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IS THE CROATIAN MODEL OF INDIVIDUAL CORRECTION PROCEDURE AN ADEQUATE FRAMEWORK FOR THE „REGULARIZATION“ OF LAND REGISTRY RECORDS IN BOSNIA AND HERZEGOVINA?

Summary: The 2019 Croatian Land Registry Act amended the definition of the individual correction procedure, establishing it as a special land registry procedure in which entries are corrected, conducted only when there is a justified reason. For purposes of comparison and possible *de lege ferenda* proposals for the legislator of Bosnia and Herzegovina, analysing the Croatian experience with this model is crucial. It indicates whether the potential implementation of a new special non-contentious land registry procedure would achieve its intended purpose and deliver the expected outcome: faster harmonisation of land registry records. The historical affiliation within the same state, along with shared legal traditions and standards in specific branches of law, provides a logical basis for using Croatian legislation as a reference. Furthermore, orienting towards an existing system with substantial practical experience is sensible, as it allows the use of case law and scholarly literature as supporting tools for resolving issues that arise in the application of the law. At the same time, limiting factors must not be overlooked, particularly those related to the constitutional structure of Bosnia and Herzegovina. Given the scope of the topic, this paper can address only certain aspects of the regulation of the special individual correction land registry procedure. The authors wish to emphasise, and it should be immediately apparent, the critical need for a *de lege lata* revision of the regulation of land registry proceedings within the Bosnian legal framework.

Keywords: individual correction procedure, land registers, non-contentious proceedings, service of process, reform of land registry procedure.

1. Framework for Discussion

Given the complexity and topicality of the issue addressed in this paper, and for the sake of precision and clarity, it is important to provide, from the outset, an explanation of the simplified individual correction land registry procedure.

In recent Croatian history, the Land Registry was governed by the Land Registry Act, which came into force on 1 January 1997.¹ This Act² has been amended nine times and supplemented, and has also been modified through other regulations³ and decisions of the Constitutional Court.⁴ The numerous amendments and supplements were among the reasons for enacting the new Land Registry Act.⁵ The Act recognises both the regular land registry procedure and special land registry procedures. The special land registry procedures are: establishment and renewal of land registers, supplementation of the land register, restoration of a land registry entry, individual correction procedure, individual formation, and the merging procedure. The Government of the Republic of Croatia cited the need to simplify the handling of the individual correction procedure (hereinafter: ICP) as one of the reasons for enacting the new Land Registry Act. The Government of the Republic of Croatia cited the need to simplify the handling of the individual correction procedure (hereinafter: ICP) as one of the reasons for enacting the new Land Registry Act. The new Act amended the definition of the individual correction procedure, stipulating that such a procedure constitutes a special land registry procedure in which entries are corrected and is conducted only where there is a justified reason. An individual correction procedure may be carried out in relation to one or more land title sheets. Existing case law is highly inconsistent regarding what constitutes a legitimate interest, and legal doctrine suggests that even the new Land Registry Act will not significantly contribute to harmonising case law on the determination of what constitutes a legitimate interest.⁶ The Land Registry Act states that a legitimate interest in conducting an individual correction procedure exists when a document makes it probable that a person holds a right not yet registered in their favour, and registering this right would require the correction of specific land registry entries, provided that such a right is, under the provisions of this Act, capable of being entered in the land register (Article 208(3) of the Land Registry Act). A person with a legal interest initiates an individual correction procedure by submitting an application. The application for the opening of an individual correction procedure must precisely specify the correction of the land registry entry is sought, which land registry registrations in that entry should be corrected, how and in whose favour the corrections should be made, and the facts on which the application is based (e.g., basis of acquisition, history of acquisition). A draft of the corrected land registry entry may also be submitted with the application. Along with the application, the parties must submit documents demonstrating the legitimacy of initiating an individual correction procedure, that is, documents supporting the merits of the application (e.g., documents on the transfer or establishment of

¹ Land Registry Act (Zakon o zemljišnim knjigama), Official Gazette (Narodne novine), No. 91/96.

² Land Registry Act (Zakon o zemljišnim knjigama), Official Gazette, Nos. 91/96, 68/98, 137/99, 73/00, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13, 108/17.

³ Article 12 of the Act on Amendments and Supplements to the Act on the Sale of Apartments with Tenancy Rights (Official Gazette No. 68/98 of 12 May 1998) repealed Article 225.

⁴ Decision of the Constitutional Court of the Republic of Croatia, No. U-I-58/97 (Official Gazette No. 137/99), by which part of Article 221, paragraph 1 of the Land Registry Act (1996) was repealed.

⁵ Official Gazette, Nos. 63/19, 128/22, 155/23 and 127/24 (hereinafter: ZZK).

⁶ MATUŠKO ANTONIĆ, Lj., Prikaz novog Zakona o zemljišnim knjigama (vođenje zemljišnih knjiga u elektroničkom obliku), Pravo i porezi, No. 7-8, 2019, p. 12 et seq.; BULKA, Z., Novi Zakon o zemljišnim knjigama, Pravosudna akademija, Zagreb, 2020, pp. 37-41.

registered rights in favour of the applicant that do not meet all the requirements for a valid land registry document, extracts from the land cadastre concerning the possessor of the property, publicly notarised statements by the land registry owner or their heirs confirming the applicant's right, etc.). If a party, through an application to initiate an individual correction procedure, proposes to amend the information in the possession sheet, the application must also include the registration form reviewed and certified by the authority competent for the cadastre; otherwise, the application will be dismissed and a record of the rejected application will be made. Once the competent land registry court has received the application to initiate an individual correction procedure, it shall issue a decision to open the procedure for the part of the land register to which the correction relates, and a record shall be made that the individual correction procedure has been opened. The recorded note shall be deleted *ex officio* at the same time as the deletion of applications and objections submitted in the procedure. Pursuant to Article 210, paragraph 4 of the Land Registry Act, the court shall issue a decision on the opening of the individual correction procedure within 30 days from the date of receipt of a duly submitted application. The decision on the opening of the individual correction procedure shall be published on the e-Notice Board, the court's notice board, the competent cadastral office, the local self-government unit, or by another appropriate means. Persons with a legitimate interest may exercise their rights in the correction procedure by submitting applications or objections within the period open for correction, or through litigation before the court or proceedings before another competent authority, after the individual correction procedure has concluded. Applications or objections may be submitted within 30 days from the date of publication of the notice on the e-Notice Board. Article 214 of the Land Registry Act regulates the court's procedure for applications and objections submitted in connection with an application for an individual correction procedure. The provisions of Article 196 of the Land Registry Act on the form and content of applications and objections, as well as the recording of applications and objections, shall apply. Under certain conditions, the court may issue a decision in the individual correction procedure without holding a correction hearing, for example, if no applications or objections have been submitted and the file and land register confirm the legitimacy of the application. Pursuant to Article 215 of the Land Registry Act, the court is required to issue a decision within 30 working days from the expiry of the last day for submitting applications and objections. If applications or objections have been submitted, or the court considers it necessary to hold a hearing, the correction hearing must be held within 60 days from the expiry of the last day for submitting applications and objections (Article 216 of the Land Registry Act).

2. Methodology and Subject of the Study

In the introductory section (point 1), the *de lege lata* model of the individual correction procedure in the land registry is presented, serving as the foundation for this study. The analysis proceeds from the premise that legal protection in the land registry is regulated independently by each state, and that such autonomy of member states (and future member states, in the case of Bosnia and Herzegovina regarding assumed

obligations) is limited by EU rules. After presenting the methodology of the study (point 2), the third section forms the main part of the work and provides an analysis of the unresolved issues in the individual correction procedure in the land registry. The analysis is structured to first review the key characteristics of the relevant legislative framework, then present all important aspects of the application of that legislation. The analysis is not an end in itself, but aims to offer realistic and feasible solutions for improving and enhancing existing practice. It is intended for all those who deal with land registry law in a serious and comprehensive manner. The purpose of this analysis is not to describe the course of this special non-contentious procedure by following the statutory provisions governing the proceedings. Instead, the analysis focuses on those provisions that imperatively define concepts and allow for improvement, but primarily on those that are not fully aligned with sources of European law. The final section presents general conclusions and recommendations, which complete the comprehensiveness of this analysis. Due to the scope of the topic, the study can only address certain issues and provide an overview of questions regarding the possibilities of implementing the model under consideration into the legislation of Bosnia and Herzegovina.

3. Analysis of open issues in the individual correction procedure (ICP)

The aim is to clarify legal institutions that have developed through long-standing practice and, by examining their interrelationship, to gain insight into the legal-logical mechanism of decision-making by the ECHR, as well as to assess whether certain procedural elements of the individual correction procedure (ICP) constitute or contain constitutionally or conventionally questionable solutions.

