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NEW REGISTERS IN CROATIAN REGISTRATION LAW: THE REGISTER OF CO-OWNERSHIP COMMUNITIES AND THE REGISTER OF BUILDING MANAGERS

Summary: *In the Croatian legal system, a number of public registers have been established. The main objective of their creation is the systematic collection of relevant data and their publication. The aim of this paper is to analyze the new registers introduced by the Act on Management and Maintenance of Buildings, which entered into force on 1 January 2025. In this regard, this paper examines the basic principles of substantive and procedural register law and compares them with those of other public registers in the Republic of Croatia. It focuses in particular on issues arising in the context of the right of access to information (whether for individuals or the public at large) and the right to privacy, with special reference to recent case law of the European courts. The aim of this paper is to identify the main arguments that should be taken into account in the legislative regulation of this issue and thus contribute to the ongoing debate on personal data protection in register law. The analysis is methodologically based on a comparison of the relevant legislation in Bosnia and Herzegovina with the legislation in the Republic of Croatia. The aim of this paper is to examine what lessons can be learned from the Croatian experience and how these lessons can be applied in the law of Bosnia and Herzegovina in order to improve the legislation on registers (de lege ferenda). It will also take into account the limiting factors primarily regarding the state structure of Bosnia and Herzegovina.*

Keywords: *public registers, the Register of Co-ownership Communities, the Register of Building Managers, Act on Management and Maintenance of Buildings.*

1. Methodology of the paper

Following the presentation of the methodological and analytical framework in Chapter 1, Chapter 2 outlines the conceptual foundations relevant to the subsequent analysis. Chapter 3 addresses the legal and institutional framework, while Chapter 4 examines the procedural and substantive provisions concerning registers and the protection of personal data. The main findings are synthesized in the concluding chapter (Chapter 6), which also provides recommendations and proposes possible solutions to the issues identified throughout the analysis. The historical ties with the same state as well as the common tradition and standards in certain areas of law provide a solid basis for the analysis of the legislation of Croatia and Bosnia and Herzegovina, whereby the recent developments in Croatian registry law can serve as a valuable model for the implementation of innovative solutions in the registry system of Bosnia and Herzegovina. A comparative legal overview provides an insight into the similarities and differences

between the legal regulations in Bosnia and Herzegovina and those in the Republic of Croatia as an EU member state, whose legal regulation is a result of the harmonization of legislation with EU law (Chapter 5). A limiting factor in the context of this analysis is the lack of established practice, given that the new housing legislation in Croatia has only been in force since the beginning of 2025. Therefore, the analysis is not based on practical issues, but rather on the identification of potential problems that could hinder the practical implementation of the legal protection procedure.

2. Framework for the discussion

On 1 January 1997, the Act on Ownership and Other Real Rights came into force in the Republic of Croatia,[1] and through its Article 360, the transformation was completed by establishing the right of ownership on the remaining (smaller) part of the housing stock. With the entry into force of the ZVDSP, the Housing Relations Act was fully repealed.[2]

On a practical and empirical level, it becomes evident that the aforementioned regulations have also raised issues related to the maintenance of housing stock. The analysis of housing regulations suggests that quality housing cannot be achieved without appropriate state intervention, specifically through the adoption of new legislation regulating housing and the maintenance of residential buildings. This issue was addressed at the end of 2024 with the adoption of the Act on Management and Maintenance of Buildings, which came into force on 1 January 2025.[3]

3. Notes on the new housing legislation - The Act on Management and Maintenance of Buildings

The aforementioned act regulates the following issues: defining the common parts and devices of a building and their maintenance; assigning a personal identification number (OIB) to the co-ownership community and its establishment; establishment of the Register of Co-ownership Communities and the Register of Building Managers; types of building maintenance and their further definition; defining urgent and necessary building repairs and investment maintenance of the building; meeting with regulations in the field of construction and meeting the basic requirements for buildings; common reserve fund, its minimum amount, building insurance; defining the basic content of the building management contract; the obligation to adopt and comply with house rules; the method and further definition of decisions on building management made by co-owners at co-owners' meetings; the obligation of co-owners and the regulation of issues related to the representative of co-owners; issues related to the building manager and the performance of this activity, their rights, obligations, and

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1 Act on Ownership and Other Real Rights (Zakon o vlasništvu i drugim stvarnim pravima), Official Gazette Nos. 91/96, 68/98, 137/99, 22/00, 73/00, 114/01, 79/06, 141/06, 146/08, 38/09, 153/09, 143/12, 152/14, (81/15 - consolidated version), 94/17, hereinafter: ZVDSP)

2 In more detail, Franić, M., Stambeni odnosi u svjetlu reintegracije hrvatskog pravnog poretka u kontinentalno europski pravni krug, Zbornik Pravnog fakulteta u Splitu, god. 46, 2009., br. 4, pp. 813-828.; Bodul, D., U susret novoj regulaciji stambenih odnosa u Republici Hrvatskoj: odgovarajući civilizacijski standard? Anali Pravnog fakulteta Univerziteta u Zenici, br. 26, 2021., pp. 165-188.

