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ORGANIZED CRIMINAL GROUPS AND THE EXPLOITATION OF CIVIL LAW: COMPARATIVE EXPERIENCES AND LEGAL RESPONSES

Abstract: *This paper analyzes how civil law instruments are misused by organized criminal groups. The fictitious and simulated contracts, the use of fictitious legal entities, and the use of other persons as nominee owners are analyzed to circumvent the law and obtain illicit property benefits. While criminal law retains primacy in addressing the offenses of organized criminal groups, the past two decades have recorded an increasing misuse of civil law mechanisms as part of strategies to manipulate the legal system. An overview of civil remedies that stand out as best practices for dealing with misuse by organized criminal groups is provided. In addition, the paper explains the civil liability of professional intermediaries, and the obligations related to beneficial ownership transparency are recognized as central in preventing the misuse of civil law mechanisms. Special focus is placed on a comparison of the legislation in the European Union with the legislation in the Republic of Serbia regarding civil asset recovery as a legal instrument in addition to criminal confiscation. As a conclusion, recommendations are given for the reform of the legal regulation in Serbia in order to achieve efficiency in conducting the procedures.*

Keywords: *organized crime, civil law, exploitation, beneficial ownership, civil asset recovery*

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INTRODUCTION

Organized crime has traditionally been viewed through the prism of criminal law, as a criminal act that is consciously carried out for the purpose of gaining profit from illegal activities, and is perceived through the use of force, threats, or resorting to corruption.[1] However, the development of modern society has proved that viewing organized crime through the prism of civil law is also an important aspect for confronting the negative consequences that arise and for preventing this crime. Perpetrators of organized crime try to gain profit through various civil law contracts, fictitious legal entities, and fiduciary arrangements. Comparatively, the member states of the European Union, adopted various regulations relating to money laundering and the financing of terrorism that directly affect the prevention of abuse of civil law. In Serbia, in addition to the Law on Obligations (ZOO), there are also the Law on the Prevention of Money Laundering and Financing of Terrorism (ZSPNFT), the Law on the Central Register of Beneficial Owners, and the Law on the Seizure of Property Arising from a Crime, which are reflected in the cooperation between the civil and criminal systems. In the monitoring and recognizing suspicious legal and financial transactions, professional intermediaries have a central role, and legal systems should insist on regularly maintaining and updating a register of beneficial owners. This paper focuses on explaining the abuse of some of the most important civil law institutions, civil law remedies that are most effective. The main goal of the paper is to analyze the legal framework comparatively in the European Union and in the Republic of Serbia, regarding the civil asset recovery, and to provide recommendations for filling possible legal gaps.

1. TYPES OF EXPLOITATION OF CIVIL LAW

The first case of exploitation of civil law is the existence of a simulation contract. Simulation of a contract (simulatio) allows creation of a semblance of a legal transaction behind which there is no real will of the contractual parties, or the main goal is to hide another contract.[2] Simulated contracts most often appear in the form of purchase and sale agreements with an unrealistically low price or with deferred payment of the purchase price. Simulated contracts also appear as loan agreements without an actual transaction of funds or as fictitious contracts for the acquisition of property. Cession contracts are widely used to disguise the ulti-

[1] Kovačević, N. V., Nikolić, B. M., & Mak, A. A. (2024): "Jedan pristup određenju uticaja organizovanog kriminala po bezbednost Republike Srbije", *Megatrend Revija*, *21*(2), p.109-122.