3.1. On service of the decision regarding the opening of the ICP

The land registry court acts in accordance with the provisions of the Land Registry Act and the rules governing non-contentious proceedings⁷, and, subsidiarily, the rules of civil procedure (Article 99 of the Land Registry Act). The decision to open an individual correction procedure shall be served on the applicant, on persons whose registration clearly indicates that service would be possible, and on persons who have requested entries in the land register after the recording of the opening of the individual correction procedure, solely for notification purposes; improper service shall not prevent continuation of the proceedings (Article 212 of the Land Registry Act). This provision on the service of the decision to open the individual correction procedure is consistent with the Land Registry Rules regarding the service of such decisions.⁸

Article 112(3) of the Land Registry Rules states that the decision to open an individual correction procedure shall be served solely to improve notification. This decision also includes a notice to be published on the e-Notice Board, the court's notice

⁷ On 24 May 2023, the Law on Non-Contentious Proceedings (Zakon o izvanparničnom postupku) was adopted (Official Gazette, no. 59/23), hereinafter referred to as the ZIP.

⁸ Rules on Internal Organisation, Maintenance of Land Registers, and the Performance of Other Tasks in Court Land Registry Departments (Land Registry Rules) (Pravilnik o unutarnjem ustroju, vođenju zemljišnih knjiga i obavljanju drugih poslova u zemljišnoknjižnim odjelima sudova), Official Gazette, nos. 81/97, 109/02, 123/02, 153/02, 14/05, 60/10, 55/13, 60/13, 63/19, 128/22, and 127/24.

board, the competent cadastral office, the local self-government unit, or by another appropriate means (Article 211(3) of the Land Registry Act). Based on the general positions of the Constitutional Court and the European Court of Human Rights (ECHR), when analysing whether the rules on service infringe the right to a fair trial, certain questions must be considered.⁹

3.1.1. Is such service grounded in law?

This phrase, *inter alia*, implies the quality of the norm, which must comply with the rule of law, meaning that the terms used must be precise, and their interpretation and application by domestic courts must not be manifestly unreasonable and, consequently, unpredictable. At the empirical level, doctrine and case law indicate that the provisions of the Land Registry Rules stipulating that service is to be effected solely for the purpose of notification have often not been applied; instead, case law has insisted on formal service and has frequently applied the provisions of the Civil Procedure Act¹⁰ concerning strict personal service. It is argued that service under the provisions of the Civil Procedure Act is considerably stricter and more complex than service under the provisions of the Land Registry Act, with the view that the Civil Procedure Act applies only subsidiarily, that is, only where the matter is not regulated by the Land Registry Act. Accordingly, the prevailing position in case law is that the Land Registry Act contains its own provisions on service and that there has been no basis for applying the provisions of the Civil Procedure Act on service, either in regular or special land registry proceedings.¹¹ Nevertheless, the question remains whether, *de lege lata*, the provision on service in the Land Registry Act is sufficiently clear and foreseeable. The European Court of Human Rights considers that a norm cannot be regarded as “law” unless it is formulated with sufficient precision to enable individuals to regulate their conduct, and that individuals must be able, if necessary and with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.¹² Thus, if courts change their approach or lack a consistent position on how to serve a decision on the initiation of an individual correction procedure, how can such clarity be expected from ordinary citizens rather than legal professionals? In this regard, the Constitutional Court of the Republic of Croatia (hereinafter: USUD), when considering the quality of legal norms in light of the rule of law,¹³ has indicated that “...the requirements of legal certainty and the rule of law under

⁹ See also the judgment *Zavodnik v. Slovenia* (ECHR, no. 53723/13, 21 May 2015), which addresses the issue of what measures a state must take in certain situations to ensure that parties in insolvency proceedings are afforded a “fair opportunity” to participate in hearings.

¹⁰ *Zakon o parničnom postupku*, Official Gazette, No. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 28/13 i 89/14 i 70/19, 80/22, 114/22, 155/23, 146/25., hereinafter: ZPP.

¹¹ BULKA, Z., *op. cit.*, 37. et seq.; BULKA, Z., PUTRIĆ, L., *Pojedinačni zemljišnoknjižni ispravni postupci, tužbe za ispravak upisa u zemljišne knjige i parnični postupci radi utvrđenja prava vlasništva (međusobni odnos navedenih postupaka i razlike) te brisovne tužbe*, Pravosudna akademija, Zagreb, 2023., p. 12. et seq. For earlier solutions, see KONTREC, D., PERKUŠIĆ, A., *Zemljišnoknjižno pravo*, Pravosudna akademija, Zagreb, 2016., p. 45.

¹² *Perinçek v. Switzerland* [GC], para. 131.

¹³ As expressed, for example, in the decision and ruling of the Constitutional Court of the Republic of Croatia, No. U-I-722/2009 of 6 April 2011 (Official Gazette, No. 44/11).

Article 3 of the Constitution demand that a legal norm be accessible to its addressees and foreseeable for them (especially for judges - added by the authors), that is, such that they can actually and concretely know their rights and obligations in order to act accordingly.¹⁴

3.1.2. Has such service achieved a legitimate aim?

In examining the reasons for adopting the provision in question, the analysis begins with the Proposal for the Land Registry Act of 16 May 2019 (No. 603), submitted by the Government of the Republic of Croatia to the Croatian Parliament,¹⁵ in particular point 2, “Key issues to be regulated by the Act.” However, no relevant explanation is provided therein. Thus, no position is set out to support the view in case law that the rules on the service of decisions on the opening of an individual correction procedure via the e-Notice Board¹⁶ and by ordinary service serve the objective of ensuring that land registry proceedings are conducted in a swift and efficient manner, nor that the reason for departing from personal service lies in the fact that such proceedings may involve a large number of parties, so that personal service of court decisions could significantly increase the costs of the proceedings and, moreover, impede their course if unsuccessful. Therefore, although Article 6(1) of the Convention cannot be interpreted as conferring a right to a specific method of service of judicial documents, such as service by registered mail and/or personal service, in the interests of the proper functioning of the judicial system, the European Court of Human Rights takes the view that a party must be notified of a hearing in such a way that they are not only informed of its date, time, and place, but are also afforded sufficient time to prepare their arguments and to attend the hearing.¹⁷ Furthermore, in this case, it is also questionable that, by providing that documents in the proceedings are published on the e-Notice Board (Article 211(3) of the Land Registry Act), that is, by not effecting personal service on a party of an act deciding on their rights, obligations, or legally protected interests, the party is objectively unable to become acquainted with the content of the act. This raises concerns regarding the exercise of the right to a fair trial, the right to equal protection of rights, and the right to an effective remedy, as guaranteed by Article 29(1) of the Constitution and Article 6(1) of the Convention. Indeed, such a party may be completely prevented from exercising that right, which thus becomes illusory and unattainable for them.

¹⁴ The requirement that a legal norm must be clear and precise is considered an integral part of the principle of the rule of law in all areas of law, as its neglect would undermine other components of the principle of legal certainty, which forms part of the rule of law – particularly the requirements for the uniform application of law and respect for the effects of final judgments and other decisions of state and public authorities (as held by the Constitutional Court of the Republic of Croatia in decision No. U-I-722/2009 of 6 April 2011, Official Gazette (Narodne novine), No. 44/11).

¹⁵ Available on the website: https://www.sabor.hr/sites/default/files/uploads/sabor/2019-05-16/153604/PZ_603.pdf (12.02.2025.).

¹⁶ Within the framework of Article 6 of the Convention, the right to the internet has received only modest elaboration. Although the ECHR has not defined e-justice – since it is essentially a “qualification or legal representation” that is continuously developing through its case law – it remains subject to the rules on access to court and the right to a fair trial under Article 6 of the Convention.

¹⁷ Vyacheslav Korchagin v. Russia, para. 65.

3.1.3. Has such service achieved a fair balance between its limited scope and the objective pursued by that limitation?

In order for statutory provisions governing the legal position of parties, and of their representatives, in court proceedings to meet the requirements set out in Article 29 of the Constitution and Article 6 of the Convention, the legal position of parties and their representatives must be equal. In other words, courts must ensure equality of parties in their ability to exercise procedural rights (equality of arms, equality of resources). The principle of equality of resources, understood as a fair balance between the parties, constitutes one of the essential elements of the right to a fair trial. In this regard, the Constitutional Court states that the principle of equality of arms, in terms of balance between the parties, includes a reasonable opportunity for both parties to present facts and support them with their evidence under conditions that do not place either party at a substantial disadvantage compared to the opposing party.¹⁸ The European Court of Human Rights (ECHR) adopted the same position in the case of *Perić v. Croatia* (judgment of 27 March 2008, application no. 34499/06, §§ 24 and 25). The disproportionality is demonstrated by the fact that the existing method of service prevented the parties from actively and effectively participating in the hearing and from lodging an objection within the prescribed time limit, thereby restricting their right of access to a court. The ECHR first emphasized that Article 6(1) of the Convention does not prescribe a specific form of service of documents. However, the general principle of a fair trial includes the fundamental requirement that proceedings should be “adversarial,” meaning that all parties in civil proceedings must be given the opportunity to be informed of and to comment on the submissions and evidence presented by the opposing party, all with the aim of influencing the court’s fair decision.