3 Official Gazette No. 152/24. in force from 1 January 2025, hereinafter: the Act.

responsibilities; appointing a compulsory building manager; appointing a compulsory representative of the co-owners; co-financing the installation of elevators in existing buildings; co-financing the renovation of building facades; the obligation of co-owners' consent for short-term apartment rentals and rentals for workers; fines for the building manager and co-owners for violating the Law; transitional and final provisions regulating previously concluded co-ownership agreements and maintenance contracts, as well as previous building managers performing building management activities until the entry into force of this Act, deadlines for adopting regulations, acts, and documents based on this Act, and finally, the entry into force of the Act. Three key points should be emphasized: first, that the Act was enacted in the public interest and in the interest of the Republic of Croatia. Not disputing the inseparable connection between substantive and procedural legal relationships arising in relation to the management of residential buildings, the ZVDSP, as a *lex generalis*, governs building management through the interaction of condominium ownership, co-ownership, and common parts of the building, which form a natural interconnection. In this regard, any unlawful interference with the property rights of co-owners can only be justified if it pursues a legitimate goal in the public interest.

This obligation is explicitly stated both in the Constitution of the Republic of Croatia[4] (Article 48, Paragraph 1[5] and Article 50[6]) and in Article 1 of Protocol No. 1 of the European Convention on Human Rights.[7] However, the Constitution of the Republic of Croatia does not use the term „public interest“, but rather stipulates that ownership can be limited or deprived by law only in the interest of the Republic of Croatia,[8] without providing a parallel definition of the term. Article 50 of the Constitution thus deals with the protective function of ownership, which inherently involves the public interest of the community as a whole or of an individual part of it. On the other hand, the case

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4 Constitution of the Republic of Croatia, Official Gazette Nos. 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14. The Constitution of the Republic of Croatia requires that the guarantee of the right to ownership, as laid down in Article 48(1), must always be considered in conjunction with Article 50, which governs the constitutional possibilities for its deprivation or limitation. In Decision No. U-IIIB-1373/2009 of 7 July 2009 (Official Gazette No. 88/09), the Constitutional Court for the first time provided a more detailed interpretation of the three constitutional rules on ownership.

5 „The right of ownership is guaranteed.“.

6 *„In the interest of the Republic of Croatia, ownership may be restricted or expropriated by law, with appropriate market-value compensation.“*

7 Official Gazette – International Agreements, Nos. 18/97, 6/99, 14/02, 13/03, 9/05, 1/06, 2/10, 13/17, hereinafter: the Convention. Article 1 of Protocol No. 1 of the Convention reads: *„Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.“*

8 Although the original text refers to the right to property, the Constitutional Court of the Republic of Croatia first emphasized its established position that property, within the meaning of Article 48(1) of the Constitution, „must be interpreted very broadly“, as it encompasses „in principle all property rights“ (see, for example, the decisions of the Constitutional Court Nos. U-III-72/1995 of 11 April 2000, U-III-476/2000 of 14 June 2000, U-III-1425/2006 of 10 September 2009, U-I-2643/2007 of 2 December 2009, U-III-689/2008 of 27 October 2010, U-III-3871/2009 of 13 May 2010, etc.).

law of the Constitutional Court of the Republic of Croatia (hereinafter: USUD)[9] at the same time distinguishes between the terms „general“ and „public“ interest, equating general interest with the interest of the Republic of Croatia. In contrast, the case law of the ECHR[10] holds that there is no substantive difference between these two terms (“even if a difference could exist...”). The choice between one alternative and the other is far from simple, for otherwise, their coexistence would not be possible and one would have long since supplanted the other. The multidimensional nature of the term „public interest“ clearly suggests that any state interest can be declared a public interest if Parliament so decides, as is the case with this law (Article 2).[11]

