending on the number of lawyers employed and the areas of law in which they practise. Firms specialising in corporate law, for example, may purchase policies with coverage limits of up to €50 million.

<sup>38</sup> Bürgerliches Gesetzbuch – BGB, BGBl. 2026 I Nr. 226.

<sup>39</sup> §43 BRAO.

<sup>40</sup> *diligentia quam in suis*, from §277 BGB.

<sup>41</sup> Allgemeine und Besondere Versicherungsbedingungen sowie Risikobeschreibungen zur Vermögensschaden-Haftpflichtversicherung für Rechtsanwälte und Patentanwälte, Steuerberater, Wirtschaftsprüfer und vereidigte Buchprüfer (AVB-RSW), HV 60/06.

<sup>42</sup> Although PI policy wordings differ between insurers, there are significant similarities in the scope of coverage, its limitations, and the applicable exclusions among policies offered by major German insurers, including AXA, Allianz, and R+V.

<sup>43</sup> § 81 Gesetz über den Versicherungsvertrag – VVG, BGBl. 2026 I Nr. 156.

In the absence of specific legislative intervention, lawyers have instead focused on defining the applicable standard of care, which will play a significant role in determining the scope of available insurance coverage.

Professional blogs have identified several examples of conduct that could amount to gross negligence on the part of a lawyer using AI: failing to verify AI-generated output, whether by citing incorrect case law or statutory provisions, or by relaying on erroneous legal conclusions, as well as breaching the duty of professional confidentiality under §§ 43a(2) and 43e BRAO by entering non-anonymised client information into an AI system.<sup>44</sup>

The German Federal Bar Association (BRAK) has likewise taken steps to clarify when lawyers may legitimately use AI as an auxiliary tool. Its AI Guidelines expressly recognise the use of AI as an assistive technology while making clear that this does not alter the lawyer's professional liability. Any AI-generated output must be personally reviewed and approved by the lawyer, who cannot delegate this duty to anyone else (BRAK, 2024, 2.1). The client's consent does not relieve the lawyer of this duty, because clients are mostly unaware of the AI tools used by their lawyers.<sup>45</sup> Even though lawyers are required to inform their clients about material aspects of their cases, neither the Federal Code for Lawyers nor the German Code of Conduct for Lawyers,<sup>46</sup> currently imposes a specific professional duty to disclose the use of AI in the provision of legal services. The focus has instead increasingly shifted towards proactive risk management within law firms in order to obtain insurance coverage by demonstrating compliance with the applicable standard of care. The BRAK Guidelines (2024, 5.1) also draw attention to Article 4 of the AI Act, which requires deployers, as defined in Article 3(4) of the AI Act, including lawyers, to ensure an appropriate level of AI literacy among persons dealing with AI systems.<sup>47</sup> Accordingly, the preparation of instructions for employees in a law firm and their training in the use of AI systems are essential components of responsible AI use.

---

<sup>44</sup> Insurers also consider whether such a failure was an isolated incident or reflects a systematic pattern of conduct, as this may influence their assessment of the extent of their liability under the policy. (Lulius, 2026).

<sup>45</sup> Lawyers cannot, in this context, rely on § 254 BGB concerning *Mitverschulden* (contributory negligence) on the part of the client.

<sup>46</sup> Berufsordnung in der Fassung vom 01.10.2022.

<sup>47</sup> Following the entry into force of the EU Digital Omnibus Regulation (Regulation (EU) 2026/1744 of the European Parliament and of the Council of 8 July 2026 amending Regulations (EU) 2024/1689, (EU) 2018/1139 and (EU) 2023/1230 as regards the simplification of the implementation of harmonised rules on artificial intelligence), Article 4 of the AI Act was amended. The obligation to ensure a particular level of AI knowledge was replaced by an obligation to support the development of AI skills among employees. The provision thus shifted from an obligation of result to an obligation of means.

Failure to take these measures may constitute a breach of a lawyer's duty of care and may, in turn, affect the insurer's obligation to provide coverage under a PI policy. Law firms therefore have a strong incentive to familiarise themselves with the operation and limitations of the AI tools they employ, identify the risks associated with their use, and establish appropriate internal risk-management procedures.

## 6. Conclusion

The use of AI in legal practice is becoming an integral part of contemporary legal work, and its continued expansion is difficult to resist given the pace of technological development and the growing pressure to improve efficiency and reduce the cost of legal services. The adoption of AI, however, does not diminish the fundamental duties that lawyers owe to their clients, including loyalty, confidentiality, and professional competence (Swisher, 2023, p. 832; Gunn-Rosas, 2024, p. 399), and failure to comply with these duties may give rise to professional liability. Lawyers therefore cannot simply rely on advice or recommendations generated by a computer system (Loy, 2022, p. 957).

Against this background, the use of AI adds a new layer of complexity to the risks associated with professional liability.<sup>48</sup> Lawyers must reconcile two competing demands: the need to adopt AI tools in order to remain efficient and competitive, and their continuing liability to ensure the quality and reliability of the legal services provided.

This makes PI insurance an increasingly important means of protecting lawyers against third-party claims arising from professional errors or omissions connected with the use of AI (Arrow, 1965, pp. 28 *et seq.*).<sup>49</sup> This development is consistent with the broader trend whereby new technologies introduce new risks, potentially rendering established approaches to risk management obsolete.

Insurers, however, have yet to adopt a consistent approach to AI-related risks in legal practice, which may explain their reluctance to revise existing PI policies. As a result, AI-related losses may fall within areas of silent coverage or overlap with

---

<sup>48</sup> A further issue concerns the contracts between law firms and AI providers, which may include broad limitations of contractual liability in the terms of service, particularly where the providers operate under common-law jurisdictions. This may create a 'liability gap' for law firms: although they remain liable to their clients for errors in the legal advice they provide, restrictive liability clauses in their contracts with AI providers may prevent them from recovering the resulting loss from the provider.

<sup>49</sup> PI insurance is particularly important for small law firms, which may be required to advise on matters outside their areas of expertise and are consequently more exposed to the risk of professional liability (Tilton, 2017, p. 56).

coverage available under other insurance policies, creating considerable scope for disputes. There is also a risk that insurers may eventually exclude certain AI-related risks altogether or interpret concepts such as 'due care' and 'professional services' more restrictively.

The growing use of AI in legal practice will require corresponding adjustments on both sides of the relationship. Lawyers will need to establish clear rules governing the selection, use and supervision of AI tools, while insurers should define more precisely the scope of coverage and the limits of their liability in relation to AI-assisted professional services. A clearer allocation of risks and responsibilities is essential if professional indemnity insurance is to provide meaningful protection to both lawyers and their clients.

At the same time, the emergence of specialised insurance products<sup>50</sup> suggests that traditional insurance arrangements may not be sufficient to address the full range of consequences arising from AI use. The insurance market is therefore likely to evolve towards a combination of PI coverage and additional forms of protection, including specialised AI insurance. The future of lawyers' PI insurance will thus depend not only on the pace of technological development, but also on the ability of insurers and the legal profession to jointly establish clearer standards governing professional care, liability and the insurability of AI-related risks.

## References

- Arrow, K. J. *Aspects of the Theory of Risk Bearing*. 1965. Cambridge: Cambridge University Press.
- Bialkowska, P. 2021. Legal and Ethical Grounds of Professional Secrecy of a Lawyer in Selected European Union Countries and in the United States of America. *Review of European and Comparative Law*, 45(2), pp. 77103. <https://doi.org/10.31743/recl.11456>
- Bundesrechtsanwaltskammer. 2024. *Hinweise zum Einsatz von künstlicher Intelligenz (KI)*. Available at: [https://www.brak.de/fileadmin/service/publikationen/Handlungshinweise/BRAK\\_Leitfaden\\_mit\\_Hinweisen\\_zum\\_KI-Einsatz\\_Stand\\_12\\_2024.pdf](https://www.brak.de/fileadmin/service/publikationen/Handlungshinweise/BRAK_Leitfaden_mit_Hinweisen_zum_KI-Einsatz_Stand_12_2024.pdf), 15. 8. 2026.
- Ćurković, M. 1997. Osiguranje od odgovornosti pri obavljanju profesionalne delatnosti. *Pravo i porezi*, 5, pp. 3542.
- Čolović, V. & Crnjanski. V. 2025. Kolektivno osiguranje od profesionalne odgovornosti, sa osvrtom na kolektivno osiguranje javnih beležnika i advokata. *Pravo i privreda*, 63(2), pp. 169-187. [https://doi.org/10.55836/PiP\\_25202A](https://doi.org/10.55836/PiP_25202A)

---

<sup>50</sup> Munich Re, Swiss Re, the Canadian company Vouch, and Armilla have developed insurance products that, among other features, provide AI developers and operators with risk assessments and performance guarantees.

- Gordanić J. & Bećirović Alić, M. The Fourth Generation of Human Rights in the Digital Age: the Impact of the Internet and Modern Technologies. *Strani pravni život*, 70(2), pp. 221-246. [https://doi.org/10.56461/SPZ\\_1157](https://doi.org/10.56461/SPZ_1157)
- Gunn-Rosas, L. 2024. Beyond the Binary: AI, Ethics, and Liability in the Legal Landscape. *Texas A&M Journal of Property Law*, 10(3), pp. 389-410. <https://doi.org/10.37419/JPL.V10.I3.2>
- Glintić, M. & Bezbradica, A. 2025. Osiguranje kao nosilac finansijske sigurnosti za upotrebu sistema veštačke inteligencije – mit ili stvarnost. In: Čeranić Perišić, J. and Glintić, M. (eds.), *Izazovi prilagođavanja pravnog okvira tehnološkim promenama u digitalnom društvu*. Beograd: Institut za uporedno pravo, pp. 165-185. [https://doi.org/10.56461/ZR\\_25.Digi.10](https://doi.org/10.56461/ZR_25.Digi.10)
- Hatfield, M. 2019. Professionally Responsible Artificial Intelligence. *Arizona State Law Journal*, 51(3), pp. 1057-1122.
- Hodge, S. 2023. Revolutionizing Justice: Unleashing the Power of Artificial Intelligence. *SMU Science and Technology Law Review*, 26(2), pp. 217-258. <https://doi.org/10.25172/smustlr.26.2.3>
- Kenneally, E. 2026. Artificial Insurance: Exposing the Coverage, Controls, and Measurement Gaps of Insurance for AI Risks. In: *Proceedings of the AAAI Symposium Series*, 7(1), pp. 690-699. <https://doi.org/10.1609/aaais.v7i1.36957>
- Jovičić, K. & Vukadinović, S. 2018. Ugovorna odgovornost – pravni rezim u uporednom pravu. *Teme*, 42(2), pp. 647-660.
- Leben, S. 2026. *AI, Confidentiality, and the Stratified Legal Profession*. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=6712738](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6712738), 14. 8. 2026. <https://doi.org/10.2139/ssrn.6712738>
- Jungk, A. 2024. Reicht die Berufshaftpflichtversicherung noch im Hinblick auf KI?. Available at: <https://anwaltsblatt.anwaltverein.de/de/themen/markt-chancen/berufshaftpflichtversicherung-im-hinblick-auf-ki>, 14. 8. 2026.
- Loy, M. 2022. Legal Liability for Artificially Intelligent “Robot Lawyers”. *Le, Mwis & Clark Law Review*, 26(3), pp. 951-972.
- Maute, J. 2014. Facing 21<sup>st</sup> Century Realities. *Mississippi College Law Review*, 32 (2), pp. 345-374.
- McGinnis, J. & Pearce, R. 2014. The Great Disruption: How Machine Intelligence Will Transform the Role of Lawyers in the Delivery of Legal Services. *Fordham Law Review*, 82(6), pp. 3041-3066.
- Morgan, J. & Hanrahan, P. 2017. Professional Indemnity Insurance: Protecting Clients and Regulating Professionals. *UNSW Law Journal*, 40(1), pp. 353-384. <https://doi.org/10.53637/SVIA9433>
- Necz, D. 2024. Rules over words: Regulation of chatbots in the legal market and ethical considerations. *Hungarian Journal of Legal Studies*, 64(3), pp. 472-485. <https://doi.org/10.1556/2052.2023.00472>
- Petrović Tomić, N. 2012. Osiguranje od profesionalne odgovornosti advokata – srpska verzija novog oblika obaveznog osiguranja. *Tokovi osiguranja – Časopis za teoriju i praksu osiguranja*, 3, pp. 17-40.

- Pierce, N. & Goutos, S. 2023. Why Lawyers Must Responsibly Embrace Generative AI. *Berkeley Business Law Journal*, 21(2), pp. 469-516. <https://doi.org/10.2139/ssrn.4477704>
- Poll, J. 1994. *Die Haftung der freien Berufe zwischen standesrechtlicher Privilegierung und europäischer Orientierung: eine rechtsvergleichende Untersuchung des deutschen Rechtskreises und des Common Law am Beispiel des Rechtsanwalts*. Paderborn: F. Schöningh.
- Sayre, M. 2024. Machines Make Mistakes Too: Planning for AI Liability in Contracting. *Journal of Law, Technology and the Internet*, 15(2), pp. 357-415. <https://doi.org/10.2139/ssrn.4904407>
- Schnyder, M. 2007. Überblick über den Deckungsbereich der Berufshaftpflichtversicherung für Rechtsanwälte. *Anwaltsrevue*, 4, pp. 151-155.
- Shamov, O. 2025. Responsibility for Errors of Generative AI in Legal Practice: Analysis of "Hallucination" Cases and Professional Ethics of Lawyers. *Visnik Nacional'nogo universitetu "Lvivska politehnika"*, 48(4), pp. 531-537. <https://doi.org/10.23939/law2025.48.531>
- Silver, C. 1996. Professional Liability Insurance as Insurance and as Lawyer Regulation: Response to Davis. *Fordham Law Review*, 65(1), pp. 233-245.
- Snell, C. 2025. Artificial Incompetence? Unpacking AI's Shortcomings in Contract Drafting and Negotiation. *Southern California Law Review*, 99, 239-290.
- Surden, H. 2024. ChatGPT, Large Language Models, and Law. *Fordham Law Review*, 92(5), pp. 1941-1972.
- Swisher, K. 2023. The Right to (Human) Counsel: Real Responsibility for Artificial Intelligence. *Arizona Legal Studies Discussion Paper*, 24(2), pp. 823-862.
- Szpyt, K. 2021. LegalTech Insurance In: Szostek, D. and Zalucki, M. (eds.), *Legal Tech: Information Technology Tools in the Administration of Justice*. Baden-Baden: Nomos Verlagsgesellschaft mbH & Co. KG, pp. 299-314. <https://doi.org/10.5771/9783748922834-299>
- Tasić, T. 2026. Balansiranje između inovacija i zaštite podataka o ličnosti na primeru chatgpt-a. *Strani pravni život*, 70(1), pp. 21-38. [https://doi.org/10.56461/SPZ\\_1143](https://doi.org/10.56461/SPZ_1143)
- Tilton, M. W. 2017. An Insider's Guide to Lawyers Professional Liability Insurance. An Insider's Guide to Lawyers Professional Liability Insurance. *The Brief*, 46(2), pp. 56-59.
- Warraich, M. K. Z. 2025. Ethical Governance of Artificial Intelligence Hallucinations in Legal Practice. *Social Sciences Spectrum*, 4(2), pp. 603-615. <https://doi.org/10.71085/ss.04.02.297>

### Internet Sources

- ABA. 2025. *The Legal Industry Report 2025*. Available at: [https://www.americanbar.org/groups/law\\_practice/resources/law-technology-today/2025/the-legal-industry-report-2025/](https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2025/the-legal-industry-report-2025/), 20. 7. 2026.

- Agent Insured. 2026. AXA, Allianz, Zurich: where the tier-one European insurers stand on AI liability in 2026. Available at: <https://agentinsured.eu/articles/axa-allianz-zurich-tier1-european-insurer-ai-stance-2026>, 5. 6. 2026.
- AP News. 2023. Lawyers submitted bogus case law created by ChatGPT. A judge fined them \$5,000. Available at: <https://apnews.com/article/artificial-intelligence-chatgpt-fake-case-lawyers-d6ae9fa79d0542db9e1455397aef381c>, 15. 7. 2026.
- Artificial Lawyer. 2025. *Vals Legal AI Research Eval – The Aftermath*. Available at: <https://www.artificiallawyer.com/2025/10/20/vals-legal-ai-research-eval-the-aftermath/>, 20. 7. 2026.
- Beck-Noxtua, 2026. Available at: <https://www.beck-noxtua.de/en/>, 20. 7. 2026.
- CCBE. 2026. Available at: [https://www.ccbe.eu/documents/professional-regulations/?utm\\_source=chatgpt.com#panel-712-0](https://www.ccbe.eu/documents/professional-regulations/?utm_source=chatgpt.com#panel-712-0), 10. 8. 2026.
- CIO. 2025. *10 famous AI disasters*. Available at: <https://www.cio.com/article/190888/5-famous-analytics-and-ai-disasters.html>, 15. 7. 2026.
- GC AI. 2026. *The 10 Best AI Tools for Legal Research in 2026*. Available at: <https://gc.ai/blog/best-ai-tools-for-legal-research>, 8. 8. 2026.
- Gizmodo. 2023. *Oops: Samsung Employees Leaked Confidential Data to ChatGPT*. Available at: [gizmodo.com/chatgpt-ai-samsung-employeesleak-data-1850307376](https://gizmodo.com/chatgpt-ai-samsung-employeesleak-data-1850307376), 31. 7. 2026.
- Insurance Journal. 2024. *Underwriters' Dilemma: Is AI a Cyber or Tech E&O Risk?* Available at: <https://www.insurancejournal.com/magazines/mag-features/2024/04/01/766850.htm>, 22. 10. 2025.
- Lulius. 2026. *Berufshaftpflicht und KI-Nutzung: Was Ihre Versicherung wirklich abdeckt*. Available at: <https://www.lulius.ai/blog/berufshaftpflicht-ki-kanzlei>, 8. 8. 2026.
- LMA. 2026. *AI Adoption Toolkit*. Available at: <https://lmalloyds.com/ai-adoption-toolkit/>, 20. 7. 2026.
- Reinsurance News. 2025. *Chaucer and Armilla launch new AI liability insurance product*. Available at: <https://www.reinsurancene.ws/chaucer-and-armilla-launch-new-ai-liability-insurance-product/>, 27. 9. 2025.
- The Guardian. 2016. Available at: <https://www.theguardian.com/technology/2016/jun/28/chatbot-ai-lawyer-donotpay-parking-tickets-london-new-york>, 23 7. 2026.
- The Guardian. 2025b. Lawyer caught using AI-generated false citations in court case penalised in Australian first. Available at: <https://www.theguardian.com/law/2025/sep/03/lawyer-caught-using-ai-generated-false-citations-in-court-case-penalised-in-australian-first>, 8. 8. 2026.
- Thomson Reuters Institute, 2023. Available at: <https://www.thomsonreuters.com/en-us/poets/wp-content/uploads/sites/20/2023/04/2023-Chat-GPT-Generative-AI-in-Law-Firms.pdf>, 29. 7. 2026.

## FROM TESTING TO DEPLOYMENT: A COMPARATIVE ANALYSIS OF AUTONOMOUS VEHICLE REGULATION\*\*\*

### *Summary*

The rapid development of autonomous vehicles challenges traditional driver-centred legal frameworks and raises important questions concerning safety, responsibility, and regulatory certainty. This article examines whether existing legal frameworks adequately address the regulation of autonomous vehicles and identifies regulatory approaches relevant to Serbia. Drawing on comparative and normative legal methodology, it analyses regulatory models in the United States, the United Kingdom, the European Union, Germany, France, and Australia, before assessing the Serbian regulatory framework. The findings indicate a shift towards ex ante safety assurance, institutional responsibility, lifecycle oversight, and adaptive regulation. Serbia, however, remains focused primarily on the testing of autonomous vehicles and lacks comprehensive rules governing authorisation, responsibility, insurance, data governance, and continuous oversight. The article therefore identifies key elements for the development of a comprehensive regulatory framework for autonomous vehicles in Serbia.

**Keywords:** Autonomous Vehicles; Autonomous Vehicle Regulation; Comparative Regulatory Frameworks; Safety Assurance; Regulatory Oversight.

---

\* PhD, Senior Research Associate, Institute of Social Sciences, Belgrade, Republic of Serbia.

E-mail: [soviljpeca@gmail.com](mailto:soviljpeca@gmail.com) • [rsovilj@idn.org.rs](mailto:rsovilj@idn.org.rs)

ORCID: <https://orcid.org/0000-0002-4048-8528>

\*\* PhD, Senior Research Associate, Institute of Social Sciences, Belgrade, Republic of Serbia.

E-mail: [sanjazlatanovic1@gmail.com](mailto:sanjazlatanovic1@gmail.com) • [szlatanovic@idn.org.rs](mailto:szlatanovic@idn.org.rs)

ORCID: <https://orcid.org/0000-0001-7753-0876>

\*\*\* This paper was written as part of the 2026 Research Program of the Institute of Social Sciences supported by the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

## OD TESTIRANJA DO PRIMENE: UPOREDNOPRAVNI PRISTUP REGULISANJA AUTONOMNIH VOZILA

### *Sažetak*

Ubrzani razvoj autonomnih vozila predstavlja izazov za tradicionalne pravne okvire zasnovane na odgovornosti vozača i otvara važna pitanja bezbednosti, odgovornosti i pravne sigurnosti. Polazna osnova u radu je to da li postojeći pravni okviri na odgovarajući način uređuju autonomna vozila, kao i identifikacija regulatornih pristupa relevantnih za Srbiju. Primenom komparativnog i normativnog pravnog metoda analiziraju se regulatorni režimi Sjedinjenih Američkih Država, Ujedinjenog Kraljevstva, Evropske unije, Nemačke, Francuske i Australije, nakon čega se sagledava trenutni regulatorni okvir u domaćem pravu. Rezultati istraživanja uporednopravne analize pokazuju pomeranje ka prethodnom obezbeđivanju bezbednosti, institucionalnoj odgovornosti, adekvatnom nadzoru i prilagodljivoj regulativi. Srbija se, međutim, i dalje prvenstveno fokusira na testiranje autonomnih vozila i nema sveobuhvatna pravila o odobravanju, odgovornosti, osiguranju, upravljanju podacima i kontinuiranom nadzoru. U radu će stoga biti identifikovani ključni elemente za razvoj sveobuhvatnog regulatornog okvira u Srbiji.

**Ključne reči:** autonomna vozila; regulisanje autonomnih vozila; komparativni regulatorni okvir; pravna sigurnost; regulatorni nadzor.

### 1. Introduction

The rapid development of autonomous vehicle (AV) technologies has attracted significant legal, public, political, social, and scholarly attention.<sup>1</sup> While public and industry discourse has largely focused on technological development and the performance of autonomous driving systems, the legal and regulatory frameworks

<sup>1</sup> For the purposes of this article, the term “autonomous vehicles” is used as an umbrella term encompassing vehicles equipped with automated driving systems operating at different levels of automation, as classified under the SAE International taxonomy. Although regulatory instruments in some jurisdictions increasingly use terms such as “automated vehicles”, “automated driving systems”, and “vehicles with automated driving functions”, this article uses the broader term “autonomous vehicles” for reasons of conceptual consistency and to reflect the widespread use in the comparative legal literature on advanced vehicle automation technologies. When referring to the terminology of a particular legal instrument, however, the terminology used in that instrument is retained.

governing their testing, deployment, operation, and accountability are equally important. The transition from human-driven to increasingly automated mobility challenges legal rules traditionally premised on continuous human control and raises questions concerning safety, responsibility, legal certainty, and the allocation of liability among the actors involved in autonomous mobility (Alqahtani, 2025, p. 16).

The deployment and operation of AVs are governed by statutes, regulations, technical standards, and administrative mechanisms that establish the conditions under which such vehicles may be tested, approved, placed on the market, and operated on public roads. These frameworks must address not only traditional road traffic and liability issues but also safety assurance, market access, data governance, cybersecurity, insurance, and continuous regulatory oversight (Eastman *et al.*, 2023, p. 1). At the same time, regulators must reconcile public safety and legal certainty with the need for sufficient flexibility to accommodate rapid technological development.

The regulatory response to these challenges varies considerably across jurisdictions. While some legal systems have introduced legislation specifically addressing automated driving technologies, others continue to rely on existing traffic, product liability, and administrative rules, supplemented by regulatory guidance or pilot programs for testing. These differences reflect variations in legal traditions, institutional structures, regulatory approaches, and assessments of the appropriate balance between technological innovation, public safety, legal certainty, and the allocation of liability.

The regulatory challenge therefore extends beyond the question of liability following an accident. Autonomous vehicles require *ex ante* regulatory mechanisms governing testing, safety assurance, type approval, market access, and operational authorisation, as well as mechanisms for monitoring compliance throughout their operational lifecycle. In this context, this article understands deployment not merely as the authorisation to operate a vehicle on public roads, but more broadly as the transition to authorised operation accompanied by continuing regulatory oversight throughout the vehicle's operational lifecycle. The increasing reliance of autonomous vehicles on software, data, connectivity, and artificial intelligence further necessitates regulatory attention to cybersecurity, data protection, software updates, and system reliability (Gordanić & Bećirović Alić, 2026, p. 224). Effective regulation must therefore establish sufficiently clear and predictable requirements while remaining adaptable to technological and societal developments.

Despite the growing body of scholarship on autonomous vehicle regulation, significant differences remain in how legal systems combine existing legal rules with emerging regulatory mechanisms specifically designed for autonomous vehicles. Comparative analysis is therefore relevant not only to identifying differences

among national frameworks but also to determining common regulatory principles and emerging approaches to the governance of autonomous vehicles. In particular, comparison can reveal how different jurisdictions address the transition from testing and experimentation to authorised deployment and continuous regulatory oversight.

Accordingly, this article examines the regulation of autonomous vehicles from a comparative law perspective, focusing on the United States (US), the United Kingdom (UK), the European Union (EU), Germany, France, and Australia. The comparative analysis considers key regulatory dimensions, including testing and market access, safety assurance, allocation of legal liability, operational oversight, and lifecycle regulation. These jurisdictions have been selected because they represent different regulatory approaches and institutional models. They also illustrate distinct stages of regulatory development, ranging from the fragmented federal-state approach in the US to the more structured frameworks developed in the UK, Germany, France, and Australia, while the EU provides a supranational framework that interacts with national regulation.

The article subsequently applies the findings of the comparative analysis to the Serbian regulatory framework. Particular attention is paid to the fact that Serbian regulation remains primarily focused on the testing of autonomous vehicles rather than their broader deployment and operation. The article therefore assesses whether the existing framework provides an adequate basis for the transition from testing to deployment and identifies regulatory elements that may inform its further development. The principal contribution of the article lies in connecting a comparative analysis of established and emerging regulatory models with a jurisdiction-specific assessment of Serbia. The analysis ultimately examines whether the Serbian framework can develop beyond its current testing-oriented approach towards a more comprehensive and technologically adaptable regulatory framework addressing safety assurance, legal responsibility, insurance, data governance, and continuous regulatory oversight.

## **2. Regulatory Challenges in the Governance of Autonomous Vehicles**

The transition of autonomous driving technologies from experimental systems to increasingly sophisticated and potentially marketable mobility solutions requires legal frameworks capable of addressing forms of technological operation that differ fundamentally from conventional human-driven vehicles (Nolte *et al.*, 2025, p. 1). Unlike traditional road traffic regulation, which is largely premised on the presence of a human driver who continuously performs the dynamic driving

task, autonomous driving systems progressively assume functions historically attributed to the driver. This technological shift consequently challenges established legal assumptions concerning control, responsibility, supervision, and compliance with road traffic rules.

One of the principal regulatory challenges concerns the need to establish appropriate *ex ante* mechanisms governing the testing, approval, and deployment of autonomous vehicles. Traditional legal frameworks have generally developed in response to technologies and modes of transportation that were already established in practice. Autonomous driving, by contrast, requires legislators and regulatory authorities to establish legal conditions for technologies whose capabilities and limitations continue to evolve. Regulatory frameworks must therefore anticipate potential risks while avoiding requirements that are either insufficient to protect public safety or so restrictive that they unnecessarily impede technological development (Nolte *et al.*, 2025, p. 1).

In this context, type approval represents an important regulatory mechanism for ensuring that autonomous vehicles satisfy prescribed technical, safety, and operational requirements before being placed on the market or authorised for use on public roads. The regulatory significance of type approval extends beyond technical compliance, as it provides a mechanism through which public authorities can exercise *ex ante* control over technologies whose operation may have significant implications for road safety and public welfare (Nolte *et al.*, 2025, p. 1). At the same time, applying established approval mechanisms to increasingly software-dependent vehicles raises questions concerning the assessment, validation, updating, and continued compliance of automated driving systems.

Testing constitutes a further important regulatory dimension. Because autonomous vehicles are capable of operating under complex and changing traffic and environmental conditions, testing is necessary to evaluate their performance and identify potential safety risks before broader deployment. Legal frameworks governing testing must therefore establish the conditions under which such vehicles may be operated, the responsibilities of entities conducting tests, the degree of human supervision required, and the safeguards applicable to other road users. The regulatory challenge lies in facilitating sufficient real-world testing to support technological development while ensuring that experimental operation does not expose the public to disproportionate risks (Taeihagh & Lim, 2018, p. 103).

The increasing role of software and data in vehicle operation also expands the scope of regulatory concerns beyond conventional vehicle safety requirements. Autonomous vehicles depend on sensors, software, connectivity, data processing, and artificial intelligence, creating additional regulatory issues relating to cybersecurity, data protection, system reliability, software updates, and the integrity of

automated decision-making processes (Kubica, 2022, p. i41). The regulatory framework must therefore address not only the physical characteristics of the vehicle but also the continuing functionality and safety of the technological systems on which automated driving depends.

Equally important is the requirement of legal certainty. Manufacturers, software developers, operators, and users require clear and predictable rules governing the authorisation, operation, supervision, and liability of autonomous vehicles. At the same time, overly rigid regulatory requirements may become obsolete as technological capabilities evolve. The regulation of autonomous vehicles therefore involves a continuing tension between legal certainty and regulatory adaptability. Public authorities must establish sufficiently precise standards to protect public interests while retaining the capacity to modify regulatory requirements in response to technological and societal developments (Sovilj & Zlatanović, 2026, pp. 205–208).

These considerations identify the principal regulatory dimensions arising in the governance of autonomous vehicles, including market access, testing, safety assurance, type approval, human supervision, responsibility, data governance, cybersecurity, and ongoing regulatory oversight. (Taeihagh & Lim, 2018, p. 103). These dimensions provide a conceptual framework for examining the legal responses adopted by different jurisdictions. The comparative analysis that follows therefore considers how selected legal systems address these challenges through their respective legislative and administrative frameworks and how they allocate liability and regulatory oversight among the actors involved in the development, deployment, and operation of autonomous vehicles.

### **3. Comparative Analysis of Regulatory Frameworks Governing Autonomous Vehicles**

The legal regulation of autonomous vehicles remains fragmented across jurisdictions, reflecting differences in regulatory approaches to technological adoption, liability allocation, and operational standards (Roussou *et al.*, 2026, p. 4). This chapter undertakes a comparative analysis of the legal frameworks governing AVs in Australia, France, Germany, the UK, and the US. Significant differences persist among these jurisdictions in their legal, institutional, social, political, and geographical contexts. Variations in public transport infrastructure, mobility needs, and household structures further influence the development of transportation systems and the regulatory approaches adopted for the deployment and operation of AVs (Emory, Douma & Cao, 2022, p. 1). While the US represents a more fragmented

and decentralised regulatory model, the UK, Germany, France, and Australia illustrate different approaches to developing more structured frameworks for the governance of AVs. The EU is examined as a distinct supranational regulatory layer rather than as a national jurisdiction because its rules on type approval, product liability, motor insurance and artificial intelligence directly shape the regulatory space within which Member States such as Germany and France regulate autonomous vehicles. These divergences not only illustrate different legislative responses to technological innovation but also provide a basis for assessing how different regulatory models address the common challenges identified in the preceding section.

### **3.1. United States:**

#### ***Federal Oversight and State-Level Governance of Autonomous Vehicles***

The US represents one of the earliest jurisdictions to facilitate the testing and development of autonomous vehicles on public roads, largely due to its innovation-oriented regulatory environment and decentralised allocation of regulatory powers (Sovilj & Zlatanović, 2026, pp. 192–193). Rather than adopting a single comprehensive federal framework governing autonomous vehicles, the US regulatory approach has developed through the interaction between federal vehicle safety regulation and state-level rules addressing operational requirements, liability, and insurance.

Federal guidance issued by the National Highway Traffic Safety Administration (NHTSA), including the *Federal Automated Vehicles Policy* (2016) and *Automated Driving Systems: A Vision for Safety* (2017), sought to promote regulatory consistency through voluntary safety guidance and a *Model State Policy* while preserving state authority over liability allocation and insurance requirements. At the federal level, NHTSA exercises its regulatory authority primarily through the *Federal Motor Vehicle Safety Standards* (FMVSS), which establish mandatory safety requirements applicable to motor vehicles and motor vehicle equipment. However, their application to highly autonomous vehicles has required regulatory adaptation due to the absence of human drivers in certain driving functions.<sup>2</sup> More recently, the federal regulatory framework has continued to evolve through targeted amendments to the FMVSS and the use of exemption mechanisms for vehicles whose design differs from that of conventional vehicles. States are generally responsible

---

<sup>2</sup> In 2020, NHTSA established the Automated Vehicle Transparency and Engagement for Safe Testing (AV TEST) Initiative in 2020 as a voluntary information-sharing mechanism designed to increase transparency regarding autonomous vehicle testing activities across the US. Rather than establishing binding regulatory requirements, the initiative sought to facilitate public access to information concerning testing operations and to support engagement among federal authorities, state regulators, industry stakeholders, and the public.

for determining the allocation of liability among manufacturers, owners, operators, and other relevant parties, whereas NHTSA retains authority over vehicle safety and safety-related defects, including those associated with automated driving systems. During the transitional period in which autonomous and conventional vehicles operate concurrently, existing liability regimes are generally expected to remain applicable (Roussou *et al.*, 2026, p. 4).

Despite several legislative initiatives, including the *AV START Act* and the *SELF DRIVE Act*, the US has not adopted a comprehensive federal statute specifically governing autonomous vehicles. These proposals sought to promote greater regulatory uniformity by clarifying federal authority over vehicle safety standards, facilitating the deployment of automated driving systems, and reducing regulatory fragmentation among states. In particular, the *SELF DRIVE Act* sought to clarify the division of regulatory authority by designating NHTSA as the primary federal authority responsible for vehicle safety standards, while limiting state regulation of autonomous vehicles where such regulation would conflict with federal requirements (Taeiagh & Lim, 2018, p. 108). However, the failure of these initiatives to achieve legislative adoption has preserved a regulatory model based largely on existing federal safety regulations and non-binding guidance issued by NHTSA. This reliance on voluntary guidance provides manufacturers with flexibility in developing and testing autonomous vehicles, but has also been criticised for creating uncertainty regarding uniform safety standards, liability allocation, and the conditions for large-scale commercial deployment. Consequently, the US regulatory framework remains characterised by a division between federal oversight of vehicle safety and state-level regulation of operational issues, liability, and insurance.

