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## PRESUĐENI KRIMINALITET U SRBIJI I SLOVENIJI – KOMPARATIVNA ANALIZA\*\*\*

**Apstrakt:** U radu je izvršena komparacija podataka o presuđenom kriminalitetu u dve bivše jugoslovenske republike – Srbiji i Sloveniji. Radi utvrđivanja eventualnih tendencija u njihovom kretanju, upoređeni su podaci za 2013. i 2003. godinu i to samo za punoletna lica. Takođe, tamo gde je to bilo moguće, podaci o presuđenom kriminalitetu upoređeni su sa onima iz 1973. kako bi se utvrdilo do kakvih je promena u strukturi dela i učinilaca došlo posle četiri decenije. U radu je izvršena i jedna vrsta transverzalne komparacije. Ukazano je koliko se podaci o presuđenom kriminalitetu razlikuju od onih o prijavljenim delima i učiniocima u istoj kalendarskoj godini. Iz takve komparacije mogli bi se (uz sve uslovnosti kojih su autori svesni) izvući važni zaključci o delovanju organa formalne socijalne kontrole u svakoj zemlji.

**Ključne reči:** presuđeni kriminalitet, komparacija, Srbija, Slovenija, trendovi.

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## ADJUDICATED CRIME IN SERBIA AND SLOVENIA – COMPARATIVE ANALYSIS

### SUMMARY

The authors have decided to compare data on adjudicated crime (precisely on convicted adults) in Serbia and Slovenia including not only the data for the year of 2013 for which they had complete information, but they also sought to determine whether the state has radically changed in relation to the period before one (2003) and four decades (1973).

First and foremost, the trend in the number of convicted adults of the age of 25 (and 23 respectively) is presented for both republics and it is concluded that in neither of them adjudicated crime has worrying trend. It is, of course, a task for criminologists to find reasons why the amplitude of the minimum-maximum number in Serbia went from 21.681 to 45.354 and in Slovenia from 3.462 to 11.321 and to explain why the smallest and the greatest number of crimes was recorded in certain years.

It should be noted that the absolute number of committed crimes has decreased in both countries in this century in comparison to the period of the last four decades. In 2013 the rate of convicted persons in Serbia amounted to 442 and it was lower than the rate in 2003 whereas in Slovenia this rate amounted to 550, which was higher than the rate recorded in 2003 and this fact requires further explanations.

In Slovenia and Serbia the structure of crimes of convicted adult offenders is different: in both republics offenders were most often convicted of property crimes, but in Serbia they comprise less than 1/3 of convicted population whereas in Slovenia these offenders comprise less than 1/2 (44%) of the convicted population. Offenders convicted of property crimes in Serbia are followed by perpetrators who were convicted of crimes against public traffic safety, crimes against public order and peace, against life and bodily integrity (in comparison to 2003 the share of the last mentioned category of convicts has decreased whereas the number of those convicted of crimes against human health and marriage and family has increased). In Slovenia the second largest group of convicted persons refers to crimes against human health. Thus, it can be concluded that both countries encounter the increase in crime related to narcotic drugs.

Comparing the data with those from the period of the last four decades, it becomes obvious that the largest decrease in the share of adjudicated crime is recorded in respect of crimes against honor and reputation. Obviously, this is due to the tendency to exclude these crimes (except for the most serious forms) from the sphere of criminal justice reaction.

Consideration of gender structure of adult convicts shows that women in both republics participate in a considerably lower percentage than that in which they are represented in general population and in this century it is around 10%. In comparison to the period of four decades ago it has not changed significantly in Slovenia whereas in Serbia it was higher at that time (in 1973 women comprised around 17% of adult convicted persons).

When we take into account in which judicial statistics presents information in regard to the age of adult convicts, it can be seen that in 2013 in Slovenia and Serbia “the age group of maximum crime” was that of the 21 (resp. 22) to 29 years old. It is also obvious that women “enter later into criminal business”, but they stay longer in it and in both states their percentage after the age of 30 is higher than the average.

Although the data are not available for Slovenia, we will briefly conclude the same as for Serbia in 2013 – in respect of marital status of convicts, married offenders are dominant category (47%); when it comes to education, offenders with completed secondary school are the most numerous – around 50% (whereas in 1973 the most represented were offenders with completed primary school); now the most of offenders are unemployed – 50.1% (and in 2003 and in 1973 the most of them were employed).

Recidivism in both countries in 2013 was around 40% (in Slovenia slightly above and in Serbia somewhat below this rate). And this is much higher in comparison to data for two other analyzed years. Consequently, this is one of the reasons why we should re-examine the criminal justice model, since the increase of recidivism rate could be an indicator that this mechanism does not achieve expected results.

Unfortunately, due to the unavailability of data for Slovenia we are not able to compare the number of persons convicted of committing a crime together with other offenders in 2013– complicity (in Serbia it was around 25%) as well as who are the victims of crimes – in most cases it is a man (84.4%) over 18 years (96.6%). It is a paradox that although they are often used as the basis for causing waves of moral panic and strengthening of penal populism, children up to 14 years are victims in Serbia in less than 1% of cases.

Finally, it should be pointed out to one question of particular interest for criminologists: relation between the number of reported and convicted persons (a phenomenon entitled “loss of crime” or “attrition of crime” or “funnel of crime”). In Serbia in 2013 the number of convicted persons amounted to 2/9 of the number of reported adult offenders (almost as much as in 2003). “Coronation of crime” in Slovenia in 2013 amounted to 88% (which is less than in 2003 when this rate was 91.2%).