If court documents, including summons to hearings, are not served personally, a party may be prevented from adequately defending itself in the proceedings. Moreover, the right of access to a court implies the right to receive proper notification of court decisions, particularly in cases where an appeal may be lodged within a legally prescribed time limit. Given that the 30-day time limit, calculated from the date of publication of the notice on the e-Notice Board, for filing an objection against the decision on the opening of individual correction procedure is of a preclusive nature (upon its expiry, the party loses the possibility to exercise a particular right), it is all the more important to strike a balance between the legitimate interest of the state in ensuring that the specific proceedings are concluded swiftly, efficiently, and effectively, on the one hand, and the individual’s right to be kept informed at all times about the progress of proceedings to which they are a party, on the other hand. This disproportion is also contributed to by the fact that a party, if duly notified, may submit its objection exclusively by electronic means,¹⁹ through notaries public and attorneys as mandatory users of electronic communication. Therefore, without entering into the question of whether such a restriction constitutes a violation of the right of access to a court, it

¹⁸ Decision of the Constitutional Court of Croatia, no. U-III-4536/2012 of 14 January 2016, Official Gazette, no. 13/2016.

¹⁹ A characteristic problem of domestic courts is the restrictive interpretation of statutory preclusive time limits.

represents a significant factor contributing to the disproportionality, since it is always assessed whether the proceedings, considered as a whole, were conducted in a manner that ensures a fair trial for the parties.

3.2. Bearing the costs of the individual correction procedure

In land register proceedings, each party bears its own costs (Article 99(3) of the Land Register Act). The said provision was introduced into the Land Register Act by Article 8 of the Act on Amendments to the Land Register Act, published in Narodne novine, No. 55/13. This position is also reflected in the case law. Thus, „... pursuant to Article 365(1) in conjunction with Article 381 of the Civil Procedure Act (Narodne novine, Nos. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07 – Constitutional Court decision; 84/08, 96/08 – Constitutional Court decisions, 123/08 – corrigendum, 57/11, 148/11 – consolidated text; 25/13 and 89/14 – Constitutional Court decision; hereinafter: CPA), the second-in-stance court examines the first-instance judgment (in the present case, a decision) within the scope in which it is challenged by the appeal. Pursuant to Article 374 of the CPA, the second-in-stance court may not alter the judgment to the detriment of the party who has appealed if only that party has lodged the appeal (this provision establishes the prohibition of *reformatio in peius*). Pursuant to Article 91(1) of the Land Register Act (Narodne novine, Nos. 91/96; 68/98; 137/99; 114/01; 100/04; 107/07; 152/08; 126/10 – Constitutional Court decision; 55/13 and 60/13 – corrigendum; hereinafter: LRA), the land register court conducts proceedings in accordance with the rules of non-contentious procedure, and subsidiarily the rules of civil procedure, unless otherwise provided by law. According to the explicit provision of Article 91(2) of the LRA, in land register proceedings each party bears its own costs. Consequently, the provisions of the Civil Procedure Act governing costs do not apply in land register proceedings, including Article 154(1) of that Act, as erroneously assumed by the first-instance court. Therefore, the land register court unjustifiably ordered the applicant to reimburse the opposing party for the costs of filing an objection in the amount of HRK 1,031.25, since, with the correct application of substantive law, it should have been decided that each party bears its own costs in these (land register) proceedings. In this context, the opposing party's claims that, in addition to the awarded costs, the land register court should have awarded further costs based on the value of the disputed property, amounting, according to the opposing party, to HRK 18,889,318.93, are irrelevant. Since this court, despite the incorrect application of substantive law, cannot amend the decision to the detriment of the opposing party because only that party filed an appeal, the appeal of the opposing party was, pursuant to Article 128(3) of the LRA, dismissed as unfounded, and the first-instance decision was upheld in point III of the operative part.“²⁰

See also ... „In explaining its position, the first-instance court, relying on the provisions of Article 158(1) of the Civil Procedure Act (hereinafter: CPA – Narodne novine Nos. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, and 70/19), which provides that a plaintiff who withdraws the lawsuit is obliged to reimburse the defendant for the costs incurred in the proceedings, by referring to the provisions of the Tariff on Fees and Reimbursement of Lawyers' Costs (hereinafter: Tariff) obliged the applicant to reimburse the opposing party for

²⁰ County Court in Varaždin, Ref. No.: GŽ-1063/15-2, 21 July 2015.

representation costs through their attorney, specifically: for the preparation of the objection, the fee under Item 19/4 of the Tariff, for representation at the on-site inspection, the fee under Item 19/1 in conjunction with Item 19/2 of the Tariff, all with the addition of reimbursement pursuant to Item 42 of the Tariff.

By a timely appeal filed on the grounds of incorrect application of substantive law, the applicant challenges the contested decision, asserting that the opposing party is not entitled to costs, as in land register proceedings each party bears its own costs. The applicant's appeal is well-founded, given that Article 99(1) of the Land Register Act (hereinafter: LRA – Narodne novine No. 63/19) provides that the land register court shall act in accordance with the rules of that Act, and unless otherwise provided by the LRA, shall follow the rules of non-contentious proceedings, and subsidiarily those of civil proceedings (paragraph 2). Paragraph 3 of the cited provision explicitly stipulates that in land register proceedings each party bears its own costs. In view of the clear provision of Article 99(3) LRA, the first-instance court unjustifiably awarded the opposing party the costs of the proceedings. Therefore, by upholding the applicant's appeal, and referring to Article 380(3) of the Civil Procedure Act (hereinafter: CPA – Narodne novine Nos. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 89/14, and 70/19) in conjunction with Article 99(2) LRA, the contested decision should have been amended and the opposing party dismissed from the request for reimbursement of the costs of the proceedings in question.²¹

3.2.1. Formulation of the Problem

The right of access to a court is not absolute. Any restrictions applied must pursue a legitimate aim, and there must be a reasonable proportionality between the means employed and the objective sought to be achieved.²² With this in mind, the European Court of Human Rights (ECHR) has repeatedly held that a requirement to pay costs when requesting a court to decide on a civil right is not per se incompatible with Article 6(1) of the Convention. However, the amount of such costs, including the party's ability to pay them, as well as the stage of the proceedings at which such a restriction on access to a court is imposed, are factors that must be taken into account when determining whether a person has indeed had effective access to a court.²³

The principle underlying the “loser pays” rule and the related rule on reimbursement of costs is to prevent unjustified litigation and unreasonably high litigation costs by deterring potential plaintiffs from initiating unfounded claims or submitting excessively high claims without bearing the consequences. The European Court of Human Rights (ECHR) therefore considers that these rules, by discouraging unfounded lawsuits and exaggerated costs, generally pursue the legitimate aim of ensuring the proper functioning of the judicial system and protecting the rights of others.

Thus, the question arises whether the rule that each party in land register proceedings bears its own costs, regardless of the outcome of the proceedings, constitutes a disproportionate burden for a party, given that the costs are often not insignificant (particularly considering that access to the court must be carried out electronically

²¹ County Court in Varaždin, Ref. No.: 10 Gž Zk-992/2021-2, 28 December 2021.

²² See, among others, ECHR, *Tinnelly & Sons Ltd. and Others and McElduff and Others v. the United Kingdom*, 1998.

²³ ECHR, *Kreuz v. Poland* (2001), paras. 59 and 60.

through an attorney or notary public, which forms a mandatory part of the costs). Accordingly, it is entirely legitimate, and, from a practical perspective, generally justified and useful, to analyse the case law of the European Court of Human Rights (ECHR) in proceedings under Article 1 of Protocol No. 1 to the Convention (*the right to the peaceful enjoyment of possessions, or right to the protection of property*).

3.2.1.1. *Autonomous concept of property*

The first thing to keep in mind when considering Protocol No. 1, Article 1 (P1-1) is that the concept of property or ownership is interpreted very broadly. It encompasses a wide range of economic interests.²⁴ For the application of P1-1, it is essential to understand the autonomous meaning of the concept of ownership as developed in the case law of the European Court of Human Rights (ECHR). The concepts of ownership in the national legal systems of the Contracting States do not have to be identical to the meaning of the term in Convention law: the concept of ownership is autonomous for the purpose of achieving the objectives of the European Convention.

3.2.1.2. *Legitimate expectations*

The autonomous meaning of the concept of property has, in the practice of the European Court of Human Rights (ECHR), led to the extension of the protection under P1-1 to legitimate expectations. In the case of *Kopeccky v. Slovakia*,²⁵ the ECHR elaborated in detail on the concept of legitimate expectations and established that it should be considered from two aspects. First, in the case of *Pine Valley Developments Ltd. and Others v. Ireland*,²⁶ the ECHR held that P1-1 may protect a legitimate expectation that certain conditions will be applied.

The second aspect of the concept of legitimate expectations was developed by the ECHR in the case of *Pressos Compania Naviera S.A. and Others v. Belgium*.²⁷ The ECHR did not explicitly state that a legitimate expectation forms part of the right of property or is attached to it. However, the ECHR emphasized that a legitimate expectation cannot arise if there is no claim under P1-1. Accordingly, the legitimate expectation established in this case was not, by itself, constitutive of a property interest, but rather related to the manner in which the applicant's (compensation) claim, which the ECHR classified as a "claim," is treated under domestic Belgian law, and in particular to the reliance on the fact that established case law of the Belgian courts would be applied, including to damage that had already been suffered by the applicants.