[2] Ravljen, M. (2018): "Simulacija i izigravanje zakona", *Pravo-teorija i praksa*, Beograd, p. 58-71.

mate beneficiary of the money. Civil qualification depends on proving the actual purpose of the contract, which requires documentary and circumstantial evidence, taking into account behavioral patterns and inconsistencies between stated and actual economic effects.[3]

The second type of exploitation of civil law concerns the existence of certain types of legal entities, often used by organized criminal groups. The existence of letterbox or shell companies is common in countries with weak regulation and is commonly used by organized crime groups to establish companies across different countries that are each other's founders in order to make it impossible to track cash flows and the real source of income. Letterbox companies are companies that exist only on paper and are companies without any independent operations, ongoing business activities and employees.[4] Another legal entity that organized criminal groups use is the trust and foundations. In some countries, with flexible legal systems, establishing of trusts and foundations is made with minimal disclosure. This means that the real control of trust of foundations can be in the hands of a person, different from the person appearing as a legal owner. Trusts and foundations are commonly used as an asset protection vehicle.[5]

The third type of civil law abuse is the existence of a nominee (straw) owner and proxies with broad power of attorney. Nominee owners are used as a front for the criminal perpetrators as they are appointed in the official registration papers as shareholders, owners, or directors. The nominee person does not have any economic interest or control; he is acting only in the name of the criminal group.[6] Criminal groups often use proxies with broad authorizations. Powers of attorney that grant broad powers to their holder, without any economic interest or appropriate reward for the holder, signal suspicion about the true owner and the true purpose of the legal entity's existence.

If ownership is obscured, private parties may unknowingly contract with entities acting as fronts for organized crime, which in turn undermines both the enforceability of contracts and the legal certainty.

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3 Borlini, L. (2024): "The normative development of laws on asset preservation and non-conviction based confiscation", *International Journal of Constitutional Law*, *22*(1), p. 101–135.

4 Gillis, M. (2018): "Shell companies and exposing beneficial ownership: testing the boundaries of the international commitment to fight corruption", *Melbourne Journal of International Law*, *20*, p.1-23.

5 Ibid.

6 Nielson, D., and Sharman, J. (2022): "Signatures for Sale: How Nominee Services for Shell Companies are abused to Conceal Beneficial Owners", The World Bank, *Stolen Asset Recovery Initative*, p.1-44.

2. CIVIL REMEDIES AGAINST THE EXPLOITATION OF THE CIVIL LAW BY THE ORGANIZED CRIMINAL GROUPS

Civil law offers more opportunities for combating the negative effects of criminal acts. The legal remedies offered by civil law can be applied at any stage of the criminal procedure. The declaration of a contract as null and void or voidable aims to protect the general interest, i.e., the interests of both the individual and the weaker contracting party.[7] According to the Serbian ZOO, if the contract conceals an illegal act, such a contract is declared null and void and is considered not to have had any legal effect from the beginning. After the declaration of the contract as null and void, restitution of the status quo is carried out, i.e., the parties are returned to their previous state.[8] The declaration of the contract as null and void also opens up space for filing a claim for unjust enrichment, which, in the case of organized crime, means additional protection for the victims of the crime. Restitution in the case of unjust enrichment allows for the return of the material benefit acquired in the absence of a formal legal basis for retaining the acquired benefit.[9]

One legal instrument that is very important for the protection of debtors from abuse by organized crime groups is the Actio Pauliana or Paulian Lawsuit. This lawsuit allows civil law to serve as an anti-criminal mechanism. Actio Pauliana is a special lawsuit filed by the creditor against the debtor and third parties, which disputes the debtor's actions. Pursuant to Article 280 of the Serbian Law on Obligations[10], any creditor whose claim is due for payment may deny the legal action of his debtor which was undertaken to the creditor's detriment. It is considered that the legal action was undertaken to the detriment of the creditors if, as a result of its execution, the debtor does not have sufficient funds to fulfill the creditor's claim. For tortious legal actions, the condition for filing a lawsuit is the existence of awareness of a third party about the debtor's intention to reduce the possibility of creditors' settlements, while in the case of actions without compensation, it is assumed that they have a harmful character. By filing this lawsuit, creditors can challenge fictitious transfers of property through the presentation of unrealistic prices or through transfers to nominee owners. The European Union, with the Directive 2024/1260 on asset confiscation, requires that states provide instruments

7 Nikolova Marković, A. (2022): "Građansko pravo između zakona i precedenta", Beograd, *Megatrend revija 19*(2), p.349-358.