Another innovation is the introduction of a new legal entity into the legal system of the Republic of Croatia. In discussing legal personality in Croatian legal theory, Klarić and Vedriš present the basic definition of a legal entity as recognized in civil law and state that a legal entity is a social creation to which the legal system confers legal capacity. Since Article 77, paragraph 1 of the Civil Procedure Act[12] bases party capacity (capacity to be a party in proceedings)[13] on legal personality, a residential building does not have *ius standi in iudicio.* Nevertheless, legal entities and their operations are governed by a multitude of regulations due to the numerous forms in which a legal entity can manifest itself. The Companies Act [14] regulates the establishment of companies as possible forms of legal entities and the role of the main bodies through which companies take action to participate in legal transactions (entering into contracts, creating rights and obligations, and otherwise exercising their business and legal capacity). In addition to companies, private law also recognizes various other entities with legal personality (for example, corporations and foundations[15] and the bankruptcy estate after the dissolution of the bankrupt debtor[16]). There are various forms of legal entities, and it is worth mentioning that legal entities have also become the subject of criminal legislation over time.[17] This expanded criminal liability in the narrower sense (liability for criminal offenses), which had previously been reserved exclusively for natural persons, has now been extended to legal entities, entities to which the legal system has granted legal personality. On the other hand, there are also entities without legal personality (co-ownership, joint ownership, marital estate, inheritance community, residential building, etc.). Therefore, positive law does not recognize legal capacity for a residential

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9 Decision of the Constitutional Court No. U-I/763/2009, Official Gazette No. 39/2011.

10 ECHR, James and Others v. The United Kingdom (1986.).

11 Bodul, D., O konceptu ***»javnog interesa«*** u nadolazećem Zakonu o upravljanju i održavanju stambenih zgrada, Informator, br. 6611., pp. 11-14.

12 Official Gazette Nos. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13, 89/14, 70/19, 80/22, 114/22. i 155/23., hereinafter: ZPP.

13 Capacity to be a party in court proceedings is an abstract capacity, to be the bearer of procedural rights and obligations, independent of a specific legal dispute.

14 Official Gazette Nos. 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 125/11, 152/11, 111/12, 68/13, 110/15, 40/19, 34/22, 114/22, 18/23,130/23, 136/24., hereinafter: ZTD.

15 Foundations Act (Zakon o zakladama), Official Gazette Nos. 106/18, 98/19 i 151/22, Article 2.

16 Bankruptcy Act (Stečajni zakon), Official Gazette Nos. 71/15, 104/17, 36/22. i 27/24., hereinafter: SZ, Article 438.

17 Act on the Liability of Legal Persons for Criminal Offences (Zakon o odgovornosti pravnih osoba za kaznena djela), Official Gazette Nos. 151/03, 110/07, 45/11, 143/12.

building as such. Provisions of the ZVDSP that tie legal capacity to the status of a natural or legal person unequivocally deny legal personhood to a residential building. However, if we look at the issue from a historical perspective, the institute of granting legal entity to a residential building is not *terra incognita* in Croatian law. Namely, according to the 1953 Regulation on the Management of Residential Buildings[18], as well as the later General Act on Residential Communities, a residential community is defined as a legal entity. This is also reflected in the new legal solution (Article 8 of the Law).[19]

The third novelty is the restriction of business activities in buildings. *Exempli gratia*, we will highlight the short-term rental, which has attracted the most attention in the professional and scientific community, especially due to the question of whether this solution is constitutionally controversial from the point of view of violating the right to peaceful enjoyment of property, restricting entrepreneurial freedom and violating the right to a home. Namely, a short-term rental of an apartment is the rental of an apartment or part of an apartment that serves for the temporary accommodation of individuals for a period shorter than 30 days (Article 4, Paragraph 1, Item 5). Therefore, an apartment owner who intends to use the apartment for short-term rental needs prior written consent from a two-thirds majority of co-owners, with the additional condition that consent must also be given by the owners of apartments whose walls, floors, or ceilings border with their apartment. The apartment owner is obliged to ensure that his/her apartment is not used for short-term rental without the required consent from Paragraph 1 of this Article and is not relieved of responsibility if the apartment is rented out to a third party or parties (Article 34.). Owners of individual parts of the building who, on 1 January 2025, are using their apartment for short-term rental are also required to obtain the consent of the co-owners by 1 January 2030. This requires a two-thirds majority of the co-owners, with the additional condition that consent must also be given by all the founding members of the co-ownership community who are owners of apartments whose walls, floors, or ceilings border with the apartment intended for short-term rental. Is such a solution controversial – we believe that it is not. By adopting the aforementioned Act, the legislator has achieved the following goal: normatively valorized (protected) the interests of co-owners (as it was assessed that the existing legislative model insufficiently protects their rights), including their right to exercise and protect property rights in accordance with the Constitution and the Convention. This mechanism allows all co-owners to have control over the use of common parts of the building, which reduces the risk of abuse of the common areas or disruption of the quality of life in the building. Additionally, the aim is also to prevent excessive commercial activities that could disturb the residents' quality of life, all in accordance with the guarantees of peaceful enjoyment of property and the right to privacy of personal and family life as provided by the Constitution of the Republic of Croatia and the European Convention on Human Rights. This can be considered a legitimate goal of public interest for the achievement of which the relevant Act was adopted.[20]

