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NEMO IUDEX SINE ACTORE

Abstract:

Modern civil law legal systems, one of which is also the positive law system of Bosnia and Herzegovina, are based on the *nemo iudex sine actore* principle. This principle is manifested through the principle of disposition, because the court does not initiate a civil procedure *ex officio*. The aim of this paper is to examine the genesis, development, and the continuity of the application of *nemo iudex sine actore* principle (no prosecution – no lawsuit) through development of the Roman law procedure. In that context, the authors cover the importance of the prosecution (*actio*) through different periods of Roman law procedure, while also elaborating the essence and the form of the legislative, formulary, and the extraordinary procedures. Positive law system of the civil legal proceedings of BIH represents a system based on a principle of material subjective rights (*ubi ius ibi actio*), contrary to the old and classic Roman law that did not know about general civil litigation, *actio*. Instead, ones rights could have been protected only in the case of a specific lawsuit (*ubi actio ibi ius*). In that context will the analysis of legal transition occur and it will explain how the general lawsuit came to be. Starting with the aforementioned facts, this paper will deal with the *nemo iudex sine actore* principles well as with *ne procedat iudex ex officio* by putting them in the context of various civil procedures within Roman law in order to ascertain the importance of these principles, the aspects and the continuity of their application in the positive law system of the civil law of Bosnia and Herzegovina.

Key words: *nemo iudex sine actore*, *ne procedat iudex ex officio*, Roman civil procedure, lawsuit (*actio*).