8 Dudas, A. (2022): "General rules on invalidity of contracts in Serbia", *Review of European and Comparative Law*, *49*(2), 7–35.

9 Nikolova Marković, A. (2024): "Osnovne karakteristike neosnovanog obogaćenja u domaćem i u uporednom pravu", *Megatrend revija*, *21*(1), 117-126

10 Član 280 Zakona o obligacionim odnosima (Sl. list SFRJ", br. 29/78, 39/85, 45/89 - odluka USJ i 57/89, "Sl. list SRJ", br. 31/93, "Sl. list SCG", br. 1/2003 - Ustavna povelja i "Sl. glasnik RS", br. 18/2020).

and mechanisms by which property can be recovered or frozen even when it has been transferred to third parties, if the acquisition of the property is a result of a fictitious contract.

The relationship between civil litigation and criminal proceedings should be based on cooperation and reciprocity. Information obtained in criminal proceedings can serve as evidence in civil proceedings, and successful civil litigation can serve as a basis for confiscation of property derived from criminal acts.[11]

3. THE LIABILITY OF INTERMEDIARIES AND THE TRANSPARENCY OF BENEFICIAL OWNERSHIP IN THE CONTEXT OF ORGANIZED CRIME

Intermediaries in financial and legal transactions in a legal system, such as banks, lawyers, notaries, and accountants, act as a filter for checking transactions, because through them, transactions that are carried out may eventually be subject to abuse by organized criminal groups. Their responsibility consists of paying due attention to compliance with and implementing a complex set of measures within the framework of the regime for the prevention of money laundering and terrorist financing. Among other things, their obligations include determining the beneficial owner, implementing a customer identification procedure, and increased vigilance in assessed high-risk transactions.

Failure to comply with these obligations may result in the intermediaries' complicity in money laundering or terrorist financing, which raises the question of their civil liability. In addition, if the intermediary has failed to comply with the procedure, i.e., if there was an opportunity to foresee the risk, and he failed to do so, the general rules on contractual and tortious liability should be applied. According to Lord[12], professional intermediaries have very important roles in the prevention and detection of organized crime, but at the same time, they are also subject to civil liability in case of omissions.

[11] Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, *Official Journal of the European Union*, L 202, 19.6.2024, 1–38.

[12] Lord, J. (2015): "Other people's dirty money: Professional intermediaries, market dynamics and the facilitation of organized crime", *The British Journal of Criminology*, *59*(5), p. 1217–1235.

4. CIVIL ASSET RECOVERY: A COMPARATIVE AND DOMESTIC LEGAL FRAMEWORK

Civil asset recovery is the most important mechanism for preventing organized crime groups from using illegally acquired assets. This instrument also aims to deter organized crime groups from abusing civil law, because if they are discovered, the illegally acquired assets will be confiscated. Unlike criminal confiscation, which is carried out after the criminal proceedings have been conducted and a conviction has been reached, civil asset recovery takes place in civil legal proceedings. In this way, it gives the legal system a chance to react in cases where criminal prosecution is not possible for various reasons. Civil recovery serves as an additional instrument for the protection of the public interest, because it allows for restitution even when criminal law fails.[13]

At the European Union level, civil asset recovery is gaining increasing importance in the implementation of the common policy and security of the Member States. Directive (EU) 2024/1260 on the freezing, management, and confiscation of assets was adopted in 2024 and is a comprehensive document that obliges Member States to establish legal regulations relating to the successful implementation of measures for the identification of beneficial owners, the introduction and obligation to regularly update the register of beneficial owners, as well as the monitoring of high-risk transactions. The above-mentioned directive opens the door to the introduction of a civil model of civil asset recovery in the legislation of all Member States, through the article that provides the possibility of freezing assets before the conclusion of criminal proceedings, and in certain cases, freezing assets regardless of criminal convictions. The adoption of this directive, especially the article that refers to the freezing of assets before the end of criminal proceedings and the power of freezing independent of a criminal conviction, shows that the European Union is increasingly focusing on the economic weakening of criminal structures, and not only on individual criminal responsibility.[14]