### 3.2. United Kingdom:

#### *Evolution of the Regulatory Framework for Autonomous Vehicles*

The United Kingdom's approach to autonomous vehicle regulation has historically been shaped by the *Automated and Electric Vehicles Act 2018* (AEVA), which represents an initial legislative response to the legal challenges arising from the transition towards automated mobility (Rosemadi, Khong & Radhakrishna, 2022, p. 157). Rather than establishing a comprehensive regulatory code for autonomous vehicles, the AEVA adopts a framework-based approach, focusing primarily on the allocation of legal responsibility and the creation of mechanisms capable of accommodating future technological developments (Eastman *et al.*, 2023, p. 49).

A central feature of the Act is the establishment of a statutory liability framework under which insurers assume primary responsibility for compensating victims of accidents caused by automated vehicles. By providing victims with a direct

route to compensation through compulsory motor insurance, the AEVA reduces the need to establish human driver fault at the initial stage of the claims process. The insurer is subsequently entitled to recover its costs from the party responsible for the accident. This represents a significant adaptation of conventional road traffic liability models, particularly in circumstances where an accident may result from a failure of the automated vehicle rather than from human negligence.<sup>3</sup>

However, the AEVA's regulatory scope remains deliberately limited. The Act does not establish a comprehensive regulatory regime addressing safety assurance, technical standards, data governance, cybersecurity, or the broader conditions for the deployment of automated vehicles. Instead, its provisions primarily establish a liability and insurance framework for automated vehicles, leaving broader regulatory requirements to subsequent legislative developments.<sup>4</sup> In this respect, the AEVA can be understood as an incremental regulatory measure, addressing the immediate legal consequences of automated vehicles without prescribing a comprehensive set of technical and operational requirements at an early stage. This approach laid the foundation for the subsequent establishment, through the *Automated Vehicles Act 2024* (AVA), of a more comprehensive regulatory framework governing vehicle authorisation, safety obligations, and ongoing regulatory oversight.

The AVA establishes the statutory framework governing the authorisation, deployment, and regulatory oversight of autonomous vehicles. At the core of the Act lies the statutory self-driving test, which serves as the principal legal criterion for determining whether a vehicle qualifies for self-driving authorisation under the Act. By placing this statutory assessment at the centre of the authorisation process, the AVA shifts regulatory attention from post-accident liability towards ex ante safety assurance. Lawful market access therefore becomes conditional upon demonstrable compliance with statutory safety standards.<sup>5</sup> The statutory test is complemented by a Statement of Safety Principles, which requires authorised self-driving vehicles to achieve a level of safety at least equivalent to that of a competent and careful human driver (Woolich & Gore, 2024). The Act distinguishes between two operational modes at the approval stage – User-in-Charge (UIC) and No-User-in-Charge (NUIC) – a distinction that constitutes one of its central regulatory innovations by allocating legal responsibility according to the degree of human involvement in vehicle operation (Roussou *et al.*, 2026, p. 7). This differentiated allocation of legal responsibility reflects the Act's underlying risk-based regulatory model, under which legal obligations increase as the role of the human

---

<sup>3</sup> *Automated and Electric Vehicles Act 2018* (c. 18), Part 1, ss. 16–20.

<sup>4</sup> *Automated and Electric Vehicles Act 2018* (c. 18), ss. 1–5.

<sup>5</sup> *Automated Vehicles Act 2024* (c. 10), Part 1, s. 2.

driver diminishes. The duty to ensure the continuing compliance of authorised vehicles rests with the Authorised Self-Driving Entity (ASDE) or, in the case of No-User-in-Charge operations, with the licensed NUIC operator responsible for the vehicle's operation.

Under the AVA, responsibility is allocated according to the operational role of each actor: ASDEs are responsible for the continuing compliance of authorised vehicles, NUIC operators bear responsibility for the operation of vehicles during driverless journeys, while UICs remain subject to defined and time-limited expectations concerning the transfer of control. Third-party compensation remains primarily governed by existing motor insurance and tort principles; however, the Act strengthens accountability during automated operation by assigning responsibility to the relevant actors and facilitating access to safety-critical information following incidents (Roussou *et al.*, 2026, p. 7). In doing so, the Act departs from traditional driver-centred liability models by recognising authorised entities responsible for self-driving operations as continuing regulatory actors whose legal responsibilities extend beyond initial vehicle authorisation to encompass ongoing compliance throughout the vehicle's operational lifecycle. The Secretary of State exercises extensive ongoing regulatory and supervisory powers, including the authority to grant, vary, suspend, or revoke authorisations, impose regulatory conditions, and maintain a public register of authorised vehicles. These powers enable continuous regulatory oversight throughout the operational lifecycle of authorised vehicles, reflecting the dynamic nature of autonomous driving technologies and the need for an adaptive regulatory framework.<sup>6</sup> To strengthen post-incident accountability, the AVA provides regulators with robust investigatory and enforcement mechanisms, including broad information-gathering powers, data-sharing arrangements with insurers, interview and information notices, warrant-based search powers, and a graduated enforcement regime comprising compliance and redress notices, monetary penalties, and criminal offences for providing false or withholding safety-critical information.<sup>7</sup>

Unlike the AEVA, which primarily addressed post-accident liability and insurance, the AVA represents a fundamental shift from a liability-centred legislative framework towards a comprehensive governance model combining market authorisation, institutional accountability, continuous regulatory supervision, and post-deployment compliance. Although parts of the Act have already entered into force, the principal authorisation regime for automated vehicles is expected to become operational in 2027 following the adoption of the necessary secondary legislation.

---

<sup>6</sup> *Automated Vehicles Act 2024* (c. 10), Part 1, s. 10.

<sup>7</sup> *Automated Vehicles Act 2024* (c. 10), ss. 16–22, 28–36.

### 3.3. European Union:

#### *Fragmented Regulatory Framework for Autonomous Vehicles*

At the EU level, there is currently no single comprehensive legislative instrument specifically regulating autonomous vehicles as a distinct legal category. Instead, the regulatory framework relies on the application of existing horizontal legal instruments governing product liability, motor insurance, and artificial intelligence. The *Product Liability Directive* 2024/2853, which repeals Directive 85/374/EEC<sup>8</sup>, establishes a strict liability regime for defective products and may apply to AV-related defects without requiring immediate sector-specific legislation (Chatzipanagiotis & Leloudas, 2020, p. 118). Similarly, the *Motor Insurance Directive* 2009/103/EC provides a framework for victim compensation through compulsory motor insurance, while allowing insurers, where appropriate, to seek recourse against responsible parties, including manufacturers.<sup>9</sup> However, its effective application to AVs may require further harmonisation concerning concepts such as automated operation and access to vehicle data. In addition, the *Artificial Intelligence Act* (Regulation (EU) 2024/1689)<sup>10</sup> introduces a risk-based ex ante regulatory approach for high-risk AI systems, including certain safety-related AI components integrated into autonomous vehicles, by imposing obligations aimed at ensuring safety, transparency, and the protection of fundamental rights (Mpofy, 2025. p. 5).

This fragmented yet precautionary regulatory approach is also reflected in the EU framework governing the testing and deployment of autonomous vehicles. While AV testing is legally permitted across the EU, the regulatory approach generally places greater emphasis on ex ante safety assessment and the mitigation of technological risks before wider market deployment. In contrast to the more innovation-driven regulatory environment in the US, where testing on public roads has traditionally been subject to fewer mandatory federal requirements, European regulatory approaches have generally favoured more controlled testing conditions, often limiting trials to private roads,

---

<sup>8</sup> Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, *Official Journal of the European Communities*, L 210.

<sup>9</sup> Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (Codified version), *Official Journal of the European Union*, L 263.

<sup>10</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), *Official Journal of the European Union*, L, 12.7.2024.

predefined routes, controlled environments, or at low speeds (Taeiagh & Lim, 2018 p. 109). This reflects a broader regulatory emphasis on public safety and regulatory oversight before permitting large-scale deployment of autonomous driving technologies.

A further component of the EU regulatory framework is provided by Regulation (EU) 2019/2144 on type-approval requirements for motor vehicles, commonly referred to as the *General Safety Regulation* (GSR II).<sup>11</sup> The Regulation establishes mandatory safety requirements for vehicles placed on the EU market and provides the legal basis for developing type-approval requirements for certain automated driving systems. By introducing harmonised technical requirements for advanced vehicle safety functions, cybersecurity, and automated driving technologies, the Regulation seeks to ensure that autonomous vehicles placed on the EU market meet applicable safety standards as part of the type-approval process. However, rather than establishing a comprehensive regulatory regime for autonomous vehicle, the Regulation operates within the broader EU type-approval framework, complementing existing liability, insurance, and AI-related rules through a preventive approach focused on vehicle safety and technical compliance.<sup>12</sup>

Consequently, while the EU regulatory framework establishes common principles concerning safety, liability, and type approval, significant aspects of autonomous vehicle deployment remain dependent on national regulatory initiatives. This has led several Member States, particularly Germany and France, to adopt more specific legislative frameworks addressing the operational deployment of autonomous vehicles.

### 3.4. Germany:

#### *A Comprehensive Regulatory Framework for Autonomous Vehicles*

Germany has emerged as a pioneer in the legal regulation of autonomous vehicles through the gradual development of a comprehensive legislative framework governing increasingly higher levels of vehicle automation. The *Automated Driving*

<sup>11</sup> Regulation (EU) 2019/2144 of the European Parliament and of the Council of 27 November 2019 on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users, amending Regulation (EU) 2018/858 of the European Parliament and of the Council and repealing Regulations (EC) No 78/2009, (EC) No 79/2009 and (EC) No 661/2009 of the European Parliament and of the Council and Commission Regulations (EC) No 631/2009, (EU) No 406/2010, (EU) No 672/2010, (EU) No 1003/2010, (EU) No 1005/2010, (EU) No 1008/2010, (EU) No 1009/2010, (EU) No 19/2011, (EU) No 109/2011, (EU) No 458/2011, (EU) No 65/2012, (EU) No 130/2012, (EU) No 347/2012, (EU) No 351/2012, (EU) No 1230/2012 and (EU) 2015/166 (Text with EEA relevance), *Official Journal of the European Union*, L 325, 16.12.2019, pp. 1–40.

<sup>12</sup> General Safety Regulation, Arts. 6–11.

Act (2017)<sup>13</sup> established the legal basis for the operation of SAE Level 3 autonomous vehicles,<sup>14</sup> while the *Act Amending the Road Traffic Act and the Compulsory Insurance Act (Act on Autonomous Driving 2021)*<sup>15</sup> marked a significant regulatory milestone by making Germany the first jurisdiction to adopt a comprehensive legal framework for the operation of SAE Level vehicles (Csítei, 2021, p. 56). This legislative reform was subsequently complemented by a federal ordinance adopted in February 2022, which operationalised the statutory framework by prescribing the technical and procedural requirements for the deployment of autonomous vehicles and amending existing road traffic legislation to facilitate their integration into public road transport (Nolte *et al.*, 2025, p. 5).

The legislative reform, formally enacted as the *Act Amending the Road Traffic Act and the Compulsory Insurance Act*, establishes the legal basis for the operation of motor vehicles equipped with automated driving functions capable of performing the entire dynamic driving task without human intervention. Rather than permitting unrestricted deployment, the Act adopts a cautious, risk-based regulatory approach by restricting the operation of such vehicles to predefined and officially approved operating areas (defined operating areas).<sup>16</sup> Within these areas, auton-

---

<sup>13</sup> Ahtes Gesetz zur Änderungen des Straßenverkehrsgesetzes, *Bundesgesetzblatt Jahrgang 2017 Teil I Nr. 38*, ausgegeben zu Bonn am 20. Juni 2017.

<sup>14</sup> Autonomous vehicles are commonly classified according to the six-level taxonomy developed by the Society of Automotive Engineers (SAE), which distinguishes vehicles based on the degree of driving automation. At SAE Levels 1 and 2, the human driver remains responsible for the dynamic driving task, notwithstanding the availability of driver-assistance functions. By contrast, at Levels 3 through 5, the automated driving system assumes responsibility for performing the dynamic driving task, although Level 3 still requires the human driver to intervene when requested. Full automation is achieved at Levels 4 and 5. Level 4, or high driving automation, is defined as a level at which the system performs all driving tasks under specific and predefined conditions. Level 5, or full driving automation, represents the highest level of automation, at which the system performs all driving tasks under all driving and environmental conditions, without requiring driver intervention. In other words, Level 5 vehicles are capable of operating fully autonomously under all driving and environmental conditions (SAE, 2021, p. 4). The SAE classification has been widely adopted as a reference framework for driving automation by international and national regulatory and policy-making bodies. It has informed the development of legal and policy frameworks in several jurisdictions, including the Australian National Transport Commission (NTC), the UK's Department for Transport (DfT), the US National Highway Traffic Safety Administration (NHTSA), the Government of Ontario, Canada, and the European Road Transport Research Advisory Council (Taeihagh & Lim, 2018, p. 106).

<sup>15</sup> Gesetz zur Änderung des Straßenverkehrsgesetzes und des Pflichtversicherungsgesetzes – Gesetz zum autonomen Fahren, *Bundesgesetzblatt Jahrgang 2021 Teil I Nr. 48*, ausgegeben zu Bonn am 27. Juli 2021.

<sup>16</sup> *Act amending the Road Traffic Act and the Compulsory Insurance Act – Act on Autonomous Driving*, Art. 1d.

omous vehicles are legally permitted to perform the driving task independently, provided that the statutory and technical requirements prescribed by the regulatory framework are satisfied. By restricting the operation of vehicles equipped with autonomous driving functions to predefined operating areas, the German legislature adopts a functional approach to regulation, whereby the scope of legal authorisation is determined not only by the technical capabilities of the automated driving system but also by the features of its intended operational environment.

The Act governs several key aspects of the deployment and operation of autonomous vehicles. It establishes procedures for obtaining an operating permit, including applicable testing requirements, and sets out the conditions for the type approval of autonomous vehicle models for use on public roads. The Act also prescribes the requirements for vehicle registration and defines the respective obligations of manufacturers, owners, and operators.<sup>17</sup> In addition, it regulates testing procedures, specifies the administrative process for obtaining operational authorization, and establishes administrative and civil liability for non-compliance. Finally, the Act sets out the technical requirements and performance standards applicable to Level 4 autonomous vehicles (Eastman *et al.*, 2023, p. 30).

From a regulatory perspective, one of the Act's most significant features is the allocation of approval authority to the competent public authorities. The legislation requires administrative authorisation not only for the autonomous vehicle itself but also for the specific operational domain in which it is intended to operate.<sup>18</sup> This dual authorisation mechanism reflects a preventive regulatory model, whereby compliance with technical, operational, and safety requirements is subject to *ex ante* administrative oversight.<sup>19</sup> Consequently, the German framework represents a structured

<sup>17</sup> The regulation expressly allocates legal responsibilities not only to manufacturers but also to vehicle owners and operators. In particular, vehicle owners are required to ensure the continued operational safety of the automated driving system by conducting pre-departure safety inspections, arranging periodic technical inspections by qualified personnel (i.e., mechanics or engineers) at intervals not exceeding 90 days, and demonstrating that the automated driving function can be safely deactivated where required. These obligations reflect the legislature's intention to distribute responsibility for the safe operation of SAE Level 4 vehicles beyond the manufacturer and to impose ongoing compliance obligations on those responsible for their operation (Malterer, 2022).

<sup>18</sup> The authorisation procedure comprises two distinct administrative stages. First, an operating permit for the autonomous driving system must be obtained from the Federal Motor Transport Authority (*Kraftfahrt-Bundesamt*). Second, the competent authority of the relevant federal state must authorise the deployment of one or more vehicles of an approved type within a defined operating area. Such authorisation may be granted only after the operational domain has been specified and in consultation with the competent local authority, thereby reflecting the Act's dual administrative approval model (Malterer, 2022).

<sup>19</sup> *Act Amending the Road Traffic Act and the Compulsory Insurance Act – Act on Autonomous*

regulatory model that combines detailed technical standards with administrative authorisation mechanisms to facilitate the gradual deployment of vehicles equipped with autonomous driving functions while maintaining regulatory oversight over their operation. From a comparative law perspective, this approach illustrates a preference for administrative supervision as the principal mechanism for managing the legal risks associated with the deployment of autonomous vehicles.

### **3.5. France: *An Incremental and Sector-Specific Regulatory Framework for Autonomous Vehicles***

France's regulatory approach to autonomous vehicles was initiated through the adoption of the *French National Strategy on the Development of Autonomous Vehicles* in 2018, which was subsequently updated in 2022.<sup>20</sup> The Strategy established the strategic and regulatory foundations for the integration of autonomous vehicles into the national transport system and serves as the principal policy framework guiding subsequent legislative and regulatory reforms, particularly with regard to ethical standards, insurance, liability allocation, and the adaptation of transport infrastructure. These policy objectives were subsequently translated into legislation through the *Mobility Orientation Law (Loi d'orientation des mobilités)*, enacted on 24 December 2019.<sup>21</sup> The Act establishes a broader framework for sustainable mobility while also providing a legal basis for the deployment of autonomous vehicles beyond the experimental phase. It further provides for the collection and use of vehicle-generated data for traffic management and incident reporting and authorises the adoption of implementing measures governing the provision of autonomous mobility services (Eastman *et al.*, 2023, p. 26). This approach reflects a gradual and adaptive regulatory strategy, whereby legislative intervention has evolved alongside technological progress and practical experimentation rather than through the immediate establishment of a comprehensive authorisation regime.

Building upon this legislative framework, France further developed its regulatory regime for autonomous vehicles through *Ordinance No. 2021-443* of April 2021,<sup>22</sup>

---

*Driving* of 12 July 2021, Art. 1e.

<sup>20</sup> *Development of Automated and Connected Road Mobility – State of Play, Challenges and Actions for the National Strategy*, 2023, p. 2.

<sup>21</sup> LOI n° 2019-1428 du 24 décembre 2019 d'orientation des mobilités, *Journal officiel de la République française* n° 0299 du 26 décembre 2019, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000039666574>.

<sup>22</sup> Ordinance no 2021-443 du 14 avril 2021 relative au régime de responsabilité pénale applicable en cas de circulation d'un véhicule à délégation de conduite et à ses conditions d'utilisation,

which introduced more specific rules governing their deployment and operation. The Ordinance addresses three principal areas: criminal liability in the context of autonomous vehicles, the conditions governing their use, and the safety requirements applicable to these systems. It provides that, where an automated driving system fails to comply with applicable operational requirements, the manufacturer may incur civil liability for any resulting damage.<sup>23</sup> In addition, the Ordinance establishes a legal framework governing access to vehicle-generated data while automated functions are activated, identifying the entities entitled to access such data, including national police authorities, vehicle registration holders, and authorised public or private actors responsible for investigating relevant incidents involving vehicle-generated data.<sup>24</sup>

Complementing this regulatory framework, France further facilitated the practical development of autonomous vehicles by expanding its experimentation regime in 2021 to permit the testing of vehicles capable of operating without a driver on board.<sup>25</sup> This regulatory evolution was intended to support a gradual transition from experimental deployment towards higher levels of vehicle automation, with the objective of enabling SAE Level 4 testing by the end of 2022.<sup>26</sup> However, by September 2022, the French authorities had introduced only the regulatory framework for SAE Level 3 deployment (Eastman *et al.*, 2023, p. 28).

Building upon its earlier regulatory reforms, France further strengthened its legal framework through *Decree No. 2024-1063* of 25 November 2024,<sup>27</sup> which estab-

---

*Journal officiel de la République française* n° 0089 du 15/04/2021. <https://www.legifrance.gouv.fr/eli/ordonnance/2021/4/14/TRAT2034523R/jo/texte>.

<sup>23</sup> *Ordinance no 2021-443*, Art. L 123-2.

<sup>24</sup> *Ordinance no 2021-443*, Art. L 123-3.

<sup>25</sup> As of 2018, French public-road testing activities encompassed three main categories of autonomous vehicle experiments: (1) motorway and expressway trials involving SAE Levels 2-4 systems; (2) low-speed urban trials at SAE Levels 2-4 and addressing more complex interactions with road users and vehicle positioning requirements; and (3) very-low-speed urban public transport experiments involving SAE Levels 4-5 vehicles operating along predefined routes, primarily small autonomous shuttles with a capacity of four to eight passengers. A notable example within the latter category is the EZ10 driverless shuttle, which was authorised to operate autonomously on a public road in Toulouse and became the first fully autonomous vehicle approved for public-road operation in Europe. Operating at SAE Level 4, the shuttle was permitted to perform driving functions autonomously within a defined operational domain and subject to specific route limitations (Bateman, 2021).

<sup>26</sup> In parallel, French stakeholders supported the development of dedicated testing environments, such as *Transpolis*, an 80-hectare experimental site designed to evaluate automated vehicles under realistic traffic conditions while reducing reliance on public road infrastructure.

<sup>27</sup> Décret no 2024-1063 du 25 novembre 2024 relatif au transport routier automatisé de marchandises, *Journal officiel de la République française*, n° 0280 du 27/11/2024, <https://www.legifrance.gouv.fr/eli/decret/2024/11/25/PTDT2408874D/jo/texte>.

lishes detailed rules governing the deployment and operation of autonomous road freight transport systems. The Decree is particularly significant because it moves beyond the regulation of testing activities and provides a comprehensive framework for the operational use of autonomous freight vehicles, including requirements relating to safety demonstrations, allocation of responsibilities among system operators and other stakeholders, operational supervision, and regulatory oversight.<sup>28</sup> The Decree is also aligned with the broader European regulatory framework, including Regulation (EU) 2019/2144 and Regulation (EU) 2022/1426<sup>29</sup> governing the type approval of automated driving systems (the ADS Regulation), while extending beyond vehicle approval to regulate the operational deployment and use of autonomous road freight transport in real-world conditions.<sup>30</sup> It therefore represents one of the most comprehensive national regulatory frameworks for the commercial deployment of highly automated freight transport in Europe. From a comparative law perspective, the French framework demonstrates a strategy of incremental regulatory development, combining policy guidance, legislative adaptation, experimental mechanisms, and a comprehensive operational framework for autonomous road freight transport to address the legal challenges arising from the deployment of autonomous vehicles.

### **3.6. Australia:**

#### ***A Regulatory Framework for Autonomous Vehicles and Safety Assurance***

Australia has recently advanced the development of a comprehensive regulatory framework for the future commercial deployment of autonomous vehicles. The proposed national safety framework is intended to regulate the safety of autonomous vehicles across their lifecycle, while their practical deployment remains subject to further legislative and regulatory implementation. Following the decision to support conditional deployment from 2027 in selected locations, Australia is transitioning from the development of its national safety framework towards controlled commercial deployment. The regulatory approach is structured around three principal phases of oversight: (1) first-supply regulation, governing the initial placement of automated

---

<sup>28</sup> *Décret no 2024-1063 du 25 novembre 2024 relatif au transport routier automatisé de marchandises*, Art. R. 3251-1.

<sup>29</sup> Commission Implementing Regulation (EU) 2022/1426 of 5 August 2022 laying down rules for the application of Regulation (EU) 2019/2144 of the European Parliament and of the Council as regards uniform procedures and technical specifications for the type-approval of the automated driving system (ADS) of fully automated vehicles, *Official Journal of the European Union*, L 221. 26.8.2022, pp. 1–64.

<sup>30</sup> French Ministry for Ecological Transition (2025), *National Strategy for Automated and Connected Road Mobility (2025–2027)*, p. 9.

vehicles on the market; (2) in-service regulation, addressing the operation and ongoing compliance of automated vehicles throughout their lifecycle; and (3) state and territory road transport regulation, encompassing matters within the jurisdiction of subnational road transport authorities (Eastman *et al.*, 2023, p. 2).

Under Australia's proposed regulatory framework, autonomous vehicles enter the commercial market through the existing first-supply regime, which governs the initial placement of vehicles on the market. This framework distinguishes between type-approval and non-type-approval pathways, with the former expected to apply to the vast majority of automated vehicles and the latter reserved for limited, case-specific circumstances (Eastman *et al.*, 2023, p. 3). An entity seeking type approval from the National Transport Commission (NTC)<sup>31</sup> assumes the role of the Automated Driving System Entity (ADSE) and remains legally responsible for the vehicle throughout its operational lifecycle, thereby becoming subject to the in-service obligations established under the proposed *Automated Vehicle Safety Law* (NTC Policy Paper, 2022, p. 22).

The type-approval process is based on self-certification, requiring the ADSE to demonstrate compliance with the Australian Design Rules (ADRs) through evidence addressing eleven core regulatory requirements, including system safety and validation, the operational design domain, the human-machine interface, compliance with road traffic laws, interaction with public authorities, risk management, driving performance, software updates, adaptation to Australian road conditions, cybersecurity, and user education. In addition, applicants must demonstrate their capacity to support the vehicle for a minimum of seven years by maintaining an established corporate presence, satisfying prescribed financial requirements, and ensuring ongoing data-recording and data-sharing capabilities (NTC Policy Paper, 2022, pp. 22–23).

Given that autonomous vehicles may be modified or updated throughout their operational lifecycle, the proposed Australian framework extends the responsibilities of the ADSE to the ongoing safety of the vehicle while in service. The ADSE is subject to a general safety duty requiring it to ensure the safe operation of autonomous vehicles, assessed against the standard of what is reasonably practicable or reasonably foreseeable (Eastman *et al.*, 2023, p. 4). This risk-based obligation places primary responsibility for identifying and mitigating safety risks on the ADSE as the entity best positioned to manage them. To demonstrate compliance, the ADSE must submit a statement of compliance supported by a safety case evidencing conformity with the applicable Australian Design Rules. In addition to the

<sup>31</sup> The National Transport Commission (NTC) is Australia's national land transport reform agency, statutorily mandated to develop, maintain, and monitor nationally consistent regulatory and operational frameworks for road, rail, and intermodal transport, including reforms addressing emerging transport technologies (NTC Policy Paper, 2023).

general safety duty, the framework envisages specific prescriptive safety obligations, expected to cover areas such as safety management, prevention of unsafe operation, notification of safety risks, data recording, education and training, and compliance with road traffic laws (NTC Policy Paper, 2021, p. 25).

An autonomous vehicle reaches the end of its regulatory lifecycle once it is no longer supported by an ADSE,<sup>32</sup> after which its automated driving functions may no longer be lawfully operated on public roads (Eastman *et al.*, 2023, p. 5). From a comparative law perspective, the Australian approach reflects a safety-assurance model in which regulatory responsibility is allocated primarily to the entity controlling the automated driving system, combining self-certification with continuing lifecycle obligations.

### 3.7. Comparative Assessment of Regulatory Models

The comparative legal analysis demonstrates that, despite significant differences in legislative structure and regulatory maturity, the jurisdictions examined exhibit a common trend towards a gradual transition from traditional driver-centred regulation to governance models centred on the safety, supervision, and responsibility of autonomous vehicles. While the US continues to rely on a fragmented allocation of regulatory responsibilities between federal and state authorities, the UK, Germany, France, and Australia have increasingly adopted more comprehensive regulatory approaches combining ex ante safety assurance, institutional responsibility, lifecycle supervision, and adaptive regulatory oversight. At the same time, the EU provides a harmonised framework for vehicle safety, type approval, product liability, and artificial intelligence, while leaving the operational deployment of autonomous vehicles largely to national legislation. These developments illustrate that the legal challenges posed by autonomous vehicles can no longer be addressed solely through traditional liability rules but require integrated regulatory frameworks governing their entire lifecycle. Against this comparative background, the following chapter examines the national legislative framework to assess its degree of alignment with these emerging international regulatory trends and to identify potential areas for further legal development.

---

<sup>32</sup> The Australian framework distinguishes between minor and significant modifications to autonomous vehicles during their operational lifecycle. Minor modifications may be implemented without notification to the in-service regulator, provided they do not affect the vehicle's level of automation, operational design domain, or safe operation. By contrast, significant modifications require the ADSE to self-certify to the in-service regulator that the modified vehicle continues to satisfy the safety standards established during the first-supply approval process. The precise scope of a "significant modification" is to be defined under the proposed *Automated Vehicle Safety Law* (NTC Policy Paper, 2022, pp. 51–52).

#### 4. Regulating Autonomous Vehicles in Serbia: From Experimental Testing to a Comprehensive Regulatory Framework

Alongside pioneering jurisdictions such as the US, the UK, and Germany, Serbia has recently taken significant steps towards establishing a regulatory framework for autonomous driving. This development has been marked by the amendments to the *Law on Road Traffic Safety*,<sup>33</sup> followed by the enactment of the *Rulebook on the Conditions for Autonomous Driving*.<sup>34</sup> Taken together, these legislative and regulatory measures have established a normative framework governing the testing of autonomous vehicles on public roads in the Republic of Serbia. At its present stage of development, however, the applicable regulatory framework remains limited to the testing of autonomous vehicles, thereby constituting an initial, yet important, step towards their broader legal regulation and eventual deployment in Serbia (Sovilj, 2024, p. 39). The establishment of this framework enabled the issuance of permits authorising the testing of two SAE Level 3 autonomous vehicles, placing Serbia, at the time of its adoption, among the limited number of European jurisdictions to have established a comparable legal basis for autonomous vehicle testing. The autonomous vehicles tested on the streets of Belgrade in 2023 were developed by the Autonomous Driving Group (Petaković, 2023).

Under the law, an autonomous vehicle is defined as a manufactured or modified motor vehicle equipped with an automated driving system that complies with the prescribed technical and other requirements and enables the vehicle to operate in road traffic with the driver exercising partial control over the vehicle or without any no driver control.<sup>35</sup> The statutory definition encompasses two distinct categories of motor vehicles: those originally manufactured with an automated driving system and those subsequently modified to incorporate such a system. While this distinction may appear primarily technical, it carries potentially significant legal implications for the allocation of responsibility for the safety, compliance, and proper functioning of the automated driving system following its subsequent integration into the vehicle. This raises the broader question of whether a vehicle retrofitted with an automated driving system should, for legal purposes, be subject to the same regulatory treatment and liability framework as a vehicle originally designed and manufactured as an autonomous vehicle. In particular, the regulatory framework would benefit from greater clarity regarding the allocation of responsibility among the vehicle manufacturer, the entity

<sup>33</sup> Zakon o bezbednosti saobraćaja na putevima, *Službeni glasnik RS*, br. 41/2009, 53/2010, 101/2011, 32/2013 - odluka US, 55/2014, 96/2015 - dr. zakon, 9/2016 - odluka US, 24/2018, 41/2018, 41/2018 - dr. zakon, 87/2018, 23/2019, 128/2020 - dr. zakon i 76/2023.

<sup>34</sup> Pravilnik o uslovima za obavljanje autonomne vožnje, *Službeni glasnik RS*, br. 104/2023.

<sup>35</sup> *Serbian Law on Road Traffic Safety (Zakon o bezbednosti saobraćaja na putevima)*, Art. 7, para. 1, item 105.

performing the modification, the operator, and other potentially relevant actors where an automated driving system is subsequently incorporated into an existing vehicle.

In addition, the statutory reference to vehicle operation “without any driver control” is of particular legal significance. This formulation challenges the traditional legal conception of the driver as the person exercising actual control over the vehicle and raises the question of whether, and to what extent, the notion of the “driver” retains its conventional legal meaning where the dynamic operation of the vehicle is entrusted entirely to an automated driving system. It consequently necessitates a reconsideration of the allocation of legal responsibility for the operation of the vehicle, including responsibility for traffic violations, failures of the automated driving system, and damage caused during autonomous operation (Mrvić Petrović, 2023, pp. 39–41). In this context, particular attention should be given to the respective legal roles and responsibilities of the vehicle operator, manufacturer, and software developer or provider of the automated driving system. In contrast to the UK and Australian models, which expressly allocate continuing responsibilities to designated entities, the Serbian framework does not yet establish a comparable institutional mechanism for allocating responsibility throughout the vehicle’s operational lifecycle.

The Rulebook lays down more detailed provisions governing the testing of autonomous vehicles, stipulating that such testing may be carried out by a legal entity having its registered office in the Republic of Serbia on the basis of a permit issued by the territorially competent organisational unit of the Ministry of Internal Affairs in whose area the testing is conducted. The permit may be issued for one or more autonomous vehicles of vehicle category L7 with a factory-enclosed M1 or N1 body,<sup>36</sup> operating at up to and including SAE Level 4 driving automation, for a period not exceeding one year.<sup>37</sup> In this context, it is important to note that both the *Law on Road Traffic Safety* and the

---

<sup>36</sup> Category L7 (heavy quadricycle) means a motor vehicle with four wheels, the unladen mass of which does not exceed 400 kilograms, or 550 kilograms in the case of vehicles intended for the carriage of goods, excluding the mass of batteries where the vehicle is electrically powered, and whose maximum continuous rated power does not exceed 15 kilowatts. Category L generally comprises mopeds, motorcycles, motor tricycles and quadricycles. Category M1 (passenger car) means a vehicle of category M with no more than nine seating positions, including the driver’s seat, and with no standing places. Vehicles of category M are vehicles designed and constructed primarily for the carriage of persons and their luggage. Category N1 means a vehicle of category N with a maximum permissible mass not exceeding 3.5 tonnes. Vehicles of category N are motor vehicles designed and constructed primarily for the carriage of goods. Serbian Rulebook on the classification of motor and trailing vehicles (Pravilnik o podeli motornih i priključnih vozila i tehničkim uslovima za vozila u saobraćaju na putevima, *Službeni glasnik RS*, br. 40/2012, 102/2012, 19/2013, 41/2013, 102/2014, 41/2015, 78/2015, 111/2015, 14/2016, 108/2016, 7/2017 - ispr., 63/2017, 45/2018, 70/2018, 95/2018, 104/2018, 93/2019, 2/2020 - ispr., 64/2021, 129/2021 - dr. pravilnik, 143/2022, 110/2022 - dr. pravilnik, 48/2023, 24/2024, 101/2024, 53/2025 i 54/2026), Arts. 6–8.

<sup>37</sup> Serbian Rulebook on the Conditions for Autonomous Driving, Art. 3.