3.2.1.3. *Interference with the right of property*

"P1-1 contains three distinct rules established by the ECHR in the case of *Sporrong and Lönnroth v. Sweden*.²⁸ „ ... *The first rule, of a general nature, expresses the principle of the peaceful enjoyment of possessions, as set out in the first sentence of the first para-*

²⁴ CARSS-FRISK, M., *The right to property, A guide to the implementation of Article 1 of Protocol No. 1 to the European Convention on Human Rights*, Handbook No. 4, Council of Europe, Strasbourg, pp. 6-7.

²⁵ ECHR, *Kopeccky v. Slovakia*, judgment, 28 September 2004, no. 44912/98.

²⁶ ECHR, *Pine Valley Developments Ltd. and Others v. Ireland*, judgment, 29 November 1991, no. 12742/87.

²⁷ ECHR, *Pressos Compania Naviera S.A. and Others v. Belgium*, judgment of 20 November 1995, no. 17849/91.

²⁸ ECHR, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Nos. 7151/75, 7152/75.

graph. The second rule covers the deprivation of property and its subjecting to certain conditions, which appears in the second sentence of the same paragraph. The third rule acknowledges that states have the right to control the use of property in accordance with the public interest and the law, as stated in the second paragraph.“

3.2.1.4. Rule of law and legality

When the Convention requires that the deprivation of property may exist only under conditions provided by law, which includes the question of whether the procedure prescribed by law has been respected, it essentially refers to domestic law and imposes an obligation that the deprivation of property complies with its substantive and procedural rules.²⁹ However, the phrase “under the conditions provided by law” is not limited solely to the requirement that the domestic law on which the deprivation of property is based exists as such.

3.2.1.5. Public interest

Interference with property can be justified only if it is carried out for a legitimate aim in the public or general interest.³⁰ The ECHR considers that, due to their direct knowledge of their society and its needs, national authorities are, in principle, in a better position than an international judge to assess what is in the public interest. Therefore, national authorities enjoy a certain degree of discretion in this regard, and the concept of public interest is necessarily broad.³¹

3.2.1.6. Proportionality

A violation of P1-1 occurs when, due to a disturbed balance between the public or general interests of the community and the individual property rights or interests, the applicant has suffered or continues to suffer an individual and excessive burden, or an excessive individual burden.³² Or conversely, when the balance is disturbed by imposing an excessive individual burden on a person. Therefore, the ECHR must determine whether a fair balance has been struck between the requirements of the general interest of a community and the demands for the protection of an individual's fundamental rights.³³

3.3. Access to court

For all proceedings, the Land Registry Act (ZZK) provides that an application for registration shall be submitted electronically, through a notary public or an attorney-at-law, as authorised users of the information system communicating with the court via

²⁹ See, ECHR, *Vrbica v. Croatia*, judgment, 1 April 2010, no. 32540/05; *Iatridis v. Greece*, judgment (GC), 25 March 1999, no. 31107/96.

³⁰ For an explanation of these concepts, see the ECHR judgment, *James and Others v. the UK*, 21 February 1986, paras. 39 to 45.

³¹ ECHR, *Former King of Greece and Others v. Greece*, judgment, 23 November 2000, no. 25701/94; *Scordino v. Italy*, judgment, 6 March 2007, no. 36813/98.

³² See, ECHR, *Sporrong and Lönnroth v. Sweden*, judgment, 23 September 1982, nos. 7151/75, 7152/75; *Immobiliare Saffi v. Italy*, judgment, 28 July 1999, no. 22774/93; *Brumarescu v. Romania*, judgment, 28 October 1999, no. 28342/95.

³³ OMEJEC, J., *Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava, strasbourgški acquis*, Zagreb, Novi informator, 2013., pp. 995-1000.

the ZIS (Article 105(1) Land Registry Act).³⁴ Proceeding from the established principles of the Constitutional Court (USUD) and the ECHR, in analysing whether the provision in question has violated the right to a fair trial, it is necessary to answer certain questions.

3.3.1. Is the submission of an application solely through an attorney-at-law or a notary public based on law?

By the phrase “based on law”, the quality of the norm is also implied, which must comply with the rule of law. This means that the terms used must be precise, and their interpretation and application by domestic courts must not be manifestly unreasonable, and thus unpredictable. The ECHR considers that a norm cannot be regarded as “law” unless it is formulated with sufficient precision to enable individuals to regulate their conduct; furthermore, individuals must be able, if necessary with appropriate advice, to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail.³⁵

In the provision in question, in 2019 a doubt arose as to whether it referred to attorneys (authorised representatives) within the meaning of general regulations³⁶ or to another category of representatives. In this regard, the Constitutional Court (USUD), when addressing the quality of legal norms in the light of the rule of law,³⁷ has indicated that “...the requirements of legal certainty and the rule of law under Article 3 of the Constitution require that a legal norm is accessible to its addressees and foreseeable for them (especially for judges - added by the authors), that is, such that they can actually and concretely know their rights and obligations in order to act in accordance with them.”³⁸

The original position of the case law was that the submission of an application electronically by a notary public does not constitute representation of the party, but only the filing of the application. This means that the notary public is not required to check the content of the documents, or whether they meet the prerequisites for registration. The foundation for this position was found in the Notaries Act, Article 4.³⁹ This was further clarified in the 2022 Amendment to the Land Registry Act (Narodne

³⁴ The Minister of Justice adopted the Regulation on Electronic Proceedings of Users and Authorised Users of the Land Registry System (Official Gazette, nos. 108/19 and 128/22 – hereinafter: the Regulation), which regulates the technical requirements, conditions of use, and costs of electronic operations in the land registers by users of the information system in the court’s operations..

³⁵ ECHR, *Perinçek v. Switzerland* [GC], para. 131.

³⁶ This refers to authorised representatives under the Civil Procedure Act (CPA) or representatives under the Obligations Act, Official Gazette, nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22, and 155/23.

³⁷ Expressed, for example, in the Decision and Ruling of the Constitutional Court (USUD), no. U-I-722/2009 of 6 April 2011, Official Gazette, no. 44/11.

³⁸ The requirement that a legal norm must be clear and precise is considered an integral part of the principle of the rule of law across all branches of law, as its neglect would undermine other components of the principle of legal certainty, which is part of the rule of law, in particular the requirements for the uniform application of the law and the respect for the effects of final judgments and other decisions of state and public authorities (position of the Constitutional Court (USUD) in Decision no. U-I-722/2009 of 6 April 2011, Official Gazette, no. 44/11.

³⁹ Notaries Act (*Zakon o javnom bilježništvu*), Official Gazette, nos. 78/93, 29/94, 162/98, 16/07, 75/09, 120/16, 57/22, hereinafter: NA.

novine, no. 128/22), which stated that the notary public or attorney through whom the application was submitted is not the party's authorised representative, unless they meet the conditions for an authorised representative in accordance with special regulations. In the latest 2024 Amendment, this was changed again, precisising the provision on the obligation to submit applications and filings through a notary public, according to which the notary public, at the request of the party, must electronically submit all filings to the competent land registry department, regardless of whether it concerns an application for registration, an objection, an appeal, a supplementation of the application, or any other filing.

Thus, a notary public through whom a party submits an application for registration or any filing cannot refuse to submit the application or filing, except where the document forming the basis for the registration has obvious defects that call its authenticity into question (Article 9 ZIDZZK/24). Attorneys may submit applications even if they are not the party's authorised representatives when they did not draft the application themselves, but they may also submit it as the party's authorised representatives. It should be noted that the Rules do not contain a provision obliging the authorised user, i.e., the notary public or attorney, to verify the relevant facts or to request that the party supplement the application with any missing documents.

3.3.2. Does the fact that the application is submitted solely through an attorney or a notary public achieve a legitimate aim?

Article 6 of the Convention does not provide a definition of “legitimate aim,” but ECHR case law offers examples of legitimate aims. An analysis of the case law indicates that examining the legitimacy of the purpose of a prescribed legal measure involves assessing the objectives for which the measure was necessary, particularly if it constitutes interference by the State with already recognized rights, and what it was intended to achieve. Considering the reasons the legislator had when enacting the provision in question, we started from the Draft Land Registry Act of 16 May 2019 (P.Z. no. 603) submitted by the Government of the Republic of Croatia to the Croatian Parliament,⁴⁰ specifically from the explanation of Article 105: “This provision regulates the methods for submitting applications for registration in the land register and allows the Minister responsible for justice to prescribe the forms on which applications may be submitted. It also states that notaries public, attorneys-at-law, and the competent State Attorney's Office, as authorised users of the court's information system, must submit applications electronically in the manner prescribed by a subordinate act.” Notaries public are required, when certifying signatures, drafting documents, or solemnising acts, to inform the party of the possibility of submitting an application and, with the party's consent, to forward it to the land registry court. However, nothing specific is stated here to justify this arrangement; it is merely a paraphrase of the article. In the non-normative section, which examines the legitimacy of the objectives, there is a part titled “Assessment of the situation and the main issues to be regulated by the Act, as well as the consequences that will arise from the adoption of the Act.”

⁴⁰ Accessible online on the website of the Croatian Parliament: https://www.sabor.hr/sites/default/files/uploads/sabor/2019-05-16/153604/PZ_603.pdf. (11.02.2025.).