In the legal regulations of the Republic of Serbia, the most important and basic framework for the confiscation of property acquired through a criminal act is contained in the Law on Confiscation of Property Derived from a Criminal Act, adopted in 2008. The adoption of this law is tied to the conduct of criminal proceedings. As for civil law, civil law mechanisms such as the Paulian lawsuit, demand for restitution on the basis of unjustified enrichment, and nullity of

[13] Dudas, A. (2022): "General rules on invalidity of contracts in Serbia", *Review of European and Comparative Law*, *49*(2), 7–35.

[14] Savona, E. U., & Riccardi, M. (2015): "From illegal markets to legitimate businesses: The portfolio of organised crime in Europe", *Final Report of Project OCP – Organised Crime Portfolio.*

simulated contracts are applied, which indirectly contribute to the protection of creditors and the confiscation of illegally acquired assets. In Serbian law, there is no independent legislation governing the conduct of civil asset recovery proceedings that are not related to criminal proceedings. The fact that there is no separate law on the confiscation of illegally acquired property indicates the need for Serbian legislation to follow positive European practices and clearly regulate civil confiscations with a separate law.

5. RECOMMENDATIONS AND PROPOSALS FOR REFORM OF LEGAL LEGISLATIVE

The analysis of European and domestic legislation relating to the confiscation of illegally acquired property has shown in which direction the Serbian legislation needs to be reformed in order to achieve efficiency in the conduct of proceedings, and in the long term, to reduce abuses by organized criminal groups.

First, it is necessary to adopt a special law relating to the return of illegally acquired property, which will be applied by civil courts, regardless of the conduct of criminal proceedings. In this way, the Serbian legislation will be in line with European standards and will enable efficiency in the return of illegally acquired property.

Furthermore, it is necessary to direct civil legal mechanisms with a strategy for the fight against organized crime. Civil legal mechanisms such as: Paulian lawsuit, claims based on unjust enrichment, and declaration of nullity of contracts are not sufficiently used in the context of financial investigations against organized criminal groups. Greater cooperation is needed between the judicial system and financial intelligence authorities in order to increase the efficiency of the procedure.

The last recommendation concerns increasing the transparency of beneficial owners. Given that criminal groups aim to build the most complex organizational structure possible for the legal entities they establish, in order to make it more difficult to identify the real owner, it is necessary to have registers of beneficial owners whose information is reliable and regularly updated. In this sense, greater and more rigorous control of professional intermediaries by the state is also needed in terms of the control of legal and financial transactions and the persons behind those transactions. Information from the register of beneficial owners should be available to the courts and interested parties at all times.

CONCLUSIONS

Criminally organized groups exploit civil law instruments in order to gain material benefit by circumventing the legal system. The analysis conducted in the paper has shown that civil law mechanisms such as the declaration of a fictitious contract as null and void, the existence of the Actio Pauliana, and the institute of unjust enrichment play an important role in nullifying the negative consequences of the activities of criminal groups, but only as a supplement to the criminal procedure. The analysis of comparative legislation in the European Union, i.e. the analysis of Directive (EU) 2024/1260 and the analysis of existing legal instruments in Serbian legislation, have shown that the Republic of Serbia needs to create a legal model that would recognize civil asset recovery as an individual institute that can be used independently from the existence of criminal proceedings for the return of illegally acquired property. Also, recommended measures for closing the lacuna in the law, exploited by organized crime groups are: enhancing the accountability of professional intermediaries and maintaining the reliability of beneficial ownership registers. Finally, the paper has shown that only through the complementarity of civil and criminal law instruments states can reduce the harmful effects of the activities of criminal groups and maintain the stability of the legal and financial system.