*Rulebook* remain insufficiently clear as to the source and basis of the classification of driving automation levels (Živanović, 2024, p. 839). In particular, while the *Rulebook* permits the testing of autonomous vehicles up to and including SAE Level 4, the *Law on Road Traffic Safety* does not expressly specify the applicable level of driving automation, nor does it identify the classification system or standard on which such levels are based. Taking into account the operational scope and the level of driving automation of the vehicle, the competent authority may, when issuing the permit and having regard to the specific circumstances of each application, prescribe safety measures concerning the duration and period of testing; the number of tests; weather conditions; the roads and routes on which testing may be conducted; the driver and other persons who may be present in the vehicle during testing; the driver's duty to exercise supervision; and the organiser's obligation to discontinue testing if road traffic safety is compromised.<sup>38</sup>

The principal structural limitation of the Serbian framework is therefore not the absence of regulation as such, but the absence of a regulatory architecture connecting testing, authorisation, deployment, institutional responsibility, and lifecycle oversight. From a *de lege ferenda* perspective, the Serbian regulatory framework should evolve beyond its current focus on the experimental testing of autonomous vehicles towards a comprehensive regime governing their deployment and operation in road traffic. Such a development would require, first, the establishment of clearer rules governing the allocation of legal responsibility among drivers, vehicle owners and operators, manufacturers, software developers and providers of automated driving systems, and other actors involved in the deployment and operation of autonomous vehicles, as well as clear rules governing human oversight and the transition of control between the driver and the automated driving system. Second, the regulatory framework should provide for an insurance regime specifically adapted to the risks associated with automated driving, including situations in which liability may no longer be attributable exclusively to human drivers. Third, specific rules should govern the collection, storage, access to, and use of data generated during autonomous operation, particularly where such data are relevant to determining the causes of an incident or allocating liability. Fourth, given the increasing reliance of automated driving systems on software and network connectivity, the regulatory framework should expressly address cybersecurity and software-related safety risks, including requirements concerning system updates, vulnerabilities, and the continued safety of automated driving functions. Finally, the existing permit-based system would benefit from a clearer mechanism of continuous regulatory oversight following the issuance of a testing permit, including monitoring compliance with prescribed safety requirements and empowering the competent authority to intervene where road traffic safety is subsequently compromised. Taken together, these measures would enable the Serbian legal framework to progress from

<sup>38</sup> Serbian *Rulebook on the Conditions for Autonomous Driving*, Art. 7.

its current partial, testing-oriented approach towards a comprehensive and technologically neutral regulatory framework capable of addressing the legal, safety and liability challenges arising from the wider deployment of autonomous vehicles.

## 5. Conclusion

The comparative analysis demonstrates that the regulation of autonomous vehicles is evolving through different legal and institutional models, while several common regulatory concerns increasingly shape these frameworks. Despite differences in regulatory maturity, institutional structures, and legislative techniques, the jurisdictions examined reveal a broader shift away from driver-centred regulation towards ex ante safety assurance, institutional responsibility, and continuous lifecycle oversight. The analysis therefore indicates that the legal regulation of autonomous vehicles cannot be effectively addressed through traditional liability rules alone, but increasingly requires regulatory mechanisms capable of governing the operation and safety of automated driving systems throughout their lifecycle.

The Serbian regulatory framework has evolved from an initial absence of specific regulation towards a partial regulatory framework, but remains primarily focused on the testing of autonomous vehicles and does not yet provide a comprehensive basis for their broader deployment and operation. The comparative analysis does not support the transplantation of any single foreign regulatory model; rather, it suggests that Serbia could selectively combine regulatory mechanisms developed in different jurisdictions, adapting them to its own institutional and legal context. The future evolution of Serbian autonomous vehicle regulation should therefore build upon the existing testing regime by gradually introducing clearer rules on liability, safety assurance, operational authorisation, and lifecycle oversight. Such development would enable Serbia to move towards a more coherent and technologically adaptable regulatory regime capable of supporting the safe and legally certain authorisation and operation of autonomous vehicles, accompanied by continuous regulatory oversight throughout their operational lifecycle.

## References

- Alqahtani, T. 2025. Recent Trends in the Public Acceptance of Autonomous Vehicles: A Review. *Vehicles*. 7, 45, pp. 1–37. <https://doi.org/10.3390/vehicles7020045>.
- Bateman, T. 2021. France approves fully autonomous bus for driving on public roads in a European first. *Euronews*. Available at: <https://www.euronews.com/next/2021/12>

- /01/france-approves-fully-autonomous-bus-for-driving-on-public-roads-in-a-european-first, (Accessed: 30 July 2026).
- Chatzipanagiotis, M., & Leloudas, G. 2020. Automated Vehicles and Third-Party Liability: A European Perspective. *University of Illinois Journal of Law, Technology & Policy*, 1, pp. 109–199. <https://doi.org/10.2139/ssrn.3519381>
- Csitei, B. 2021. Autonomous and Automated Vehicles in Germany and Hungary, with Special Attention to the Question of Civil Liability. *Acta Univ. Sapientiae, Legal Studies*, 10(1), pp. 55–64. <https://doi.org/10.47745/AUSLEG.2021.10.1.04>
- Eastman, B. et al. 2023. A Comparative Look at Various Countries' Legal Regimes Governing Automated Vehicles. *Journal of Law and Mobility*, 2 (1), pp. 1–79. <https://repository.law.umich.edu/jlm/vol2023/iss1/2>
- Emory, K., Douma, F., & Cao, J. 2022. Autonomous vehicle policies with equity implications: Patterns and gaps. *Transportation Research Interdisciplinary Perspectives*, 13. 100521, pp. 1–8. <https://doi.org/10.1016/j.trip.2021.100521>
- French Ministry for Ecological Transition (2025). *National Strategy for Automated and Connected Road Mobility (2025–2027)*, pp. 1–22. Available at: <https://www.ecologie.gouv.fr/sites/default/files/documents/National%20strategy%20for%20automated%20and%20connected%20road%20mobility%20-%20Review%20and%20update%20proposals%202025-2027.pdf>, (Accessed: 5 August 2026).
- Gordanić, J., & Bećirović Alić, M. 2026. The fourth generation of human rights in the digital age: the impact of the internet and modern technologies. *Strani pravni život*, 70(2), pp. 221–246. [https://doi.org/10.56461/SPZ\\_1157](https://doi.org/10.56461/SPZ_1157)
- Kubica, M. L. 2022. Autonomous Vehicles and Liability Law. *The American Journal of Comparative Law*, 70, pp. i39–i69. <https://doi.org/10.1093/ajcl/avac015>
- Malterer, M. 2022. Germany completes legal framework for autonomous driving – Federal Cabinet approves new ordinance. *Driverless Commute*. Available at: <https://www.thedriverlesscommute.com/germany-completes-legal-framework-for-autonomous-driving/>, (Accessed: 25 July 2026).
- Mpofy, R. 2025. Liability for Autonomous Vehicle Decisions: Comparative Legal Analysis of the EU, China, and Türkiye, pp. 1–15. Available at: <https://ssrn.com/abstract=5759786>, (Accessed: 5 August 2026).
- Mrvić Petrović, N. 2023. Odgovornost za štetu nastalu upotrebom automatizovanog vozila. In: Petrović, Z., Čolović, V., & Obradović, D. (ed.), *Prouzrokovanje štete, naknada štete i osiguranje (Causation of Damage, Damage Compensation and Insurance)*. Beograd: Institut za uporedno pravo, pp. 29–50. [https://doi.org/10.56461/zr\\_23.ons.02](https://doi.org/10.56461/zr_23.ons.02)
- Nolte, M. et al., 2025. Review of Conceptualizations of Safety and Risk in Current Automated Driving Regulation. *IEEE Intelligent Vehicles Symposium (IEEE IV)*, pp. 1–8. <https://doi.org/10.48550/arxiv.2502.06594>
- NTC Policy Paper. 2021. *A national in-service law for automated vehicles*. Melbourne: National Transport Commission. Available at: <https://www.ntc.gov.au/sites/default/files/assets/files/2021-06-22%20NTC%20Policy%20Paper%20-%20A%20national>

- %20in-service%20safety%20law%20for%20automated%20vehicles.pdf, (Accessed: 1 August 2026).
- NTC Policy Paper. 2022. *The regulatory framework for automated vehicles in Australia*. Melbourne: National Transport Commission. Available at: <https://www.ntc.gov.au/sites/default/files/assets/files/NTC%20Policy%20Paper%20-%20regulatory%20framework%20for%20automated%20vehicles%20in%20Australia.pdf>, (Accessed: 1 August 2026).
- NTC Policy Paper. 2023. *Guidelines for Trials of Automated Vehicles in Australia*. Melbourne: National Transport Commission. Available at: <https://www.ntc.gov.au/sites/default/files/assets/files/Guidelines%20for%20trials%20of%20automated%20vehicles%20in%20Australia%202023.pdf>, (Accessed: 1 August 2026).
- Petaković, N. 2023. Pravilnik o uslovima za obavljanje autonomne vožnje: Dozvola se može izdati za jedno ili više autonomnih vozila na period od najduže godinu dana. *Paragraf*. Available at: <https://www.paragraf.rs/dnevne-vesti/301123/301123-vest13.html>, (Accessed: 8 August 2026).
- Rosemadi, J. F., Khong, D. W. K., & Radhakrishna, G. 2022. Civil liability of autonomous vehicles: a review of literature. *IJUM Law Journal*, 30(2), pp. 155–179 <https://doi.org/10.31436/ijumlj.v30i2.740>
- Roussou, J. *et al.* 2026. Literature review of legal frameworks and liability allocation in connected and automated vehicles. *Research in Transportation Business & Management*. Elsevier. 68, pp. 1–19. <https://doi.org/10.1016/j.rtbm.2026.101804>
- SAE International. 2021. *Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles*. (SAE Standard J3016\_202104). Geneva: SAE International. [https://doi.org/10.4271/J3016\\_202104](https://doi.org/10.4271/J3016_202104)
- Sovilj, R. 2024. Odgovornost za štetu nastalu upotrebom autonomnih vozila. U: Mujo-  
vić, H. (ed.), *Srbija i reformisanje instituta odgovornosti 7 (Serbia and reforming the  
institute of liability 7)*. Beograd: Institut društvenih nauka i Novi Sad: Advokatska  
komora Vojvodine, pp. 38–43.
- Sovilj, R., & Zlatanović, S. 2026. Autonomous Vehicles and the Limits of Traditional Liability: Between Legal Doctrine and Technological Innovation. *Anali Pravnog fakulteta  
u Beogradu*, 74 (2), pp. 185–213. [https://doi.org/10.51204/Anali\\_PFBU\\_26201A](https://doi.org/10.51204/Anali_PFBU_26201A)
- Taeihagh, A., & Lim, H. S. M. 2018. Governing autonomous vehicles: emerging responses  
for safety, liability, privacy, cybersecurity, and industry risks. *Transport Reviews*, 39  
(1), pp. 103–128. <https://doi.org/10.1080/01441647.2018.1494640>
- Woolich, A., & Gore, M. 2024. UK's Automated Vehicles Act 2024. EU, competition and  
regulatory. Holman Fenwick Willan LLP. Available at: <https://www.hfw.com/app/uploads/2024/07/006179-HFW-UKs-Automated-Vehicles-Act-2024.pdf>, (Accessed: 3  
August 2026).
- Živanović, F. 2024. Osiguranje od auto-odgovornosti i autonomna vozila. *Tokovi osiguranja*, 4, pp. 835–851. <https://doi.org/10.5937/TokOsig2404835Z>



## DIGITAL ASSETS AND PROPERTY TAXATION: COMPARATIVE LAW CHALLENGES AND SERBIAN PERSPECTIVE\*\*\*

### *Summary*

In contemporary societies, now commonly referred to as digital societies, digital assets are experiencing significant growth and are becoming an increasingly important component of economic activity. The emergence of new forms of value that exist exclusively in the digital environment has created a need for an appropriate legal and tax framework, resulting in the gradual inclusion of digital assets within the scope of an increasing number of taxes. This paper is limited to the analysis of the tax treatment of digital assets within the framework of property taxes in both static and dynamic terms. It aims to present the tax regime applicable to digital assets in domestic and comparative law, primarily from the perspective of net wealth taxes and inheritance and gift taxes, and to identify, through comparative law analysis, the key challenges faced by tax authorities when subjecting digital assets to property taxes. This is investigated primarily using the normative and comparative methods and, to some extent, the axiological and historical-legal methods. The results of the comparative law analysis showed that digital assets are included in the net wealth tax bases in countries that have retained such taxes, and that one of the key challenges in their taxation is determining their value. Given that the Serbian

---

\* Associate Professor, University of Novi Sad, Novi Sad Faculty of Law, Republic of Serbia.

E-mail: [ccvjetkovic@pf.uns.ac.rs](mailto:ccvjetkovic@pf.uns.ac.rs)

ORCID: <https://orcid.org/0000-0003-0000-8099>

\*\* Assistant Professor, University of Novi Sad, Novi Sad Faculty of Law, Republic of Serbia.

E-mail: [lbaturan@pf.uns.ac.rs](mailto:lbaturan@pf.uns.ac.rs)

ORCID: <https://orcid.org/0000-0001-7753-0876>

\*\*\* This paper was written as part of the research conducted within the following project: 'Digital Assets – Legal Challenges and Security Risks'. The project was funded by the Provincial Secretariat for Higher Education and Scientific Research of the Autonomous Province of Vojvodina.

tax system does not impose a net wealth tax, the tax treatment of digital assets in the context of property taxation is relevant only within the framework of inheritance and gift taxes. However, the practical scope these taxes is limited, as tax exemptions apply to transfers to the closest relatives. The analysis indicates a need for further clarification of the rules governing the determination of the market value of digital assets for inheritance and gift tax purposes under Serbian tax law. The findings should, however, be considered in light of certain limitations, primarily arising from the focus on property taxes and the limited number of jurisdictions included in the comparative analysis.

**Keywords:** Digital Assets, Property Taxes, Net Wealth Tax, Inheritance and Gift Tax, Comparative Tax Law.

## DIGITALNA IMOVINA I POREZI NA IMOVINU: IZAZOVI U UPOREDNOM PRAVU I SRPSKA PERSPEKTIVA

### *Sažetak*

U savremenim društvima, koja se sve češće označavaju kao digitalna društva, digitalna imovina doživljava izraziti uspon i postaje sve važniji deo ekonomskih tokova. Nastanak novih oblika vrednosti koje postoje isključivo u digitalnom okruženju uslovio je potrebu za odgovarajućim pravnim i poreskim okvirom, usled čega je digitalna imovina postepeno uključivana u predmetni obuhvat sve većeg broja poreskih oblika. Predmet ovog rada biće ograničen samo na analizu poreskog tretmana digitalne imovine u okviru poreza na imovinu u statici i dinamici. Cilj rada je, dakle, da se prikaže poreski režim digitalne imovine u domaćem i uporednom pravu, pre svega, sa stanovišta poreza na neto bogatstvo i poreza na nasleđe i poklon, kao i da se putem uporednopravne analize identifikuju ključni izazovi sa kojima se suočavaju poreske vlasti prilikom podvrgavanja digitalne imovine porezima na imovinu. Predmet rada istraživan je primenom, pre svega, normativnog i komparativnog metoda, a donekle i aksiološkog i istorijskopravnog metoda. Rezultati uporednopravne analize pokazali su da digitalna imovina ulazi u poresku osnovicu poreza na neto bogatstvo u onim državama koje su zadržale ovaj porez, kao i to da je jedan od ključnih problema prilikom oporezivanja digitalne imovine njeno vrednovanje. S obzirom na to da u srpskom poreskom sistemu ne postoji porez na neto bogatstvo,

u kontekstu poreza na imovinu relevantan je jedino poreski tretman digitalne imovine u okviru poreza na nasleđe i poklon, s tim da treba istaći da je praktični domašaj ovog poreza ograničen jer je poresko oslobođenje ustanovljeno za najbliže srodnike. Srpski zakonodavac bi u budućnosti trebalo da posveti veću pažnju pravilima za određivanje tržišne vrednosti digitalne imovine za potrebe poreza na nasleđe i poklon. Međutim, rezultate ovog rada treba posmatrati u svetlu određenih ograničenja, koja prvenstveno proizlaze iz toga što se rad bavi samo porezima na imovinu, kao i okolnosti da je broj jurisdikcija koje su obuhvaćene uporednopravnom analizom ograničen.

**Ključne reči:** digitalna imovina, porezi na imovinu, porez na neto bogatstvo, porez na nasleđe i poklon, uporedno poresko pravo.

## 1. Introduction

Considering that digital assets are becoming an increasingly important part of modern economic flows and a significant manifestation of taxpayers' economic power, it is clear why they have been incorporated into modern tax systems. Namely, their taxation can be regarded as an instrument that contributes to greater fairness and comprehensiveness of tax systems, and to greater transparency of financial flows, thereby reducing the scope for tax evasion. However, the intangible, anonymous, and decentralised nature of digital assets has posed numerous challenges (Babović, 2023, p. 449; Dimitrijević & Golubović, 2025, p. 639), both to traditional concepts of property law (Lee, 2024, p. 1) and to tax authorities, which encounter difficulties in monitoring transactions and assessing tax liabilities (Widjaja, 2025, p. 298).

The concept of digital assets is interpreted differently in the academic literature (Lee, 2024, p. 1). It is important to emphasise that international and national legal frameworks use different terms, including 'digital assets', 'virtual assets', and 'crypto-assets', sometimes referring to substantially similar forms of value. In this paper, the term 'digital assets' is used as a broader term, primarily because it corresponds to the terminology used in Serbian legislation, which distinguishes between virtual currencies and digital tokens (Law on Digital Assets, 2001, Article 2).<sup>1</sup>

It should be noted that several different taxable events related to digital assets may give rise to a tax liability. Thus, the acquisition, possession, and transfer of digital assets may, depending on the specific circumstances, be relevant for different tax types. The applicable tax regime depends on a number of factors, including

---

<sup>1</sup> Law on Digital Assets, *Official Gazette of the Republic of Serbia*, No. 153/2020.

primarily the legal qualification accorded to particular forms of digital assets under the national tax system and the method of acquiring digital assets (Živković, 2024, p. 450). For illustration, under Serbian VAT law, different tax regimes apply to virtual currencies and digital tokens (Labudović Stanković, 2025, p. 926), while under the income tax regulations, the tax treatment of cryptocurrencies acquired through mining differs from that of cryptocurrencies received as compensation for work from an employer (Živković, 2024, pp. 453-460).

Although the taxation of digital assets has been increasingly examined, their treatment under property taxes remains less explored. This paper, therefore, focuses on treatment of digital assets under property taxes in static terms (taxes for which the ownership of property itself is regarded as a manifestation of economic power) and property taxes in dynamic terms (taxes for which the transfer of property between persons is regarded as a manifestation of economic power). It should be emphasised that the range of taxes falling within these categories is determined on the basis of the OECD tax classification. Given the intangible nature of digital assets, it is clear that only one property tax in static terms is relevant for the subject of this paper – the net wealth tax. With regard to property taxes in dynamic terms, the tax treatment of digital assets will be considered from the perspective of inheritance and gift taxes and financial and capital transaction taxes. The research questions are as follows: (1) how are digital assets treated under net wealth taxes? (2) how are digital assets treated under inheritance and gift taxes and financial and capital transaction taxes? and (3) how are digital assets treated for inheritance and gift tax purposes under Serbian tax law?

The subject of the paper was researched using, primarily, the normative and comparative methods and, to some extent, the axiological and historical-legal methods. The normative method was used to identify the logical content of the norms relevant to the subject of the research, while the comparative method was used to examine the solutions adopted in comparative law. The axiological method was used to understand the purpose of individual norms, while the historical-legal method was used to trace the development of net wealth tax over time.

## **2. Digital Assets and Property Taxes in Static Terms**

A net wealth tax is a tax levied generally on the entire wealth of taxpayers, with their liabilities deducted, and the tax liability arising only if the value of the net assets exceeds a legally established threshold. Although there are numerous arguments in favour of this tax (Cvjetković, 2015, pp. 257-261), the most significant one is certainly that it contributes to reducing inequality. The idea of a tax levied on

the entire taxpayers' wealth dates back to antiquity. Thus, in ancient Rome, property inventories were conducted in order to distribute military and tax liabilities fairly (Monson, 2023, p. 5). Although there was no wealth tax in the Middle Ages, some forms of fiscal records of wealth were maintained in certain countries during this period (Milošević & Cvjetković Ivetić, 2025, p. 24). Thus, in medieval England, the Domesday Book represented one of the earliest and most significant comprehensive property inventories conducted for tax purposes. Since the concept of property in the legal and tax context lacks a generally accepted definition, the net wealth tax generally relies on the principle of enumeration, whereby the objects whose value is included in the tax base are expressly listed. It should be noted that, for administrative, technical, economic, cultural, socio-political and other reasons, not all assets are included in this tax base. In this respect, in most countries that impose a net wealth tax, the value of works of art, various forms of pension savings, and similar assets is not included in the tax base (Cvjetković, 2015, p. 253).

Although as many as twelve European countries had a net wealth tax in their tax systems in the early 1990s, today only three countries have retained it – Switzerland, Spain and Norway. Switzerland not only has the most generous net wealth tax but also has the longest tradition, with the cantons having levied this tax since the beginning of the 18<sup>th</sup> century (Marti, Martínez & Scheuer, 2023, p. 515). Its abolition in some tax systems has been explained by unsatisfactory fiscal performance, high administrative costs and efforts to prevent capital outflows (Cvjetković, 2015, p. 261).

In Spain, net wealth tax is also levied on digital assets, based on their market value, as they constitute assets and rights with economic content (Hernández Sánchez *et al.*, 2024, p. 5). Although this tax is regulated by national legislation in Spain, the autonomous communities may influence certain elements of the tax, such as the applicable rates. In the absence of regulations adopted by the autonomous communities, the minimum tax-free threshold is €700,000 (Hernández Sánchez *et al.*, 2024, p. 5). Although Spanish residents have been required to file an informative tax return for certain categories of assets held abroad since 2012, in 2024 this reporting obligation was extended to virtual currencies held on foreign platforms with a value exceeding €50,000, regardless of whether the holders are liable for net wealth tax (Hernández Sánchez *et al.*, 2024, p. 6). This measure was introduced in order to increase transparency regarding taxpayers' tax position and to identify undeclared capital and income.

In Norway, where net wealth tax is levied on assets exceeding NOK 1,700,000 (approximately €146,000), and the market value of digital assets is included in the tax base (Iacono & Smedsvik, 2024, p. 9). Therefore, in the context of net wealth taxation, this category of assets is not subject to the exemptions and special rules applicable to traditional currencies, stocks, bonds, financial instruments and other

types of assets that benefit from preferential tax treatment (The Norwegian Tax Administration, n.d.). Although the wealth tax formally applies to all crypto-assets, a practical problem is that they are often self-reported by taxpayers. Due to the absence of a reliable third-party reporting mechanism, the risk of tax evasion is significantly increased (Barake & Økland, 2025, p. 2).

In Switzerland, the market value of digital assets is also included in the net wealth tax base, with the tax rates and tax-free thresholds varying from canton to canton (from CHF 25,000 to CHF 200,000, or approximately €27,000 to €218,000) (Brüllhart, Gruber, Krapf & Schmidheiny, 2016, p. 6). The Swiss Federal Tax Administration pays significant attention to the rules governing the valuation of digital assets for the net wealth tax purposes. In this respect, it is stipulated that the values of digital assets published by the Federal Tax Administration are to be used. Where no such values are available, the value determined on the platforms on which the assets are held is used. As a final option, the acquisition price may be used (RSM Switzerland, n.d.).

As can be seen, in all three European countries that continue to apply net wealth tax, digital assets are included in the tax base. Although valuation challenges are generally present in the context of net wealth taxation, it appears that tax authorities face greater difficulties in assessing the value of crypto-assets than that of traditional assets (Ooi, 2023, p. 29). The ease with which digital assets can be valued depends on the frequency with which they are traded. Thus, as a rule, assessing the value of Bitcoin is not problematic, while assets that are rarely traded are more difficult to value. As some authors point out, the valuation of digital assets for tax purposes is sometimes carried out on an intuitive basis, which creates legal uncertainty and may undermine the principle of taxation according to ability to pay (Cediel, 2024, p. 414). It is therefore considered desirable for tax administrations, in the absence of legislation, to issue instructions for the valuation of crypto-assets for tax purposes (Ooi, 2023, p. 33).

In some countries, such as Italy, quasi-wealth taxes can also be found. In the context of digital assets, such a tax takes the form of levies imposed on crypto-assets held in the country and abroad (Paoletto, Monte & Bonomi, 2020, p. 4). Since 2023, these levies have been imposed not only on traditional financial instruments but also on crypto-assets, regardless of whether they generate income, that is, regardless of whether they are treated as financial assets. These levies are imposed solely on the basis of ownership of digital assets. This approach brings these levies closer to the concept of a partial wealth tax, although the formal classification of the levy as a tax on financial assets is retained (Kraken, 2025). Through this approach, the Italian legislation sought to ensure equal tax treatment of digital assets and other forms of financial assets, and to prevent significant amounts of digital wealth from remaining outside the tax base. The rates are relatively low (0.2%), so taxpayers should have

little incentive to evade the tax. Unlike Italy, Belgium has a partial wealth tax, and its tax base does not include digital assets but only traditional financial instruments held in securities accounts with a value equal to or exceeding €1 million (European Parliamentary Research Service, 2025, p. 11). This essentially means that the tax applies to financial instruments such as bonds and shares.

### **3. Digital Assets and Property Taxes in Dynamic Terms**

Regarding inheritance and gift taxes, it is important to note that different categories of digital assets are not treated uniformly for the purposes of these taxes. The inheritance and gifting of digital assets that are exclusively financial in nature are subject to the general tax rules (Szwajdler, 2023, p. 152). The specificity of certain forms of digital assets lies in the fact that, unlike traditional financial instruments, they are stored in digital wallets and protected by private keys. This feature can significantly complicate or prevent access to the assets following the death of their owner (Carata & Chelaru, 2024, p. 1). Since private keys, which provide access to crypto-assets, can be stored and transferred without the knowledge of the competent authorities, this may facilitate tax evasion (Ooi, 2023, p. 29).

With regard to the second property tax in dynamic terms – the tax on the transfer of absolute rights, i.e., capital and financial transaction tax – it should be noted that the transfer of digital assets for consideration is not, in itself, subject to taxation. However, in this context, it is worth to mention the approach adopted in Indonesia. Since August 2025, the sale or exchange of crypto-assets has been subject to a final withholding tax at a rate of 0.21% applied to the transaction value. The responsibility for collecting this tax lies with electronic trading platforms (MUC Consulting, 2025). It is important to note that this is not a tax on the transfer of absolute rights, but an income tax imposed on income generated from the transfer of cryptocurrencies for consideration. It is therefore, in substance, a tax on presumed income.

### **4. Tax Treatment of Digital Assets under Property Taxes in Serbia**

The Serbian tax system does not impose wealth tax, nor is the transfer of digital assets for consideration subject to the tax on the transfer of absolute rights. Since 2020, only the inheritance and gifting of digital assets have been subject to inheritance and gift tax, with the exception of inheritances and gifts of digital assets of 'small' value, with the threshold defined as RSD 100,000 (approximately €850) in a calendar year for each type of taxable event. The tax base is the market value of the digital asset

inherited or received as a gift as at the date of the tax liability arising. This value is determined by the competent tax authority, provided that, in the case of inheritance, the market value is reduced by the debts the taxpayer is obliged to settle from the inherited property. It has to be noted that a tax exemption applies to heirs and recipients of gifts in the first order of inheritance, as well as to spouses and parents of the deceased and spouses of the donor, as persons in the second order of inheritance. Taxpayers in the second order of inheritance in relation to the deceased or the donor are subject to tax rate of 1.5%, while all other taxpayers are subject to tax rate of 2.5% (Law on Property Taxes, 2001, Articles 14, 16 & 19).<sup>2</sup> However, Serbian legislation does not lay down detailed rules governing the determination of the market value of digital assets for inheritance and gift tax purposes. The Ministry of Finance has not yet addressed this issue in its official opinions, which are binding on the Tax Administration, thereby further contributing to legal uncertainty in this area.

## **5. Conclusion**

The inclusion of digital assets within the scope of the net wealth taxes and inheritance and gift taxes was a necessary step in adapting tax systems to modern economic realities. As digital assets have become an increasingly significant manifestation of taxpayers' economic power, traditional approaches to taxation have no longer been sufficient to encompass new forms of value.

Although there are numerous arguments in favour of retaining a net wealth tax, it has been retained in only three European countries – Spain, Switzerland and Norway. What these three jurisdictions have in common is that digital assets, i.e., their market value, are included in the tax base, clearly confirming that digital assets are no longer a grey area but an integral part of modern tax systems. Although a net wealth tax has the potential to encompass digital assets, its effectiveness will largely depend on the state's capacity not only to identify these assets but also to value them adequately. Thus, a common problem across all jurisdictions analysed is valuation, owing to high volatility of digital assets and the absence of 'official sources' of market value comparable to those available for traditional financial instruments. Valuation challenges are less pronounced where digital assets are frequently traded.

In addition to the traditional wealth tax, some countries also impose partial wealth taxes that encompass digital assets. For example, Italy taxes the ownership of

---

<sup>2</sup> Law on Property Taxes. *Official Gazette of the Republic of Serbia*, Nos. 26/2001, 42/2002, 80/2002, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012, 47/2013, 68/2014, 95/2018, 99/2018, 86/2019, 144/2020, 118/2021, 138/2022, 92/2023, 94/2024.

crypto-assets, making this approach functionally similar to a wealth tax, although it is based on the aim of aligning the tax treatment of crypto-assets with that of other financial instruments. The question remains whether this is an isolated approach or a sign of a broader regulatory trend. By contrast, Belgium provides an example of a country that imposes a wealth tax only on assets held in securities accounts, which does not preclude the possibility that the tax base may be extended to digital assets in the future.

A comparative law analysis has shown that the rationale underlying some approaches to taxation of digital assets is the state's effort to increase transparency regarding taxpayers' financial position. Thus, in Spain, taxpayers are required to file an informative tax return if the value of virtual currencies held on foreign platforms exceeds the threshold prescribed by law.

Regarding inheritance and gift taxes, although digital assets of a financial nature are generally subject to the general tax rules, their specific characteristics – primarily their decentralised nature, storage in digital wallets, and reliance on private keys – make it significantly more difficult to subject them effectively to these taxes. These characteristics may therefore create opportunities for tax evasion.

Finally, it can be concluded that, without precisely defined rules for determining the tax base and effective mechanisms for the exchange of information between countries, there is a risk that a significant proportion of digital assets will remain outside the scope of property taxes and that their value will be inadequately determined in some cases. As regards Serbian tax law, since the introduction of a wealth tax in the near future does not appear realistic, greater attention should be paid to the rules governing the determination of the market value of digital assets for inheritance and gift tax purposes.

Although these findings may contribute to improving the tax rules applicable to digital assets, the paper has certain limitations, primarily stemming from its focus on property taxes and the limited number of jurisdictions included in the comparative analysis.

## References

- Babović, M. 2023. Uporednopravni regulatorni odgovori na izazove digitalne imovine. *Strani pravni život* 67(3), pp. 447-469. Available at: <https://www.stranipravnizivot.rs/index.php/SPZ/article/view/951/917>, 13. 4. 2026. [https://doi.org/10.56461/SPZ\\_23305KJ](https://doi.org/10.56461/SPZ_23305KJ)
- Carata, C. & Chelaru, A.-L. 2024. *The Evolution of the Digital Inheritance: Legal, Technical, and Practical Dimensions of Cryptocurrency Transfer through Succession in French-inspired Legal Systems*, pp. 1-9. arXiv. Available at: <https://doi.org/10.48550/arXiv.2410.22907>, 10. 4. 2026.

- Cediel, A. 2024. Domestic Tax Regulation in the Face of the Crypto Economy: Challenges Going Forward. In: Pastor-Sempere, C. (ed.), *Governance and Control of Data and Digital Economy in the European Single Market*. Cham: Springer, pp. 413-430. [https://doi.org/10.1007/978-3-031-74889-9\\_18](https://doi.org/10.1007/978-3-031-74889-9_18)
- Cvjetković, C. 2015. *Porez na imovinu u statici*. Doktorska disertacija. Beograd: Pravni fakultet Univerziteta u Beogradu.
- Dimitrijević, M. & Golubović, S. 2025. Theoretical Aspects of the Artificial Intelligence Use in Shaping Digital Public Money Legislation. *Strani pravni život* 69(5), pp. 635649. Available at: <https://www.stranipravnizivot.rs/index.php/SPZ/article/view/635-649/1027>, 10. 4. 2026. [https://doi.org/10.56461/SPZ\\_25406KJ](https://doi.org/10.56461/SPZ_25406KJ)
- European Parliamentary Research Service. 2025. *The Future of EU Tax Policy Harmonization*. Brussels: European Parliament.
- Hernández Sánchez, Á., Sastre-Hernández, B. M. Jorge-Vazquez, J. & Náñez Alonso, S. L. 2024. Cryptocurrencies, Tax Ignorance and Tax Noncompliance in Direct Taxation: Spanish Empirical Evidence. *Economies* 12(3), pp. 1-25. <https://doi.org/10.3390/economies12030062>
- Iacono, R. & Smedsvik, B. 2024. Behavioral Responses to Wealth Taxation: Evidence from a Norwegian Reform. *CESifo Working Papers*, No. 11335. Munich: CESifo GmbH. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4991833](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4991833), 13. 4. 2026. <https://doi.org/10.2139/ssrn.4991833>
- Labudović Stanković, J. 2025. Oporezivanje digitalne imovine u Republici Srbiji. U: Vujisić, D. (ed.), *Savremeno pravo u eri digitalizacije i održivog razvoja*. Kragujevac: Pravni fakultet u Kragujevcu, pp. 911-930. <https://doi.org/10.46793/XXIMajsko.911LS>
- Lee, L. 2024. *Examining the Legal Status of Digital Assets as Property: A Comparative Analysis of Jurisdictional Approaches*, pp. 1-16. arXiv. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4807135](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4807135), 13. 4. 2026.
- Marti, S., Martínez, I. Z. & Scheuer, F. 2023. Does a Progressive Wealth Tax Reduce Top Wealth Inequality? Evidence from Switzerland. *Oxford Review of Economic Policy*, 39 (3), pp. 513-529. Available at: <https://academic.oup.com/oxrep/article/39/3/513/7245729>, 13. 4. 2026. <https://doi.org/10.1093/oxrep/grad025>
- Milošević, G. & Cvjetković Ivetić, C. 2025. *Poreski i budžetski system*. Novi Sad: Pravni fakultet u Novom Sadu.
- Monson, A. 2023. Taxing Wealth in the Just City: Cicero and the Roman Census. *The Journal of Roman Studies*, 113, pp. 1-27. Available at: <https://www.cambridge.org/core/journals/journal-of-roman-studies/article/taxing-wealth-in-the-just-city-cicero-and-the-roman-census/DE6F13DB46C1D9D012472D28F67DD0B5>, 10. 4. 2026. <https://doi.org/10.1017/S0075435823000436>
- Paoletto, A., Monte, M. & Bonomi, R. 2020. *Wealth tax: Italy*. Wealth Tax Commission Background Paper No. 136. London: The Wealth Tax Commission. Available at: <https://www.wealthandpolicy.com/wp/136.html>, 13. 4. 2026. <https://doi.org/10.47445/136>
- Szwajdler, P. 2023. Digital Assets and Inheritance Law: How to Create Fundamental Principles of Digital Succession System?. *International Journal of Law and Information*

*Technology*, 31, pp. 144-168. Available at: <https://academic.oup.com/ijlit/article/31/2/144/7248529>, 10. 4. 2026. <https://doi.org/10.1093/ijlit/eaad014>

Živković, L. 2024. Tax Treatment of Crypto Assets under Serbian Law – Status Quo and Future Challenges. *Review of Central and East European Law*, 49, pp. 446-473. Available at: [https://brill.com/view/journals/rela/49/2-4/article-p446\\_012.xml?srsId=AfmBOorqOvNYnbZcNoBHV0qMzXguYuPtt-BgbOolDD471bYCGkrSSJl-OI:10.1163/15730352-bja10109](https://brill.com/view/journals/rela/49/2-4/article-p446_012.xml?srsId=AfmBOorqOvNYnbZcNoBHV0qMzXguYuPtt-BgbOolDD471bYCGkrSSJl-OI:10.1163/15730352-bja10109), 13. 4. 2026. <https://doi.org/10.1163/15730352-bja10109>

### **Internet Sources**

Barake, M. & Økland, A. 2025. *Who Owns Cryptocurrency?*. Skatteforsk Working Paper No. 17. Ås: Norwegian University of Life Sciences. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5603533](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5603533), 13. 4. 2026.