It only states that “a gradual transition to fully electronic proceedings in the land registers, i.e., to an electronic file, is being achieved.” It does not, for example, mention the position, supported by part of the professional community, that requiring applications to be submitted exclusively through an attorney or notary public does not restrict the parties in protecting their rights. Rather, by requiring professional representation, due to the complexity of the proceedings, the importance of the dispute, and the efficiency of adjudication, the rights of the parties – which require expert legal knowledge and experience to protect – are safeguarded, thereby enabling decisions on the rights and obligations of the parties to be made effectively and within a reasonable time.

Furthermore, it is not specified, for example, what is advocated in certain professional circles – namely, that the purpose of the measure in question is to ensure the dignity of the proceedings and the court itself, as well as the fair, lawful, and effective protection of the parties’ rights and the cost-efficiency of the proceedings. In other words, it does not explain why the concept of parties’ postulation capacity and voluntary representation in civil proceedings was abandoned, nor why the principle of optional dual representation of a party and the recognition of postulation capacity for civilly capable parties was not retained. This is particularly important because, in the present case, it does not concern so-called complex proceedings, such as when submitting an appeal for review to the Supreme Court, where the 2019 Amendment to the Civil Procedure Act included an explanation by the legislator.

Given the seriousness and complexity of an appeal for review as an extraordinary legal remedy, the Civil Procedure Act (CPA) provides that a party may submit such a review only through an authorised representative who is either an attorney or a person who has passed the judicial exam. This was also confirmed by the Constitutional Court (USUD), which followed the legal position of the ECHR, noting that submitting a review requires a higher level of expertise and competence than is needed for ordinary legal remedies. The reason in favour is to ensure greater effectiveness and efficiency in access to the highest judicial instance in the state, whose unified task is to secure the uniform application of the law and equality of all citizens in its application.⁴¹ Moreover, the fact that these are not complex cases is evident from Article 13 of the Act on Free Legal Aid,⁴² where land registry proceedings are not categorised among the so-called “more complex proceedings”.

In conclusion, the question is whether a so-called “legitimacy of purpose” exists in situations where an application is submitted solely through an attorney or a notary public. If a legitimate aim is not established, case law indicates that the ECHR and the Constitutional Court (USUD) terminate further examination and immediately find the contested legal measure incompatible with the Constitution. Methodologically, to determine whether the aim of the proposed or already undertaken measure is legitimate, as is customary in doctrinal analyses, we relied on available facts, available documentation, relevant legal acts, and the provision in question was considered in light of real-life circumstances, within a realistic context, always guided by the fundamental principles of the constitutional order and the arguments of sound reason. However,

⁴¹ PELCL, H., Dopusštenost izvanredne revizije u građanskom parničnom postupku Republike Hrvatske, Anali Pravnog fakulteta Univerziteta u Zenici, 17, 2016., vol. 9, p. 203. et seq.

⁴² Narodne novine, no. 143/13. i 98/19., furthermore: ZBPP.

even if we start from the premise that the aim is legitimate, this in itself does not justify any measure applied to achieve it; rather, it is up to the legislator to achieve a fair balance and a reasonable proportional link between the type or scope of legislative measures undertaken and the objectives sought in the public interest. A proportional link can be established only if the measures taken are no more restrictive than necessary to ensure the realization of the legitimate goal (which, in the authors' opinion, is doubtful).⁴³

3.3.3. Was the restriction proportionate to the pursued legitimate goal?

Proportionality is a key principle in ECHR case law. It requires a fair balance between the State's legitimate aims and the measures it adopts to achieve those aims. Proportionality also demands a fair balance between the rights of the individual and the public interest. The greater the interference with an individual right, the stronger the justification must be. This raises the question: are the provisions in question disproportionately restrictive for parties initiating land registry proceedings? In other words, has the legislator achieved a fair balance and a reasonable proportional relationship, ensuring that the measures taken are no more restrictive than necessary to achieve the legitimate aim?⁴⁴

To justify the thesis that these provisions are disproportionately restrictive and burdensome for the parties, we will examine whether the proceedings, considered as a whole, were conducted in a manner that ensures a fair trial for the parties. Thus, requiring the submission of an application by an attorney or a notary public – professionals whose occupation is to provide legal assistance – rather than by someone else, inherently imposes a financial burden on the party and places the State in an active role to ensure accessible legal proceedings for determining rights and obligations governed by law. When answering the question of whether the State has ensured effective access to the courts, we must take into account the constitutional and Convention-based right to free legal aid as a specific form of legal assistance, which under Article 6 of the Convention entails concrete obligations for the State to ensure the conditions for the enjoyment and protection of this right.

Currently, Article 13 of the ZBPP does not allow free secondary legal aid in land registry cases, because the legislator deems that these are not so-called complex cases. Thus, the inability to exercise the right to free secondary legal aid calls into question the right of access to the courts for a broad group of vulnerable persons, since the State has not provided for secondary legal aid by law and has not specified the situations in which secondary legal aid must be granted in land registry cases, such as for indigent parties, persons with disabilities, and elderly or uneducated persons. As a result, these persons may be left without effective protection of their property and other rights, since they may be denied assistance in drafting and submitting documents and participating in court proceedings, particularly as they are not granted the right to free representation.

⁴³ Constitutional Court of the Republic of Croatia (USUD), rulings Nos. U-I-2938/2011, U-I-1747/2012, U-I-3883/2013, U-I-5087/2013, U-I-3128/2014, U-I-5224/2014, and U-I-437/2015 of 23 April 2018. Examples in which the Constitutional Court assessed the legitimacy of the objectives of contested laws include: USUD ruling No. U-I-662/2011 of 10 July 2018, paras. 15, 16.2, and 16.3; USUD ruling Nos. U-I-3685/2015 et al. of 4 July 2017 (Official Gazette, No. 39/17), para. 28.1; USUD ruling Nos. U-I-381/2014 et al. of 12 June 2014 (Official Gazette, No. 86/14), paras. 2, 3, and 4.

⁴⁴ Constitutional Court of the Republic of Croatia (USUD), rulings Nos. U-I-2938/2011, U-I-1747/2012, U-I-3883/2013, U-I-5087/2013, U-I-3128/2014, U-I-5224/2014, and U-I-437/2015 of 23 April 2018.

Bearing this in mind, we may also ask whether the legal solution in this case is disproportionate, as it constitutes a form of indirect discrimination against citizens based on their financial status. Indeed, Article 173 of the ZPP essentially means that anyone who does not meet the conditions prescribed by the ZBPP for being granted the right to free legal aid, which are closely linked to their difficult financial position and who realistically lacks the means to cover the costs of an attorney or a notary public, is forced to represent their own interests before the court exclusively, which under the current rules they cannot do. This must also be considered in the context of certain special land registry proceedings, for example, the individual correction procedure (ICP), where service is carried out via the e-notice board. Although Article 6(1) of the Convention cannot be interpreted as conferring the right to a specific method of service of court documents, such as service by registered or personal delivery, in the interest of the functioning of the judicial system, the ECHR holds that a party must be notified of a court hearing in a manner that not only informs them of the date, time, and place of the hearing, but also provides sufficient time to prepare their arguments and attend the hearing.⁴⁵

Since the 30-day period for submitting an objection to the decision on the initiation of an individual correction procedure is calculated from the date of publication on the e-Notice Board and is preclusive (once this period expires, the party loses the opportunity to exercise their right), it becomes even more difficult to balance the legitimate interest of the State in concluding the specific proceedings quickly, efficiently, and properly, with the individual's right to be continuously informed about the progress of the proceedings in which they are a party. Therefore, by stipulating that procedural documents are published on the e-Notice Board (Article 211(3) of the ZZK), meaning the party is not personally served with the act deciding on their right, obligation, or legally based interest, the party is objectively unable to become informed of the content of the act. This raises concerns regarding the exercise of the right to a fair trial, the right to equal protection of rights, and the right to an effective remedy, as guaranteed by Article 29(1) of the Constitution and Article 6(1) of the Convention. Indeed, such a party could be completely prevented from exercising this right, which thus becomes illusory and unrealizable for them.

4. Instead of a conclusion: Is the individual correction procedures an adequate model for the Bosnian-Herzegovinian legislator?

Faced with similar problems in land registry law and influenced by comparable legal and political demands, Croatia and Bosnia and Herzegovina have pursued different approaches in reforming and aligning their land registry systems. Nevertheless, despite differences in the pace and intensity of these reforms, a comparative legal analysis reveals many parallels, including the same dilemmas, controversies, and unresolved issues.⁴⁶

⁴⁵ ECHR, Vyacheslav Korchagin v. Russia, 2018, § 65.

⁴⁶ MUTAPČIĆ, H., OSMANBEGOVIĆ, K., Intencije novog stvarnog prava u procesu uspostave tačne i potpune javne evidencije nekretnina, Društveni ogledi, Centar za društvena istraživanja Interna-

From the perspective of Croatian legislation, the problems of the ICP are as follows:

Ad 3.1. Taking into account the fact that the ECHR and USUD⁴⁷ recognize for states a “wide margin of appreciation” in determining how to regulate a particular issue, and considering that national authorities are best familiar with their own country as well as other circumstances relevant to the enactment of a specific law, and are therefore in the best position to determine which legal solution is the most appropriate, there is, correspondingly, a significant responsibility on the part of the state to choose the most adequate legal solution. Case law and doctrine indicate that the right to bring a lawsuit or appeal must arise from the moment when the parties can realistically become aware of a legal decision that imposes an obligation on them or potentially harms their legitimate rights and interests (*Miragall Escolano and Others v. Spain*, 2000, § 37;⁴⁸ *Cañete de Goñi v. Spain*, 2002, § 40⁴⁹).