Bibliography

- Borlini, L. (2024): "The normative development of laws on asset preservation and non-conviction based confiscation", *International Journal of Constitutional Law*, *22*(1), p. 101–135.
- Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, *Official Journal of the European Union*, 19.6.2024, p.1–38.
- Dudas, A. (2022): "General rules on invalidity of contracts in Serbia", *Review of European and Comparative Law*, *49*(2), p. 7–35.
- Gillis, M. (2018): "Shell companies and exposing beneficial ownership: Testing the boundaries of the international commitment to fight corruption", *Melbourne Journal of International Law*, *20*, p.1-23.
- Kovačević, N. V., Nikolić, B. M., & Mak, A. A. (2024): "Jedan pristup određenju uticaja organizovanog kriminala po bezbednost Republike Srbije", *Megatrend Revija*, *21*(2), p.109-122.
- Lord, J. (2019): "Other people's dirty money: Professional intermediaries, market dynamics and the facilitation of organized crime", *The British Journal of Criminology*, *59*(5), p. 1217–1235.

- Nielson, D., and Sharman, J. (2022): "Signatures for Sale: How Nominee Services for Shell Companies are abused to Conceal Beneficial Owners", The World Bank, *Stolen Asset Recovery Initiative*, p.1-44.
- Nikolova Marković, A. (2024): "Osnovne karakteristike neosnovanog obogaćenja u domaćem i u uporednom pravu", *Megatrend revija*, *21*(1), 117-126.
- Nikolova Marković, A. (2022): "Građansko pravo između zakona i precedenta, Beograd", *Megatrend revija*, *19*(2), p.349-358
- Ravljen, M. (2018): "Simulacija i izigravanje zakona", *Pravo-teorija i praksa*, Beograd, p. 58-71.
- Savona, E. U., & Riccardi, M. (2015): "From illegal markets to legitimate businesses: The portfolio of organised crime in Europe", *Final Report of Project OCP – Organised Crime Portfolio*, Transcrime, https://www.transcrime.it/wp-content/uploads/2015/04/executive.pdf (Accessed 4 September 2025).
- Zakon o obligacionim odnosima (Sl. list SFRJ", br. 29/78, 39/85, 45/89 - odluka USJ i 57/89, "Sl. list SRJ", br. 31/93, "Sl. list SCG", br. 1/2003 - Ustavna povelja i "Sl. glasnik RS", br. 18/2020).

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ORGANIZOVANE KRIMINALNE GRUPE I ZLOUPOTREBA GRAĐANSKOG PRAVA: UPOREDNA ISKUSTVA I PRAVNI ODGOVORI

Sažetak: *Ovaj rad analizira načine na koje se instrumenti građanskog prava zloupotrebljavaju od strane organizovanih kriminalnih grupa. Posebna pažnja posvećena je fiktivnim i simulovanim ugovorima, upotrebi fiktivnih pravnih lica, kao i korišćenju drugih osoba kao nominalnih vlasnika, u cilju zaobilaženja zakona i sticanja protivpravne imovinske koristi. Iako krivično pravo zadržava primat u sankcionisanju krivičnih dela organizovanih kriminalnih grupa, poslednje dve decenije svedočimo sve učestalijoj zloupotrebi građanskopravnih mehanizama kao deo strategija usmerenih na manipulaciju pravnim sistemom. U radu se daje pregled građanskopravnih lekova koji se izdvajaju kao primeri dobre prakse u suzbijanju zloupotreba od strane organizovanog kriminala. Pored toga, objašnjava se građanska odgovornost profesionalnih posrednika, dok se obaveze vezane za transparentnost stvarnog vlasništva prepoznaju kao centralne u sprečavanju zloupotrebe građanskopravnih instrumenta. Poseban fokus stavljen je na uporednu analizu zakonodavstva Evropske unije i zakonodavstva Republike Srbije u pogledu građanskog oduzimanja imovine kao pravnog instrumenta koji dopunjuje krivičnopravne konfiskacije. Kao zaključak, date su preporuke za reformu pravne regulative u Srbiji radi postizanja veće efikasnosti u sprovođenju postupaka.*

Ključne reči: *organizovani kriminal, građansko pravo, zloupotreba, stvarno vlasništvo, građansko oduzimanje imovine.*