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## DOKTRINE „STAND YOUR GROUND“ I „CASTLE“ – NUŽNA ODBRANA STANA I DRUGIH PROSTORA IZ UGLA ANGLOAMERIČKOG I EVROPSKOG PRAVA

**Apstrakt:** Iako nužna odbrana spada u klasične institute krivičnog prava, poslednjih nekoliko decenija u zakonodavstvu i uporednoj sudskoj praksi dolazi do preispitivanja njenih granica. Dok evropsko pravo tradicionalno smatra da napadnuti nije obavezan da se povlači pred napadačem, ovo pravilo je u angloameričkom pravu važilo samo ukoliko se radilo o odbrani u prostoru mesta stanovanja. Početkom XXI veka dolazi do reforme nužne odbrane u jednom broju američkih država, uz uvođenje subjektivnog kriterijuma kada je odbijanje napada upotrebom smrtonosne sile nužno i uvođenje većeg broja zakonskih pretpostavki, što je znatno povećalo broj slučajeva u praksi u kojima je ubistvo napadača bilo opravdano. Iako se proširivanjem prava na nužnu odbranu uvećava verovatnoća mogućih zloupotreba, ne ohrabruje činjenica da se u srpskoj judikaturi opravdanje po ovom osnovu prihvata vrlo restriktivno. Autor ukazuje na opravdanost izdvajanja nužne odbrane u mestu stanovanja iz opšteg režima i na neophodnost da se inercija sudova po tom osnovu prevaziđe drugačijim zakonodavnim pristupom.

**Ključne reči:** nužna odbrana, doktrina „zauzmi busiju“, doktrina „zamka“, stan, vozilo.

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“STAND YOUR GROUND” AND “CASTLE” DOCTRINES –  
DEFENSE OF A DWELLING OR OTHER PLACES  
FROM ANGLO-AMERICAN AND EUROPEAN  
LEGAL PERSPECTIVE

SUMMARY

Although self-defense belongs to the classical criminal justice institutes, over the last few decades its boundaries have been re-examined in the legislation and comparative case law. While European law traditionally consider that the attacked person is not obligated to retreat from the attacker, in Anglo-American law this rule was only effective when it came to the defense of dwellings. At the beginning of the 21<sup>st</sup> century, the self-defense was reformed in many US states, with the introduction of a subjective criterion, when the rejection of the attack by the deadly force is to be considered necessary, and the introduction of several legal assumptions, which, in effect, greatly increased the number of cases where the murder of the attacker was justified. While extending the right to a self-defense increases the likelihood of possible abuse, the fact that in the Serbian judiciary the justification on this basis applies very restrictively does not encourage. The author points out that it is necessary to allocate defense of dwellings from the general regime of self-defense, and to overcome the inertia of courts on that basis by a different legislative approach.

**Key words:** self-defense, doctrine “stand your ground”, doctrine “castle”, dwelling, vehicle.

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## DRŽAVNI SUDOVI – PERSPEKTIVE

*„Klanjajući se diktatima političkih gospodara, postali ste partneri u zločinu ubistva sudske nezavisnosti i integriteta. Prodali ste svoju dušu đavolu, trampeći vašu savest za materijalnu dobit, lagodnost i sigurnost službe...“*

(Iz govora Anwara Ibrahima, opozicionog lidera, nakon čitanja presude Federalnog suda Malezije od 10. februara 2015, World Observer Online, 13 February 2015.)

**Apstrakt:** Osnovna uloga države treba da bude u poboljšanju, ili bar očuvanju na zadovoljavajućm nivou uslova života građana koji žive u njoj. No, kako u svetu, tako i u Srbiji svakodnevno se ispoljavaju okolnosti koje govore čak upravo suprotno. U sistemu države jedna od osnovnih poluga je pravosuđe gde se po značaju posebno ističu sudovi. Stoga je ne samo logično, nego i empirijski lako utvrdivo da u lošoj državi ne može funkcionisati dobro pravosuđe. Pa i obrnuto. S druge strane, istina i pravda, kao osnovni civilizacijski aksiomi i uslovi opstanka čovečanstva, ali i temelj ljudskih prava, u principu i u najvažnijem su kao ekskluzivitet povereni takvim državama i takvim sudovima. Pod takvim postavkama se ovde, autor ne samo pita da li to tako treba da ostane, nego i daje eksplicitan odgovor da to tako više ne može ukoliko želimo bilo kakav napredak i iole prihvatljivu životnu perspektivu. Došlo je vreme da se rezultati sadašnjih rešenja, naročito uloge države, prvo analiziraju, zatim da se o tome dobro razmisli, da bi se konačno pristupilo kapitalnim promenama u odlučivanju o istini i pravdi.

**Ključne reči:** država, sudovi, istina, pravda, perspektive.

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## STATE COURTS – PERSPECTIVES

### SUMMARY

The article is dealing with state owned courts with utmost criticism. Contemporary states are predominantly burdened with enormous troubles many are so called “failed states”. The courts, being the state organs are tied to such states. Therefore, in “failed states” there must be the “failed courts.” This pertains especially to Serbia and its courts, including Constitutional court. However, the logical consequence is that under existing system it is almost impossible to achieve any improvement with existing political Establishment and its staff.