In a broader sense, it is the responsibility of national authorities to act with due diligence in ensuring that the parties to proceedings are informed of the procedures affecting them so that they can appear before the court and defend themselves. In sum, we are of the opinion that the existing system for serving decisions on the opening of ICPs does not establish a fair balance between the interests of the authorities in swift proceedings and the parties concerned,⁵⁰ particularly in a way that provides them with a clear, actual, and effective opportunity to challenge such decisions, thus representing a disproportionate interference with the right of access to a court. We accept the well-known fact that the extent of the unregulated situation in the land registers in the Republic of Croatia is significant, and that this is associated with an exceptionally

cionalnog Burč univerziteta, Sarajevo, 2021.; MULABDIĆ S., MULABDIĆ, A., *Dejstvo ugovora o otuđenju tuđe stvari, Domaća i strana sudska praksa*, br. 81/2019, Privredna štampa, Sarajevo; MULA-BDIĆ, S., *Derivativni način sticanja prava vlasništva na nekretnini, Domaća i strana sudska praksa*, br. 78/2018, Privredna štampa, Sarajevo; MULABDIĆ, S., *Sticanje prava vlasništva na nekretnini polazeći od načela povjerenja u istinitost i potpunost zemljišne knjige*, Pravna misao, No. 7-8/2007, Sarajevo; MULABDIĆ, S., *Stjecanje prava vlasništva dosjelošću s posebnim osvrtom na rješenja Zakona o zemljišnim knjigama*, Pravna misao, No. 7-8/2006, Sarajevo; MULABDIĆ, S., MUTAPČIĆ, H., *Nova rješenja publicijanske tužbe prema Zakonu o stvarnim pravima i kritički osvrt na preuzeta rješenja iz Zakona o vlasničko-pravnim odnosima*, Domaća i strana sudska praksa, No. 82/2019, Privredna štampa, Sarajevo; MUTAPČIĆ, H. (2017.): *Načelo povjerenja u zemljišnu knjigu*, Grin, Gračanica; MUTAPČIĆ, H., ORUČ, H., *Application of the principle of trust in the land registry in the context of the disposition of marital assets*, Human, No. 7/2017, Tuzla; POVLAKIĆ, M., *Načelo povjerenja u zemljišnu knjigu u najnovijoj praksi Vrhovnog suda Federacije BiH*, Nova pravna revija, No. 1/2014, Njemačka fondacija za međunarodnu pravnu saradnju – IRZ Stiftung, Sarajevo; POVLAKIĆ, M., *Načelo upisa i stjecanje prava vlasništva na nekretninama prema novom zemljišnoknjižnom i stvarnom pravu u BiH*, Godišnjak Pravnog fakulteta u Sarajevu, No. LIII/2010, Sarajevo; POVLAKIĆ, M., *Novo stvarno pravo Republike Srpske*, Nova pravna revija, No. 1-2/2010, Njemačka fondacija za međunarodnu pravnu saradnju – IRZ Stiftung, Sarajevo.

⁴⁷ For example, USUD ruling No. U-I-3684/2015 of 22 May 2018.

⁴⁸ ECHR, No. 38366/97 and nine other applications, ECHR 2000-I.

⁴⁹ ECHR, No. 55782/00, ECHR 2002-VIII.

⁵⁰ The parties in non-contentious proceedings are the applicant and the person designated by the applicant as the opposing party (Art. 5, para. 1, items 1 and 2 of the Non-Contentious Procedure Act – ZIP). Additionally, this includes any person whose legal position could be directly affected by the decision proposed for adoption, by a decision the court may adopt in connection with the petition or ex officio, or by any other court action during the proceedings that could directly affect their legal position (Art. 5, para. 1, item 3 ZIP). See also Art. 5, para. 1, item 4 ZIP.

large number of ICPs submitted to the competent authorities. On account of these demands, an exceptionally large number of proceedings are being and will continue to be conducted.

However, there is no objective impossibility to establish the identity of all persons potentially interested in a specific proceeding, which means that, *de lege lata*, the current form of service falls below the level of constitutional acceptability, as it does not appropriately balance the public interest in achieving the objectives of the ICP with the need to protect individual procedural rights. Therefore, there is no need for the existing service model, which would be justified by objective necessity, and the limitation of the parties' procedural rights must also be considered in light of the fact that the proceeding affects property ownership matters, i.e., an institution that the Constitution of the Republic of Croatia proclaims in Article 3 as one of the key values of the constitutional order of the Republic of Croatia through the phrase “inviolability of property”.⁵¹ We are also of the opinion that the service model is legally unsustainable, as it creates legal uncertainty, as well as insecurity and distrust in legal transactions, which is contrary to the principle of the rule of law, one of the highest values of the constitutional order of the Republic of Croatia.

Ad 3.2. From the above, it follows that, when examining whether the existing solution regarding the allocation of the costs of interference with property rights, as guaranteed by P1-1, is justified, the following questions must be considered: a) Does a right to property exist in relation to the obligation to pay costs under Article 1? Undoubtedly, it does. b) Was there interference with that property right? Since there is an obligation to cover the costs, there has indeed been interference with the party's property. Otherwise, the requirement to pay court costs is consistent with the right of access to a court, provided it does not undermine the very substance of that right.⁵²

In this regard, it must be considered whether the interference with property was justified. This is the case only if the interference (a) is provided by law, (b) pursues a public interest, and (c) complies with the principle of proportionality. Here, the phrase “prescribed by law” requires that the interference has a basis in positive law; however, the question remains whether the provisions are sufficiently clear and precise, given the specific nature of the matter they regulate. Land registry proceedings are generally cases in which disputes between the parties do not predominate, raising the question of whether, in such proceedings, each party should bear its own costs, particularly where one party has caused unreasonable costs through its own fault or due to circumstances attributable to it. It should also be noted that the current solution was implemented in 2013⁵³ and lacks adequate explanation and clear argumentation, providing no discernible legal reasoning or justification for the change in the legislator's position.

Analysing the concept of “public interest” in the case law of the ECHR, it is clear that it must be interpreted broadly, meaning that the national legislator enjoys a wide margin of appreciation regarding this concept, as an expression of a particular (economic) policy

⁵¹ See the decision of the Constitutional Court, No. U-I-1348/17; U-I-3233/17 of 4 February 2020.

⁵² See the decision of ECHR, *Kreuz v. Poland* (2001).

⁵³ Available on the official website: <https://mpudt.gov.hr/UserDocsImages/dokumenti/Javna%20savjetovanja/Zakon%20o%20izmjenama%20i%20dopunama%20Zakon%20o%20zemlji%C5%A1nim%20knjigama.pdf> (2.2.2025.).

pursued by the state. When the costs solution was introduced in 2013, it was stated that “proceedings in which the land registry court decides at a hearing constitute non-contentious proceedings, so it is logical that the provisions on costs in these proceedings follow the rules applicable to non-contentious proceedings.” The current model of cost allocation in the ZIP is regulated differently. For example, Article 32 of the ZIP addresses certain issues regarding the reimbursement of costs in non-contentious proceedings. As a general rule, the court will decide on the reimbursement of costs based on a specific request from the parties, taking into account all the circumstances of the specific case (Article 32, paragraph 1 of the ZIP). In proceedings involving parties with opposing interests, the court will decide on the reimbursement of costs with the appropriate application of the provisions of the law governing civil proceedings, unless principles of fairness require otherwise (Article 32, paragraph 2 of the ZIP).⁵⁴ However, a party is obliged, regardless of the outcome of the proceedings, to reimburse the other party for costs caused by its own fault or by an event that occurred to it (reimbursement under the principle of *culpa*, Article 32, paragraph 3 of the ZIP). A special rule applies in cases involving the pursuit of common interests of all parties. The court will decide on the reimbursement of costs related to the pursuit of the common interests of all parties proportionally to the parties’ shares in the subject matter of the proceedings, and if such shares cannot be determined, the costs will be divided equally (Article 32, paragraph 4 of the ZIP). A special rule applies also in cases involving the pursuit of the common interests of all parties. The court will decide on the reimbursement of costs related to the pursuit of the common interests of all parties proportionally to the parties’ shares in the subject matter of the proceedings, and if such shares cannot be determined, the costs will be divided equally (Article 32, paragraph 4 of the ZIP).