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[18] Regulation on the Management of Residential Buildings (Uredba o upravljanju stambenim zgradama) Official Gazette of FNRJ Nos. 52/53, 29/54.

[19] Bodul, D., Ususret implementiranju nove pravne osobe u hrvatskom pravnom poretku: stambena zajednica, IUS INFO, March, 2024., (Online edition)

[20] Article 1 of Protocol 1 to the European Convention on Human Rights guarantees the right to peaceful enjoyment of property, but this right is not absolute. It may be restricted by legal measures intended to achieve legitimate public interest objectives, such as the protection of the rights of others and the general welfare. Specifically, under Convention law, the legisla-

Furthermore, the Constitutional Court of the Republic of Croatia[21] emphasizes that the legislator holds constitutional authority to decide on public policies (Article 2, Paragraph 4, Item 1 of the Constitution), with broad discretion, while bearing exclusive responsibility for the justification and effectiveness of the legal measures enacted.[22]

4. An Overview of the Relevant Legal Provision of the Act on the Management and Maintenance of Buildings

The Act provides that the co-ownership community acquires legal personality upon entry in the Register of Co-ownership Communities and loses legal personality upon deletion from the Register of Co-ownership Communities. It also specifies that the co-ownership community is identified to third parties by its personal identification number (OIB) and the name entered in the Register of Co-ownership Communities. The name of the co-ownership community consists of the term „building“ followed by the address of its registered office. The seat of the co-ownership community is the address where the building is located (Article 8 of the Law). Additionally, the Register of Co-ownership Communities is managed by the State Geodetic Administration. Namely, the Register of Co-ownership Communities is an electronic database that is maintained uniformly for all co-ownership communities in the Republic of Croatia. For the purpose of determining and assigning a personal identification number to the co-ownership community, the State Geodetic Administration assigns a unique identifier to the building and each individual part of the building. It is important to note that the minister responsible for spatial planning and construction will regulate, by regulation, the content of the Register of Co-ownership Communities, the manner of its management, the application forms for registration, the forms for requesting data changes, as well as the method and procedure for determining unique identifiers (Article 9 of the Act).

The Act also establishes another register, the Register of Property Managers. It is maintained by the State Geodetic Administration. This register is managed uniformly for all property managers in the Republic of Croatia and is kept in electronic form. It is public and is organized and maintained in accordance with the provisions of the Act regulating the state information infrastructure in the Republic of Croatia. In the Register of Property Managers, public data includes information about the property manager and the address of the building or functional unit managed by the property manager. The Register of Property Managers contains and maintains data and documents related to the property manager, the address of the building or functional unit managed by the property manager, the management contract for the building, the compulsory property manager, the decision on the appointment of the compulsory property manager, and other data in accordance with the law and subordinate regulations. The minister responsible for spatial planning and construction, with the prior consent of the director-general of the State Geodetic Administration, will govern by regulation the content of the Register of Property Managers, the manner of its manage-

tor must balance the rights of the individual (in this case, the right to property) with public interests, such as the protection of other co-owners, the preservation of quality of life in shared residential spaces, and the prevention of abuse of common areas.

[21] For example, the Decision of the Constitutional Court of the Republic of Croatia, No. U-I-3684/2015 of 22 May 2018.

[22] Bodul, D., Nakić, J., Izazovi kratkoročnog najma stanova – Pandorina kutija problematike stanovanja je otvorena, IUS INFO, 12 September 2024 (Online edition)

ment, the application forms for registration, and the application forms for requesting data changes (Article 11).