It is not sufficient to mention that at present time in both former Yugoslav republics in comparison to the period of four decades ago (1973) the effect of “crime loss” is enhanced. This raises numerous questions of interest for criminological research. The first would be to examine specific reasons that lead to the phenomenon of “funnel of crime” – whether these are the quality of charges, characteristics of offenders, the relationship between the authorities in charge of crime investigation, type of committed crimes, the way courts and prosecution work, eventual pressure on the judiciary or any other possible reason... and to try to understand the discrepancy between the widest and the narrowest parts of “funnel of crime” in last four decades.

**Keywords:** adjudicated crime, comparative analysis, Serbia, Slovenia, trends.

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## SUDIJE POROTNICI I VLADAVINA PRAVA

**Apstrakt:** Članak sadrži istorijsko i komparativno istraživanje glavnih modela učešća laika u pravosuđu i ključnih problema u vezi s tim. Prvo, daju se razlozi za ustanovljenje i karakteristike rada porote u revolucionarnoj Francuskoj i mešovitoj suda u Nemačkoj. Dalje, daje se analiza razvitka pitanja porotnika u Kraljevini Srbiji i Jugoslaviji. Između ostalog, navodi se neuspeh mešovitoj suda u Srbiji, zbog zastrašivanja porotnika. U komunističkoj Jugoslaviji, porotnici su ustanovljeni da služe „tekovinama revolucije“, što je bilo u suprotnosti sa principom vladavine prava. Nasuprot laičkom učešću u pravosuđu, prezentira se holandski sistem profesionalnog sudstva.

Članak sadrži više aspekata učešća porotnika u krivičnom pravosuđu: njihovu selekciju, kontrolu njihovog rada, prednosti i mane, slučajeve ukidanja porote. Autor zaključuje da nijedan model laičkog učešća u krivičnom pravosuđu nije u saglasnosti sa principom „vladavine prava, a ne ljudi“. Od modernog pravosuđa se zahteva donošenje obrazloženih odluka, što se može obezbediti samo profesionalnim sudijama. Sve u svemu, zaključuje se da instituciju laičkog učešća u pravosuđu treba ukinuti. Demokratski princip u sudstvu može se obezbediti na drugi, ispravan način: putem „otvorene pravde“ koja u sebe uključuje opštu i ekspertsku kontrolu rada sudija. Uostalom, postoji izvesna logika u razvitku porote (i porotnika) koja ukazuje na buduće rešenje. U prvoj fazi je ustanovljena porota; zatim je ona modifikovana u mešoviti sud. U poslednjoj fazi biće potpuno ukinuto učešće laika u suđenju.

**Ključne reči:** porota, šefengerichte, prednosti porote, mane sudija porotnika, ukidanje porotnika.

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## LAY JUDGES AND GOVERNMENT OF LAW

### SUMMARY

The article contains historical and comparative survey of many models of lay participation in judiciary and key problems with it. The first, it has given reasons for establishment and characteristic of work of jury in revolutionary France and mixed court in Germany. Further, it gives analysis of development of question of jurors in Kingdom of Serbia and Yugoslavia. Among the other things, it points out the failure of mixed courts in Serbia because of intimidation of jurors. In communist's Yugoslavia, jurors were established to serve to the 'achievements of Revolution' which was the negation of principle of government of laws. Opposite to the law participation, there was/is professional Dutch criminal justice system.

The article contains many aspects of lay participation in criminal adjudication: selection of jurors, control of their work, advantages and disadvantages, the cases of jury abolition. The author comes to the conclusion that any model of lay participation in criminal adjudication can't be in accordance to principle of 'government of laws and not of men'. Key requirements of modern justice are reasoned decisions which can be provided only by professional judges. All in all, it concludes that institution of lay participation should be abolished. Democratic principle in judiciary can be provided in some other, proper ways: by 'open justice' which includes general and expert public control of judges' work. After all, there is certain logic in the development of jury (and jurors) which points to its future solution. In the first phase, the jury was established; later, it was modified to mixed court. In the third, the last, phase, the lay participation in criminal adjudications will be abolished entirely.

**Keywords:** jury, mixed court, advantage of lay judges, disadvantage of lay judges, abolition of lay judges.

# ZAKONODAVSTVO I PRAKSA

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## KAKO ZAKON O PUTNIM ISPRAVAMA KRŠI USTAV I „ZAOBILAZI“ ZAKONIK O KRIVIČNOM POSTUPKU – ŠTA MENJATI?

**Apstrakt:** U radu se ukazuje na odredbe iz Zakona o putnim ispravama, koje uređuju odbijanje izdavanja putne isprave i oduzimanje putne isprave, i obrazlaže se na koji način se direktno krši sloboda kretanja garantovana čl. 39. Ustava Republike Srbije kao i kako se obesmišljava primena mere obezbeđenja prisustva okrivljenog u postupku iz čl. 199 ZKP (Zabrana napuštanja boravišta). Takođe, videćemo na koji način rešenja iz Zakona o putnim ispravama direktno dovode do povrede prava na delotvoran pravni lek iz čl. 13 Evropske konvencije za zaštitu ljudskih prava i osnovnih sloboda. Prikazuju se i rešenja iz zakonodavstva SR Nemačke.

Radi lakše preglednosti, tekst je izložen taksativno po rednim brojevima. Prvo se navode odredbe pravnih akata koje su analizirane, a zatim se obrazlaže u čemu se sastoje povrede.

**Ključne reči:** ograničavanje slobode kretanja; oduzimanje putne isprave; mere obezbeđenja prisustva okrivljenog u postupku; povreda prava na delotvoran pravni lek.