Brühlhart, M., Gruber, J., Krapf, M. & Schmidheiny, K. 2016. *Taxing Wealth: Evidence from Switzerland*. NBER Working Paper No. 22376. Cambridge, Massachusetts: National Bureau of Economic Research. Available at: <https://EconPapers.repec.org/RePEc:nber:wp27052>, 13. 4. 2026. <https://doi.org/10.3386/w22376>

Kraken. 2025. *Understanding the Annual Italian Stamp Duty Withholding on your Kraken Account*. Available at: <https://support.kraken.com/articles/understanding-the-annual-italian-stamp-duty-withholding-on-your-kraken-account>, 10. 4. 2026.

MUC Consulting. *No Longer Subject to VAT, Crypto Transactions Now Withheld under Income Tax Article 22*. Available at: <https://muc.co.id/en/article/no-longer-subject-to-vat-crypto-transactions-now-withheld-under-income-tax-article-22>, 10. 4. 2026.

Norwegian Tax Administration. *Tax Regulations – Virtual Assets*. Available at: <https://www.skatteetaten.no/en/person/taxes/get-the-taxes-right/shares-and-securities/about-shares-and-securities/digital-currency/tax-regulations-virtual-currency/>, 11. 4. 2026.

Ooi, V. 2023. *Report on the Challenges which Digital Assets Pose for Tax Systems with a Special Focus on Developing Countries*. New York: United Nations Department of Economic and Social Affairs. Available at: [https://ink.library.smu.edu.sg/sol\\_research/4183/](https://ink.library.smu.edu.sg/sol_research/4183/), 11. 4. 2026. <https://doi.org/10.2139/ssrn.4395761>

RSM Switzerland. *Cryptocurrencies for Individuals*. Available at: <https://www.rsm.global/switzerland/en/service/tax-and-legal/cryptocurrencies-taxation/cryptocurrencies-for-individuals>, 11. 4. 2026.



## JUDGES AND PROSECUTORS ON SOCIAL MEDIA IN SERBIA: EXPLORING CONTROVERSIAL ETHICAL CONCERNS\*\*\*\*

### *Summary*

In the contemporary landscape, characterised by the ubiquitous integration of technology, artificial intelligence and social media into daily life, there is a pressing need to systematically investigate their use within the legal profession. The research process involved an analysis of relevant media channels, desk research, an online survey, and semi-structured group interviews with judges, prosecutors and other representatives of the judiciary. The paper aims to identify the ethical dilemmas arising from respondents' use of social media. It examines respondents' perception of the boundary between the private and public spheres, as well as freedom of expression and the need to regulate the use of social media. The paper concludes with recommendations regarding the use of social media by judges, prosecutors and other representatives of the judiciary, bearing in mind their role in society and the applicable regulations and standards by which they should be guided.

**Keywords:** Judges, Public Prosecutors, Social Media, Internet, Ethical Dilemmas.

---

\* PhD, Associate Professor, Faculty of Organisational Sciences, University of Belgrade, Serbia.

E-mail: [krivokapic.djordje@fon.bg.ac.rs](mailto:krivokapic.djordje@fon.bg.ac.rs)

ORCID: <https://orcid.org/0000-0002-0950-6820>

\*\* LL.M, Teaching Assistant, Faculty of Organisational Sciences, University of Belgrade, Serbia.

E-mail: [andrea.nikolic@fon.bg.ac.rs](mailto:andrea.nikolic@fon.bg.ac.rs)

ORCID: <https://orcid.org/0000-0001-8739-8717>

\*\*\* PhD, Teaching Assistant holding a PhD, Faculty of Law, University of Belgrade, Serbia.

E-mail: [valerija.dabetic@ius.bg.ac.rs](mailto:valerija.dabetic@ius.bg.ac.rs)

ORCID: <https://orcid.org/0000-0002-0356-3904>

\*\*\*\* This paper is the result of research conducted within the 2025 scientific strategic project of the University of Belgrade Faculty of Law entitled *Problems of Creating, Interpreting and Applying Law*.

## SUDIJE I TUŽIOCI NA DRUŠTVENIM MREŽAMA U SRBIJI – AKTUELNE ETIČKE DILEME

### *Sažetak*

Tehnologija, veštačka inteligencija i društvene mreže postali su sastavni deo naše svakodnevnice, te se javila potreba za sistematičnim istraživanjem načina na koji se ti alati koriste u pravosudnim profesijama. Istraživanje je obuhvatalo analizu relevantnih društvenih mreža, pregled postojeće literature i dosadašnjih studija, onlajn upitnik, kao i polustrukturirane grupne intervju sa sudijama, tužiocima i drugim predstavnicima pravosuđa. Cilj rada je da, iz perspektive ispitanika, ukaže na moralne dileme koje proizilaze iz upotrebe društvenih mreža. Sa posebnom pažnjom diskutuje se o granici između privatne i javne sfere, slobodi izražavanja i načinima regulisanja korišćenja društvenih mreža. Rad se završava preporukama za sudije, tužioce i druge predstavnike pravosuđa, imajući u vidu njihovu društvenu ulogu, kao i propise i standarde koji bi trebalo da usmeravaju njihovo ponašanje.

**Ključne reči:** sudije, javni tužioci, društvene mreže, internet, etičke dileme.

### 1. Introduction

Technology and social media have become seamlessly woven into the fabric of daily life, connecting individuals with family, friends, colleagues and acquaintances through online communication channels. Furthermore, users actively engage in posting, commenting on, liking and sharing diverse content on social media platforms.<sup>1</sup> Judges, prosecutors and other representatives of the judiciary are not exempt from this trend, as they too use social media. Moreover, with regard to issues concerning the functioning of the judiciary, judges and prosecutors not only have the right to participate in such debates but, in certain circumstances, also have a duty to express their views (Matić Bošković & Novaković, 2025). Nevertheless,

<sup>1</sup> According to 2022 data, the average internet user spends approximately seven hours a day online, which is nearly 40 per cent of their waking time. Given the growing importance of the internet in contemporary social, economic and political life, and its potential to promote equality among individuals, there have been increasing calls to recognise internet access as an autonomous human right (Digitizer, 2023; Jelisavac Trošić & Gordanić, 2023, p. 377).

the involvement of judges and prosecutors in social media activities may give rise to ethical dilemmas and practical challenges.

First, the internet has evolved into 'a technological, social, media, political and legal phenomenon' that profoundly affects contemporary social relations (Petrović, 2022, p. 470). Consequently, the boundaries between the private and public spheres have become increasingly blurred in the digital environment. In the case of judges and public prosecutors, the question of professional ethics, therefore, extends beyond their official duties and encompasses both their private and public lives. This raises the fundamental question: where is the line between the professional and the private sphere? Is it even possible to draw such a line precisely, or is it ultimately unattainable? Second, although freedom of expression is guaranteed to everyone, in the case of judges and prosecutors this freedom is not absolute and it must be exercised in a manner consistent with professional ethics and the standards developed in the jurisprudence of the European Court of Human Rights. Accordingly, should there be limits on the freedom of expression of judges and prosecutors in the digital sphere and, if so, how are such limits perceived in the light of ethical obligations and existing national and international standards? Finally, the responsible use of social media is a prerequisite for judges and prosecutors to participate in online communication. How do they assess the need for (institutional) regulation and additional training in digital literacy? These research questions were examined through semi-structured group interviews and an online survey conducted among judges, public prosecutors and other representatives of the judiciary (Judicial Academy trainees and judge assistants) in Serbia (hereinafter: judicial office holders).

## **2. The Impact of Social Media Use by Judicial Office Holders**

Certain challenging situations that have arisen in Serbian society have prompted further questions: Can judicial office holders participate in a television quiz show? (Petrović, 2018). Can they be writers, artists or bloggers? (Majić, 2023). Is it appropriate for judicial office holders to sing or dance to folk or jazz music? (Blic, 2019a). What types of photographs may judicial office holders take at private events? (Blic, 2019b). Under what circumstances may judicial office holders comment in the media on court decisions, judicial proceedings, or pending and concluded cases? (Živanović, 2017; KRIK/OCCRP, 2016). There are numerous scientific studies addressing cyberspace and data in general (Hendriks & Hansen, 2016), the influence of social media on sociability (Petrović, 2013; Nešić 2022), and communication through social media (Castells, 1996, 2009; Vuković, 2019). Furthermore, several empirical studies have analysed the impact of social media

on judicial decision-making and the relationship between social media and public perceptions of judicial impartiality and independence (Kwame, 2024). However, the specific issues identified above – which could serve as guidelines for online behaviour of judicial office holders – have rarely been examined empirically. To the authors' knowledge, only a survey conducted among Canadian judicial office holders on the use of social media (Taylor, 2019),<sup>2</sup> and preliminary findings from a survey of trainees (future judicial office holders) in Greece<sup>3</sup> have addressed these issues. Interestingly, both studies reached similar conclusions: (a) judicial office holders may use social media, provided that they remain acutely aware of their professional limitations; (b) it is essential to maintain a clear distinction between private and public identities in the online environment; and (c) the principal risks are the perception of bias and the erosion of public trust, highlighting the need to develop ethical guidelines specifically tailored to the use of social media.

Similar concerns emerged from a survey conducted among Hungarian judges,<sup>4</sup> which found strong support for judges' freedom of expression, particularly in relation to issues affecting the rule of law, judicial independence and the administration of justice. At the same time, respondents reported limited opportunities to express such views publicly and identified fear of retaliation (81 per cent), the widespread prevalence of a chilling effect (50 per cent), and potential professional consequences as significant obstacles to public engagement. Finally, CCJE Opinion No. 25 was also informed by empirical data collected through a questionnaire distributed among CCJE members.<sup>5</sup> Although the responses and related materials have not been made publicly available, their use in the drafting process suggests that the Opinion was grounded not only in normative considerations but also in the experiences and views of members of the European judiciary.

Notably, several authors analysed some related topics, such as the freedom of expression of judges on social media. Focusing on the jurisprudence of the European Court of Human Rights and comparative guidelines concerning the use of

---

<sup>2</sup> An online survey was conducted in 2013 among Canadian judicial office holders. The sample consisted of 678 participants (Taylor, 2019).

<sup>3</sup> As part of the Themis Competition, an initiative of the European Judicial Training Network (EJTN)), future judges and prosecutors conducted a preliminary quantitative study. The survey sample consisted of 67 of the 80 students enrolled at the National School of Judges (Blitsa, Papaathanasiou & Salmanli, 2015).

<sup>4</sup> An online survey concerning certain aspects of the freedom of expression of Hungarian judges was conducted in 2023. A total of 285 judges, out of 2,692 serving in Hungary during that period, completed the questionnaire by the deadline, representing 11 per cent of Hungarian judges. For further details, see: Hungarian Association of Judges (MABIE), 2023.

<sup>5</sup> CCJE. 2022. Op. N° 25. Available at: <https://rm.coe.int/opinion-no-25-2022-final/1680a973ef%0A%0A>, 22. 6. 2026.

social media, these authors concluded that judges, like any other citizens, are free to express their opinions online. Nevertheless, they must exercise additional caution and refrain from actions that could be subject to misinterpretation (Matić Bošković & Novaković, 2025). Another important question is whether judicial office holders refrain from expressing their views due to fear of adverse consequences (Somers, 2019). Following the sanctions imposed on Polish and Hungarian judges for publicly expressing opposition to judicial reforms (Wojtanowski, 2023; Elósegui, 2021; Hungarian Helsinki Committee, 2023),<sup>6</sup> many judicial office holders have begun to suppress or modify their speech in order to avoid negative repercussions. This 'chilling effect' has negative implications on the judiciary as an institution and for the legal profession as an important 'agent' in safeguarding the rule of law (Fajdiga & Zagorc, 2023). Undoubtedly, online communication has enhanced transparency and public engagement among judicial office holders; however, at the same time, it has blurred the boundaries of private and public life and raised concerns regarding impartiality, independence and public confidence in the judiciary. Therefore, this paper examines a different aspect of freedom of expression, relying on the opinions and experiences of judicial office holders in Serbia.

Normatively speaking, the conduct of judicial office holders in Serbia is governed by a combination of binding legal rules and non-binding ethical standards. The binding framework includes the Constitution of the Republic of Serbia (2006),<sup>7</sup> the Law on judges (2023),<sup>8</sup> the Law on court organisation (2023),<sup>9</sup> the Law on public prosecution (2023),<sup>10</sup> and the Court Rules of Procedure (2015).<sup>11</sup> In addition, judicial and prosecutorial conduct is shaped by a number of soft-law instruments,

<sup>6</sup> Hungarian Helsinki Committee, The Implementation of the *Baka v. Hungary* judgment: the freedom of expression of judges is at stake, 2 March 2023, [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/State\\_of\\_implementation\\_of\\_the\\_Baka\\_v\\_Hungary\\_judgment.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/State_of_implementation_of_the_Baka_v_Hungary_judgment.pdf), 9. 11. 2025.

<sup>7</sup> Constitution of the Republic of Serbia, *Official Gazette of the Republic of Serbia* no. 98/2006 and 115/2021. Available at: <http://www.ustavni.sud.rs/page/view/en-GB/235-100028/constitution>, 28. 8. 2023.

<sup>8</sup> Law on Judges, *Official Gazette of the Republic of Serbia* no. 10/2023. Available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_sudijama.html](https://www.paragraf.rs/propisi/zakon_o_sudijama.html), 28. 8. 2023.

<sup>9</sup> Law on the Organisation of Courts, *Official Gazette of the Republic of Serbia* no. 10/2023. Available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_uredjenju\\_sudova.html](https://www.paragraf.rs/propisi/zakon_o_uredjenju_sudova.html), 22. 11. 2023.

<sup>10</sup> Law on Public Prosecution, *Official Gazette of the Republic of Serbia* no. 10/2023. Available at: [https://www.paragraf.rs/propisi/zakon\\_o\\_uredjenju\\_sudova.html](https://www.paragraf.rs/propisi/zakon_o_uredjenju_sudova.html), 22. 11. 2023.

<sup>11</sup> Court Rules of Procedure, *Official Gazette of the Republic of Serbia* no. 110/2009, 70/2011, 19/2012, 89/2013, 96/2015, 104/2015, 113/2015 - corr., 39/2016, 56/2016, 77/2016, 16/2018, 78/2018, 43/2019, 93/2019 and 18/2022. Available at: [https://www.paragraf.rs/propisi/sudski\\_poslovnik.html](https://www.paragraf.rs/propisi/sudski_poslovnik.html), 22. 10. 2023.

including the Codes of Ethics for Judges and Public Prosecutors,<sup>12</sup> the Bangalore Principles of Judicial Conduct,<sup>13</sup> Opinion No. 3 of the Consultative Council of European Judges,<sup>14</sup> Opinion No. 25 of the Consultative Council of European Judges on the Freedom of Expression of Judges, Non-binding Guidelines on the Use of Social Media by Judges,<sup>15</sup> Judicial Conduct and Ethics,<sup>16</sup> and the Practical Guidelines on Use of Social Media by Judges.<sup>17</sup>

The Bangalore Principles of Judicial Conduct represent the most widely accepted international standard of judicial ethics. The core values enshrined in this document are independence, impartiality, integrity, equality, competence and diligence. They are intended to provide guidance to judges; however, they were drafted before the emergence of social media platforms and contain no specific provisions concerning digital conduct. Additionally, Opinion No. 3 of the Consultative Council of European Judges focuses on the principles and rules governing judges' professional conduct with particular emphasis on ethics, incompatible behaviour and impartiality; however, it does not address the specific challenge posed by digital platforms and online expression. More recently, CCJE Opinion No. 25 of the Freedom of Expression of Judges reaffirmed that judges enjoy the right to participate in public debate, particularly on matters concerning the administration of justice, the rule of law and judicial independence. At the same time, the Opinion emphasises that judges must exercise this freedom in a manner that preserves public confidence in their independence, impartiality and integrity, thereby directly addressing many of the dilemmas raised by social media communication. Finally, the UNODC Non-Binding Guidelines on the Use of Social Media by Judges were designed to provide guidance to judges and judiciaries on how to navigate social media platforms in a manner consistent with international and regional standards of judicial conduct and existing codes of ethics. This document is the most directly relevant

<sup>12</sup> This distinction is particularly relevant in the prosecutorial context, as the Serbian Code of Ethics for Public Prosecutors expressly refers to several international soft-law instruments and professional standards that should be considered when interpreting ethical obligations.

<sup>13</sup> UNODC, 2018. The Bangalore Principles of Judicial Conduct. Available at: <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>, 28. 8. 2023.

<sup>14</sup> CCJE. 2002. Op. N° 3. Available at: <https://rm.coe.int/168070098d>, 28. 8. 2023.

<sup>15</sup> UNODC, 2019. Non-binding Guidelines on the Use of Social Media by Judges. Available at: [https://www.unodc.org/res/ji/import/international\\_standards/social\\_media\\_guidelines/social\\_media\\_guidelines\\_final.pdf](https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/social_media_guidelines_final.pdf), 28. 8. 2023.

<sup>16</sup> UNODC, 2019. Judicial Conduct and Ethics – Self-directed Course. Available at: [https://www.unodc.org/documents/ji/training/self\\_directed\\_ebook2.pdf](https://www.unodc.org/documents/ji/training/self_directed_ebook2.pdf), 28. 8. 2023.

<sup>17</sup> CEELI Institute. 2019. *Practical Guidelines on Use of Social Media by Judges*. Available at: [https://ceeliinstitute.org/wp-content/uploads/2022/01/CEELI\\_SoMe\\_Guidelines\\_ENG\\_Upd2021.pdf](https://ceeliinstitute.org/wp-content/uploads/2022/01/CEELI_SoMe_Guidelines_ENG_Upd2021.pdf), 28. 8. 2023.

instrument to the subject matter of the present study. The Guidelines address the identification of judges on social media, the types of content judges should post and their behaviour in commenting on various topics, the concept of online friendships and relationships, and privacy and security concerns. These existing documents range from general ethical principles to social-media-specific guidance. All these instruments converge around the same core values – independence, impartiality and integrity – and recognise that online conduct is not exempt from these requirements. However, if so many rules exist, why do controversial ethical issues related to the use of social media by judicial office holders continue to arise? Why do judicial office holders have different understandings of these rules?

Initially, legal rules are silent in specific situations and cannot (and should not) regulate all possible activities of those to whom they apply; therefore, one enters the realm of professional legal ethics (Schwartz *et al.*, 2020). Within the judiciary, ethical codes play an important role in bridging the gap between legal regulation and professional conduct, providing guidance in situations where formal legal rules offer limited direction. Although they are not legally binding in the same manner as statutory provisions, the professional values and standards prescribed by judicial codes of ethics contribute to the development of a shared judicial culture and help articulate the standards of integrity, impartiality and propriety expected from judicial office holders (Mak, 2018a; Mak, Graaf & Jackson, 2018). Ethical codes are particularly relevant in addressing emerging challenges, such as judicial office holders' use of social media, where legal regulation is often absent or intentionally limited, leaving greater scope for professional self-regulation and ethical judgment. It is, therefore, imperative to recognise that laws serve as powerful regulatory tools for social relations; nonetheless, they may exhibit deficiencies and do not invariably produce the intended outcomes (Stojanović, 2021, p. 55). One reason for their potential (in)effectiveness lies in the social context, as 'isolating the effects of a law from contextual effects is troublesome: a "laboratory setting" can hardly ever be created' (Haarhuis & Niemeijer, 2009, p. 406). Furthermore, ethical guidelines evolve across temporal and spatial dimensions, reflecting variations in moral values from one era to another. While moral norms generally align with legislative frameworks, they are intricately intertwined with the specific social contexts of a particular locality (Trilling, 1972, pp. 1-2).

Second, the use of the internet is shaped by the broader social context in which it occurs. In societies characterised by different cultural patterns and forms of sociability, online communication practices also differ, as Petrović suggests (Petrović, 2013). Although contemporary Serbian society can no longer be described as culturally homogeneous in the traditional sense, each new era of communication tends to preserve elements of the value system inherited from previous periods (Šešić &

Nikolić, 2021, p. 16). This helps explain why judicial office holders' culture often differs from the dominant cultural paradigm. Judicial culture is not determined solely by formal legal rules but also by shared professional values, ethical expectations and institutional traditions that shape judicial office holders' behaviour and reinforce a distinct professional identity. Consequently, their professional 'mental software' shapes perceptions of appropriate conduct and communication, both within and outside the courtroom (Mak, Graaf & Jackson, 2018; Knežević Bojović, 2025; Dabetić, 2023).

Finally, online communication differs depending on who uses the internet, which needs are satisfied through its use, the life habits of a specific user, and their material and educational status, among other factors (Petrović, 2013, p. 12.). Considering judges as internet users, their professional lives are permeated by a form of 'symbolic dictation', i.e., the manner in which the institution influences their behaviour in order to preserve judicial reputation as a form of 'institutional capital' (Garoupa & Ginsbourg, 2015). Hence, there are numerous institutional requests that judges must incorporate into both their professional and private lives. Most importantly, judges must genuinely embrace common institutional values and refrain from conduct that could undermine public trust in their dignity, impartiality and independence (Greenberg & Haley, 1986, p. 417).<sup>18</sup> The primary rationale behind this behavioural norm is rooted in the notion that citizens or society should not differentiate between a judge's virtual and real-world personas. For them, a judge retains a consistent identity irrespective of the context. Consequently, the judge's institutional identity becomes inherently intertwined with their social identity and personal activities.

Social media have been defined as 'any cell phone or internet-based tools and applications that are used to share and distribute information' (The Law Dictionary, 2023). They have also been described as 'digital services that connect participants in multisided markets, set the rules for such interactions and make use of algorithmic systems to collect and analyse data and personalise their services',<sup>19</sup> as well as 'technology-based applications, including without limitation one or more pages of information published on the internet by a natural or juridical person' (Fisher,

---

<sup>18</sup> As Greenberg and Haley (1986) argue, 'in most occupations, there typically exists an external monitor that, coupled with the threat of dismissal, functions as a disciplinary mechanism on the behavior of employees. In contrast, the independence of the judiciary removes any such disciplinary mechanisms. The only effective constraint on judicial behavior, therefore, is that which is internally imposed by the judges themselves' (p. 417).

<sup>19</sup> CM/Rec(2022)11 – Recommendation of the Committee of Ministers to member States on principles for media and communication governance (Adopted by the Committee of Ministers on 6 April 2022 at the 1431<sup>st</sup> meeting of the Ministers' Deputies). Available at: <https://search.coe.int/cm?i=0900001680a61712>, 23. 6. 2026.

2019). Some authors emphasise the functions of these platforms, highlighting the ability to create personal profiles, construct online identities, establish relationships, build reputations and participate in communities (Wolf, Sims & Yang, 2018). Focusing specifically on judicial ethics in the digital era, Keith R. Fisher described judges 'new wine in old bottles', and social media as 'ultimately an extension of public fora that already exists' (Fisher, 2019). For the purposes of this research, social media are considered bidirectional communication channels through which users can have their own accounts, become members of communities, and participate in public spaces. The most relevant social media platforms considered were Facebook, Twitter (renamed X in 2023), Instagram, LinkedIn and YouTube, each serving a different purpose.

### **3. Understanding the Methodology: the Use of Semi-Structured Group Interviews and an Online Survey**

In order to identify critical issues, common positions and practices related to the use of social media by judicial office holders, semi-structured group interviews were conducted with several representatives of judicial organisations and associations, including the Judges' Association of Serbia, the Prosecutors' Association, the Association of Judges and Prosecutors, the Alumni Club of the Judicial Academy, the Forum of Judges of Serbia, CEPRIS, Judicial Base South and the Judicial Academy (listed according to the interview schedule). The semi-structured online group interviews – with two to three participants per interview – were conducted in June 2020 via the Zoom platform. The authors of the paper possess the audio recordings of the interviews, and transcripts were also prepared. The objective of the interviews was to assess the understanding and awareness of the potential opportunities and risks associated with the use of social media within the judicial community. The interviews covered the following nine topics: (1) social media accounts; (2) virtual friendships and possible conflicts of interest; (3) participation in the digital public sphere; (4) (in)appropriate content on social media; (5) justice-related content; (6) limits to freedom of expression; (7) regulatory approaches – law or ethics; (8) cybersecurity and verbal attacks; and (9) digital skills.

Based on the findings and thematic structure of the interviews, a corresponding online survey was subsequently developed to enable the quantitative validation and comparison of attitudes identified during the qualitative phase. The survey was divided into nine sections, corresponding to those covered in the interviews, with one additional section on socio-demographic characteristics. It consisted of a total of 56 questions. Although the topics mirrored those addressed in the interviews,

the wording of the questions was adapted to the survey format by transforming open-ended, reflective questions into closed five-point Likert-scale statements (ranging from 1 – strongly disagree to 5 – strongly agree) that measured the degree of respondents' agreement with particular positions or practices. In this way, the survey instrument retained the conceptual framework of the interviews while enabling the collection of comparable quantitative data.

**Table 1a:** Distribution of survey respondents by profession and gender

| Socio-demographic characteristics of respondents – profession, gender and years of professional experience               |                 |                       |      |
|--------------------------------------------------------------------------------------------------------------------------|-----------------|-----------------------|------|
| Variable/Profession                                                                                                      | Gender/Category | Number of respondents | %    |
| <b>Judge</b>                                                                                                             | Female          | 34                    | 39%  |
|                                                                                                                          | Male            | 16                    |      |
| <b>Public Prosecutor</b>                                                                                                 | Female          | 18                    | 25%  |
|                                                                                                                          | Male            | 15                    |      |
| <b>Other representatives of the Judiciary</b><br>(Judicial Academy Trainee, Judge Assistants and Public Sector Employee) | Female          | 29                    | 26%  |
|                                                                                                                          | Male            | 18                    |      |
| <b>Total</b>                                                                                                             | Female + Male   | 130                   | 100% |

**Table 1b:** Distribution of survey respondents by years of professional experience

| Variable/Years of professional experience | Other representatives of the Judiciary | Judge | Public Prosecutor | Total (%) |
|-------------------------------------------|----------------------------------------|-------|-------------------|-----------|
| up to 5                                   | 24                                     | /     | /                 | 24 (19%)  |
| 6 to 10                                   | 18                                     | 8     | 7                 | 33 (25%)  |
| 11 to 20                                  | 4                                      | 19    | 15                | 38 (29%)  |
| 21 to 29                                  | /                                      | 12    | 9                 | 22 (17%)  |
| 30 and more                               | /                                      | 11    | 2                 | 13 (10%)  |

The online survey was open to judges, judicial trainees and prosecutors from all courts of general jurisdiction in Serbia in August and September 2020. The online survey was completed by 130 respondents, of whom judges represented the largest group (50), followed by Judicial Academy trainees (41), public prosecutors (33), judge assistants (4) and public sector employees (2). It was essential to encompass all demographic categories, including the younger participants. For this reason, participants from the Judicial Academy were included as respondents, given the likelihood that most of them will eventually assume positions as judges or public prosecutors. More than half (62.6 per cent) of the respondents were women. The respondents were also segmented according to years of professional experience: up

to five years, five to ten years, eleven to twenty years, twenty-one to twenty-nine years, and more than thirty years of experience. Interestingly, most judges and public prosecutors among the respondents had between eleven and twenty years of professional experience, while Judicial Academy trainees, as expected, generally had between one and ten years of experience. Overall, the sample was well balanced, which enabled the authors to analyse the data according to the respondents' gender, profession and years of experience.<sup>20</sup>

In conclusion, it is necessary to underline that, although the main data were collected in 2020, the phenomenon of social media has gained increasing significance in recent years, and the findings of this analysis make a meaningful contribution to contemporary scholarly literature. Evidently, the use of social media by legal professionals and its consequences are not static phenomena. However, the COVID-19 pandemic accelerated the use of technology in both private and professional contexts, while the use of social media became even more relevant. This makes the period of data collecting a particularly important point of analysis, as 2020 represented a critical baseline year during which digital transformation accelerated. A particularly strong indicator of the study's enduring relevance is that the real-world situations and concrete examples involving specific types of social media conduct and ethical dilemmas faced by judicial office holders remain relevant today. Namely, the underlying tensions between judicial independence, public accountability, freedom of expression and institutional impartiality continue to exist, making the standards developed in the paper, based on those examples, fully applicable to situations encountered by judicial office holders today. Moreover, unlike the broader field of legal ethics, where normative and doctrinal analyses are abundant, empirical studies and survey-based examinations of actual online conduct and the social media behaviour of judicial office holders remain exceptionally rare in the scholarly literature. Therefore, the present study, by providing systematic empirical evidence on how judicial office holders use these platforms and how such behaviour should be regulated, arrives at a time when regulators most need data to support policymaking.

---

<sup>20</sup> Some preliminary results of this research were presented in the publication *Ethical Aspects of the Use of Social Media - Guidelines for Judges and Prosecutors* (Krivokapić et al., 2021). For the purposes of further and more in-depth scholarly analysis, these results were subsequently discussed at the academic conference *Law, Society and Digital Pasts, Presents and Futures* at Lund University in 2023. The present paper focuses on selected findings that are re-examined through a broader socio-legal and theoretical framework. The results were systematically compared with domestic and international standards governing judicial office holders' freedom of expression, including relevant soft-law instruments and the case law of the European Court of Human Rights, thereby moving beyond the descriptive presentation of empirical data.

## 4. Findings and Discussion

### 4.1. *Where is the Boundary Between the Professional and Private Spheres?*

**Social media accounts** – The vast majority of respondents (83.2 per cent) use social media, while 61.8 per cent use social media several times a day. Most respondents have a personal account on Facebook (57.7 per cent), which appears to be the most popular social media platform, followed by Instagram (41.5 per cent), Twitter (14.6 per cent), LinkedIn (20 per cent) and YouTube (23.8 per cent). A noteworthy share of respondents reported not having any social media accounts (24.6 per cent). As many as 68 per cent of respondents believe that judicial office holders should use social media and that opening accounts on social media should not be subject to prior restrictions (46.1 per cent). The narratives below provide insight into how respondents perceive the use of different social media platforms:

‘LinkedIn is a social media platform for the professional exchange of opinions, updates on professional achievements and the exchange of expert knowledge, while Facebook and Instagram are primarily used for leisure and social connections, and judicial office holders should use them in accordance with their intended purposes. Professional networking is at the core of the profession. Any form of prohibition on professional connections, networking and sharing experiences does more harm than good to the profession.’

Interviewees agree that social media should be freely accessible provided that online activities do not harm the reputation of the account holder, the judicial profession or the judicial system as a whole. However, they are of the opinion that certain restrictions may be imposed in relation to specific situations, which will be addressed in greater detail in the following section. In any case, there is a consensus that judicial office holders should refrain from using social media during working hours. The following statement illustrates the participants’ perspectives on this issue:

*‘When used wisely, social media can serve as a valuable indicator of intellectual breadth and versatility. Information shared on personal profiles may reveal a person’s capacity for reflection and openness – qualities that are essential for those entrusted with making decisions concerning the rights and lives of others.’*

**Online friendships** – Factors that should be taken into consideration when assessing the relevance of an online friendship include the nature of the particular social media page, the number of friends a judicial office holder has (for example, a lower number may suggest a closer relationship), the judicial office holder’s practice of accepting friend requests, the degree of online or offline interaction, and the frequency with which an online friend or contact is a party to the proceedings in

which the judicial office holder is involved. As noted by several interviewees, social media accounts underscore the complexity of maintaining an online identity:

*'They are useful for informational purposes and for maintaining contact with friends and relatives, but they should not contain content from one's private life... Social networks have often been exploited by outsiders from various, including criminal, circles, and that is why judicial office holders must exercise particular caution in their use.'*

There is a consensus among the interviewees that individuals on social media can be regarded as close friends with their online contacts if they have restricted public access to their profiles through privacy settings (a feature commonly available on Facebook). Nevertheless, it may be surprising that similar shares of survey respondents agree (40.3 per cent – options 4 and 5 – agree and strongly agree) and disagree (47.3 per cent – options 1 and 2 – disagree and strongly disagree) that friendships on social media should be treated in the same manner as real-life friendships when deciding on the recusal of a judicial office holder from proceedings. The following excerpts reveals this discrepancy:

*'Behaviour online is the same as behaviour in any other public place (street, cinema, restaurant, etc.)... We must certainly be more responsible than people out of office.'*

Consequently, social media friendships and connections may represent a particularly sensitive issue, especially those involving connections between judicial office holders and lawyers or parties to proceedings. Those issues may raise questions concerning impartiality, prompt requests for recusal, cause delays and create other procedural challenges. However, there is a consensus among survey respondents (80.8 per cent – options 4 and 5) that judicial office holders may friend each other on social media. The respondents also agree, although to a lesser extent (67.9 per cent – options 4 and 5), that they may friend lawyers. While online friendships with lawyers<sup>21</sup> may generally be accepted, interviewees favour the position that judicial office holders should avoid friending lawyers who regularly appear before them, as this could lead to repeated requests for recusals. Additionally, judicial office holders should avoid sending or accepting friend requests from lawyers involved in cases currently pending before them. The quotations below provide insight into how the respondents perceive online friendships between colleagues:

*'It should not be forgotten that fellow lawyers, judges and prosecutors may have been colleagues at university or even friends before the judicial office holder was elected to the position. They know each other from university and from real life; they are connected in real life, so why should this not also be reflected also on social media?'*

---

<sup>21</sup> For the purposes of this paper, the term 'lawyer' refers to attorneys-at-law (advocates) and is used as the closest functional equivalent to legal practitioners representing clients in different legal systems, including barristers and solicitors.