4.1 Open issues related to the new registers

The minister responsible for spatial planning and construction should adopt the aforementioned regulations, which will govern the content of the mentioned Registers, within 90 days from the date of entry into force of this Act (Article 67). Of course, the question is what happens if they are not adopted within the deadline or if they are not adopted at all. Here, the decision of the Constitutional Court[23] should be considered, in which it expressed the view that, although the adoption of regulations for the implementation of a law after the expiration of the deadline specified by law negatively affects the legal order's security, this in itself does not deprive the competent authority of its right and power to adopt the act even after the deadline has passed.[24] In that decision, the Constitutional Court also stated that the provisions of Art. 129 of the Constitution, as well as the provisions of Art. 105, par. 1 and 2 of the Constitutional Act, prescribe the procedure for the Constitutional Court in cases where the competent authority has not adopted a regulation for the implementation of the provisions of the Constitution, laws, and other regulations, although it was obligated to do so. If it is determined that a regulation has not been adopted, the Constitutional Court is required to notify the Government of the Republic of Croatia or the Croatian Parliament, about it. This suggests that the Constitution encourages the responsible authority, which is delayed in adopting a regulation, to proceed with its adoption, rather than penalizing the delay by revoking the authority to adopt the regulation or declaring the regulation adopted after the deadline as unconstitutional and unlawful. Similarly, pursuant to the provision of Art. 128, par. 5 of the Constitution, regarding the non-adoption of regulations for the implementation of laws within the legally prescribed deadlines, the Constitutional Court may notify the Croatian Parliament about this issue, as it adversely affects the realization of constitutionality and legality.[25]

It should also be mentioned that it has been noted that other public registers are regulated by rules from different legal sources. Moreover, these rules often stem from various levels, with many originating from secondary legislation. As a result, secondary rules frequently do not align with legal provisions or, in fact, are in conflict with them. This becomes particularly problematic when there are no original registration rules, and instead, rules that can conditionally be regarded as general rules are applied accordingly.[26] For instance, what occurs when a housing community enters bankruptcy? Specifically, the law identifies the reduction of the total number of co-owners to a single owner and the merger with another co-ownership community as grounds for the dissolution of the co-ownership community (Art. 16). Therefore, bankruptcy is not specified as a reason for the dissolution of the co-ownership community. However, it is stated that the provisions regulating the operation of associations shall be applied by analogy

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[23] Constitutional Court, No. U-II-4343/2004 of 24 February 2005.

[24] It also confirmed the same in U-II/2662/2005 of 14 April 2015, and U-II-2050/2013 of 27 September 2013.

[25] See Point III, report U-X-835/05, of February 24, 2005.

[26] Mihelčić, G., Nakić, J., Neusklađenosti u registarskim stvarima (odabrana pitanja), Zbornik Pravnog fakulteta Sveučilišta u Rijeci, vol. 38, 2017., No. 1, pp. 649-672.

to the activities, functioning, dissolution of the co-ownership community, and other issues not addressed by the co-ownership agreement and this Law (Article 7).[27] The Associations Act clearly defines the reasons for the dissolution of an association, with particular emphasis on the introduction of bankruptcy for associations. In this way, the conclusion arising from Article 3 of the Bankruptcy Act is further strengthened, according to which bankruptcy may be initiated, *inter alia*, against a legal entity, unless otherwise prescribed by law. Therefore, the fact that bankruptcy has been initiated should be published in the Register of Co-ownership Communities. However, in the event of initiating bankruptcy proceedings initiated against the assets of the housing community, in accordance with the Associations Act, the aforementioned fact will have to be published (exclusively) in the court register (Article 437 of the Associations Act), which will result in certain legal facts related to the same legal entity being published in two registers.

Another important issue is the protection of personal data, specifically the issue of the public nature of the relevant registers.[28] The legal framework relevant to the subject area is primarily comprised by the provisions of the Constitution of the Republic of Croatia (Art. 36-39). The principle of publicity of land registries is one of the fundamental principles of Croatian land registry law.[29] The principle of publicity in a material sense implies that land registries, extracts, and copies from them carry public faith, meaning their content is complete and accurate, while the principle of publicity in a formal sense means that land registries are public because their content is accessible to all. Everyone may request access to the land register and all auxiliary lists, and obtain extracts and transcripts from it.[30] The court register is a public record containing authentic and up-to-date information and documents regarding registered entities, whose registration is prescribed by the laws governing the organization and operation of specific entities. The register is maintained by commercial courts.[31] The Public Procurement Act[32] stipulates that legal protection is also based on the principle of transparency (Article 4, Paragraph 1). As of 1 January 2018, pursuant to Article 7, Paragraph 1 of the Regulation on the Procurement Plan, Contract Register, Preliminary Consultation, and Market Analysis in Public Procurement[33], the procurement plan, the contract reg-

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27 Associations Act (Zakon o udrugama), Official Gazette Nos. 74/14, 70/17, 98/19, 151/22, hereinafter: Associations Act.