According to the further provision of Article 32, paragraph 5 of the ZIP, in other cases each party bears its own costs. Furthermore, certain measures undertaken by the state must also satisfy the requirement of “proportionality.” Thus, the question arises whether it is proportionate, in cases where a party has caused the costs through its own fault or by an event that occurred to it, to shift those costs to the opposing party under the pretext of public interest. A clear example is the individual correction procedure, in which actions are initiated that cause certain costs to the opposing parties, and it is undisputed that this procedure can be abused. In this context, the concept of abuse of rights in land registry proceedings includes circumstances where the rules are not violated, but are applied to a situation artificially created solely to take advantage of certain rights. Given that this concerns a situation where legal rules have not been violated, that is, where the party acted in accordance with the regulations, the principle prohibiting abuse of rights and its application may conflict with the principle of legal certainty. In conclusion, ECHR case law emphasises that the fairness of a procedure is assessed on the basis of the proceedings as a whole,⁵⁵ so the task of the ECHR is to examine whether the procedure, viewed in its entirety, was conducted fairly for the applicant.⁵⁶ In this context, not every procedural violation constitutes a breach of the right to a fair trial, but only a violation of such significance that it infringes upon that right of a party.

⁵⁴ For the costs of civil proceedings, see the provisions of Articles 151–176 of the ZPP.

⁵⁵ ECHR, *Barbera, Messeque and Jabardo v. Spain*, judgment of 6 December 1998, Series A, No. 146, § 68.

⁵⁶ ECHR, *Delta v. France*, judgment of 19 December 1990, Series A, No. 191, § 35.

When discussing costs, the purpose and effect of the potential new model for cost allocation existing in the ZIP, which, in the authors' opinion, should be implemented in a new amendment to the ZZK, is to prohibit a series of artificially and seemingly contrived arrangements that do not reflect economic reality and are created solely to achieve a more favourable legal position. In implementing such a new solution, the legislator should enable the court to consider the subject matter of the dispute, the realistic chances of success for the party, the importance of the proceedings for the party, the complexity of the substantive and procedural law to be applied in the specific case, and the party's inability to represent themselves, given that the application for entry in the land register is submitted exclusively electronically through notaries and attorneys, who are mandatory users of electronic communication with the court via the joint information system of land registries and cadastre (hereinafter: ZIS). Here, we have not addressed whether submitting an application for entry in the land registers exclusively electronically, through notaries and attorneys as mandatory users of electronic communication with the court, constitutes a restriction or violation of the right of access to a court; however, it is certainly something that should be considered when analysing the redefinition of the rules on costs.

Ad. 3.3. It can be stated that the land registry procedure has several persistent problem areas. In addition to those of a doctrinal nature, which are difficult to regulate precisely by law, the efficiency of land registry proceedings remains a constant concern. The USUD and ECHR link the right of access to a court to lower judicial instances, and the prevailing view is that access to the highest judicial instance may be limited in various ways. Even then, however, as already emphasised, attention must be paid to the relationship between the limitation and its purpose, whether the purpose of the limitation can be achieved with a lesser restriction of the right, and whether it is necessary to the extent required to satisfy the purpose of the limitation in a democratic society without infringing the essence of the guaranteed right. In summary, we are of the opinion that the relevant provisions do not establish a fair balance between the interest of the authorities in conducting proceedings efficiently (the public interest) and the interests of the parties concerned, particularly in a way that provides them with a clear, real, and effective opportunity to access the court, and therefore represent a disproportionate interference with the right of access to a court.

We acknowledge the well-known fact that the unregulated state of land registries in the Republic of Croatia is significant and is associated with an exceptionally large number of cases submitted to the competent authorities. In connection with these requests, an exceptionally large number of proceedings are being, and will be, conducted. However, there is an objective impossibility of access to the court, which means that, *de lege lata*, the form of initiating and participating in proceedings, in the author's opinion, falls below constitutionally acceptable standards, as it does not, in a balanced manner, take into account both the public interest in achieving the goals of land registry proceedings (which are not explained in the draft Law and are therefore only presumed by the author) and the need to protect individual procedural rights. Thus, according to the drafter of the Law, there is neither a need for the existing model of initiating proceedings justified by objective necessity, nor should the limitation of the procedural rights of parties be con-

sidered without regard to the fact that the proceedings affect issues of real estate ownership – an institution which, in Article 3 of the Constitution of the Republic of Croatia, is proclaimed as one of the highest values of the constitutional order of the Republic of Croatia through the phrase “inviolability of ownership.”⁵⁷ We also believe that the model in question is unsustainable, as it introduces legal uncertainty and undermines confidence in legal transactions, which is contrary to the principle of the rule of law, one of the highest values of the constitutional and legal order of the Republic of Croatia.

The aim was to consider and analyse the lessons that can be drawn from the experiences of the Republic of Croatia and how these lessons may be applied to the law of Bosnia and Herzegovina to further develop legislation on land registry legal protection. This offers an overview of the relationship between legal regulation and practice and highlights the shortcomings of the current legal framework for land registry legal protection in proceedings in Bosnia and Herzegovina. When drafting new laws, the question almost invariably arises as to whether one should follow the traditional Continental European models or the Anglo-Saxon models, which are sometimes described as “more modern.

Alternatively, following the slogan “the best of both worlds,” elements of these systems could be combined. Some argue that, in doing so, more legal provisions should be consolidated into a single law. It should first be noted that probably no one who has studied the legal system of another country would support an approach in which foreign law is “copied” exactly without adaptation to local circumstances. Law regulates specific societies, and societies have their own traditions, problems, and conditions. Although the legislation of Bosnia and Herzegovina generally aims to transform its law and prepare for EU membership, it still faces particular challenges. Each country, given its unique background, must implement this process in a way that aligns with its national realities.

Therefore, these countries must find their own path, which is usually not achieved as effectively in “foreign schools.” Foreign laws cannot simply be adopted and copied in this manner. However, this does not mean that foreign laws can be arbitrarily mixed to create new law. On the contrary, a clear orientation based on a specific legal system is necessary. A clear orientation towards an existing system with proven practical experience is also meaningful, as this allows the use of case law and professional literature as auxiliary tools in resolving issues that arise in the application of the law. Explanations and discussions from these sources rarely relate to isolated articles, but rather to the fundamental principles of the relevant law, to explicit provisions of the same law in similar cases, and so on. This is especially true when resources are limited and time is scarce, as is the case in Bosnia and Herzegovina.

BIBLIOGRAPHY

1. Pravilnik o elektroničkom postupanju korisnika i ovlaštenih korisnika sustava zemljišnih knjiga, Official Gazette, Nos. 108/19. i 128/22.
2. Pravilnik o unutarnjem ustroju, vođenju zemljišnih knjiga i obavljanju drugih poslova u zemljišnoknjižnim odjelima sudova (Zemljišnoknjižni poslovnik), Official Gazette, Nos. 81/97, 109/02, 123/02, 153/02, 14/05, 60/10, 55/13, 60/13, 63/19, 128/22. i 127/24.

⁵⁷ Reference should be made to the USUD rulings, U-I-1348/17 and U-I-3233/17, dated 4 February 2020.

3. Zakon o besplatnoj pravnoj pomoći, Official Gazette, Nos. 143/13. i 98/19.
4. Zakon o izmjenama i dopunama Zakona o prodaji stanova na kojima postoji stanarsko pravo, Official Gazette, No. 68/98
5. Zakon o izvanparničnom postupku, Official Gazette, No. 59/23.
6. Zakon o javnom bilježništvu, Official Gazette, Nos. 78/93, 29/94, 162/98, 16/07, 75/09, 120/16, 57/22
7. Zakon o obveznim odnosima, Official Gazette, Nos. 35/05, 41/08, 125/11, 78/15, 29/18, 126/21, 114/22, 156/22. i 155/23.
8. Zakon o parničnom postupku, Official Gazette, Nos. 53/91, 91/92, 112/99, 88/01, 117/03, 88/05, 2/07, 84/08, 96/08, 123/08, 57/11, 148/11, 25/13, 28/13 i 89/14 i 70/19, 80/22, 114/22, 155/23, 146/25.
9. Zakon o zemljišnim knjigama, Official Gazette, Nos. 63/19, 126/22, 155/23, 127/24.
10. Zakon o zemljišnim knjigama, Official Gazette, Nos. 91/96, 68/98, 137/99, 73/00, 114/01, 100/04, 107/07, 152/08, 126/10, 55/13, 60/13, 108/17. (repealed)
11. BULKA, Z., Novi Zakon zemljišnim knjigama, Pravosudna akademija, Zagreb, 2020., pp. 37-41.
12. BULKA, Z., PUTRIĆ, L., Pojedinačni zemljišnoknjižni ispravni postupci, tužbe za ispravak upisa u zemljišne knjige i parnični postupci radi utvrđenja prava vlasništva (međusobni odnos navedenih postupaka i razlike) te brisovne tužbe, Pravosudna akademija, Zagreb, 2023., p. 12. et seq.
13. CARSS-FRISK, M., The Right to Property, A Guide to the implementation of Article 1 of Protocol No. 1 to the European Convention on Human Rights, Handbook No. 4, Council of Europe, Strasbourg, pp. 6-7.
14. KONTREC, D., PERKUŠIĆ, A., Zemljišnoknjižno pravo, Pravosudna akademija, Zagreb, 2016., p. 45.
15. MATUŠKO ANTONIĆ, Lj., Prikaz novog Zakona o zemljišnim knjigama (vođenje zemljišnih knjiga u elektroničkom obliku), Pravo i porezi, Nos. 7-8, 2019., p. 12. et seq.
16. MULABDIĆ S., MULABDIĆ, A. Dejstvo ugovora o otuđenju tuđe stvari, Domaća i strana sudska praksa, No. 81/2019, Privredna štampa, Sarajevo.
17. MULABDIĆ, S., Derivatívni način sticanja prava vlasništva na nekretnini, Domaća i strana sudska praksa, No. 78/2018, Privredna štampa, Sarajevo.
18. MULABDIĆ, S., Sticanje prava vlasništva na nekretnini polazeći od načela povjerenja u istinitost i potpunost zemljišne knjige, Pravna misao, Nos. 7-8/2007, Sarajevo.
19. MULABDIĆ, S., Stjecanje prava vlasništva dosjelošću s posebnim osvrtom na rješenja Zakona o zemljišnim knjigama, Pravna misao, No. 7-8/2006, Sarajevo.
20. MULABDIĆ, S., MUTAPČIĆ, H., Nova rješenja publicijanske tužbe prema Zakonu o stvarnim pravima i kritički osvrt na preuzeta rješenja iz Zakona o vlasničko-pravnim odnosima, Domaća i strana sudska praksa, No. 82/2019, Privredna štampa, Sarajevo.
21. MUTAPČIĆ, H., Načelo povjerenja u zemljišnu knjigu, Grin, Gračanica, 2017.