Interviewees are of the opinion that the mere fact that a judicial office holder's online account is connected as a 'friend' with a party, prosecutor or defence counsel is not, in itself, a reason for recusal. However, this must be assessed in each individual case, depending on the circumstances of the case and in accordance with the general rules governing recusal. Judicial office holders should adopt a proactive approach and openly disclose friendships on social media and/or in their private lives to the court president and other involved parties, thereby enabling the consideration of potential recusal.

**Participation in the digital public sphere** – The survey included several questions examining respondents' perspectives on expressing an intention to attend various types of events through the 'Attend an Event' option on Facebook. The respondents were almost evenly divided on whether judicial office holders should be permitted to indicate their intention to attend an event that promotes a critical forum on the state of media freedom in the Republic of Serbia. Specifically, 42.3 per cent of the respondents indicated that sharing such information is appropriate, whereas 34.6 per cent disagreed and 23.1 per cent were undecided. By contrast, the respondents expressed a slight tendency to disagree with the proposition that judicial office holders should be permitted to indicate their intention to attend a Pride parade and the accompanying series of seminars on discrimination against LGBT people in the public sector. In particular, 51.2 per cent of the respondents considered sharing such information to be inappropriate, whereas 28.3 per cent considered it appropriate and 20.5 per cent were undecided. Nearly half of the respondents (47.3 per cent) considered it appropriate for judicial office holders to invite their friends to a Facebook event promoting organic cosmetics produced by domestic manufacturers, while 21.4 per cent were undecided.

Overall, the findings presented are largely consistent with contemporary international standards and the current Serbian legal and ethical framework governing judicial office holders' use of social media. Soft-law instruments, including the Bangalore Principles of Judicial Conduct, the UNODC Non-binding Guidelines on the Use of Social Media by Judges and the CEELI Practical Guidelines recognise that judicial office holders may maintain personal social media accounts, establish online connections and participate in digital communication. At the same time, they emphasise that private online activities cannot be entirely separated from professional responsibilities where they may affect public confidence in judicial independence, impartiality, integrity or propriety. In this respect, the respondents' views largely reflect the existing international ethical framework, while the remaining disagreements concern the assessment of specific situations rather than the underlying ethical principles themselves. The findings further suggest that the principal challenge does not lie in drawing a strict boundary between the private and professional spheres, but in determining when private online conduct acquires professional relevance because of its potential impact on public confidence in the judiciary.

#### **4.2. Where is the Boundary of Freedom of Expression for Judicial Office Holders in the Digital Sphere?**

**(In)appropriate content on social media** – When asked about photographs that individuals may share on social media as a form of personal expression, most respondents agree that judicial office holders should not post content depicting alcohol consumption (64.1 per cent – options 1 and 2) or nudity (76.6 per cent – options 1 and 2). The respondents also considered that judicial office holders should refrain from posting photographs or other content that conveys ostentation, such as the purchase of luxury items or the display of a privileged lifestyle (62.3 per cent). While the majority of interviewees agreed that these types of photographs are incompatible with judicial ethics, others argued that social media merely increase the visibility of behaviour that already exists offline, and should therefore not be regarded as the source of ethical problem itself:

*‘It is considered inappropriate for a judicial office holder to post a photograph wearing expensive jewellery, yet it is acceptable for the same person to wear such jewellery at work every day. Social media are not the problem in themselves; they merely make certain patterns of behaviour more visible. Therefore, attention should be directed to the underlying issue – namely, the behaviour – if, indeed, a problem exists.’*

Almost half of the respondents (45 per cent) considered that judicial office holders should not post entertainment-related content on their social media accounts, whereas 24.5 per cent took the opposing view. The respondents were equally divided on whether judicial office holders should be permitted to use satire and irony to express their personal views on social media. Specifically, 36.9 per cent disagreed and an equal proportion (36.9 per cent) agreed with this proposition. Furthermore, almost half of the respondents (38.9%) indicated that, by liking posts on social media, judicial office holders express their sympathy for the user who posted the content. The interview narratives point to an underlying concern about maintaining judicial integrity in digital spaces:

*‘... noting that the same social media platforms should be used with caution to ensure that judicial office holders do not compromise their integrity in the eyes of the public through their posts.’*

Consistent with existing soft-law guidance (UNODC, 2019a; CEELI Institute, 2019), online posts by judicial office holders should serve a legitimate educational or informational purpose, and they should avoid content that could create an appearance of predisposition or bias. They should also exercise caution when following or liking advocacy groups, campaigns or commentators where such associations could undermine public confidence in their impartiality or in the impartiality of the judiciary in general. In this respect, it is important to consider not only what judicial office

holders post but also where they post it. It is not advisable to post on platforms that, by their nature, foster controversies or sensationalism or that are publically associated with specific ideological or political positions to the detriment of neutrality and pluralism.<sup>22</sup> These reflections indicate a broader uncertainty surrounding professional boundaries online:

*Not every social media platform serves the same purpose or targets the same audience. Facebook, Twitter and LinkedIn profiles provide users with greater opportunities to engage with topics related to their profession. By contrast, Instagram is primarily associated with content characteristic of private life rather than professional activity.'*

**Justice-related content** – Interviewees agree that judicial office holders may comment on proposed reforms of procedural laws, speak publically on matters directly affecting the operation of the courts, and express their views on issues concerning or judicial office holders' independence. With regard to posts concerning shortcomings or malfunctions within the judiciary, the interviewees consider that judicial office holders may speak publicly about such issues, particularly where concerns raised through appropriate internal channels have not resulted in an adequate institutional response. This approach is consistent with contemporary European standards on judicial office holders' freedom of expression;<sup>23</sup> which recognise the legitimacy of public interventions by judicial office holders on matters affecting the administration of justice, judicial independence and the rule of law. In such cases, even where an issue has political implications, this alone is not sufficient to prevent judicial office holders from making public statements on the matter, as many interviewees emphasised:

*'The prudent use of personal social media accounts with limited visibility, together with the use of professional profiles aimed at explaining the work of the judiciary and promoting public understanding of its role, is consistent with contemporary international standards governing judicial office holders' use of social media.'*

According to the interviewees, comments on draft legislation may be helpful and appropriate, provided that judicial office holders avoid offering informal interpretations or expressing controversial views on constitutionality. Generally, judicial commentary on proposed legislation or other matters of government policy should focus on practical implications or drafting deficiencies and avoid issues of political controversy. Nevertheless, the interviewees expressed the view that judicial office holders may, in certain circumstances, have a moral duty to speak out publicly, for

<sup>22</sup> It is important to note that the survey was conducted in 2020, before significant changes were introduced to the governance of the Twitter platform. Therefore, the respondents' views should be interpreted in the context of the platform as it existed at the time of data collection.

<sup>23</sup> ECtHR. *Baka v. Hungary*, app. no. 20261/12, 23 June 2016. Available at: <https://hudoc.echr.coe.int/fre?i=001-163113>, 23. 6. 2026; ECtHR, *Żurek v. Poland*, 2022; CCJE, 2022.

example by joining a vigil or signing a petition in favour of energy conservation and environmental protection. According to these participants, such forms of engagement do not necessarily compromise judicial impartiality but rather express concern for the local and global community. However, if any of these issues were to come before a judge in their professional capacity and their impartiality were called into question, the judge should recuse themselves from the proceedings.

**Limits to freedom of expression** – In principle, the interviewees considered that there should be no barriers to participating in online debates on local and social issues and other professional matters. However, with regard to the political engagement of judicial office holders on social media, the requirement of impartiality entails that they must refrain from publicly disclosing their political views, except on matters relating to the functioning of the justice system. Indeed, if judicial office holders express their political views on social media, they may rightly be accused of bias where they are called upon to decide a case involving a political organisation or political issues. Against this background, it is not surprising that a substantial proportion of the respondents considered that expressing opinions or ideological positions directly related to political issues (49.6 per cent), as well as expressing support for political organisations, should be prohibited:

*‘...the content must be such that it does not call into question the dignity of the judicial function. The same applies to content relating to topics or statements that could call into question the appearance of independence and impartiality, as well as the obligation to refrain from expressing political views.’*

These reflections should also be interpreted in the light of the Serbian legal framework, which explicitly prohibits political engagement of judicial office holders. Accordingly, the sensitivity of the issue appears to stem less from disagreement with the restriction itself than from uncertainty regarding its application to various forms of online activity and expression. In general, the perception of impartiality is measured by the standard of a reasonable observer (UNODC, 2018). At the same time, the assessment of a judicial office holder’s online activity must be based on its impact on the independent and impartial performance of their judicial duties. Judicial office holders should not be penalised for conduct when there is no indication that it has affected the performance of their judicial office, particularly in relation to concluded, pending or imminent proceedings.

Both the respondents and interviewees expressed the general view, with which the authors agree, that judicial office holders should be free to use social media to follow topics of interest. While it would be disproportionate and unreasonable to require judicial office holders to follow a broad range of content solely to avoid any appearance of bias, they should nevertheless be aware of the ‘echo chamber’ effect (Arguedas *et al.*, 2022), which may result from following exclusively sources of information that

reflect a specific political or social perspective, or politicians representing a particular political orientation. Judicial office holders should also be aware that search engines may create a filter bubble by selectively presenting information based on a user's location, previous searches and browsing history. Similar effects are produced by the algorithms embedded in social media platforms, which curate news feeds, recommendations and suggested content according to users' previous interactions and preferences. Judicial office holders should therefore remain aware of the risks of bias, selective views and ideological reinforcement that may be fostered by both search engines and social media platforms.

The findings presented in this section are largely consistent with contemporary international standards and the current Serbian legal and ethical framework governing judicial office holders' freedom of expression. This guaranteed right is accompanied by specific professional responsibilities aimed at safeguarding public confidence in judicial independence, impartiality and integrity. Accordingly, the respondents' views concerning political engagement, public commentary and online conduct largely correspond to the principles reflected in the Bangalore Principles of Judicial Conduct, the UNODC Non-binding Guidelines on the Use of Social Media by Judges and CCJE Opinion No. 25. They also align with the approach adopted by the European Court of Human Rights, particularly in *Baka v. Hungary* and *Zurek v. Poland*, which recognises both judges' right – and, in matters concerning the administration of justice, their duty – to participate in public debate, while protecting them against measures that produce a chilling effect on judicial freedom of expression.

#### **4.3. How do Judges and Public Prosecutors Assess the Need for Institutional Regulation and Additional Training in Digital Literacy?<sup>24</sup>**

**Regulatory approach – law or ethics** – There was a consensus among the respondents that the use of social media should be regulated through a soft-law

<sup>24</sup> It is noteworthy that, since the research was conducted, several developments have taken place in the field of judicial office holders' ethics in Serbia. New Codes of Ethics for Judges and Public Prosecutors were adopted in 2021 and 2024, respectively, while institutional mechanisms for the interpretation and application of ethical standards have been further strengthened (Code of Ethics for Judges, *Official Gazette of the Republic of Serbia* no. 96/2010 and 90/2021. Available at: <https://www.paragraf.rs/propisi/eticki-kodeks-principi-i-pravila-ponasanja-sudija.html>, 22. 10. 2025; Code of Ethics for Public Prosecutors, *Official Gazette of the Republic of Serbia* no. 33/2024. Available at: [https://www.paragraf.rs/propisi/eticki\\_kodeks\\_javnih\\_tuzilaca\\_i\\_zamenika\\_javnih\\_tuzilaca\\_republike\\_srbije.html](https://www.paragraf.rs/propisi/eticki_kodeks_javnih_tuzilaca_i_zamenika_javnih_tuzilaca_republike_srbije.html), 15. 10. 2025; In addition, the Rules of Procedure of the High Judicial Council's Ethics Board introduced the possibility of appointing confidential ethics advisors, enabling judges to seek guidance when faced with ethical dilemmas (EU for Serbia – Support to the High Judicial Council, 2021. Available at: <https://www.euza-tebe.rs/rs/vesti/usvojen-pravilnik-o-radu-etickog-odbora-visokog-saveta-sudstva>, 25. 6. 2026);

instrument. The respondents considered that the Code of Ethics should not be extensively detailed or burdened with provisions governing the use of social media (69.2 per cent), but that the relevant standards should instead be elaborated in a separate instrument, such as ethical guidelines (37.7 per cent). By contrast, only 10 per cent of the respondents considered hard-law regulations to be necessary. It is noteworthy that 46.1 per cent of the respondents agreed that judicial office holders should not be subject to prior restrictions when creating a social media account, whereas 29.3 per cent disagreed with this position. A quarter of the respondents (24.6 per cent) were undecided as to how this issue should be regulated. Judges and public prosecutors with more than 11 years of professional experience were generally of the view that no prior approval should be required for social media use. Many interviewees emphasised that maintaining judicial integrity in the digital sphere is of paramount importance:

*‘One should not impose limitations or introduce prohibitions; rather, one should take care to preserve one’s integrity. A judicial office holder, as a user of social media, should be aware of and responsible for every photograph, comment, “like” or other content that they publish on a social media and thereby protect the reputation and dignity of their office, just as they should behave in every other aspect of their professional and private life.’*

**Digital skills** – More than half of the respondents (55 per cent) considered that there is no need to establish a special commission within the High Judicial Council or the High Prosecutorial Council to approve the use of social media by judicial office holders. However, such a commission was considered necessary when confidential consultations are required, particularly in situations involving the interpretation of ethical dilemmas (42.6 per cent). Considering the potential forms of misuse, the findings suggest that a majority of respondents recognise the need for education regarding the use of social media (49.2 per cent), as well as further training in digital skills (60.5 per cent).

---

Professional associations have also developed mechanisms for ethical guidance. The Council for Ethical Issues within the Judges Association of Serbia issued an opinion concerning activities on social media (Judges’ Association of Serbia – JAS. Council for Ethical Issues. 2018. Available at: <https://docs.google.com/document/d/1kecJFLPC3eRaRVqBbIohJQ-qebW9S3iV/edit>, 25. 6. 2026, while CEPRIS organised an Intensive Course on Judicial Ethics and Legal Skills (CEPRIS, 2026. Available at: <https://www.cepris.org/strucni-skupovi/pravni-fakultet-u-beogradu-organizuje-intenzivni-kurs-o-pravosudnoj-etici-i-pravnim-vestinama/>, 25. 6. 2026); Furthermore, the guide *Ethical Aspects of Social Media Use – A Guide for Judges and Prosecutors* has become an important reference tool for addressing ethical dilemmas arising from online activity (Krivokapić *et al.*, 2021). Despite the clear preference expressed by the respondents for a dedicated soft-law instrument, Serbia has not yet adopted specific guidelines governing the use of social media by judicial office holders. Consequently, the regulatory gap identified during the research largely persists.

*'Would judicial office holders be discriminated against if significant restrictions on the use of social media were introduced for them, but not for other employees within the judiciary, other public sector employees or citizens?'*

When discussing the preceding narrative, it is important to emphasise that judicial office holders, as a professional group, constitute a specific category of public officials. As such, they are subject not only to the general rules of conduct applicable to all employees but also to specific ethical codes, which impose a higher standard of responsibility than that applicable to ordinary citizens. Any potential discrimination should be understood as reflecting the inherent tension between the requirements of integrity and impartiality, on the one hand, and every individual's right to freedom of expression, on the other. More broadly, it is imperative for individuals holding judicial office to recognise that their social media activities may be perceived as reflecting the position of the judiciary and the institution they represent, even when they express personal opinions. Judicial office holders must, therefore, exercise caution in their online activities, given the continuous public scrutiny to which they are subject. The online reputation of these professionals has the potential to influence public perceptions offline and, consequently, may pose a risk to the independence and impartiality that are fundamental to their roles.

Regarding the above findings, they are fully consistent with current international and Serbian approaches to regulating judicial office holders' use of social media. Rather than advocating detailed legal regulation and broad prohibitions, international soft-law instruments, including the UNODC Guidelines, the CEELI Practical Guidelines and CCJE Opinion No. 25, emphasise ethical guidance, education and individual professional responsibility. The respondents' preference for a dedicated soft-law instrument, combined with their recognition of the need for greater digital literacy and ethical counselling, therefore reflects the broader international trend towards supporting judicial office holders in navigating ethical dilemmas in the digital environment rather than restricting their participation in it.

## 5. Conclusion

Based on the analysis of the data collected during this research, several conclusions can be drawn. Firstly, some ethical issues may be regarded as relatively 'non-controversial', as the respondents demonstrated a high level of consensus regarding well-established principles of judicial ethics. These include the freedom to maintain a personal social media account while avoiding the disclosure of overly personal information; refraining from displaying luxury, nudity, or alcohol consumption; avoiding political engagement on social media; recognising the need

for additional education and digital literacy; and favouring the regulation of social media use through a dedicated soft-law instrument. These findings confirm that, with regard to non-controversial issues, the existing ethical framework governing judicial conduct remains largely applicable in the digital environment. The challenge, therefore, lies not in developing entirely new ethical principles, but in interpreting established standards in the context of social media.

Furthermore, considering that many ethical questions fall into a 'grey area', it is understandable that there are issues on which the respondents did not reach a consensus. Accordingly, the most controversial issues identified in this study concern the assessment of online friendships and potential conflicts of interest, participation in the digital public sphere, the distinction between appropriate and inappropriate online content, the limits of freedom of expression, as well as the influence of social media algorithms on access to information and the need for additional soft-law guidance. The divergence of opinions on these issues appears to stem from three main reasons: (a) respondents interpret the existing legal and ethical regulations differently – while younger respondents tend to interpret existing ethical standards more broadly, older respondents demonstrate a more reserved understanding (for example, younger respondents are more likely to consider that an online friendships should be treated in the same manner as offline friendships);<sup>25</sup> (b) a lack of information literacy, namely a lack of understanding of the specific modes of communication within the digital environment – the internet is a multi-dimensional phenomenon that enables different forms of communication among highly heterogeneous users (Petrović, 2013, pp. 12-13); or (c) the absence of regulation concerning certain controversial issues which suggests a need for further guidance. Although the gap between the real and digital worlds has reduced, online activities may have tangible consequences in the offline world.

Furthermore, social media users, including judicial office holders, possess a specific understanding of their institutional and social identities. Different social contexts and dominant cultural paradigms require an appropriate regulatory response. Therefore, the authors believe that the existing normative framework is generally capable of governing judicial conduct in the digital sphere, as the fundamental principles of judicial ethics remain equally applicable online. However, the controversial issues identified in this study demonstrate that additional guidance is needed to clarify how these established principles should be interpreted and applied

---

<sup>25</sup> An illustrative example of the distinction between these two types of 'friendships' is provided by one of the first social networking services, MySpace. The first friend of each user was Tom Anderson, one of the platform's founders. At the peak of its expansion, Tom had a total of 221,036,100. It is difficult to believe that Tom could have had a close personal relationship with each of these users (Gere, 2011, pp. 209–210).

in the context of social media. Rather than creating a new ethical standard, the findings support the development of specific soft-law guidance addressing those aspects of online conduct that remain insufficiently regulated.

Ultimately, the findings suggest that the central ethical challenge posed by social media lies not in the technology itself, but in the increasingly blurred boundary between the private and institutional identities of judicial office holders. The controversies identified in this study demonstrate that online activities that may appear purely personal can nevertheless affect perceptions of impartiality, integrity and public confidence in the judiciary. Therefore, the key task for future ethical guidance is not to redefine judicial values, but to clarify how long-established principles of judicial ethics should be interpreted and applied in an evolving digital environment.

## References

- Blitsa, D., Papathanasiou, I. & Salmanli, M. 2015. Judges and Social Media: Managing the Risks. *SSRN Electronic Journal*, pp. 1-21. <https://doi.org/10.2139/ssrn.2634043>
- Castells, M. 1996. *The Rise of the Network Society*. Oxford: Blackwell.
- Castells, M. 2009. *Communication Power*. Oxford: Oxford University Press.
- Dabetić, V. 2023. *Izazovi konsolidacije sudstva kao nezavisne grane vlasti u Srbiji na početku 21. veka*. PhD thesis, Belgrade: University of Belgrade, Faculty of Law.
- Dragičević Šešić, M. & Nikolić, T. 2021. Kultura u digitalnoj sferi. In: Dragičević Šešić, M. & Nikolić, T. (eds.), *Digitalni horizonti kulture, umetnosti i medija*, pp. 15-30. [https://doi.org/10.18485/fdu\\_dhkum.2021.ch1](https://doi.org/10.18485/fdu_dhkum.2021.ch1)
- Elósegui, M. 2021. The Independence of the Judiciary in the Jurisprudence of the European Court of Human Rights: The Case of *Baka v. Hungary*. In: Elósegui, M., Miron, A., Motoc, I. (eds.), *The Rule of Law in Europe*. Springer, pp. 69-87. [https://doi.org/10.1007/978-3-030-56001-0\\_6](https://doi.org/10.1007/978-3-030-56001-0_6)
- Fajdiga, M. & Zagorc, S. 2023. Freedom or Fear of Expression of Judges? Exploring the 'Chilling Effect' on Judicial Speech. *European Constitutional Law Review*, 19(2), pp. 249-270. <https://doi.org/10.1017/S1574019623000093>
- Fisher, K. R. 2019. Judicial Ethics in a World of Social Media. In: Schoeller-Schletter, A. (ed.), *Impartiality of Judges and Social Media: Approaches, Regulations and Results*, pp. 7-13.
- Garoupa, N. & Ginsbourg, T. 2015. *Judicial Reputation – A Comparative Theory*. University of Chicago Press. <https://doi.org/10.7208/chicago/9780226290621.001.0001>
- Gere, C. 2011. *Digitalna kultura*. Beograd: Clio.
- Greenberg, P. E. & Haley, J. A. 1986. The role of the compensation structure in enhancing judicial quality. *The Journal of Legal Studies*, 15(2), pp. 417-439. <https://doi.org/10.1086/467820>
- Hendriks, V. F., & Hansen, P. G. 2017. *Bura informacija: Zašto „lajkujemo“? Objašnjenje individualnog ponašanja na društvenim mrežama* (prev. Novaković, M.). Centar za promociju nauke.

- Haarhuis, C. M. K. & Niemeijer, E. 2009. Synthesizing Legislative Evaluations: Putting the Pieces Together. *Evaluation*, 15(4), pp. 403-425. <https://doi.org/10.1177/1356389009341897>
- Jelisavac Trošić, S. I. & Gordanić, J. B. 2023. Priznanje prava na pristup internetu kao samostal-nog ljudskog prava – potencijali i prepreke. *Strani pravni život*, 3(67), pp. 375-394. [https://doi.org/10.56461/SPZ\\_23301KJ](https://doi.org/10.56461/SPZ_23301KJ)
- Kwame, D. 2024. The Influence of Social Media on Judicial Independence. *Journal of Modern Law and Policy*, 4(1), pp. 49-61. <https://doi.org/10.47941/jmlp.2156>
- Knežević Bojović, A. 2025. *Etička dimenzija sudske samouprave u Srbiji*. Institut za uporedno pravo. Beograd. [https://doi.org/10.56461/M204\\_25AKB](https://doi.org/10.56461/M204_25AKB)
- Krivokapić, Đ., Visentin, M., Krstić, I. & Nikolić, A. 2021. *Etički aspekti upotrebe društvenih mreža – Vodič za sudije i tužioce*. Council of Europe.
- Mak, E. 2018. Researching judicial ethical codes, or: how to eat a mille-feuille?. *International Journal for Court Administration*, 9/2, pp. 55-66. <https://doi.org/10.18352/ijca.277>
- Mak, E., Graaf, N. & Jackson, E. 2018. The Framework for Judicial Cooperation in the Euro-pean Union: Unpacking the Ethical, Legal and Institutional Dimensions of 'Judicial Culture', *Utrecht Journal of International and European Law*, 34(1), pp. 24-44. <https://doi.org/10.5334/ujel.452>
- Matić Bošković, M. & Novaković, M. 2025. Freedom of Expression of Judges and the Influence of Social Media. *Bratislava Law Review*, 9(1), pp. 135-150. <https://doi.org/10.46282/blr.2025.9.1.886>
- Nešić, D. 2022. Mediji, društvene mreže i javno mnjenje, *Birodi – Biro za društvena istraživanja*. Available at: <https://www.birodi.rs/wp-content/uploads/2022/12/TEKST-Nešić-2.pdf>, 22. 7. 2026.
- Petrović, D. 2013. *Društvenost u doba interneta*. Belgrade.
- Petrović, D. B. 2022. Privacy and Protection of Personal Data – Criminal Law Aspect. *Strani pravni život*, 4(64), pp. 469-489. [https://doi.org/10.56461/SPZ\\_22407KJ](https://doi.org/10.56461/SPZ_22407KJ)
- Schwartz, M. D., Wydick, R. C., Perschbacher, R. R. & Bassett, D. L. 2020. *Problems in Legal Ethics*. West Academic Publishing.
- Stojanović, A. 2021. Digitalne tehnologije i pravni okvir kulturne politike u Srbiji. In: Dragičević Šešić, M. & Nikolić, T. (eds.), *Digitalni horizonti kulture, umetnosti i medija*. Beograd. Fakultet dramskih umetnosti: Clio, pp. 49-73. [https://doi.org/10.18485/fdu\\_dhkum.2021.ch3](https://doi.org/10.18485/fdu_dhkum.2021.ch3)
- Sommers, M. M. 2019. The Impartiality Principle and Judges Online: Too Dangerous to Speak, Too Dangerous Not To? In: Schoeller-Schletter, A. (ed.), *Impartiality of Judges and Social Media: Approaches, Regulations and Results*, pp. 14-18.
- Taylor, L. 2019. The Use of Social Media by Canadian Judicial Officers. In: Schoeller-Schletter, A. (ed.), *Impartiality of Judges and Social Media: Approaches, Regulations and Results*, pp. 19-24.
- Trilling, L. 1972. *Sincerity and Authenticity*. Harvard University Press. <https://doi.org/10.4159/9780674044463>
- Vuković, V. 2019. *Društveni mediji i upravljanje komunikacijama*. Fakultet dramskih umjetnosti.

Wojtanowski, M. 2023. ECtHR: *Żurek v. Poland* (Application No. 39650/18, 16 June 2022): Constitutional Crisis and the Judge's Freedom of Expression. *Bratislava Law Review*, 7(2), pp. 213-226. <https://doi.org/10.46282/blr.2023.7.2.716>

### Internet Sources

- Arguedas, A. R., Robertson, C. T., Fletcher, R. & Nielsen, R. K. 2022. *Echo Chambers, Filter Bubbles, and Polarisation: a Literature Review*. Available at: <https://royalsociety.org/-/media/policy/projects/online-information-environment/oie-echo-chambers.pdf>, 27. 1. 2023.
- Blic (media outlet). 2019a. *Sudija iz Vladičinog Hana zaigrala i zapevala u kancelariji, sve to snimila i objavila, ali – da li se sada kaje?*. Available at: <https://www.blic.rs/vesti/drustvo/video-sudija-iz-vladicinog-hana-zaigrala-i-zapevala-u-kancelariji-sve-to-snimila-i/9q039jd>, 28. 8. 2023.
- Blic (media outlet). 2019b. *Prekršili etički kodeks? O sudbini četvoro tužilaca koji su slikani u društvu kriminalaca odlučiće disciplinski tužilac*. Available at: <https://www.blic.rs/vesti/drustvo/prekršili-eticki-kodeks-o-sudbini-cetvoro-tuzilaca-koji-su-slikani-u-drustvu/ctyth45>, 28. 8. 2023.
- Digitizer, 2023. Available at: <https://www.digitizer.rs/news-stories/najzanimljivija-statistika-koriscenja-interneta-u-2022-godini/>, 5. 6. 2026.
- Hungarian Association of Judges (MABIE). 2023. *Research report – On certain issues relating to the freedom of expression of Hungarian judges*, November – December 2023. Available at: [https://helsinki.hu/wp-content/uploads/2025/01/Kutatasi\\_jelentes\\_B\\_en-1.pdf](https://helsinki.hu/wp-content/uploads/2025/01/Kutatasi_jelentes_B_en-1.pdf), 22. 7. 2026.
- KRIK/OCCRP. 2016. *What made a Serbian Judge Quit?*. Available at: <https://www.krik.rs/en/what-made-a-serbian-judge-quit/>, 28. 8. 2023.
- Majić, M. 2023. *Blog sudije Majića*. Available at: <https://misamajic.com/>, 28. 8. 2023.
- Miroslav Mišković's (Serbian businessman) website. 2017. Available at: <https://www.miroslavmiskovic.rs/en/returning-passport-to-miskovic-pressure-on-judge-to-reverse-decision/>, 12. 9. 2017
- Petrović, A. Politika (daily newspaper). *Sudija može u 'Slagalicu' – Šta je nespojivo sa sudijskom funkcijom*. Available at: <https://www.politika.rs/sr/clanak/399421/Sudija-moze-u-Slagalicu>, 13. 11. 2023.
- The Law Dictionary. *Social Media, Definition & Legal Meaning*. Available at: <https://thelawdictionary.org/social-media/#:~:text=Any%20cell%20phone%20or%20internet,%2C%20Twitter%2C%20YouTube%2C%20blogs>, 22. 11. 2023.
- Wolf, M., Sims, J. & Yang, H. 2018. *Social Media? What Social Media?* Available at: [https://www.researchgate.net/publication/325795069\\_Social\\_media\\_What\\_social\\_media](https://www.researchgate.net/publication/325795069_Social_media_What_social_media), 22. 7. 2026.
- Živanović, M. 2017. *Serbian Council withdraws warning issued to Miskovic judge*, BIRN. Available at: <https://balkaninsight.com/2017/09/06/serbian-judicial-council-withdrew-public-warning-for-the-judge-in-miskovic-case-09-06-2017/>, 25. 8. 2026.

## OSNIVANJE PORESKOG SUDA IZ UPOREDNOPRAVNE I MEĐUNARODNOPRAVNE PERSPEKTIVE: PUTOKAZI ZA REPUBLIKU SRBIJU\*\*

### *Sažetak*

Usled obimne i složene poreske materije, čestih izmena poreskih propisa i činjenice da još uvek ne postoji adekvatan mehanizam za rešavanje poreskih sporova, u Republici Srbiji se svakodnevno povećava broj nerešenih predmeta pred Upravnim sudom. Ovaj trend dovodi do zastoja u radu Upravnog suda u oblasti poreskih predmeta, a ta situacija ugrožava kako fiskalne interese države tako i legitimne interese poreskih obveznika. Imajući u vidu postojeće izazove u pogledu efikasnosti upravnosudskog odlučivanja i zaštite prava poreskih obveznika, u radu se razmatra opravdanost uvođenja specijalizovanih poreskih sudova kao oblika specijalizacije u poreskoj materiji u Republici Srbiji. Polazi se od pretpostavke da postojeći mehanizmi za zaštitu prava na suđenje u razumnom roku nisu dovoljni za unapređenje efikasnosti i stoga se razmatraju druga moguća rešenja za prevazilaženje postojećeg problema. S obzirom na složenost i obimnost poreske materije, u radu se analiziraju postojeći međunarodni standardi i uporednopravna rešenja kako bi se ocenila opravdanost uspostavljanja posebnog institucionalnog okvira za rešavanje poreskih sporova. Analiza je sprovedena primenom uporednopravnog i pravnodogmatskog metoda. Zaključuje se da bi temeljno osmišljeno uvođenje specijalizovanog poreskog suda, uz jasan oslonac na međunarodne standarde i primere dobre uporedne prakse, moglo doprineti efikasnijem rešavanju sporova, unapređenju zaštite prava obveznika i jačanju ukupne pravne sigurnosti u ovoj oblasti.

**Ključne reči:** specijalizacija u poreskoj materiji, Poreski sud, Upravni sud Republike Srbije, poreski sporovi.

\* Naučni saradnik, Institut za uporedno pravo, Beograd.

E-mail: [m.vasovic@iup.ac.rs](mailto:m.vasovic@iup.ac.rs)

ORCID: <https://orcid.org/0009-0007-4218-3350>

\*\* Istraživanje je nastalo uz finansijsku podršku Ministarstva nauke, tehnološkog razvoja i inovacija (evidencioni broj: 451-03-33/2026-03/200049 od 5. 2. 2026).

## THE ESTABLISHMENT OF A TAX COURT FROM COMPARATIVE AND INTERNATIONAL LAW PERSPECTIVES: GUIDANCE FOR THE REPUBLIC OF SERBIA

### *Summary*

Due to the complexity of tax matters, the frequent amendments of tax legislation, and the absence of an adequate mechanism for resolving tax disputes, the number of unresolved cases before the Administrative Court in the Republic of Serbia is steadily increasing. This trend has already begun to cause delays in the Court's handling of tax-related cases, thereby jeopardizing both the fiscal interests of the state and the legitimate rights of taxpayers. The paper proceeds from the assumption that the existing mechanisms for the protection of the right to a trial within a reasonable time are insufficient to improve efficiency. Therefore, the paper examines other possible solutions for overcoming the existing problem. In this paper, the author will identify international standards and best practices and use them as a benchmark to assess whether the establishment of a dedicated tax court in Serbia is justified. The analysis was conducted using the comparative and legal-dogmatic method. In conclusion, it is argued that the establishment of a specialized tax court could contribute to the more efficient resolution of tax disputes, the enhancement of taxpayers' rights protection, and the strengthening of overall legal certainty in the field of tax law as long as it is aligned with identified international standards, comparative legal approaches and best practices.

**Key words:** Specialization in Tax Matters, Tax Court, Administrative Court of the Republic of Serbia, Tax Disputes.

### 1. Uvod

Upravni sud Srbije je godinama „zatrpan” predmetima upravne materije, uključujući i poresku. Imajući u vidu da je „na čekanju” oko 160.000 predmeta, a od toga preko 10.000 poreskih, i da se godišnje reši mnogo manje predmeta poreske materije nego što pristiže,<sup>1</sup> nameće se pitanje reforme koja bi obuhvatila ustanovljavanje poreskog suda u Srbiji. Iako se čini da je 10.000 mali broj u odnosu na 160.000, treba imati u vidu da oko 84.000 slučajeva čine tužbe zbog „ćutanje uprave”, što je više od polovine ukupnih upravnih predmeta.<sup>2</sup> Pored toga, nakon 2022. godine

---

<sup>1</sup> Informacija od javnog značaja, Upravni sud, broj: Su II-17a 43/25, od 7. 5. 2025.

<sup>2</sup> Informacija od javnog značaja, Upravni sud, broj: Su II-17a 60/25, od 3. 7. 2025.

duplirao se broj poreskih sporova. Konkretno, 2022. godine pristigla su 1682 predmeta, a naredne godine taj broj je narastao na 3396, i skoro isto toliko u 2024. godini. U prva četiri meseca 2025. godine primljeno je 1211 novih poreskih predmeta, što je približno njihovom broju iz cele 2022. godine. Dakle, do 2023. godine priliv novih predmeta bio je stabilan i kretao se oko 1600 godišnje, a potom sledi trend povećanja novih predmeta, što upućuje na tendenciju daljeg rasta.