28 Josipović, T., Zajednička načela registarskog materijalnog prava, u: Dika, M., Ernst, H., Jelčić, O., Josipović, T., Lisičar, H., Marin, J., Marković, N., Matanovac, R., Rački Marinković, A., Radišić, N., Roić, M., (opća redakcija: Josipović, T.), Hrvatsko registarsko pravo - registri pravnih osoba, nekretnina, pokretnina i prava, Narodne novine, Zagreb., 2006., pp. 1- 28.

29 On the relationship between the principle of publicity of land registries and the right to the protection of personal dana see Dešić, J., Brajković, L., Komparativna rješenja odnosa publiciteta zemljišnih knjiga i zaštite osobnih podataka, Godišnjak Akademije pravnih znanosti Hrvatske, vol. 12, 1 (2021), pp. 327-344.

30 Article 7, paragraph 1 of the Land Registry Act (Zakon o zemljišnim knjigama), Official Gazette Nos. 63/19, 128/22, 155/23. i 127/24. See, Josipović, T., Zemljišnoknjižno pravo, Informator, Zagreb, 2001., pp. 131.

31 Article 2, paragraph 1, item 1(a) of the Court Register Act (Zakon o sudskom registru), Official Gazette Nos. 1/95, 57/96, 1/98, 30/99, 45/99, 54/05., 40/07, 91/10, 90/11, 148/13, 93/14, 110/15, 40/19, 34/22 i 123/23.

32 Official Gazette Nos. 120/16. i 114/22., hereinafter: ZJN.

33 Official Gazette Nos. 101/17, 144/20 i 30/23.

ister, and any subsequent amendments must be published in a standardized format in the Electronic Public Procurement Classifieds of the Republic of Croatia (EOJN RH) within eight days of their adoption or amendment. This requirement stems from the very notion of „public“ in the title of the institution of „public procurement“. The prescription and implementation of this principle allow the public to be informed about both the manner of work and the outcomes of the activities of the body conducting the legal protection procedure. This principle is upheld throughout all stages of the public procurement procedure, including the appeal stage, and as such, it should be particularly emphasized. In the legal protection procedure, it is implemented in such a way that each party, as well as the general public, can be informed about the appeal procedure and the decisions made in that process. One of the (newer) public registers is the Register of Expropriated Real Estate. It is established pursuant to Article 44, Paragraph 1 of the Act on Expropriation and Compensation Determination[34] and is regulated by the Ordinance on the Content and Method of Maintaining the Register of Expropriated Real Estate.[35] Therefore, in order to justify the need for making them public in accordance with the provisions, primarily Article 8 of the Convention[36] and the case law of the ECHR, the starting point was the fact that the information, data, or documents for which access is requested meet the public interest test. Moreover, such a need exists because the relevant information ensures the transparency of the conduct of public affairs and issues of public interest for society as a whole, enabling public participation in public administration. Given the multiple aspects of data protection under Article 8 of the Convention, a range of criteria must be considered to determine, in each specific case, whether access to data/information is significant for the exercise of an individual's right to personal data protection under Article 8 of the Convention, and whether the denial of access constitutes an infringement of that right. Therefore, for the transparency of the register to be justified, that is, for the national authorities to be allowed to make public and enable access to relevant data from the community of co-owners' register, the public nature of the community of co-owners' register must be „prescribed by law“, it must have one or more legitimate objectives mentioned in Article 8, Paragraph 2 of the Convention, and the element of publicity must be defined as „necessary in a democratic society“.[37] On the same note is the Charter of Fundamental Rights of the European Union.[38] The structure and text of the Charter differ from the

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34 Official Gazette Nos. 74/14, 69/17. i 98/19.

35 Official Gazette Nos. 17/16.

36 Article 8 of the Convention – Right to Respect for Private and Family Life
„1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

37 Omejec, J., Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava, Strasbourški *acquis*, Zagreb, Novi informator, 2013. and Beširević, V., et al., Studija o primjeni prakse Europskog suda za ljudska prava u upravnim sporovima, Regionalna škola za javnu upravu, ReSPA aktivnosti financira Evropska unija, 2018.