22. MUTAPČIĆ, H., ORUČ, H., Application of the principle of trust in the land registry in the context of the disposition of marital assets, Human, Tuzla, No. 7/2017.
23. MUTAPČIĆ, H., OSMANBEGOVIĆ, K., Intencije novog stvarnog prava u procesu uspostave tačne i potpune javne evidencije nekretnina, Društveni ogledi, Centar za društvena istraživanja Internacionalnog Burč univerziteta, Sarajevo, 2021.
24. OMEJEC, J., Konvencija za zaštitu ljudskih prava i temeljnih sloboda u praksi Europskog suda za ljudska prava, strasbourgški acquis, Zagreb, Novi informator, 2013., pp. 995-1000.
25. PELCL, H., Dopuštenost izvanredne revizije u građanskom parničnom postupku Republike Hrvatske, Anali Pravnog fakulteta Univerziteta u Zenici, 17, 2016., vol. 9, p. 203. et seq.
26. POVLAKIĆ, M., Načelo povjerenja u zemljišnu knjigu u najnovijoj praksi Vrhovnog suda Federacije BiH, Nova pravna revija, Njemačka fondacija za međunarodnu pravnu saradnju – IRZ Stiftung, Sarajevo, No. 1/2014.
27. POVLAKIĆ, M., Načelo upisa i stjecanje prava vlasništva na nekretninama prema novom zemljišnoknjižnom i stvarnom pravu u BiH, Godišnjak Pravnog fakulteta u Sarajevu, Sarajevo, No. LIII/2010.
28. POVLAKIĆ, M., Novo stvarno pravo Republike Srpske, Nova pravna revija, Njemačka fondacija za međunarodnu pravnu saradnju – IRZ Stiftung, Sarajevo, No. 1-2/2010,
29. ECHR, James and others v. the United Kingdom, 21 February 1986, §§ 39–45.
30. ECHR, Tinnelly & Sons Ltd. and others, and McElduff and others v. the United Kingdom, 1998.
31. ECHR, Barbera, Messeque and Jabardo v. Spain, judgment of 6 December 1998, Series A, No. 146, § 68.
32. ECHR, Former King of Greece and others v. Greece, judgment of 23 November 2000, No. 25701/94.
33. ECHR, Scordino v. Italy, judgment of 6 March 2007, No. 36813/98.
34. ECHR, No. 38366/97 and nine other applications, ECHR 2000-I.
35. ECHR, No. 55782/00, ECHR 2002-VIII.
36. ECHR, Brumarescu v. Romania, judgment of 28 October 1999, No. 28342/95.
37. ECHR, Delta v. France, judgment of 19 December 1990, Series A, No. 191, § 35.
38. ECHR, Iatridis v. Greece, judgment (GC), 25 March 1999, No. 31107/96.
39. ECHR, Immobiliare Saffi v. Italy, judgment of 28 July 1999, No. 22774/93.
40. ECHR, Kopecky v. Slovakia, judgment of 28 September 2004, No. 44912/98.
41. ECHR, Kreuz v. Poland (2001), §§ 59–60.
42. ECHR, Perić v. Croatia, judgment of 27 March 2008, application No. 34499/06, §§ 24–25.
43. ECHR, Perinçek v. Switzerland (GC), § 131.
44. ECHR, Pine Valley Developments Ltd. and others v. Ireland, judgment of 29 November 1991, No. 12742/87.

45. ECHR, *Pressos Compania Naviera S.A. and others v. Belgium*, judgment of 20 November 1995, No. 17849/91.
46. ECHR, *Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Nos. 7151/75, 7152/75.
47. ECHR, *Vrbica v. Croatia*, judgment of 1 April 2010, No. 32540/05.
48. ECHR, *Vyacheslav Korchagin v. Russia*, 2018, § 65.
49. ECHR, *Zavodnik v. Slovenia*, No. 53723/13, 21 May 2015.
50. USUD, No. U-I-662/2011 of 10 July 2018, paras. 15, 16.2 and 16.3.
51. USUD, No. U-I-58/97, Official Gazette, No. 137/99, by which part of Art. 221, para. 1 of the Land Registry Act (1996) was repealed.
52. USUD, No. U-I-3684/2015 of 22 May 2018.
53. USUD, No. U-I-3685/2015 et al. of 4 July 2017 (Official Gazette, No. 39/17), para. 28.1.
54. USUD, No. U-I-381/2014 et al. of 12 June 2014 (Official Gazette, No. 86/14), paras. 2, 3 and 4.
55. USUD, No. U-I-722/2009 of 6 April 2011 (Official Gazette, No. 44/11).
56. USUD, No. U-III-4536/2012 of 14 January 2016 (Official Gazette, No. 13/2016).
57. USUD, rulings Nos. U-I-2938/2011, U-I-1747/2012, U-I-3883/2013, U-I-5087/2013, U-I-3128/2014, U-I-5224/2014 and U-I-437/2015 of 23 April 2018.
58. USUD, Nos. U-I-1348/17; U-I-3233/17 of 4 February 2020.
59. County Court in Varaždin, case No. 10 Gž Zk-992/2021-2, 28 December 2021.
60. County Court in Varaždin, case No. Gž-1063/15-2, 21 July 2015.
61. Available online: https://www.sabor.hr/sites/default/files/uploads/sabor/2019-05-16/153604/PZ_603.pdf. (11.02.2025.).
62. Available online: <https://mpudt.gov.hr/UserDocsImages/dokumenti/Javna%20savjetovanja/Zakon%20o%20izmjenama%20i%20dopunama%20Zakon%20o%20zemlji%C5%A1nim%20knjigama.pdf> (2.2.2025.).

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JE LI HRVATSKI MODEL POJEDINAČNOG ISPRAVNOG POSTUPKA ADEKVATAN MODEL ZA „SREĐIVANJE“ ZEMLJIŠNO KNJIŽNOG STANJA ZA BOSANSKOHERCEGOVAČKOG ZAKONODAVCA?

Sažetak: Novi Zakon o zemljišnim knjigama iz 2019. je izmijenio definiciju pojedinačnog ispravnog postupka navodeći da je pojedinačni ispravni postupak poseban zemljišnoknjižni postupak u kojem se ispravljaju zemljišnoknjižni upisi, a provodi se kad postoji opravdani razlog. Radi usporedbe i mogućih prijedloga de lege ferenda za bosansko-hercegovačkog zakonodavca, analiza hrvatskih iskustava s modelom pojedinačnog ispravnog postupka je bitna jer ukazuje hoće li potencijalna implementacija i primjena novog posebnog izvanparničnog zemljišno-knjižnog postupka ostvariti svoju svrhu i dati očekivane rezultate – brže usklađivanje zemljišnoknjižnog stanja. Povijesna pripadnost istoj državi, s obzirom na zajedničku tradiciju i standarde pojedine grane prava, logičan je razlog uzimanja za uzor hrvatskoga zakonodavstva. Štoviše, jasna orijentacija na već postojećem sistemu sa znatnim iskustvom u praksi također je smisljena, iz razloga što takva situacija omogućava korištenje sudske prakse i stručne literature kao pomoćnog sredstva u rješavanju problema koji se javljaju u primjeni zakona. Pritom se ne gube iz vida ni ograničavajući čimbenici, i to prvenstveno glede državnoga uređenja BiH. Ipak uslijed opsega problematike, rad je u mogućnosti dotaknuti tek određena pitanja uređenja posebnog zemljišnoknjižnog pojedinačnog ispravnog postupka. Ono što autori žele istaknuti, ili treba da bude odmah uočljivo je kritična potreba za revizijom de lege lata uređenja zemljišnoknjižnog postupka u bosansko hercegovačkoj legislativi.

Ključne riječi: pojedinačni ispravni postupak, zemljišne knjige, izvanparnični postupak, dostava, reforma zemljišnoknjižnog postupka.