Tendencija rasta novih poreskih predmeta svakako ukazuje i na mogućnost daljeg porasta povreda prava na suđenje u razumnom roku u postupcima pred Upravnim sudom. Iako je optimalnom rešavanju ovog problema posvećeno dosta pažnje u naučnim krugovima, ono do sada nije sagledano sa posebnim osvrtom na poreskoppravne predmete (Rabrenović, Ćorić & Knežević Bojović, 2024; Rabrenović, 2022). Tako je, na primer, postupak za utvrđivanje povrede prava na suđenje u razumnom roku pred Upravnim sudom pokrenut u relativno malom broju slučajeva – od 1,7% ukupnog broja predmeta u 2019. godini do 0,8% u 2022. godini (Rabrenović, Ćorić & Knežević Bojović, 2024, pp. 241–242).

Imajući u vidu ukupan broj predmeta pred Upravnim sudom, kao i relativno nizak procenat pokretanja postupaka za zaštitu prava na suđenje u razumnom roku, potrebno je razmotriti mogućnosti za unapređenje postojećeg sistema sudske zaštite u poreskopravnoj materiji. U tom kontekstu, u radu će posebna pažnja biti posvećena mogućnosti osnivanja posebnog poreskog suda, što se, uz alternativno osnivanje poreskih odeljenja u okviru upravnih sudova, zagovara i u naučnoj literaturi. Pored toga što se u stručnim i naučnim krugovima dužna pažnja posvećuje i jednom i drugom obliku specijalizacije u poreskoj materiji,<sup>3</sup> u okviru ovog rada ispitivaće se prevashodno uporednopravna rešenja, kao i međunarodni standardi koji se odnose na osnivanje poreskog suda kao vida specijalizacije u poreskoj materiji. Takav pristup posledica je zakonskog rešenja u Republici Srbiji prema kojem u okviru Upravnog suda nisu formirana sudska odeljenja prema vrsti predmeta, već su ona uspostavljena isključivo po teritorijalnom principu, van sedišta Upravnog suda. Dakle, razmatranje opravdanosti uvođenja specijalizovanih poreskih odeljenja čini se necelishodnim, budući da bi njihovo formiranje u okviru Upravnog suda zahtevalo ne samo zakonske izmene već i uvođenje sudskih odeljenja za druge vrste predmeta u okviru istog suda.

---

<sup>3</sup> Specijalizacija sudstva se određuje kao postepen proces i može se ispoljavati u različitim oblicima. Najniži nivo specijalizacije ogleda se u određivanju pojedinačno specijalizovanih sudija u okviru opšteg sudskog sistema. Viši stepen specijalizacije podrazumeva formiranje specijalizovanih veća ili odeljenja u okviru sudova opšte nadležnosti, dok najviši stepen specijalizacije predstavlja uspostavljanje posebnog sistema specijalizovanih sudova. Više o tome vid. Gramckow & Walsh, 2013, p. 16.

U stranoj naučnoj literaturi značajan prostor posvećen je pitanju opravdanosti osnivanja poreskih sudova (Van Ham, 2022; Sarmiento & Jiménez-Valladolid de L'Hotellerie-Fallois, 2014). Pre svega, pažnja je usmerena na razgraničenje nadležnosti između neporeskih i poreskih sudova (Van Ham, 2022, pp. 31–42; Tjahjono, Nur Sariono & Krisharyant, 2025; Setiyaji & Abdillah, 2024). Istraživanja su takođe pokazala i da veći broj država članica Evropske unije ima ustanovljene poreske sudove (Van Ham, 2022, pp. 45–51, 53–54; Sarmiento & Jiménez-Valladolid de L'Hotellerie-Fallois, 2014; Ćosić Dedović, 2020, p. 236, par. 4). Pored toga, novija istraživanja pokazuju da su, u cilju uspostavljanja pravne sigurnosti i efikasnije zaštite poreskih obveznika, jedino poreski sudovi kompetentni da odlučuju u poreskoj materiji, čime se doprinosi razvoju kvalitetnije sudske prakse i antiabuzivne doktrine (Silver, 2026, pp. 4–5, 32, 34; Hutagalung, 2025, p. 333; Fadhli, 2025). Pravna sigurnost i efikasnost zaštite poreskih obveznika ne samo da predstavljaju neizostavne elemente načela vladavine prava već doprinose i ostvarivanju 16. cilja održivog razvoja Ujedinjenih nacija usmerenog na izgradnju stabilnih institucija (United Nations, 2016, p. 25). Ipak, deo doktrine (Zimmer, 2009, pp. 3–4) i Mišljenje broj 15 KVES-a ukazuju i na izvesne opasnosti do kojih može dovesti neoprezno ustanovljavanje specijalizovanih sudova, nudeći istovremeno i načine za njihovo prevazilaženje (Ćosić Dedović, 2020, pp. 236–248).

Nasuprot tome, dosadašnja naučna istraživanja u domaćoj literaturi bila su pretežno usmerena na iznalaženje efikasnih mehanizama za prevazilaženje problema dugog trajanja upravnih postupaka i upravnih sporova (Rabrenović, Ćorić & Knežević Bojović, 2024; Rabrenović, 2022). Međutim, pitanje mogućih načina unapređenja efikasnosti suđenja u poreskoj materiji, uključujući i potencijalnu specijalizaciju Upravnog suda, ostaje nedovoljno razmatrano. Pojedine inicijative jesu pokrenute, poput stručnih rasprava i okruglih stolova (Upravni sud Republike Srbije: Aktuelne vesti), ali bez značajnijeg normativnog ili teorijskog razvoja u ovom smeru. Stoga je cilj rada da se ispitaju mogućnosti i opravdanost uvođenja specijalizovanih poreskih sudova u Republici Srbiji na osnovu sistematičnog razmatranja postojećih međunarodnih standarda, uporednopravnih rešenja i stavova doktrine u toj oblasti.

Rad je podeljen u dve celine. U okviru prvog dela biće analiziran uporednopravni i međunarodnopravni pristup osnivanju specijalizovanih poreskih sudova. Potom će, na osnovu izdvojenih međunarodnih standarda i primera dobre prakse, biti razmotrena opravdanost osnivanja specijalizovanog poreskog suda u Republici Srbiji. Prilikom sagledavanja opravdanosti tog koraka, posebna pažnja biće posvećena kriterijumima odnosno putokazima koji pre svega proizilaze iz Mišljenja Konsultativnog veća evropskih sudija (u daljem tekstu: KVES) br. 15 o specijalizaciji sudija, ali se po pravilu ponavljaju i u drugim međunarodnopravnim

i uporednopravnim dokumentima. Na osnovu proučavanja doktrinarnih mišljenja i međunarodnih i uporednopravnih rešenja, u završnom delu biće predložen optimalan način rešavanja problema efikasnosti sudskih postupaka u poreskoj materiji.

## **2. Uporednopravni i međunarodnopravni pogled na praksu osnivanja poreskih sudova**

U okviru ove celine, najpre će se analizirati u kojoj su meri zastupljeni specijalizovani poreski sudovi ili specijalizovana poreska odeljenja u državama koje primenjuju anglosaksonski i kontinentalni pravni sistem. U literaturi se ukazuje na to da osnivanje specijalizovanih sudova predstavlja trend koji se proširio Evropom (Ablotia, 2025, p. 283; Umukoro & Oboreh, 2022, p. 949). U tu svrhu razmotriće se struktura i nadležnost poreskih sudova u Sjedinjenim Američkim Državama (dalje: SAD) i Kanadi, jer se nastanak poreskih sudova povezuje upravo sa ove dve države, kao i u sistemima nekih država u kojima je poreska specijalizacija izraženija, a koje pripadaju kontinentalnom sistemu prava, kao što su Nemačka, Austrija i Italija. S druge strane, upoređić se i struktura domaćeg upravnog sudstva sa hrvatskim, s obzirom na to da je Srbija sa Hrvatskom delila istoriju oporezivanja dobara i usluga do 1991. godine. Nakon toga sagledaće se kriterijumi i zahtevi formulisani međunarodnim aktima i dokumentima, kao i pojedinim uporednopravnim rešenjima, čije je ispunjenje neophodno da bi se u određenoj oblasti osnovao specijalizovani sud. Svi oni su usmereni ka obezbeđivanju visokog kvaliteta sudskog sistema.

### **2.1. Specijalizacija poreskih sudova: iskustvo u inostranstvu**

Nastanak poreskih sudova u SAD usko je povezan sa ustanovljavanjem Odbora za poreske žalbe (*Board of Tax Appeals*) 1924. godine, kao nezavisne agencije koja je bila deo izvršne vlasti (Jones, 1969–1970, p. 633). Nakon toga, 1942. godine, njeno ime je promenjeno u Poreski sud SAD (*Tax Court of the United States*), ali je i dalje ostala nezavisna agencija u okviru izvršne vlasti (Dubroff & Hellwig, 2014, p. 175). Konačno, 1969. godine, ovaj sud je potpao pod sudsku vlast i neznatno promenio naziv u *United States Tax Court* (Dubroff & Hellwig, 2014, p. 175). Od 1924. godine do sedamdesetih godina prošlog veka broj slučajeva nije prelazio preko 10.000 predmeta godišnje (Dubroff & Hellwig, 2014, p. 907–908). Promena je nastupila krajem sedamdesetih godina dvadesetog veka zbog porasta broja preuzetih poreskih predmeta koji je počeo da se kreće između 25.000 i 45.000 godišnje (Dubroff & Hellwig, 2014, pp. 907–908). Predsednik ovog poreskog suda je tada naložio sudijama da ulože dodatne napore kako bi se prevazišao problem

nagomilanih, nerešenih predmeta, dok su stranke upućivane na poravnanje radi bržeg okončanja postupaka i uspostavljanja pravnosnažnosti (Parker, 1982, pp. 130–131). Prema podacima do 2013. godine, Poreski sud SAD je uspevaao da održi tempo rešavanja pristiglih poreskih predmeta sa prethodnim zaostatom od oko 26.000 predmeta, koji je 1982. godine iznosio preko 65.000 (Dubroff & Hellwig, 2014, pp. 907–908). Slično je bilo i u Kanadi koja je 1983. godine usvojila Zakon o Poreskom sudu Kanade (*Tax Court of Canada Act*) i osnovala poseban poreski sud sa legislativnim ovlašćenima, nastao od posebne agencije, tj. Odbora za poreska pitanja (*Tax Review Board*) kao deo izvršne vlasti, što je bio slučaj i sa SAD (Bowal, 2006, p. 65).

S obzirom na to da SAD i Kanada pripadaju državama koje primenjuju anglo-saksonsko pravo, potrebno je u okviru ove analize u obzir uzeti i poreske sudove u državama koje primenjuju kontinentalni sistem prava u Evropi. Bitno je najpre spomenuti Nemačku, čiji su poreski zakoni imali veliki uticaj na donošenje srpskog procesnog poreskog zakona 2002. godine (Vasović, 2025, p. 125). Nemačka je više puta menjala svoje državne granice i ustavno uređenje, ali je njen prvi poreski sud, nakon raspada Svetog rimskog carstva, ustanovljen još 1848. godine, dok je Federalni finansijski sud (*Bundesfinanzhof*) ustanovljen 1950. godine. Nemačka ima dva poreska suda: Fiskalni sud koji sudi u prvom stepenu i Federalni finansijski sud koji sudi u drugom stepenu (European E-justice Portal: Germany). U Nemačkoj postoji ukupno 18 fiskalnih sudova koji na godišnjem nivou rešavaju približno 38.000 poreskih predmeta u upravnosudskom postupku (Ablotia, 2025, p. 385). Posebno je značajno istaći da u ovim sudovima postupaju sudije starije od 35 godina, raspoređene u sedam sudskih veća, pri čemu je svako veće specijalizovano za određenu vrstu poreza. Takva organizacija rada dodatno doprinosi visokom stepenu stručnosti i specijalizacije u odlučivanju o poreskim sporovima (Ablotia, 2025, p. 385). Ovi sudovi postupaju u upravnim predmetima koji se odnose na takse, poreze i carine. U prvom stepenu u određenim slučajevima može suditi sudija pojedinac, ali je češće da se presude donose u većima od troje profesionalnih sudija i dvoje sudija porotnika. Nasuprot tome, u Federalnom finansijskom sudu presudu donosi veće od pet profesionalnih sudija (European E-justice Portal: Germany). Za državu čiji je bruto domaći proizvod jedan od najvećih u svetu, sasvim je logično da postoji dvostепенost u sudskim poreskim postupcima.

Dvostепенost postoji i u Italiji, gde u prvom stepenu odlučuju provincijski, a u drugom regionalni poreski sudovi. Oni rešavaju upravne sporove koji se odnose na poreze, takse, obavezne socijalne doprinose i slična poreska davanja (European E-justice Portal: Italy). Neke države poput Austrije imaju više vrsta upravnih sudova, pa je tako jedan od njih i Federalni fiskalni sud koji donosi presude u upravnim poreskim postupcima (European e-Justice Portal: Austria). Ovde sudi

sudija pojedinac, osim u izuzetnim slučajevima, jer postoji dvostepenost (*Bundesfinanzgericht*). Ukoliko je žalba dozvoljena, u drugom stepenu odlučuje Vrhovni upravni sud Austrije koji rešava sve upravne sporove, a ne samo poreske (European e-Justice Portal: Austria).

Rešenja Republike Hrvatske su takođe značajna, između ostalog i zbog toga što su Hrvatska i Srbija sve do 1991. godine delile istoriju oporezivanja dobara i usluga. U Hrvatskoj ne postoje posebni poreski sudovi, ali zato postoje tri specijalizovana odeljenja u okviru Upravnog suda Hrvatske, i to: a) finansijsko-imovinsko, b) socijalno-radno i opšte i c) odeljenje za međunarodnu zaštitu (Upravni sud Republike Hrvatske). Iako postoji posebno odeljenje za finansijsko-imovinska pitanja, poreska specijalizacija nije potpuna. Konkretno, sudija Upravnog suda Hrvatske koji je u finansijsko-imovinskom odeljenju, u obavezi je da sudi u poreskim i svim ostalim predmetima koji se tiču imovinskih zahteva, kao što su katastarski predmeti, uklanjanje i legalizacija građevina i sl. Specijalizacija nije kompletna, ali je konkretnija nego u Upravnom sudu u Srbiji.

Na plenarnoj sednici Konsultativnog veća evropskih sudija, još 2012. godine, putem upitnika koji su popunile države članice Evropske unije, utvrđeno je da specijalizovana poreska odeljenja u okviru administrativnih sudova ili specijalni poreski sudovi uveliko postoje u mnogim državama Evropske unije (Consultative Council of European Judges, 2012, par. 4; Čosić Dedović, 2020, p. 243, par. 46). Ne iznenađuje činjenica da je analiza navedenog upitnika pokazala da pojedine države članice, koje imaju specijalizovane sudove, u radu ovih sudova angažuju i sudije koje nisu pravnici (Consultative Council of European Judges, 2012, par. 43). Ovakva rešenja postoje u finansijskoj materiji, budući da se računovodstvo ne može odvojiti od poreskog prava i obrnuto, pa se smatralo da je za delotvornost rešavanja sporova bilo efikasnije da u veću postoji i ekonomista.

## ***2.2. Specijalizacija sudova iz međunarodnopravne perspektive***

U pojedinim međunarodnim aktima i instrumentima razmatraju se značaj i opravdanost osnivanja specijalizovanih sudova. Iako se kriterijumi koji će se analizirati u okviru ove celine po pravilu odnose na opravdanost osnivanja bilo koje vrste specijalizovanog suda, oni su svakako od velikog značaja i za sagledavanje opravdanosti osnivanja specijalizovanog poreskog suda u Republici Srbiji, pa i u drugim nacionalnim jurisdikcijama.

Najpre, Evropski sud za ljudska prava (dalje: ESLJP) doneo je u nekoliko slučajeva presude koje su uticale na osnivanje specijalizovanih sudova u okviru nacionalnih pravnih sistema (Ablotia, 2025, p. 379). Ključni predmet u ovom kontekstu jeste *Sramek protiv Austrije* iz 1984. godine, kojim su postavljeni temelji za razvoj

nezavisnih upravnih sudova u Austriji.<sup>4</sup> Ovaj slučaj odnosio se na problem sastava regionalne upravne komisije, tačnije Regionalne komisije za promet zemljištem, budući da je jedan od njenih članova bio visoki državni službenik koji je takođe predstavljao jednu od strana u tom upravnom postupku (Ablotia, 2025, p. 379). U stručnoj literaturi presuda ESLJP u predmetu *Sramek* navodi se pre svega kao važan pokretač postepenih reformi u Austriji koje su 2014. godine rezultirale osnivanjem mreže upravnih sudova na saveznom i pokrajinskom nivou (Ablotia, 2025, p. 379).

Najzad, u Mišljenju broj 15, Konsultativno veće evropskih sudija istaklo je nekoliko ključnih standarda koje bi novoosnovani specijalizovani sudovi trebalo da ispune. Među najznačajnijim zahtevima izdvajaju se sledeći: 1) specijalizovani sudovi opravdani su samo ako je vrsta prava složena i specifična, te ako u okviru njih postupaju sudije sa odgovarajućim kvalifikacijama za pružanje odgovora u tim složenim oblastima (Ćosić Dedović, 2020, p. 248, Consultative Council of European Judges, 2012, par. 28); 2) sudije specijalizovanog suda i sudije opšteg usmerenja trebalo bi da imaju jednak status (Ćosić Dedović, 2020, p. 248). Ovaj princip trebalo bi da se primenjuje i na njihove naknade, kao i na poštovanje etičkih pravila i pravila o odgovornosti (Consultative Council of European Judges, 2012, par. 57); 3) svim sudijama trebalo bi pružiti mogućnost specijalizacije i prethodnog prolaska kroz obuku (Ćosić Dedović, 2020, p. 248); 4) formiranje specijalizovanih odeljenja i sudova mora biti strogo regulisano, uz uvažavanje svih kriterijuma koji uređuju sudijsku delatnost uključujući veličinu suda i troškove specijalizacije (Consultative Council of European Judges, 2012, par. 30); i 5) opšta procesna pravila trebalo bi primenjivati i pred specijalizovanim sudovima kako bi se izbeglo stvaranje velikog broja posebnih procesnih pravila, što bi moglo otežati pristup sudu i ugroziti pravnu sigurnost. Ipak, KVES dopušta odstupanje od ovog zahteva, odnosno primenu posebnih procesnih pravila, ukoliko je to opravdano samom svrhom osnivanja specijalizovanog suda, kao što je, na primer, zaštita najboljeg interesa deteta u oblasti porodičnog prava (Consultative Council of European Judges, 2012, par. 32). Najzad, KVES ističe da se mora učiniti sve što je neophodno kako bi se jamčili optimalni uslovi za sprovođenje pravde i kvaliteta donetih sudskih odluka u okviru specijalizovanih sudova (Consultative Council of European Judges, 2012, par. 31). U tom kontekstu se naglašava i da sudije specijalizovanih sudova treba da ispune uslove propisane članom 6 EKLJP, pre svega u pogledu nezavisnosti i nepristranosti, pristupa sudu i prava na raspravu u razumnom roku (Consultative Council of European Judges, 2012, par. 23). Kada je reč o dužini sudskog postupka pred specijalizovanim sudovima, značajan je i podatak OECD-a prema kojem je specijalizacija sudova povezana sa kraćim trajanjem sudskih postupaka (Palumbo, *et al.*, 2013, pp. 26–27).

<sup>4</sup> European Court of Human Rights, *Sramek v. Austria*, Application no. 8790/79, 22 October 1984.

Konačno, radi sagledavanja šire slike o opravdanosti osnivanja specijalizovanog suda u određenoj oblasti, pored evropskih kriterijuma, značajni su i kriterijumi koje je postavio Komitet za analizu sistema saveznih sudova u okviru Kongresa SAD 1990. godine. Ovi kriterijumi zavređuju pažnju naročito zbog toga što se u velikoj meri preklapaju sa gorenavedenim preporukama KVES-a, a reč je o sledećim zahtevima (Ablotia, 2025, pp. 383–384; Gramckow & Walsh, 2013, p. 6):

- Usko definisana pravna oblast: sud mora postupati u posebnoj i precizno ograničenoj oblasti prava koja se može jasno razgraničiti od nadležnosti sudova opšte nadležnosti.
- Veliki broj predmeta: u relevantnoj pravnoj oblasti mora postojati značajan broj sporova kako bi njihovo poveravanje specijalizovanom sudu doprinelo rasterećenju sudova opšte nadležnosti.
- Potreba za stručnim znanjem: pravna oblast o kojoj je reč mora zahtevati specijalizovana znanja ili kvalifikacije, poput naučnih, tehničkih, psiholoških ili ekonomskih, što prevazilazi opšte pravno obrazovanje i obuku sudija.
- Potreba za ujednačenom primenom prava: neophodno je da postoji opravdan javni interes za ujednačenim sudskim odlučivanjem i doslednom primenom prava u predmetnoj pravnoj oblasti.

### **3. Potreba za osnivanjem poreskog suda u Republici Srbiji u svetlu odabranih međunarodnih standarda**

U okviru ove celine ispitaće se opravdanost osnivanja poreskog suda u Republici Srbiji putem analize ispunjenosti ključnih kriterijuma u srpskom pravnom sistemu, identifikovanih u uporednopravnoj praksi i međunarodnopravnim rešenjima. Reč je o sledećim zahtevima:

1. Složenost i specifičnost poreske materije, kao i veliki broj nerešenih predmeta pred Upravnim sudom, opravdavaju osnivanje specijalizovanog suda;
2. Sudije specijalizovanog suda treba da omoguće strankama ostvarivanje prava na suđenje u razumnom roku, kao i rasterećenje sudova koji su ranije postupali u toj materiji;
3. Jačanje stručnosti sudija kroz posebne stručne obuke u oblasti poreskog prava i razvoj ujednačene prakse u oblasti poreza.

#### **3.1. Složenost i specifičnost materije poreskog prava**

U Upravnom sudu ne postoji specijalizacija sudija, pa se postavlja pitanje da li složenost i obimnost poreske materije u dovoljnoj meri opravdavaju specijalizaciju

sudija za poresku materiju. Za razliku od drugih grana prava, poresko pravo obuhvata izuzetno veliki spektar zakona, pravilnika, uredba i mišljenja Ministarstva finansija. Tako, na primer, da bi se neko bavio poreskim savetovanjem, neophodno je da poznaje poreski procesni zakon,<sup>5</sup> zatim zakone koji definišu posebne vrste poreza poput PDV-a, poreza na dobit, poreza na dohodak građana, poreza na imovinu, akciza, carina i doprinosa za obavezno socijalno osiguranje.<sup>6</sup> Pored navedenog

<sup>5</sup> Zakon o poreskom postupku i poreskoj administraciji RS – ZPPPA, *Službeni glasnik RS*, br. 80/2002, 84/2002 – ispr., 23/2003 – ispr., 70/2003, 55/2004, 61/2005, 85/2005 – dr. zakon, 62/2006 – dr. zakon, 63/2006 – ispr. dr. zakona, 61/2007, 20/2009, 72/2009 – dr. zakon, 53/2010, 101/2011, 2/2012 – ispr., 93/2012, 47/2013, 108/2013, 68/2014, 105/2014, 91/2015 – autentično tumačenje, 112/2015, 15/2016, 108/2016, 30/2018, 95/2018, 86/2019, 144/2020, 96/2021, 138/2022 i 94/2024.

<sup>6</sup> Reč je o sledećim zakonima: Zakon o porezu na dodatu vrednost – ZPDV, *Službeni glasnik RS*, br. 84/2004, 86/2004 – ispr., 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 – usklađeni din. izn., 68/2014 – dr. zakon, 142/2014, 5/2015 – usklađeni din. izn., 83/2015, 5/2016 – usklađeni din. izn., 108/2016, 7/2017 – usklađeni din. izn., 113/2017, 13/2018 – usklađeni din. izn., 30/2018, 4/2019 – usklađeni din. izn., 72/2019, 8/2020 – usklađeni din. izn., 153/2020, 138/2022 i 94/2024; Zakon o porezu na dobit pravnih lica – ZPDPL, *Službeni glasnik RS*, br. 25/2001, 80/2002, 80/2002 – dr. zakon, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014 – dr. zakon, 142/2014, 91/2015 – autentično tumačenje, 112/2015, 113/2017, 95/2018, 86/2019, 153/2020, 118/2021 i 94/2024; Zakon o porezu na dohodak građana – ZPDG, *Službeni glasnik RS*, br. 24/2001, 80/2002, 80/2002 – dr. zakon, 135/2004, 62/2006, 65/2006 – ispr., 31/2009, 44/2009, 18/2010, 50/2011, 91/2011 – odluka US, 7/2012 – usklađeni din. izn., 93/2012, 114/2012 – odluka US, 8/2013 – usklađeni din. izn., 47/2013, 48/2013 – ispr., 108/2013, 6/2014 – usklađeni din. izn., 57/2014, 68/2014 – dr. zakon, 5/2015 – usklađeni din. izn., 112/2015, 5/2016 – usklađeni din. izn., 7/2017 – usklađeni din. izn., 113/2017, 7/2018 – usklađeni din. izn., 95/2018, 4/2019 – usklađeni din. izn., 86/2019, 5/2020 – usklađeni din. izn., 153/2020, 156/2020 – usklađeni din. izn., 6/2021 – usklađeni din. izn., 44/2021, 118/2021, 132/2021 – usklađeni din. izn., 10/2022 – usklađeni din. izn., 138/2022, 144/2022 – usklađeni din. izn., 6/2023 – usklađeni din. izn., 92/2023, 116/2023 – usklađeni din. izn., 6/2024 – usklađeni din. izn., 94/2024, 101/2024 – usklađeni din. izn., 8/2025 – usklađeni din. izn. i 19/2025; Zakon o porezima na imovinu, *Službeni glasnik RS*, br. 26/2001, *Sl. list SRJ*, br. 42/2002 – odluka SUS i *Sl. glasnik RS*, br. 80/2002, 80/2002 – dr. zakon, 135/2004, 61/2007, 5/2009, 101/2010, 24/2011, 78/2011, 57/2012 – odluka US, 47/2013, 68/2014 – dr. zakon, 95/2018, 99/2018 – odluka US, 86/2019, 144/2020, 118/2021, 138/2022, 92/2023 i 94/2024; Zakon o akcizama, *Službeni glasnik RS*, br. 22/2001, 73/2001, 80/2002, 43/2003, 72/2003, 43/2004, 55/2004, 135/2004, 46/2005, 101/2005 – dr. zakon, 61/2007, 5/2009, 31/2009, 101/2010, 43/2011, 101/2011, 6/2012 – usklađeni din. izn., 43/2012 – odluka, 76/2012 – odluka, 93/2012, 119/2012, 8/2013 – usklađeni din. izn., 47/2013, 4/2014 – usklađeni din. izn., 68/2014 – dr. zakon, 142/2014, 4/2015 – usklađeni din. izn., 5/2015 – usklađeni din. izn., 55/2015, 103/2015, 5/2016 – usklađeni din. izn., 108/2016, 7/2017 – usklađeni din. izn., 18/2018 – usklađeni din. izn., 30/2018, 4/2019 – usklađeni din. izn., 5/2020 – usklađeni din. izn., 7/2020 – izm. usklađenih din. izn., 78/2020 – izm. usklađenih din. izn., 153/2020, 11/2021 – usklađeni din. izn., 53/2021, 32/2022 – odluka, 46/2022 – odluka, 50/2022 – odluka, 62/2022 – odluka, 73/2022 – odluka, 84/2022 – odluka, 89/2022 – odluka, 97/2022 – odluka, 110/2022 – odluka, 121/2022 – odluka, 130/2022 – odluka, 144/2022 – odluka, 6/2023 – odluka, 15/2023 – odluka, 25/2023 – odluka, 75/2023, 30/2024 – usklađeni din. izn., 94/2024, 10/2025 – usklađeni din. izn. i 12/2025 – izmena usklađeni din.

postoje i dodatni zakoni koji su u indirektnoj vezi sa porezima, poput zakona koji regulišu predmet fiskalizacije, elektronsko fakturisanje, inspeksijski nadzor,<sup>7</sup> itd. Prema trenutnoj strukturi Upravnog suda Srbije, jedan sudija bi trebalo da zna ne samo navedene poreske propise već i svu ostalu materiju iz koje može proizaći upravni spor.

Pored prethodno navedenih poreskih zakona, u oblasti poreskog prava primenjuje se i veliki broj pravilnika,<sup>8</sup> uredba i mišljenja Ministarstva finansija,<sup>9</sup> čiji broj premašuje nekoliko hiljada, a nekada su i nekoliko puta obimniji od samih zakona. Bitno je imati u vidu i to da Upravni sud može donositi odluke koje se tiču i rezidenata i nerezidenata. U tom slučaju, sudija bi trebalo da poznaje i sve ugovore o izbegavanju dvostrukog oporezivanja koje je Srbija zaključila (Ministarstvo finansija Republike Srbije, Ugovori o izbegavanju dvostrukog oporezivanja). Dodatno, neophodno je i razumevanje dokumenata određenih organizacija, poput Model-konvencije OECD-a i pratećeg Komentara (OECD Model Tax Convention on Income and on Capital 2017), kao i ratifikovanih multilateralnih ugovora.<sup>10</sup> Poznavanje pomenutih dokumenata je posebno bitno u slučajevima gde postoji određena pravna nedorečenost koja potiče iz stranog prava, kao što je odredba o stvarnom vlasniku prihoda iz Zakona o porezu na dobit pravnih lica<sup>11</sup> i Zakona

---

izn; Carinski zakon, *Službeni glasnik RS*, br. 95/2018, 91/2019 – dr. zakon, 144/2020, 118/2021 i 138/2022; i Zakon o doprinosima za obavezno socijalno osiguranje, *Službeni glasnik RS*, br. 84/2004, 61/2005, 62/2006, 5/2009, 52/2011, 101/2011, 7/2012 – usklađeni din. izn., 8/2013 – usklađeni din. izn., 47/2013, 108/2013, 6/2014 – usklađeni din. izn., 57/2014, 68/2014 – dr. zakon, 5/2015 – usklađeni din. izn., 112/2015, 5/2016 – usklađeni din. izn., 7/2017 – usklađeni din. izn., 113/2017, 7/2018 – usklađeni din. izn., 95/2018, 4/2019 – usklađeni din. izn., 86/2019, 5/2020 – usklađeni din. izn., 153/2020, 6/2021 – usklađeni din. izn., 44/2021, 118/2021, 10/2022 – usklađeni din. izn., 138/2022, 6/2023 – usklađeni din. izn., 92/2023, 6/2024 – usklađeni din. izn., 94/2024 i 8/2025 – usklađeni din. izn.

<sup>7</sup> Reč je o Zakonu o fiskalizaciji, *Službeni glasnik RS*, br. 153/2020, 96/2021 i 138/2022 i Zakonu o elektronskom fakturisanju, *Službeni glasnik RS*, br. 44/2021, 129/2021, 138/2022, 92/2023 i 94/2024.

<sup>8</sup> Na primer, Pravilnik o PDV-u je nekoliko puta obimniji od samog zakona: Pravilnik o porezu na dodatu vrednost, *Službeni glasnik RS*, br. 37/2021, 64/2021, 127/2021, 49/2022, 59/2022, 7/2023, 15/2023, 60/2023, 96/2023, 116/2023, 29/2024, 65/2024, 73/2024, 101/2024 i 107/2024.

<sup>9</sup> Upravni sud RS često se u svojim presudama poziva na mišljenja Ministarstva finansija, posebno o složenijim pitanjima, iako nije u obavezi da ih primenjuje. Vid. npr. Upravni sud RS, presuda 6 U. 14382/16, 6. 9. 2018. godine, p. 7.

<sup>10</sup> Zakon o potvrđivanju Multilateralne konvencije za primenu mera koje se u cilju sprečavanja erozije poreske osnovice i premeštanja dobiti odnose na poreske ugovore RS, *Službeni glasnik RS* – Međunarodni ugovori, br. 3/2018.

<sup>11</sup> ZPDPL, čl. 40a.

o porezu na dohodak građana.<sup>12</sup> Iz navedenog nesumnjivo proizilazi da je sudija Upravnog suda dužan da donese presudu poznajući obimnu i složenu materiju poreskog prava, dok u isto vreme sudi i u drugim predmetima upravne prirode.

Kao ilustracija složenosti poreske materije u kojoj postupa sudija Upravnog suda može da posluži član 40a Zakona o porezu na dobit pravnih lica gde se zahteva da primalac prihoda bude i njegov stvarni vlasnik. Pojam stvarnog vlasnika prihoda nije bliže definisan ni zakonom ni podzakonskim propisima, već je dodatno razrađen jedino u mišljenjima Ministarstva finansija koja ne obavezuju ni poreske obveznike ni Upravni sud, već samo Poresku upravu.<sup>13</sup> Sudija Upravnog suda bi trebalo prvo da utvrdi jezičko značenje pojma „stvarni vlasnik”, imajući u vidu da Srbija vlasništvo prihvata kao nedeljivu celinu oslanjajući se na kontinentalnopravnu praksu.<sup>14</sup> Sudija bi u tom slučaju trebalo da pogleda odakle potiče taj pojam, što bi upućivalo na anglosaksonsku praksu (Zuk, 2013, p. 311). Kada sudija shvati kako je koncept svojine deljiv u praksi država koje primenjuju anglosaksonsko pravo, i da se iz takve prakse ne može izvući odgovarajuća definicija, trebalo bi da u razmatranje uzme ugovor o izbegavanju dvostrukog oporezivanja sa državom primaoca prihoda, a zatim i OECD Model-konvenciju (OECD Model Tax Convention on Income and on Capital 2017, čl. 10, 11 i 12) i njen prateći Komentar (OECD Model Tax Convention on Income and on Capital 2017, komentar na članove 10 (par. 12–12.5), 11 (par. 9–10), i 12 (par. 4–4.6)) kako bi u kontekstu deljive svojine razumeo ulogu pomenutog pojma u poreskoj materiji. Detaljnom analizom utvrdilo bi se da definicija postoji u Komentaru OECD Model-konvencije. Komentar, međutim, nije pravno obavezujući, pa bi sudija najverovatnije bio u dilemi da li da prema članu 3, stavu 2 poreskog ugovora<sup>15</sup> primeni domaće značenje pojma koji je u poreskom ugovoru nedefinisan, ili da ipak primeni Komentar OECD Model-konvencije i time odredbi o stvarnom vlasniku prihoda pripiše međunarodno značenje. Primenom domaće norme koja ne sadrži definiciju ovog pojma, sudija bi popunjavao pravnu prazninu, pa bi se od njega očekivalo da ima specijalizovano znanje u tom polju, što verovatno ne bi bio slučaj budući da sudije Upravnog suda donose presude u svim upravnim stvarima.