38 Official Journal of the European Union, C 202/389, available on the website: https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:12016P/TXT. In detail, Priručnik o europskom zakonodavstvu o zaštiti podataka, edition from 2018, The European Union Agency for Fundamental Rights and the Council of Europe, 2020., pp. 45. et seq.

structure and text of the European Convention on Human Rights. The Charter does not include the concept of interference with guaranteed rights, but it contains a provision on the limitations in the exercise of rights and freedoms recognized by the Charter. According to Article 52, Paragraph 1, limitations on the exercise of rights and freedoms recognized by the Charter, including the right to personal data protection, are only acceptable under the following conditions: they are prescribed by law, respect the essence of the right to data protection, are necessary in accordance with the principle of proportionality, and pursue objectives of general interest recognized by the Union or the need to protect the rights and freedoms of others.[39]

5. Experiences for the Bosnian-Herzegovinian legislator

The issue of housing is a relatively new subject in comparative research. In the European context, the prevailing national particularism in housing policy has begun to give way to ideas of harmonization in the past decade. Consequently, faced with similar legal and political challenges, the states have pursued different approaches in reforming housing regulations. In the preamble of its Constitution, Bosnia and Herzegovina has committed to the goals and principles of the United Nations Charter and to being guided by the Universal Declaration of Human Rights of 1948, which, among other things, proclaims the right to a standard of living that includes housing (Article 25, Paragraph 1). However, Bosnia and Herzegovina is a complex state with very limited competences, consisting of two entities and the Brčko District of Bosnia and Herzegovina. The Federation of Bosnia and Herzegovina is an entity consisting of ten cantons. In Bosnia and Herzegovina, there is no legal or institutional framework, either at the state or entity level, that would define issues related to housing policy in the broadest sense. Most issues in this area are regulated by various laws and subordinate legislation, the adoption of which is mainly within the competence of the entity in the Republic of Srpska, while in the Federation of Bosnia and Herzegovina, it falls under the joint competence of the entities and cantons.[40] Ownership of real property, as a fundamental concept of property law, together with the full range of rights it grants to the holder, is regulated in the Federation of Bosnia and Herzegovina by the Law on Property Relations of FBiH,[41] in the Republic of Srpska by the Law on Property Rights of RS,[42] and in the Brčko District of Bosnia and Herzegovina by the Law on Ownership and Other Property Rights of Brčko District of BiH.[43] Regarding property ownership issues, the key actors are notaries and municipal courts where land registers are maintained. However, what can be said is that there is no law that deals exclusively with housing relations, particularly with registries related to housing matters.[44]

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[39] Bodul, D., Treba li registar zajednice suvlasnika biti javan? Novi informator, 2024., broj 6850-6851, pp. 1-3.

[40] For more details about the distribution of competencies see Išerić, H., Raspodjela nadležnosti prema Ustavu BiH, Sveske za javno pravo, Sarajevo 28/2017, pp. 14 et seq.

[41] Official Gazette of FBiH, br. 66/13, 100/13 i 32/19 - decision of the Constitutional Court

[42] Official Gazette of RS, br. 12408, 3/09. - correction, 58/09, 95/11, 60/15, 18/16 - decision of the Constitutional court i 107/19.

[43] Official Gazette of Brčko District BiH, br. 11/01, 8/03, 40/04 i 19/07.

[44] Hebib, M., Ramić, L., Bilić, E., Lapo, I., Stambeno tržište u Bosni i Hercegovini s posebnim osvrtom na Sarajevo i Tuzlu, Centar za podršku organizacijama (CENZOR), Tuzla, 2020.