Kada je reč o praksi Upravnog suda Srbije, do danas je doneto samo nekoliko presuda povodom stvarnog vlasnika prihoda. Na primer, prilikom rešavanja jednog predmeta, Upravni sud nije ulazio u suštinu značenja ovog pojma, već je samo potvrđivao navode mišljenja Ministarstva finansija, iako se od suda očekuje

<sup>12</sup> ZPDG, čl. 107a.

<sup>13</sup> ZPPPA, čl. 11, st. 3.

<sup>14</sup> Zakon o osnovama svojinskopravnih odnosa, *Službeni list SFRJ*, br. 6/80 i 36/90, *Sl. list SRJ*, br. 29/96 i *Sl. glasnik RS*, br. 115/2005 – dr. zakon.

<sup>15</sup> Koja se oslanja na OECD Model Tax Convention on Income and on Capital 2017.

stvaranje sudske prakse, posebno kada odredba nije definisana u zakonu.<sup>16</sup> Tek u jednoj presudi Upravni sud je, i to samo u jednoj rečenici, naveo značenje stvarnog vlasnika prihoda navodeći da: „Direktni primalac prihoda nije nosilac autorskog prava na softveru (njegov stvarni vlasnik), već je nosilac autorskog prava na softveru „D. D.” iz SAD, sa kojom Republika Srbija nema zaključen Ugovor o izbegavanju dvostrukog oporezivanja”.<sup>17</sup> Iz navedenog proizlazi da Upravni sud pravo svojine na imovini poistovećuje sa ekonomskim vlasništvom nad prihodima koji proističu iz pomenute imovine, pri čemu ostaje nejasno u kom kontekstu koristi pojam „stvarni vlasnik”, s obzirom na to da takav pojam ne postoji u poreskim zakonima,<sup>18</sup> već postoji samo sintagma „stvarni vlasnik prihoda”.

Nešto više o stvarnom vlasniku prihoda može se naći jedino u mišljenjima Ministarstva finansija Republike Srbije. Zanimljivo je da u svim mišljenjima<sup>19</sup> od 2016. godine pa nadalje nije uvažen međunarodni i jedinstveni aspekt pojma stvarnog vlasnika prihoda i nije ukazano na Komentar OECD Model-konvencije iz 2014. godine, koji sadrži najveće i najvažnije izmene u shvatanju pomenutog pojma. Takođe, navedena mišljenja znatno se razlikuju i ne odražavaju konzistentan stav Ministarstva finansija (Vasović, 2025a, pp. 306–313). Sudije Upravnog suda koje nisu specijalizovane za poresku materiju oslanjale su se previše na stavove Ministarstva finansija, dok bi sudije poreskog suda najverovatnije ovom problemu pristupile na drugačiji način, koristeći drugu metodologiju, uzimajući u obzir i međunarodna značenja i aspekte pojma stvarnog vlasnika prihoda.

S druge strane, Upravni sud u Hrvatskoj nije odlučivao u sporovima koji se tiču stvarnog vlasnika prihoda u kontekstu ugovora o izbegavanju dvostrukog oporezivanja, ali je zato u jednoj presudi u okviru poreskog upravnog postupka jasno ukazao na postojanje razlike između stvarnog vlasnika nad dobrima (pravo svojine) i ekonomskog vlasnika, koji je zapravo stvarni vlasnik prihoda koji pomenuto dobro generiše.<sup>20</sup> Iz ovoga se vidi da za razliku od Upravnog suda Srbije, Upravni

<sup>16</sup> Upravni sud RS, presuda 6 U. 14382/16, 6. 9. 2018. godine, p. 7.

<sup>17</sup> Upravni sud RS, presuda 25 U. 11689/15, 9. 2. 2018. godine.

<sup>18</sup> ZPDPL, čl. 40a; ZPDG, čl. 107a.

<sup>19</sup> Ministarstvo finansija objavilo je nekoliko mišljenja od 2016. godine, ne uzimajući u obzir jedinstveni međunarodni karakter pojma stvarnog vlasnika prihoda za dividende, kamate i autorske naknade koji se mogao naći u Komentaru OECD Model-konvencije iz 2014/17. godine. Vid. Mišljenje Ministarstva finansija br. 011-00 3/2016-04 od 20. 5. 2016. godine, 218; Mišljenje Ministarstva finansija br. 337-00-232/2016-04 od 27. 5. 2016. godine, 220–221; Mišljenje Ministarstva finansija br. 011-00-00345/2018-04 od 9. 5. 2018. godine, 158–159; Mišljenje Ministarstva finansija br. 430-00-422/2018-04 od 31. 8. 2018. godine, 147; Mišljenje Ministarstva finansija br. 011-00-439/2021-04 od 11. 6. 2021. godine, 188–190; i Mišljenje Ministarstva finansija br. 011-00-867/2021-04 od 3. 12. 2021. godine, 190–193.

<sup>20</sup> Upravni sud HR, presuda Us I-1898/2023-10, 12. 5. 2025. godine.

sud u Hrvatskoj, koji ima delimičnu specijalizaciju za poresku materiju, prepoznaje razliku između pomenutih pojmova, iako ne pripada grupi država koje primenjuju anglosaksonski princip prava.

Ovo je samo jedan primer kompleksnosti poreske materije, u kojoj norme nekad nisu previše jasne. Na ovom mestu ukratko će biti izdvojena još dva primera nejasnih i nedovoljno definisanih normi koji uključuju načelo fakticiteta<sup>21</sup> i sekundarnu poresku obavezu<sup>22</sup> koja se odnosi na pomaganje u izbegavanju<sup>23</sup> plaćanja poreza. Načelo fakticiteta neki praktičari poreskog prava smatraju opštom antiabuzivnom merom, ali nije jasno da li su subjektivni i objektivni elementi, koji po pravilu čine deo ovih mera (Vasović, 2024, pp. 101–102), obuhvaćeni pomenu tim načelom, i u kojoj meri. Pored toga, norma je preširoko postavljena i stoga je podložna različitim tumačenjima (Kostić, 2016, p. 114). S druge strane, u pogledu sekundarne poreske obaveze nije definisano šta podrazumeva pomaganje ili doprinošenje u izbegavanju plaćanja poreza drugog lica, niti kako se dokazuje savesnost. Nadalje, fraza „izbegavanje plaćanja poreza” jasno pokazuje da li se misli na nezakonitu evaziju (Gomes, 2019, p. 69) ili na zakonitu a nelegitimnu evaziju (Bergedahl, 2018, p. 11).

Kako bi se osigurala pravna sigurnost i ubrzao proces donošenja presuda, sudija koji o predmetu odlučuje mora biti visokokvalifikovan za rešavanje poreskih slučajeva, odnosno da poseduje specijalizaciju u oblasti poreza. Problem složenosti i specifičnosti propisa u poreskoj materiji, uključujući i primenjive međunarodne standarde, široko je prepoznat i u naučnoj i stručnoj literaturi (Van Ham, 2022 pp. 45–51, 53–54; Sarmiento & Jiménez-Valladolid de L’Hotellerie-Fallois, 2014; Ćosić Dedović, 2020, p. 236, par. 4). Zbog toga se u određenim državama, kao i u prethodno analiziranom dokumentu KVES-a, opravdano ukazuje na potrebu uvođenja specijalizovanih odeljenja ili posebnih sudova. Oblast poreskog prava u Republici Srbiji, kao što je izloženo, upravo ispunjava kriterijume takve složenosti i specifičnosti (Ćosić Dedović, 2020, p. 236, par. 4). Na taj način poreskim obveznicima bila bi obezbeđena delotvornija sudska zaštita u Republici Srbiji, na koju ukazuje KVES u Mišljenju broj 15 (Ćosić Dedović, 2020, p. 238, par. 9–10).

<sup>21</sup> ZPPPA, čl. 9.

<sup>22</sup> ZPPPA, čl. 31, st. 2, tač. 2.

<sup>23</sup> Više o terminu „izbegavanje plaćanja poreza” i njegovom razlikovanju od poreske utaje vid. Živković, 2023, p. 369; Kostić & Vasović, 2024, p. 389.

### **3.2. Omogućavanje strankama da ostvare prava na suđenje u razumnom roku i rasterećenje sudova koji su ranije postupali u poreskoj materiji**

Stabilna poreska politika i zaštita privlače investitore, što znači više potencijalnih poreskih prihoda za Srbiju. Naime, Srbija se ubraja u mali broj evropskih država koje imaju niske stope poreza na dobit,<sup>24</sup> uz mogućnost korišćenja poreskih olakšica koje efektivnu poresku stopu mogu svesti na nulu.<sup>25</sup> Međutim, sama niska poreska stopa nije dovoljna da privuče investitore, jer ako ne postoji stabilna zaštita poreskih obveznika, investitori mogu biti u dilemi da li da investiraju u Srbiji. Stabilna zaštita je osigurana ukoliko postoji visoka verovatnoća u pogledu donošenja kvalitetne odluke u razumnom roku od strane domaćih organa, kao i suda koji nije preopterećen brojem predmeta.

Polazeći od prethodno identifikovanih međunarodnih standarda i primera dobre prakse, u narednim redovima ispitaće se da li bi se osnivanjem poreskog suda u Republici Srbiji unapredilo ostvarivanje prava na suđenje u razumnom roku, te da li bi se na taj način Upravni sud rasteretio od postupanja u velikom broju predmeta u poreskoj materiji. Imajući u vidu broj nerešenih slučajeva i trend povećanja predmeta iz poreske materije, do pravnosnažne presude Upravnog suda poreski obveznik bi morao da čeka i po nekoliko godina. Neosnivanje specijalizovanog suda ugrozilo bi pravo obveznika na suđenje u razumnom roku. Na dan 30. 4. 2025. godine Upravni sud ima 159.289 nerešenih predmeta, od čega 10.198 predmeta koji se odnose na poreze i carine, a u periodu 2020–2025. godine Upravni sud je dobio 14.215 poreskih i carinskih predmeta.<sup>26</sup> Ovi podaci potvrđuju da bi formiranje specijalizovanog poreskog suda u velikoj meri rasteretilo Upravni sud od postupanja u velikom broju poreskih predmeta, čime se potvrđuje njegova opravdanost u svetlu analiziranih uporednih i međunarodnih standarda.

Dakle, imajući u vidu da Upravni sud ima ukupno 63 sudije<sup>27</sup> i uzimajući u obzir broj nerešenih slučajeva, čini se da će biti potrebne godine samo da se reše zaostali predmeti ukoliko ne dođe do osnivanja specijalizovanog poreskog suda. Takođe, budući da sudije u Republici Srbiji trenutno nisu specijalizovane za poresku materiju, odlučivanje u složenim poreskim predmetima, naročito onima sa

---

<sup>24</sup> Uporediti ZPDPL, 2001, čl. 39 sa stopama poreza na dobit u Evropskoj uniji. Tax Foundation, Corporate income tax rates in Europe. Dostupno na: <https://taxfoundation.org/data/all/eu/corporate-income-tax-rates-europe/>, 28. 10. 2025.

<sup>25</sup> ZPDPL, čl. 50a.

<sup>26</sup> Informacija od javnog značaja, Upravni sud, broj: Su II-17a 43/25, od 7. 5. 2025.

<sup>27</sup> Maksimalan broj sudija je 63, što je predviđeno Odlukom o broju sudija u sudovima RS, 2015, čl. 6. Trenutni broj je 62. Upravni sud Republike Srbije. Dostupno na: <https://www.up.sud.rs/lat/sudije/>, 4. 6. 2025.

međunarodnim elementom, može zahtevati više vremena. Specijalizacija sudija za poresku materiju mogla bi doprineti efikasnijem odlučivanju u takvim predmetima (Oren-Kolbinger, 2024, p. 98; Dexter, 1968, p. 131). Tako su, na primer, u SAD, gde je osnovan prvi poreski sud, nakon što se osamdesetih godina prošlog veka broj novih slučajeva drastično povećao, sudije ovog suda uspele u određenim godinama da reše više predmeta nego što je pristizalo (Dubroff & Hellwig, 2014, p. 906). Ilustracije radi, u 2013. godini pristiglo je 27.039 novih predmeta, a ovaj sud je rešio 31.983 predmeta (Dubroff & Hellwig, 2014, p. 907). Iako pravni sistemi SAD i Srbije nisu isti, ovo ipak pokazuje da je aktivnim delovanjem specijalizovanog suda moguće u velikoj meri uticati na smanjenje broja predmeta. Stoga se može zaključiti da bi poreski obveznici pred poreskim sudovima imali osnov da očekuju stručnije i kvalitetnije odlučivanje, uz istovremeno kraće trajanje postupka nego što je to danas slučaj pred preopterećenim Upravnim sudom Republike Srbije.

### ***3.3. Jačanje stručnosti sudija putem obuka iz poreske oblasti i razvoj ujednačene prakse u oblasti poreza***

Kako ističu zagovornici specijalizovanih sudova, mogućnost pogrešnog ili neujednačenog tumačenja veća je kada se radi o sudiji koji nije specijalizovan za poresko pravo (Oren-Kolbinger, 2024, p. 99; Dexter, 1968, p. 131). Jedan od primera neadekvatnog tumačenja jeste prethodno pomenuta presuda u kojoj je sud stvarnog vlasnika prihoda poistovetio sa stvarnim imaoцем prava svojine nad određenom imovinom iz koje proističu prihodi.<sup>28</sup> Uloga poreskih sudova je posebno izražena u tumačenju nedovoljno jasnih zakonskih odredaba u zemljama koje su ustanovile ove specijalizovane sudove (Silver, 2025, p. 5). Treba pomenuti i to da je Konsultativno veće evropskih sudija u Mišljenju broj 15 istaklo potrebu da specijalizovane sudije prethodno završe program posebne stručne obuke radi donošenja kvalitetnijih presuda (Ćosić Dedović, 2020, pp. 243, 247).<sup>29</sup> Iako nisu dostupni podaci o tome u kojoj meri su sudije Upravnog suda u svom dosadašnjem radu učestvovalе u obukama Pravosudne akademije iz poreskog prava, pojedini propusti uočeni u sudskoj praksi svakako potvrđuju potrebu da se sa takvim obukama nastavi u Republici Srbiji.

<sup>28</sup> Upravni sud RS, presuda 25 U. 11689/15, 9. 2. 2018. godine-

<sup>29</sup> Treba istaći da bi, radi jačanja pravne sigurnosti i potencijalnog smanjenja broja poreskih sporova pred sudovima, posebnu pažnju trebalo posvetiti stručnom usavršavanju zaposlenih u Poreskoj upravi. Iako je ova aktivnost bila predviđena osnivanjem Poreske akademije, Programom transformacije Poreske uprave, njena puna realizacija do danas nije ostvarena (Ministarstvo finansija – Poreska uprava, 2021, p. 16).

U uslovima nepostojanja adekvatne opšte antiabuzivne mere, kao što je slučaj u Srbiji (Kostić, 2016, p. 114), specijalizovani poreski sud mogao bi doprineti razvoju konzistentne sudske doktrine u oblasti sprečavanja izbegavanja plaćanja poreza, do sada nerazvijene u praksi Upravnog suda.<sup>30</sup> Naime, načelo fakticiteta, koje se na neki način primenjuje kao opšta antiabuzivna mera, zapravo je suviše široko postavljeno i ne sadrži elemente koje bi jedna opšta antiabuzivna norma trebalo jasno da obuhvati (Vasović, 2024, pp. 101–102). To su subjektivni i objektivni elementi, najbolje vidljivi na primeru opšte antiabuzivne mere koja se kao obavezujuća norma nalazi u Direktivi o utvrđivanju pravila protiv praksi izbegavanja plaćanja poreza kojima se direktno utiče na funkcionisanje unutrašnjeg tržišta.<sup>31</sup> Kao primer sudske doktrine možemo uzeti švajcarske sudove koji su razvili doktrinu „suština iznad forme”, primenjenu u tumačenju koncepta stvarnog vlasnika prihoda iz poreskih ugovora (Danon, 2018, p. 34). Prema ovoj doktrini, zahteva se prosleđivanje prihoda od strane njegovog direktnog primaoca na osnovu ugovora ili drugih okolnosti i činjenica, što je u skladu sa Komentarom OECD Model-konvencije iz 2014/17. godine, odnosno sa međunarodnim značenjem pojma stvarnog vlasnika prihoda (Danon, 2018, p. 34–35). Komentar OECD Model-konvencije iz 2017. godine navodi da sudske doktrine nisu u suprotnosti sa odredbama poreskih ugovora i kao primer, između ostalog, navodi i doktrinu ekonomske suštine (OECD Model Tax Convention on Income and on Capital, 2017, Komentar člana 1, par. 78–80), što se delimično poklapa i sa načelom fakticiteta, u kojem se navodi da se poreske činjenice utvrđuju prema njihovoj ekonomskoj suštini.<sup>32</sup> Ni Sudu pravde Evropske unije nije strano da svojom doktrinom stvara antiabuzivne norme ukoliko ih države članice nemaju u domaćem pravu (Terra & Kajus, 2024, pp. 35–46). U tom pogledu značajna je i presuda Poreskog suda Sjedinjenih Američkih Država iz 2025. godine u kojoj je značenje „ekonomske suštine” tumačeno u restriktivnijoj formi u korist pravne sigurnosti i samih poreskih obveznika (Pollock, Judge & Kane, 2025, p. 695). Imajući u vidu sve navedeno, poreski sud u Srbiji bio bi u

---

<sup>30</sup> Upravni sud Republike Srbije je do sada u obzir uzimao samo načelo fakticiteta, a nije se upuštao u stvaranje sudske antiabuzivne doktrine. On je načelo fakticiteta, iako se može smatrati normom za sprečavanje poreske evazije, tumačio pre svega kao opšte načelo, poput načela zakonitosti (Upravni sud RS, presuda U. 15575/2019 od 16. 3. 2023). Ni u jednoj svojoj presudi nije objasnio šta znači „ekonomska suština”, i time povodom ovog pitanja nije stvorena sudska praksa, već je Sud pomenuti pojam uvezao sa stavom o dva načela fakticiteta. U njemu se navodi da će se oporezivati desimulovani, a ne simulovani pravni poslovi, što bi trebalo tumačiti kao dva odvojena stava (Upravni sud RS, presuda U. 793/2019 od 4. 5. 2023; Upravni sud RS, presuda U. 9179/2018 od 30. 9. 2022).

<sup>31</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, *OJ L* 193, 19. 7. 2016, čl. 6.

<sup>32</sup> ZPPPA, čl. 9, st. 1.

mogućnosti da svojom doktrinom popuni pravnu prazninu jer pojam „ekonomska suština”, koji se nalazi u prvom stavu načela fakticiteta, ostaje nejasan i neobjašnjen.

Takođe, vođenje upravnog postupka bilo bi pojednostavljeno jer bi se formirala stabilna sudska praksa (Oren-Kolbinger, 2024, p. 99; Dexter, 1968, p. 131), naročito u pitanjima međunarodnog poreskog prava, što bi inspektorima olakšalo donošenje pravilnijih odluka prilikom izrade rešenja u konkretnim poreskim predmetima. Poreski sudovi bi odluke donosili primenom sopstvene metodologije odlučivanja, bez isključivog oslanjanja na mišljenja Ministarstva finansija u složenijim predmetima, naročito onima međunarodnog poreskog karaktera.<sup>33</sup> Ovo je izuzetno bitno, jer su mišljenja Ministarstva finansija sporna, budući da obavezuju samo Poresku upravu, ali ne i poreske obveznike, kao ni Upravni ili bilo koji drugi sud.<sup>34</sup> Pored toga, mišljenja su ponekad problematična, posebno u situacijama kada je o istom pitanju odlučeno drugačije, iako je tumačena zakonska odredba ostala nepromenjena, što se u praksi dešava.<sup>35</sup> U takvim okolnostima postavlja se pitanje o tome da li se primenjuje kasnije ili ranije mišljenje, s obzirom na to da načelo vremenskog važenja poreskog zakona iz Zakona o poreskom postupku i poreskoj administraciji<sup>36</sup> važi samo za propise, a mišljenje nema snagu propisa.<sup>37</sup> Da zaključimo, u Republici Srbiji prepoznata je nedovoljno ujednačena praksa u pogledu poreskopравnih pitanja i osnivanje specijalizovanog poreskog suda trebalo bi da doprinese njenom ujednačavanju.

#### 4. Zaključak

Sadržina nacionalnih poreskih propisa veoma je složena, a broj nerešenih predmeta istovremeno je u stalnom porastu u Republici Srbiji. Pored toga, u pogledu ovih pitanja ne postoji dovoljno ujednačena praksa koja bi doprinela

<sup>33</sup> Na primer, u pogledu pojma stvarnog vlasnika prihoda Upravni sud se u potpunosti oslanjao na mišljenja Ministarstva finansija koja su, kao što je prethodno pokazano, problematična onda kada isto pitanje uređuju na različite načine. Vid. Upravni sud RS, presuda 6 U. 14382/16, 6. 9. 2018. godine, p. 7.

<sup>34</sup> ZPPPA, 2002, čl. 11, st. 3.

<sup>35</sup> Mišljenja Ministarstva finansija o pitanju stvarnog vlasnika prihoda su drastično drugačija, što ukazuje na činjenicu da Ministarstvo ne razume u potpunosti šta ovaj pojam znači, popunjavajući time pravnu prazninu, što je posao suda, a ne akta Ministarstva koje obavezuje jedino Poresku upravu. Takođe, u žalbi ili tužbi poreski obveznik može se pozvati na mišljenje koje njemu odgovara, dok isto može učiniti i Poreska uprava / Ministarstvo u svojim rešenjima. Vid. i uporediti mišljenja Ministarstva finansija iz fusnote 9.

<sup>36</sup> ZPPPA, čl. 5.

<sup>37</sup> Detaljnije o problemu vremenskog važenja mišljenja Ministarstva finansija i zašto se maksime poput *lex posterior* ne mogu primeniti u ovom slučaju, imajući u vidu stav OECD-a, vid. u Vasović, 2025a, p. 312–313.

pravnoj sigurnosti poreskih obveznika i efikasnijem postupanju Upravnog suda u poreskim predmetima. Sve to ukazuje na potrebu preduzimanja određenih mera kako bi se unapredila pravna zaštita poreskih obveznika. Mnoge države su ovaj problem uspešno rešile ustanovljavanjem specijalizovanih poreskih sudova ili osnivanjem specijalizovanih odeljenja u okviru već postojećih sudova. Postojeća institucionalna i organizaciona rešenja u Republici Srbiji ne idu u prilog formiranju specijalizovanih odeljenja u okviru Upravnog suda, već otvaraju prostor za razmatranje mogućnosti za osnivanje specijalizovanog poreskog suda, čime bi se Upravni sud rasteretio od postupanja u velikom broju predmeta. Uvođenje ovakvog vida specijalizacije doprinelo bi delotvornom rešavanju sudskih postupaka u poreskoj materiji jedino ukoliko se pri formulisanju nacionalnopravnih rešenja dosledno slede izložene smernice razvijene na međunarodnom nivou, uz sagledavanje primera dobrih uporednih praksi prikazanih u ovom radu. Na taj način bi se eliminisali potencijalni problemi na koje se nailazi prilikom osnivanja svih vrsta specijalizovanih sudova. Istovremeno, takav obazriv i pažljivo odmeren pristup prilikom sprovođenja specijalizacije omogućio bi ostvarivanje brojnih pogodnosti.

Najpre, uvođenje poreskih sudova gde odlučuju sudije specijalizovane samo za poreze, predstavljalo bi, čini se, snažan podsticaj za strane investitore, posebno stoga što Srbija ima niže efektivne poreske stope od mnogih država Evropske unije. Dalje, opasnost po likvidnost poreskih obveznika bila bi manja jer bi se kvalitetnije presude donosile u kraćem roku nego što je sada slučaj. Treće, tumačenje propisa od strane specijalizovanih sudija ne samo što bi bilo kvalitetnije i delotvornije od tumačenja sudija koje nemaju specijalizovano znanje o porezima u domaćem i međunarodnom okviru, već bi doprinelo i većoj koherentnosti i ujednačenosti sudske prakse u sličnim sporovima, čime bi se povećala pravna sigurnost i predvidivost. Četvrto, poreski sud bio bi u mogućnosti da stvara sudsku doktrinu i time spreči izbegavanje plaćanja poreza, posebno imajući u vidu da Srbija nema opšte antiabuzivne norme kakve se primenjuju u Evropskoj uniji. Peto, poreski sud bi svojim radom razvio stabilnu sudsku praksu, što bi poreskim inspektorima olakšalo donošenje pravilnijih odluka u konkretnim predmetima. Na kraju, uporedna analiza je potvrdila da specijalizovani poreski sudovi, ili makar poreska odeljenja, u pojedinim državama postoje desetinama ili čak stotinama godina i da su njihovi rezultati pozitivno ocenjeni. Stoga ne čudi zaključak KVES-a o tendenciji porasta osnivanja različitih vrsta specijalizovanih sudova. Vođena takvim tendencijama, Republika Srbija bi, oslanjajući se na primere dobre prakse i relevantne međunarodne standarde, mogla pristupiti osnivanju specijalizovanog poreskog suda u okviru svog pravnog sistema.

## Literatura

- Ablotia, L. 2025. Specific Aspects of Establishing Specialized Courts. *Journal of Law*, (1), pp. 377–391.
- Bergedahl, C. 2018. Anti-Abuse Measures in Tax Treaties Following the OECD Multilateral Instrument – Part 1. *Bulletin for International Taxation*, 72(1), pp. 11–30.
- Bowal, P. 2006. The Tax Court of Canada. *Law Now*, 30(5), pp. 65–67.
- Čosić Dedović, J. 2020. *Pregled mišljenja Konsultativnog vijeća evropskih sudija: br. 1 do 22 (2001–2019)*. Sarajevo: Misija OSCE-a u Bosni i Hercegovini.
- Danon, R. J. 2018. Treaty Abuse in the Post-Beps World: Analysis of the Policy Shift and Impact of the Principal Purpose Test for MNE Groups. *Bulletin for International Taxation*, 72(1), pp. 31–55.
- Dexter, W. 1968. Judicial Tax Courts for the States: A Modern Imperative. *University of Michigan Journal of Law Reform*, 2(1), pp. 129–143.
- Dubroff, H. & Hellwig B. 2014. *The United States Tax Court: An Historical Analysis* (2<sup>nd</sup> ed.). Washington, D.C.: United States Tax Court.
- Fadhli, A. R. 2025. The Role of the Tax Court In Resolving Tax Disputes: An Analysis of the Effectiveness and Transparency of the Legal Process. *Fox Justi: Jurnal Ilmu Hukum*, 15(2), pp. 263–274.
- Gomes, M. L. 2019. The DNA of the Principle Purpose Test in the Multilateral Instrument. *Intertax*, 47(1), pp. 66–90.
- Hutagalung, H. 2025. Reconstruction of the tax dispute resolution system to achieve legal justice in Indonesia. *Privet Social Sciences Journal* 5(11), pp. 332–338. DOI: 10.55942/pssj.v5i11.979
- Jones, J. B. Jr. 1969–1970. The Tax Court. *Tax Lawyer*, 23(3), pp. 633–636.
- Kostić, J. & Vasović, M. 2024. Pravilo o transfernim cenama kao antiabuzivna mera u zakonodavstvu EU i praksi Suda pravde EU. *Strani pravni život*, 68(3), pp. 387–402.
- Kostić, S. 2016. Načelo fakticiteta u srpskom poreskom pravu. *Harmonius*, (5), pp. 112–129.
- Oren-Kolbinger, O. 2024. Do Tax Judges Favor the Tax Authority?. *Florida Tax Review*, 28(1), pp. 91–127.
- Palumbo, G., et al. 2013. *Judicial Performance and its Determinants: A Cross-Country Perspective*. OECD Economic Policy Papers, No. 5. Paris: OECD Publishing.
- Parker, E. G. 1982. United States Tax Court. *Women Lawyers Journal*, 68(4), pp. 130–132.
- Pollock, N., Judge, S., & Kane, T. 2025. Trumping the Economic Substance Doctrine with Varian. *Tax Notes Federal*, 187(2025), pp. 693–701.
- Rabrenović, M. 2022. Upravno pravo na prekretnici i pravna priroda upravnih aktivnosti: osvrt na neke osobenosti nadzora nad delatnošću osiguranja u Srbiji. *Evropska revija za pravo osiguranja*, 21(2), pp. 9–17.
- Rabrenović, A., Čorić, V. & Knežević Bojović, A. 2024. Decision making within a reasonable time in administrative procedure and dispute – the case of Serbia. U: Dimitrijević, P., Devjak, S., (ur.). *Zakon o opštem upravnom postupku: savremene tendencije i*

- izazovi. Beograd: Eurosfera & Partners, Institut za uporedno pravo, MLC Fakulteta za management in pravo, pp. 233–245.
- Sarmiento, D. & Jiménez-Valladolid de L'Hotellerie-Fallois, D. (eds.). 2014. *Litigating EU Tax Law in International, National and Non-EU National Courts*. Amsterdam: IBFD.
- Setiyaji, G. & Abdillah, A. 2024. Repositioning the Tax Court Within Indonesia's Constitutional Framework: Judicial Independence and Institutional Reform. *Lex Publica*, 11(2), pp. 275–293.
- Silver, B. 2026. Tax-tualism. *Minnesota Law Review*, Vol. 111 (forthcoming 2027). Dostupno na: SSRN: <https://ssrn.com/abstract=6259238> or <http://dx.doi.org/10.2139/ssrn.6259238>
- Terra B. & Kajus J. 2024. *A Guide to the European VAT Directives, Volume 1: Introduction to European VAT*. Amsterdam: IBFD.
- Tjahjono, G. A., Nur Sariono, J. & Krisharyant, E. 2025. Characteristics of the Tax Court as a Special Court in an Independent Judicial Power System. *International Journal of Judicial Law*, 4(4), pp. 38–46.
- Umukoro, B. E., Oboreh, P. A. 2022. Is the National Industrial Court (NIC) Still a Special Court? A Review of the Extra Luggage of Ancillary Jurisdiction of the NIC as a Dis-service to Labour Justice. *Beijing Law Review*, 13(4), pp. 948–966.
- Van Ham, N. 2022. *Tax Collection and Effective Legal Protection*. Master thesis. Tilburg: Tilburg Law School – Fiscal Institute Tilburg, University of Tilburg.
- Vasović, M. 2025. Anti-evasion provisions applicable to value-added tax in the republic of Serbia, *Zbornik radova Pravnog fakulteta u Nišu*, 64(105), pp. 117–132.
- Vasović, M. 2024. Načelo fakticiteta i opšta antiabuzivna mera iz ATAD Direktive. *Arhiv za pravne i društvene nauke*, 119(4), pp. 99–112.
- Vasović, M. 2025a. *Stvarni vlasnik prihoda u poreskom pravu*. Beograd: Institut za uporedno pravo.
- Zimmer, M. B. 2009. Overview of Specialized Courts. *International Journal for Court Administration*, 2(1), pp. 1–15.
- Zuk, M. 2013. The Beneficial ownership concept in tax treaties. In: Michael lang *et al.* (eds.), *Limits to tax planning*, Wien: Linde, pp. 306–333.
- Živković, L. 2023. The Unshell Directive Proposal in a Nutshell: Open Question. *Strani pravni život*, 66(4), pp. 367–386.

### **Internet izvori**

- Bundesfinanzgericht, About the Federal Finance Court. Dostupno na: <https://www.bfg.gv.at/ueber-das-bundesfinanzgericht.html>, 29. 10. 2025.
- Bundesfinanzhof, History of the Court. Dostupno na: <https://www.bundesfinanzhof.de/de/gericht/geschichte/onlineausstellung-rfh/bfh/>, 29. 10. 2025.
- Consultative Council of European Judges, Opinion (2012) No. 15 of the Consultative Council of European Judges on the Specialisation of Judges, the 13<sup>th</sup> plenary meeting of the CCJE, Paris, 2012. Dostupno na: <https://rm.coe.int/16807477d9>, 22. 6. 2026.

- European e-Justice Portal, National specialised courts – Austria. Dostupno na: [https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-specialised-courts/at\\_en](https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-specialised-courts/at_en), 27. 10. 2025.
- European e-Justice Portal, National specialised courts – Germany. Dostupno na: [https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-specialised-courts/de\\_en](https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-specialised-courts/de_en), 27. 10. 2025.
- European e-Justice Portal, National specialised courts – Italy. Dostupno na: [https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-specialised-courts/it\\_en](https://e-justice.europa.eu/topics/taking-legal-action/legal-systems-eu-and-national/national-specialised-courts/it_en), 27. 10. 2025.
- Gramckow H., Walsh B. 2013. Developing Specialized Court Services: International Experiences and Lessons Learned, Justice & Development Working Paper Series, The World Bank. Dostupno na: <https://openknowledge.worldbank.org/server/api/core/bitstreams/07e745a4-4cdb-516f-9af6-7de264efd73b/content>, 22. 6. 2025.
- Ministarstvo finansija Republike Srbije, Ugovori o izbegavanju dvostrukog oporezivanja. Dostupno na: <https://www.mfin.gov.rs/propisi/ugovori-o-izbegavanju-dvostrukog-oporezivanja>, 4. 6. 2025.
- Tax Foundation, Corporate income tax rates in Europe. Dostupno na: <https://taxfoundation.org/data/all/eu/corporate-income-tax-rates-europe/>, 28. 10. 2025.
- United Nations, *Transforming our World: the 2030 Agenda for Sustainable Development*, A/RES/70/1, 2015. Dostupno na: <https://docs.un.org/en/A/RES/70/1>, 19. 5. 2026.
- Upravni sud Republike Hrvatske, Podela odeljenja u Upravnom sudu Hrvatske. Dostupno na: <https://sudovi.hr/hr/usri/o-sudovima/specijalizacija-referada>, 31. 10. 2025.
- Upravni sud Republike Srbije, Sudije. Dostupno na: <https://www.up.sud.rs/lat/sudije/>, 4. 6. 2025.
- Upravni sud Republike Srbije, Aktuelne vesti. Dostupno na: <https://www.up.sud.rs/lat/aktuelne-vesti/>, 4. 6. 2025.

---

## UPUTSTVO AUTORIMA

### Prijavljivanje rukopisa za objavljivanje

Autori mogu da dostave radove napisane latiničkim pismom na srpskom ili na engleskom jeziku u elektronskom formatu, kao .doc ili .docx dokument. Rokovi za predaju radova su: za prvi broj – 15. februar, za drugi broj – 15. maj, za treći broj – 15. avgust i za četvrti broj – 15. novembar. Rukopisi se dostavljaju putem linka: <https://www.stranipravnizivot.rs/index.php/SPZ/about/submissions>.

Autorskom izjavom autori garantuju da su prihvatili uređivačku politiku časopisa i da su prilikom izrade rada i njegovog prijavljivanja za objavljivanje poštovali etičke standarde publicistike i naučnog rada. U slučaju dostavljanja koautor-skih radova, korespondencija se u ime svih autora odvija sa autorom koji je rad poslao i koji će biti odgovoran za komunikaciju sa ostalim autorima (tzv. autor za korespondenciju).