6. Instead of a conclusion

When it comes to the principle of publicity of various registers, in comparative practice there is no universally accepted standard regarding what should take precedence: the right (of the individual or the broader public) to information or the right to privacy protection. The legal tradition of a state, along with the specific social context and the current moment, will be the prevailing factors in determining the appropriate balance between the public's right to be informed and the individual's right to protect their privacy. The different approaches to this issue in various countries, as well as the differing practices within individual countries, indicate that it is not easy to establish pre-determined rules on transparency that will apply in every individual case. The ECHR, in its case law, has developed certain key criteria related to establishing a balance between the right to data protection and other fundamental rights. In this regard, any interference must have a legitimate aim of protecting individuals' privacy and must achieve a proportional balance of competing interests in the particular case, so that the right to privacy and the right to the public interest are fairly balanced.[45] The issue of identifying individuals included in the register is primarily presented as a conflict between different, yet equally protected, rights. Namely, through (partial or complete) anonymization of personal data, as is often emphasized, the individual's right to dignity, as well as the right to privacy and protection of personal data, is primarily safeguarded. On the other hand, ensuring access to complete information enables the exercise of the right to freedom of access to information. Furthermore, the public accessibility of registers contributes to the transparency and openness of institutions, ensures public oversight of the functioning of the system, and strengthens public trust in institutions. Taking into account the Corruption Perceptions Index, the public's right to know provides an additional justification for calling for the transparency of the relevant registers. Generally speaking, there is data that, in itself, does not trigger public interest, and thus there is no need for its disclosure. However, registers typically generate a large volume of data, the value and relevance of which differ from the public's perspective, particularly in the context of personal data protection and privacy rights. In recent times, however, a new trend has emerged, wherein the practice of extensive and automatic anonymisation of personal data within institutions is being reconsidered, in favour of the principle of transparency. Moreover, the principle of transparency is often cited as one of the main objectives, with leading authors emphasizing that the transparency of public registers primarily holds instrumental value. In other words, transparency is not an objective in itself, but rather a tool for achieving other goals. In conclusion, everything stated represents only a small part of the scope of political reality, which can only partially illustrate the complexity of the social decision-making process and provide a partial insight into the social relations that influence the formation and definition of the concept of public interest. The current Law in this domain seems constitutionally acceptable to us, assuming that transparency in the upcoming Regulation is not achieved merely through the publication of information, but that the information is accessible, reliable, relevant, complete, timely, and understandable. These can also be recommendations for the Bosnian and Herzegovinian legislator. However, it is necessary to be realistic

[45] ECHR, Satakunnan Markkinapörssi Oy i Satamedia Oy v. Finland, p. 198. V. i Von Hannover v. Germany (No. 2), Applications Nos. 40660/08 i 60641/08, judgment of 7 February 2012; *Magyar Helsinki Bizottság v. Hungary,* No. 18030/11, judgment of 8. November 2016.; *Couderc and Hachette Filipacchi Associés v. France,* Application No. 40454/07, judgment of 10 December 2015.

and acknowledge that, for now, defining the legal framework for housing in Bosnia and Herzegovina is a complex issue that requires a broad and cautious approach to provide adequate solutions. Therefore, the issue of registers is not currently a priority. The complexity of analyzing the relevant issues in Bosnia and Herzegovina is particularly emphasized when considering that the application of norms is defined by specific sociological and economic factors, as well as the complex state organization of Bosnia and Herzegovina.

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NOVI REGISTRI U HRVATSKOM REGISTARSKOM PRAVU: REGISTAR ZAJEDNICA SUVLASNIKA I REGISTAR UPRAVITELJA ZGRADA

Sažetak: *U hrvatskom pravnom sustavu uspostavljeno je nekoliko javnih registara. Glavni cilj njihove uspostave je sustavno prikupljanje relevantnih podataka i njihovo objavljivanje. Cilj ovog rada je analizirati nove registre uvedene Zakonom o upravljanju i održavanju zgrada, koji je stupio na snagu 1. siječnja 2025. U tom smislu, ovaj rad proučava osnovna načela materijalnog i procesnog registarskog prava te ih uspoređuje s onima drugih javnih registara u Republici Hrvatskoj. Posebno se fokusira na pitanja koja proizlaze iz prava na pristup informacijama (bilo za pojedince bilo za širu javnost) i prava na privatnost, s posebnim osvrtom na recentnu sudsku praksu europskih sudova. Cilj ovog rada je identificirati glavne argumente koji bi trebali biti uzeti u obzir pri zakonodavnom reguliranju ovog pitanja i tako doprinijeti tekućoj raspravi o zaštiti osobnih podataka u pravu registara. Analiza je metodološki zasnovana na usporedbi relevantnog zakonodavstva Bosne i Hercegovine sa zakonodavstvom Republike Hrvatske. Cilj ovog rada je ispitati koje se pouke mogu izvući iz hrvatskog iskustva i kako te pouke primijeniti u zakonodavstvu Bosne i Hercegovine s ciljem poboljšanja zakonodavstva o registrima (de lege ferenda). Također će se uzeti u obzir ograničavajući faktori, prvenstveno u vezi s državnom strukturom Bosne i Hercegovine.*

Ključne riječi: *javni registri, Registar zajednica suvlasnika, Registar upravitelja zgrada, Zakon o upravljanju i održavanju zgrada.*