Sve aktivnosti u vezi sa uređivanjem časopisa (od prijema rukopisa do objavljivanja elektronskog izdanja časopisa) obavljaju se posredstvom elektronskog sistema za uređivanje časopisa koji omogućava pripremu i objavljivanje časopisa u elektronskom obliku (*Open Journal Systems* – OJS). U slučaju da autor nema nalog, potrebno je da se registruje preko linka: <https://www.stranipravnizivot.rs/index.php/SPZ/about/submissions>. Detaljno uputstvo za registraciju autora i prijavu rukopisa može se preuzeti sa sajta časopisa *Strani pravni život* ([www.stranipravnizivot.rs](http://www.stranipravnizivot.rs)). Celokupan uređivački postupak odvija se unutar samog sistema, pod nadzorom glavnog i odgovornog urednika i sekretara, a ključna obaveštenja namenjena autorima, recenzentima ili drugim korisnicima automatski se prosleđuju elektronskom poštom. Zahvaljujući onlajn sistemu uređivanja časopisa, obezbeđeno je čuvanje svih verzija objavljenih i odbijenih radova u elektronskoj bazi podataka. Autori u svakom trenutku mogu da se upoznaju sa tokom i ishodom postupka recenziranja.

### Važne napomene za pripremu rukopisa

Način oblikovanja naučnih članaka i ostalih priloga koji se dostavljaju redakciji *Stranog pravnog života* uređen je ovim uputstvom. Molimo autore da svoje priloge prilagode tematici časopisa i predviđenom načinu oblikovanja rukopisa, kako prilogi ne bi bili eliminisani nakon početne provere.

**Naučni članci** mogu biti napisani na srpskom ili engleskom jeziku. Oni moraju sadržati podatke o autoru, naslov, sažetak, ključne reči i spisak referenci. Uz

priloge koji se objavljuju na srpskom jeziku dostavlja se prevod naslova rada, rezimea i ključnih reči na engleskom jeziku. Prilozi koji se dostavljaju na engleskom jeziku sadrže prevod naslova, sažetka i ključnih reči na srpski jezik.

Autorski članci ne bi trebalo da prelaze obim jednog autorskog tabaka (28.800 karaktera sa razmacima), što je približno 16 stranica (od 28 redova po stranici i 66 karaktera po redu). Duži rukopisi biće prihvaćeni izuzetno ako to zahteva tema rada, i to obima do 1,5 tabaka, po prethodnom dogovoru autora sa glavnim i odgovornim urednikom. U ostalim situacijama, rad većeg obima biće vraćen autoru radi skraćivanja. U obim rada ne ulaze tekstovi navedeni u fusnotama (dodatni podaci o autoru, organizaciji u kojoj je zaposlen, druge napomene), naslov članka, sažetak, ključne reči i spisak literature.

Naučni članci se klasifikuju u: originalne (u kojima se iznose prethodno neobjavljeni rezultati sopstvenih istraživanja zasnovanih na primeni naučnih metoda) i pregledne (koji sadrže originalan, detaljan i kritički prikaz istraživačkog problema ili područja u kojem je autor ostvario određeni doprinos, prikazan u vidu autocitata).

U časopisu je moguće objaviti i **naučnu kritiku ili polemiku** zasnovanu na naučnoj argumentaciji u vezi sa određenom naučnom temom. Obim naučnog rada ove vrste može da iznosi do 10.000 znakova sa razmacima. Osim podataka o autoru i naslova članka, naučna kritika mora da sadrži apstrakt (do 400 znakova sa razmacima), ključne reči (do pet pojmova ili sintagmi) i spisak bibliografskih izvora. Svi navedeni podaci ne uračunavaju se u obim rada.

Ostali prilozi. Komentari sudskih odluka mogu biti u obimu do 15.000 karaktera. Izlaganja sa naučnih i stručnih skupova, prikazi knjiga i srodni prilozi ne bi trebalo da prelaze 7.000 karaktera. Ovi prilozi ne sadrže apstrakt niti rezime.

### Osnovno oblikovanje teksta

Svi prilozi pišu se u programu Microsoft Word, u formatu A4, latinicom, fontom Times New Roman, veličine 12 pt, sa proredom 1,5; sa automatskim uvlačenjem pasusa za 9 mm, bez umetanja tabulatora i bez deljenja reči na slogove (hifenacije). Posle svakog znaka interpunkcije stavlja se samo jedan razmak. Za posebna slova iz srpskog i stranog latiničkog pisma koriste se raspoloživi simboli – dijakritički znaci. Ćiriliske znakove iz stranog pisma i karaktere iz drugih pisama (kineskog, japanskog, arapskog itd.) treba transliterizovati i transkribovati prema tablici dostupnoj na: <https://www.loc.gov/catdir/cpsol/roman.html>. Imena i prezimena stranih autora navode se u originalu, osim kada se moraju transkribovati na latinicu (na primer imena iz ruskog jezika).

Kada se autor poziva na radove objavljene u *Stranom pravnom životu*, koristi isključivo naziv časopisa na srpskom jeziku nezavisno od toga na kom jeziku piše rad. Reference koje se citiraju u radu pisanom na engleskom jeziku se ne prevode, već se navode na izvornom jeziku. Prevod stručnih pojmova iz strane literature, kada je to moguće, treba da bude zamenjen odgovarajućim nazivom u srpskom jeziku. Prevod latinskih pravnih izraza ili izreka nije potreban. Strani pojmovi pišu se kurzivom. Druge strane reči ili sintagme koje označavaju specifične izraze ili institute u stranom pravu, a ne mogu se sa preciznošću prevesti na srpski jezik ili ne postoje u srpskom pravu, zadržavaju se u originalnom nazivu (kurzivom), s tim što se njihovo značenje objašnjava na srpskom jeziku. U tekstu ne treba koristiti podebljana (boldirana) niti podvučena slova.

*Strani pravni život* prihvata citiranje i oblikovanje referenci prema Harvard stilu citiranja – britanski standard, prema modelu autor/rad. Navedeni stil modifikovan je jedino u pogledu načina citiranja pravnih izvora. Način primene ovog stila citiranja i sastavljanja spiska literature objašnjen je detaljno u ovom uputstvu.

S obzirom na prihvaćeni stil referenciranja, beleške u dnu teksta (fusnote) sadrže dopunska objašnjenja, a ne upućuju na korišćenu literaturu, što se čini u tekstu. Članovi i stavovi pravnih odredbi na koje se autor poziva navode se u tekstu, a ne u fusnotama. Kao izuzetak od prethodnog pravila, nazivi pravnih akata, kao i sudskih odluka, citiraju se u fusnotama.

**Ime, srednje slovo i prezime autora (jednog ili više njih)** navode se na prvoj strani rukopisa u gornjem levom uglu. Pišu se uz upotrebu dijakritičkih znakova (č, đ, š itd.), bez naučnih titula. Imena stranih autora takođe se pišu sa dijakritičkim znacima, bez obzira na jezik rada.

Ostali podaci koji se odnose na autore: naučna i stručna zvanja, akademske titule, ORCID broj autora, naziv ustanove u kojoj je autor zaposlen i podaci za kontakt (imejl autora) navode se u posebnoj belešci (fusnoti) na istoj strani ispod teksta, označeni zvezdicom. Navođenje ORCID identifikacionih brojeva za sve autore je obavezno.

**Naziv ustanove autora (afilijacija).** Navodi se potpuni, zvanični naziv i sedište ustanove (grad i država) u kojoj je autor zaposlen ili u kojoj je obavio istraživanje. Studenti postdiplomskih studija navode naziv ustanove u kojoj studiraju.

**Istraživački podatak / istraživački projekat.** Autor može nakon naslova uneti posebnu fusnotu u kojoj će navesti tačne, potpune i aktuelne podatke o okolnostima pod kojima je rad nastao (u okviru međunarodne saradnje, međunarodnog programa, kao deo naučnog ili istraživačkog projekta, u okviru postdiplomskih studija ili postdoktorskih studija, kao saopštenje sa održanog naučnog skupa, gostujuće predavanje i slično) i/ili naznaku o instituciji, državnom organu ili međunarodnoj organizaciji koja je finansijer ili korisnik projekta.

U **zahvalnici** (posebnoj napomeni na prvoj strani rada ispod teksta označenoj zvezdicom posle naslova rada) navode se imena drugih lica koja nisu autori, ali su imala učešća u istraživanju ili su pomagala u priređivanju rada, sa objašnjenjem njihove uloge. U fusnoti se može navesti i obaveštenje da je rad urađen u okviru određenog naučnoistraživačkog projekta, da je ranije usmeno izlagan na naučnom skupu i slično.

**Naslov rada** piše se malim slovima na sredini, font 14 pt. Naslov ne bi trebalo da ima više od 10 do 12 reči.

**Sažetak** se navodi ispod naslova članka. Sažetak ne sme da bude duži od 800 znakova sa razmacima. Veličina fonta je 11 pt (kurzivom). U sažetku autor ukazuje na značaj teme, osnovno istraživačko pitanje/hipotezu, cilj istraživanja, metodologiju i rezultate istraživanja. U apstraktu treba koristiti termine koji se često koriste za indeksiranje i pretraživanje članaka.

**Ključne reči** su termini ili fraze koji najbolje opisuju sadržaj članka za potrebe indeksiranja i pretraživanja. Potrebno je dati pet ključnih reči ili sintagmi na jeziku rada. U članku se navode ispod apstrakta (veličina fonta 11 pt, kurzivom).

**Naslov rada, sažetak i ključne reči na engleskom jeziku** (ako je članak na srpskom jeziku), **odnosno na srpskom jeziku** (ako je članak na engleskom jeziku) navode se dva reda ispod naslova, apstrakta i ključnih reči na jeziku rada.

**Podnaslovi** u tekstu se pišu na sredini, malim slovima i podebljanim (boldiranim) slovima, veličine 12 pt i numerišu se arapskim brojevima. Uvod i zaključak se, takođe, označavaju rednim brojevima. Podnaslovi drugog reda se pišu podebljanim (boldiranim) slovima, kurzivom. Podnaslovi trećeg reda se pišu kurzivom, bez podebljanja i takođe se numerišu (npr. 1.1, 1.1.1). Rad ne bi trebalo da sadrži više od tri nivoa podnaslova.

**Tabele, grafikoni i slični prilozi** dostavljaju se posebno u formatu i rezoluciji pogodnoj za štampu. U tekstu mora biti jasno označeno mesto na kojem se navode i umeću prilozi (tabele, slike i sl.). Svi prilozi moraju biti propisno označeni (npr. Tabela 1 – naslov) i uz njih je obavezno navesti izvor.

**Popis korišćene literature** navodi se na kraju rada, fontom 11 pt. Popis bibliografskih jedinica sastavlja se po abecednom redosledu prezimena autora, bez numerisanja. Lista referenci ne uključuje pravne akte, sudske odluke, kao ni odluke drugih organa, jer se oni već citiraju u fusnotama na odgovarajućem mestu u radu.

## Način citiranja i sastavljanja spiska referenci

### *Navođenje izvora unutar teksta*

Od autora se očekuje da navedu korišćene izvore, i to potpuno i tačno, i da precizno prenesu tuđe navode, te se prilikom citiranja knjiga ili članaka preporučuje da, gde je moguće, budu navedene strane sa kojih se preuzima tuđi tekst. Brojevi stranica moraju biti sadržani kod doslovnog citiranja tuđeg teksta, prilikom parafraziranja ili upućivanja na određeni deo knjige ili članka. Jedna stranica se označava sa „p.”, a više strana sa „pp.” (skraćeno lat. *paper* – *pluta paper*). Moguće je koristiti i rad prihvaćen za objavljivanje, pod uslovom da je za njega određen digitalni identifikator (DOI broj), koji će biti naveden u spisku literature uz druge podatke o citiranom radu.

Način navođenja izvora zavisi od toga da li je potrebno istaći ime autora ili sadržaj njegovog teksta. U prvom slučaju se ime autora čiji se rad koristi navodi u samoj rečenici; u drugom slučaju se navodi na kraju rečenice u zagradi, uz godinu objavljivanja rada (a po potrebi i broj strane). Na primer:

- Kako je istakao profesor Konstantinović (2006, p. 36) obimnost Skice za Zakonik o obligacijama i ugovorima bila je posledica težnje da zakon bude razumljiv svima, a ne da učesnike u prometu nauči pravu.
- Skica za Zakonik o obligacijama i ugovorima bila je obimna, zato što se težilo da zakon bude razumljiv svima, a ne da učesnike u prometu nauči pravu (Konstantinović, 2006, p. 36).

*Isticanje imena autora.* Kada se u rečenici pominje ime nekog autora, bez dodatnih informacija o sadržaju rada koji se citira (sumarni pregled ili ukazivanje na izvor), dovoljno je navesti prezime autora i u zagradi godinu u kojoj je rad objavljen. Navodimo primer:

- U svom radu Ćirić (2008) konstatuje da je...

Kada se upućuje na posebne delove u radu, mora biti naveden i broj stranice ili stranica na kojima se nalazi citat. Primeri:

- U svom radu Ćorić (2017, pp. 26–30) opisuje procesna sredstva za naknadu štete u sudskom poretku Evropske unije.
- Stoga, prema Đorđeviću (2016, pp. 28–29), trebalo bi da se uzmu u obzir i drugačija rešenja iz uporednog prava.

Preuzeti sadržaj drugog autora se može saopštiti i parafraziranjem:

- Stoga Perović u predgovoru ponovljenom izdanju Skice za Zakonik o obligacijama i ugovorima (Konstantinović, 2006, p. 16) zaključuje da svaki pravni sistem dopušta slobodu ugovaranja, ali do izvesne granice.

Ako se citira neodređen broj strana, navodi se samo početna stranica sa koje se preuzima citat, dok iza nje stoji „i dalje”. Na primer:

- Sve ove teorije se mogu podeliti u nekoliko grupa (Čolović, 2009, pp. 83 i dalje)...

Kada se upućuje na izvor iz fusnote nekog rada, posle broja strane piše se skraćénica „fn.”:

- Navedeno rešenje je nesumnjivo podložno kritici (Jovanović, p. 8, fn. 14)...

*Doslovno citiranje* koristi se retko, uglavnom da bi se izbeglo pogrešno tumačenje originalnog teksta, da se istakne bitan argument ili ideja koja će potom biti posebno analizirana ili pobijana ili kada je na lep i efektan način autor izrazio svoju misao, a taj efekat bi parafraziranje poništilo. U svakom slučaju doslovnog citiranja teksta drugog autora neophodno je navesti tačnu stranu (ili strane) na kojima se citat nalazi, kako bi čitaoci mogli proveriti iznete podatke.

Kraći citati, dužine do 30 reči, sastavni su deo rečenice, istaknuti navodnicima. Mogu biti direktno ili indirektno citirani, na primer:

- Kako ističe Stanković (1972, p. 177) „neimovinska šteta predstavlja posebnu pojavu i pojam za sebe”.

Ili:

- Sve su to razlozi što treba prihvatiti da „neimovinska šteta predstavlja posebnu pojavu i pojam za sebe” (Stanković, 1972, p. 177).

U citate duže od 30 reči autor nas uvodi svojim rečima, a zatim počinje citat, koji ističe navodnicima, obavezno uz naznaku prezimena autora i tačne strane ili strana na kojima se nalazi citat. Tekst se može preuzeti direktno:

- Nemogućnost korišćenja uništene stvari može da izazove neimovinsku štetu, nezavisno od *pretium affectionis*. Prema Stankoviću (1972, p. 307) reč je o slučajevima „u kojima nemogućnost upotrebe uništene odnosno oštećene stvari unosi veliki poremećaj u oštećenikov svakodnevni praktični život, lančanu reakciju raznovrsnih maltretiranja i ograničavanja, koja mogu predstavljati potpunu dezorganizaciju oštećenikovog načina života i njegovih svakodnevničkih navika”.

Indirektno se isti tekst može preuzeti na sledeći način:

- Nemogućnost korišćenja uništene stvari može da izazove neimovinsku štetu, nezavisno od *pretium affectionis*, u slučajevima „u kojima nemogućnost upotrebe uništene odnosno oštećene stvari unosi veliki poremećaj u oštećenikov svakodnevni praktični život, lančanu reakciju raznovrsnih maltretiranja i ograničavanja, koja mogu predstavljati potpunu dezorganizaciju oštećenikovog načina života i njegovih svakodnevničkih navika” (Stanković, 1972, p. 307).

Dugačke citate bi najpravilnije bilo preuzeti tako što se iza dve tačke navedu u posebnom redu uvučeno, složeno manjim fontom (11pt), uz naznaku izvora i stranice.

Izostavljeni deo reči iz citata označava se trima tačkama u ugaonim zagradama, na primer:

- Prilikom organizacije izvršenja rada u javnom interesu „pragmatični razlozi [...] ukazivali bi na potrebu većeg učešća lokalne zajednice (u sektoru službi socijalne zaštite)” (*Alternative zatvorskim kaznama*, 2005, p. 44).

**Citiranje različitih radova dva autora.** Kada se u istoj rečenici upućuje na radove dva autora (bilo da imaju saglasne ili oprečne stavove) u tekstu se navodi prezime svakog od autora, uz godine kada su radovi objavljeni, prema sledećim primerima:

- I Đorđević (2012, p. 34) i Mrvić Petrović (2011, pp. 86–87) smatraju da uvođenje sistema dani-novčane kazne nije ostvarilo željene efekte u pravnom sistemu Republike Srbije.
- Kauzalitet kod propuštanja se različito objašnjava po teoriji *aliud agere* u odnosu na teoriju prethodno preduzete radnje (vid. za prvu Welp, 1968, p. 30, a za drugu Rudholphi, 1972).

**Citiranje imena dva ili tri autora istog rada.** U tekstu se upućuje na zajednički rad autora uz navođenje prezimena oba autora povezana simbolom &, dok se u zagradi navodi godina u kojoj je rad objavljen.

- Na ovakav odnos države i crkve trebalo bi da obratimo posebnu pažnju (Đorđević & Stanić, 2015, p. 63).
- U svom radu Nikolić & Čović (2018) ukazali su na...
- Uporednopravno istraživanje (Mrvić Petrović & Petrović, 2018) potvrdilo je...
- Mrkšić, Popović & Novaković (2018, p. 477) analiziraju...

**Citiranje rada koji ima više od tri autora.** U tekstu se navodi samo prezime prvog autora i iza njega opšteprihvaćena skraćenica *et al.* (*et alia*). Na primer:

- Čeranić *et al.* (2018) istražili su...

**Citiranje više radova istog autora, objavljenih iste godine.** U tekstu se uz prezime autora i godinu dodaju latinička slova a, b, c, d, kako bi se označili različiti radovi istog autora objavljeni iste godine. Primer:

- Svakako, navedeni vid krivice trebalo bi da je više u našem fokusu (Ćirić, 2004a, p. 70)... Pored „tvrde”, ne bismo smeli da zaboravimo „meku moć”... (Ćirić, 2004b, p. 334).

**Citiranje rada objavljenog pod okriljem organizacije.** U slučaju da je navedeni tekst objavila organizacija (pravno lice, udruženje, ustanova, međunarodna, nevladina organizacija i sl.) tako da pojedini autor nije posebno naveden, u tekstu treba uputiti na naziv organizacije i godinu objavljivanja rada. Dozvoljena je upotreba uobičajenih službenih skraćenica međunarodnih organizacija ili njihovih tela. Na primer:

- Od presudne je važnosti istraživati izborne procese u domaćem i stranom pravu (Institut za uporedno pravo, 2013, pp. 32–35).
- Media and information technologies can offer such spaces to allow different groups to interact with each other, so in Tallin Guidelines on National Minorities and the Digital Age (OSCE, 2019) ...

**Citiranje rada nepoznatog autora.** Umesto podataka o autoru koristi se naslov rada:

- U *Teoriji države i prava* (1995, p. 204) jasno se kaže...

**Rad nepoznate godine izdanja.** U navedenom slučaju koristi se skraćenica n. d. (od *no date*):

- Zirojević (n. d.) ukazuje na obeležja terorizma...

Ili indirektno:

- Obeležja savremenog terorizma su... (Zirojević, n. d.).

**Sekundarne reference.** Ako primarni izvor nije bilo moguće pronaći, nego ga autor preuzima iz rada drugog autora, mora se pozvati na primarni izvor i sekundarnu referencu na sledeći način:

- Zlatarić (1967), kako navodi Kambovski (2005, p. 701) uključuje u saizvršilaštvo i radnje preduzete pre ili posle dovršenja krivičnog dela.

Ili:

- U ranijoj teoriji se smatralo da saizvršilaštvo uključuje i radnje preduzete pre ili posle dovršenja krivičnog dela (Zlatarić, 1967, navedeno u Kambovski, 2005, p. 701).

**Navođenje propisa.** U skladu sa pravilom časopisa da pravni izvori nisu uključeni u listu referenci, propis pomenut u tekstu navodi se u fusnotama na odgovarajućem mestu.

Dakle, prilikom citiranja zakonodavnih akata potrebno je navesti osnovne podatke o aktu i godinu objavljivanja njegove najnovije verzije, uz brojeve službenih glasila u kojima su objavljeni ili podatke o elektronskim izvorima sa kojih su preuzeti, u skladu sa podacima dostupnim na zvaničnoj internet stranici nadležnog organa ili pribavljenim iz javne službe zadužene za objavljivanje pravnih propisa i praćenje

njihovih izmena. Autor može koristiti tekst akta na izvornom jeziku, kao i njegov zvanično objavljeni prevod na engleski (ili drugi jezik), što mora biti naznačeno.

Član, stav i tačka propisa skraćeno se pišu čl., st. i tač. Kada se pišu ispred brojeva, iza napisanih brojeva se ne stavlja tačka.

Na primer:

- čl. 5, st. 2, tač. 3 ili čl. 5, 6, 9 i 10 ili čl. 4–12.

**Navođenje sudske prakse i odluka drugih organa.** Prilikom citiranja sudske prakse ili odluka drugih organa/tela, autor treba da navede što potpunije podatke: vrstu odluke sudskog, upravnog tela ili Ustavnog suda, naziv donosioca, druge podatke na osnovu kojih se odluka identifikuje (slovo koje označava vrstu postupka, broj postupka, godinu pokretanja postupka), datum kada je doneta i, ako postoji, izvor iz kog je preuzeta. Drugim rečima, citat treba da sadrži naziv organa koji je odluku doneo, broj predmeta, datum, kao i sve druge podatke neophodne za njenu preciznu identifikaciju. Za presude Evropskog suda za ljudska prava merodavan je i broj predstavke. U skladu sa već pomenutim pravilom, sudske odluke i odluke drugih organa citiraju se u fusnotama, a ne u glavnom tekstu članka. One takođe nisu uključene u listu referenci na kraju članka.

Praksa međunarodnih sudova ili tribunala navodi se korišćenjem zvaničnih skraćenica naziva sudova, na primer: ICJ, PCIJ, ICTY, ICTR, ECHR, nakon čega slede naziv predmeta, vrsta odluke, datum donošenja, publikacija u kojoj je odluka objavljena i stranica na kojoj je objavljena. Kod presuda međunarodnih krivičnih tribunala, nakon naziva predmeta navodi se sudsko veće (i, po potrebi, podaci o izdvojenim mišljenjima sudija, ukoliko se autor na njih poziva u radu), dok se kod odluka Evropskog suda za ljudska prava navodi i broj predstavke. Sudska praksa Suda pravde Evropske unije mora se citirati korišćenjem evropskog identifikatora sudske prakse (ECLI). Domaće i strane sudske odluke, pravna shvatanja i slično, kao i odluke međunarodnih sudova, mogu se citirati uz upućivanje na elektronske pravne baze iz kojih su preuzete (Paragraf Lex, Intermex, EUR-Lex, CURIA, Lexiweb.co.uk, Légifrance, HUDOC itd.). Prilikom citiranja sudskih slučajeva koristi se skraćenica *v* za veznik *versus*, npr. *Fremkin v Russia*, *Goobald v Mahmood*.

Sledeći primeri ilustruju različite načine navođenja:

- Pravno shvatanje, 1999. Pravno shvatanje utvrđeno putem odgovora na pitanja na sednici Odeljenja za privredne sporove Višeg privrednog suda od 6. oktobra 1999, dostupno u elektronskoj pravnoj bazi Paragraf Lex.
- Odluka US, 2017. Odluka Ustavnog suda Republike Srbije, br. IUo-173/2017 o utvrđivanju neustavnosti i nezakonitosti Pravilnika opštine Bečej iz 2013. o kriterijumima i postupku dodele sredstava crkvama i verskim zajednicama, *Službeni glasnik RS*, br. 68/2018.

- Presuda Apelacionog suda u Beogradu, Gž. 636/2011 od 28. maja 2012. Arhiva Apelacionog suda u Beogradu, 2012. *Borodin v Russia*, predstavka br. 41867/04, presuda ECHR, 6. 2. 2013, par. 166.
- *Borodin v Russia*, predstavka br. 41867/04, presuda ECHR, 6. 2. 2013, par. 166.
- *Goobald v Mahmood*, 2005 All ER (D) 251 (Apr). Dostupno na: <https://Lexisweb.co.uk/cases/2005/april/godbald-v-mahmood>, 18. 1. 2019.
- Judgment of the General Court (Second Chamber) of 13 October 2015.
- *Intrasoft International SA v European Commission* (Case 403/12, EC-LI:EU:T:2015:774)

**Citiranje referenci preuzetih sa interneta.** Ukoliko se u radu koriste sadržaji sa interneta, navode se na isti način kao i ostali sadržaji, ako su poznati autori ili organizacije ili državne ustanove koje su ih publikovale, s tim što će u spisku literature na odgovarajući način biti naglašeno da je reč o URL izvoru ili o članku sa DOI brojem. Elektronski dostupni sadržaji retko imaju označene stranice, pa se preciznost kod navođenja citata postiže pozivanjem na odeljke ili pasuse, ako su numerisani u tekstu.

### **Sastavljanje spiska literature**

Spisak literature je obavezan na kraju rada. U spisak literature unose se sve bibliografske jedinice korišćene u radu, osim pravnih izvora, sudskih odluka, kao i odluka drugih organa koji se navode u fusnotama.

U spisku literature se bibliografske odrednice (reference) navode po abecednom redu, prema početnom slovu prezimena autora, početnom slovu organizacije u slučaju da je autor nepoznat ili, ako su nepoznati i autor i organizacija, prema početnom slovu naslova bibliografske jedinice. U slučaju koautorstva, potrebno je navesti imena svih autora ukoliko ih nema više od tri. Ukoliko je broj koautora veći, navodi se ime prvog koautora uz oznaku et al.

#### **1. Knjige (elektronske), druge monografije i udžbenici, poglavlja u monografijama**

Navode se obavezno sledeći elementi po modelu:

Prezime, ime (inicijal) autora. Godina izdanja. *Naslov: podnaslov*. Izdanje (navodi se samo ukoliko nije prvo izdanje). Mesto izdavanja: izdavač.

Na primer:

- Vasiljević, M. 2018. *Trgovinsko pravo*. Beograd: Pravni fakultet Univerziteta u Beogradu.

- Sime, S. 2018. *A Practical Approach to Civil Procedure*. 31st ed. Oxford: Oxford University Press.

Kada ima više od tri autora, knjiga se navodi prema početnom slovu prezimena prvog autora, a umesto imena ostalih autora koristi se skraćenica *et al.* Kada knjiga nema podatak o autoru, ali je istaknuto ime urednika ili organizacije, umesto autorovog imena navodi se ime urednika (uz naznaku tog svojstva) ili naziv organizacije koja je izdala publikaciju.

Za urednike koristiti skraćenicu „ur.” (ako je knjiga izdata na srpskom jeziku), a „ed.” (za knjige na engleskom jeziku sa jednim urednikom) ili „eds.” (kada ima dva ili više urednika). Na primer:

- UNICRI. 1997. *Promoting Probation Internationally*. Publ. no 58. Rome/London: UNICRI.
- Tappan, P. W. (ed.). 1951. *Contemporary corrections*. New York: McGraw-Hill.

Obavezni elementi koji se moraju navesti kada se citira sadržaj elektronske knjige su: Prezime, ime (inicijal) autora. Godina. *Naslov: podnaslov*, [e-knjiga]. Izdanje (navodi se samo ukoliko nije prvo izdanje). Mesto izdavanja: izdavač. Pristup preko baze podataka, URL adresa, datum pristupa.

Na primer:

- Molan, M. T. 2012. *Series: Questions & Answers*, [eBook]. 8th ed, 2012-2103. Oxford: OUP Oxford. Database: eBook Academic Collection. Dostupno na: <http://eds.a.ebscohost.com/>, 18. 1. 2019.

## 2. Doktorske disertacije, magistarski ili završni master radovi

Obavezno se navode: Prezime, ime (inicijal) autora. Godina odbrane. *Naslov: podnaslov*. Doktorska/master teza. Mesto izdavanja: naziv fakulteta/univerziteta.

Na primer:

- Stanić, M. 2017. *Pravna priroda poslaničkog mandata*. Doktorska disertacija. Beograd: Pravni fakultet Univerziteta u Beogradu.

## 3. Poglavlja u knjigama i naučni/stručni radovi objavljeni u zbornicima i zbirkama radova sa naučnih skupova

Podaci o navedenim bibliografskim jedinicama sadrže obavezno sledeće elemente koje treba navesti po modelu:

Prezime, ime (inicijal) autora. Godina. *Naslov: podnaslov*. U: Prezime, ime (inicijal) urednika (ur.). *Naslov knjige/zbornika radova*. Mesto izdavanja: izdavač, stranice (celog rada).

Za urednike koristiti skraćenicu „ur.” (ako je zbornik na srpskom jeziku), a „ed.” (za zbornike na engleskom jeziku sa jednim urednikom) ili „eds.” (kada zbornik uređuju dva ili više urednika). Primer:

- Moss, G. 2015. New World and Old World: Symphony or Cacophony?. In: Parry, R. & Omar, P. (eds.), *International Insolvency Law: Future Perspectives*. Nottingham/Paris: INSOL Europe, pp. 17–42.
- Čolović, V. 2011. Status stranog stečajnog postupka u nemačkom zakonodavstvu. U: Vasiljević, M. & Čolović, V. (ur.), *Uvod u pravo Nemačke*. Beograd: Institut za uporedno pravo i Pravni fakultet Univerziteta u Beogradu, pp. 524–541.

#### 4. Članci

Obavezni elementi koji se navode su:

Prezime, ime (inicijal) autora. Godina. Naslov rada: podnaslov. *Naziv časopisa*, tom (broj), stranice (celog rada). DOI broj (ukoliko postoji) u formi linka: <https://doi.org/10.XXX>

Na primer:

- Đukić-Milosavljević, I. *et al.*, 2017. Jedinice za podršku deci žrtvama i svedocima u krivičnom postupku – Domaće pravo i praksa. *Temida*, 20(1), pp. 45–64.
- Višekruna, A. 2018. Ostvarivanje saradnje u stečajnim postupcima sa elementom inostranosti: primer protokola. *Strani pravni život*, 62(3), pp. 65–88. <https://doi.org/10.5937/spz1803065V>
- Vukadinović Marković, J. 2024. Challenges and perspectives of arbitration in South East and Central Europe–Serbia. *Strani pravni život*, 68(4), pp. 557–574. [https://doi.org/10.56461/SPZ\\_24405KJ](https://doi.org/10.56461/SPZ_24405KJ)

#### 5. Izvori sa interneta koji imaju autora

Radovi dostupni na internetu, sa poznatim autorom, kao i različiti izveštaji, citiraju se prema sledećem modelu:

Prezime, ime (inicijal) autora. Godina izdanja. Naslov: podnaslov. Mesto izdavanja: izdavač ili organizacija odgovorna za održavanje internet stranice. URL adresa: datum pristupa stranici.

Na primer:

- Mutavdžić Obradović D. 2015. *Odgovornost vlasnika odnosno držaoca psa za štetu koju je prouzrokovao drugom licu*. Beograd: Paragraf. Dostupno na: <https://www.paragraf.rs/>, 18. 1. 2019.

- Lietonen, A. & Ollus, N. 2017. The costs of assisting victims of trafficking in human beings: a pilot study of services provided in Latvia, Estonia, Lithuania, Report Series 87. Helsinki: HEUNI. Dostupno na: [https://www.heuni.fi/material/attachments/heuni/reports/HY3EXasQ3/HEUNI\\_Report\\_no.87.pdf](https://www.heuni.fi/material/attachments/heuni/reports/HY3EXasQ3/HEUNI_Report_no.87.pdf), 18. 1. 2019.

Reference na radove iz zbornika čiji je sadržaj objavljen na internetu navode se na sledeći način:

Prezime, ime (inicijal) autora. Godina izdanja. Naslov rada, uključujući naziv časopisa ili zbornika radova i ostale neophodne bibliografske podatke. URL adresa, datum pristupa.

Na primer:

- Rabrenović, A. 2024. Public service and human resources management standards in 2023 Principles of public administration – something old and something new?. In: Kostić, J., Ranaldi, V. & Sinagra, A. (eds.), *From national sovereignty to negotiation sovereignty*. Belgrade: Institute of Comparative Law: University „Niccolò Cusano”, pp. 215–233. Dostupno na: <https://iup.rs/wp-content/uploads/2024/09/2024-From-national-sovereignty-to-negotiation-sovereignty.pdf>, 28. 4. 2025.
- Rabrenović, A. 2008. Razvoj službeničkog sistema federalne uprave SAD: od potrage za političkim plenom ka ostvarenju javnog interesa. U: Ćirić, J. (ur.), *Uvod u pravo SAD*. Beograd: Institut za uporedno pravo, pp. 49–70. Dostupno na: <http://iup.rs/wp-content/uploads/2017/10/Uvod-u-pravo-SAD.pdf>, 18. 1. 2019.

## 6. Internet izvori bez označenog autora

Osnovni podaci koji se navode su: Naslov rada. Godina izdanja. URL/naziv baze podataka, datum pristupa.

Na primer:

- Nacionalni akcioni plan za borbu protiv korupcije – Mongolija. 2016. Dostupno na: <https://www.opengovpartnership.org/.../06-national-action-plan-combating-corruption>, 18. 1. 2019.

Uredništvo stoji na raspolaganju autorima za sva dodatna potrebna pojašnjenja. Pitanja se mogu uputiti elektronskom poštom na adresu uredništva.

CIP - Каталогизација у публикацији  
Народна библиотека Србије, Београд

34

**STRANI pravni život** = Foreign legal life / glavni i  
odgovorni urednik Katarina Jović. - 1956, br. 1- . -  
Beograd : Institut za uporedno pravo, 1956- (Beograd  
: Birograf Comp). - 24 cm

Tromesečno. - Drugo izdanje na drugom medijumu:

Strani pravni život (Online) = ISSN 2620-1127

ISSN 0039-2138 = Strani pravni život

COBISS.SR-ID 86244103