Yet, there are some proposals, all based on making some distance from State and politics.

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47 Sveti Augustin: O božjoj državi, IV, 4: *Remota itaque iustitia quid sunt regna nisi magna latrocinia –Odmakne li se pravda, šta su kraljevstva nego velike razbojničke družine?*

Truth and justice are too precious for the Mankind to remain exclusivity of state due only to the physical power it possesses. Therefore as much as possible is necessary involvement of experts and other people outside State and politics. However, for the judges the prime must be ethic criterion. Repetitive changes of regulations and some additional education of people unacceptable for judiciary are the wrong way that is leading only to further confusion and many other negative consequences.

**Key words:** state, courts, truth, justice, perspectives.

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## KRIVIČNO DELO PRANJA NOVCA U SAVREMENOM UPOREDNOM ZAKONODAVSTVU

**Apstrakt:** Pranje novca je krivično delo međunarodnog karaktera koje priznaje većina zakonodavstava i pravnih teoretičara u čitavom svetu. To je priliv prihoda stečenih krivičnim delom, prividno legalnih, u cilju budućeg slobodnog korišćenja date imovine i sticanja novih dohodaka. Krivična dela pranja novca predviđena su međunarodnim sporazumima, među kojima najveći značaj ima Konvencija Ujedinjenih nacija protiv nezakonitog prometa opojnih droga i psihotropnih supstanci i Konvencija Saveta Evrope o pranju, traženju, zapleni i oduzimanju prihoda stečenih kriminalom i o finansiranju terorizma. Bečka konvencija je prvi, ali i najvažniji međunarodni ugovor posvećen pranju novca, jer se sve naredne konvencije zasnivaju na tom sporazumu. U članu 3 (1) države se pozivaju da inkriminišu tri oblika aktivnosti kada se vrše umišljajno. Primarna namera je bila da se kriminalizuje proces u kome neko prikriva postojanje, nedozvoljen izvor ili nazakonito korišćenje dohoda, a zatim ih lažno prikaže kako bi prihodi izgledali legalno. Takođe, cilj se ogleda i u tome da se spreči povratak nezakonitog profita u kriminalnu delatnost, koji se koristi za razvoj te aktivnosti. U ovom radu autor razmatra jedan broj značajnih pitanja vezanih za krivična dela pranja novca. U datom kontekstu posebna pažnja posvećena je prikazu i analizi zakonskih tekstova Sjedinjenih Američkih Država, Velike Britanije i Ruske Federacije.

**Ključne reči:** pranje novca, Bečka konvencija, prihodi stečeni krivičnim delom, legalizacija, Konvencija o pranju novca.

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Волженкин Б. В. /2001/: *Уголовный кодекс Голандии*, Санкт-Петербург.

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## THE OFFENSE OF MONEY LAUNDERING IN MODERN COMPARATIVE LEGISLATION

### SUMMARY

Money laundering is a crime of international character recognized by the most legislations and legal theorists throughout the world. It is the influx of proceeds from crime, apparently legal, in order to enable the future use of that property and the acquisition of new incomes. Money laundering crimes are regulated by international agreements, among which the most significant is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Vienna Convention was the first international agreement addressed to money laundering and the most important international commitment on this matter, as all the future treaties rely on it. The article 3 (1) of the convention calls on states to incriminate three types of activities, when they are committed intentionally. The primary intent was to criminalize the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate. The convention also is aimed to stem the flow of illicit profits back to the criminal enterprise used to capitalize criminal profits and to expand criminal activity. In this article, the author discusses a number of important issues related to the money laundering crimes. In that context, special attention was paid to demonstration and analysis of statutes of USA, Great Britain and Russian Federation.

**Key words:** money laundering, Vienna Convention, proceeds from crime, legalization, Money Laundering Convention.

*Zvezdana Hristov\**

## PSIHOLOŠKE I KRIMINOLOŠKE KARAKTERISTIKE UČINILACA KRIVIČNIH DELA PROTIV EKONOMIJE

**Apstrakt:** Izrada profila učinilaca krivičnih dela protiv ekonomije, odnosno onih koji zloupotrebom službenog položaja, vršenjem krivičnih dela protiv imovine i privrede razaraju ekonomiju jedne zemlje, oštećuju državni budžet i negativno utiču na standard građana predstavlja istraživanje multidisciplinarnog karaktera u kojem se ukrštaju znanja iz oblasti ekonomije, psihologije i prava. Za analizu ličnosti učinilaca ove grupe krivičnih dela upotrebljeni su Kibernetička baterija konativnih testova – KON 6<sup>1</sup> i test AMRL 23 koji su konstruisali Knežević i Radović 1994. godine. Na reprezentativnom uzorku osuđenih lica za dela protiv ekonomije koji su na izdržavanju zatvorske kazne u Kazneno-popravnim zavodima Sremska Mitrovica i Požarevac, inventarima ličnosti je proverena sklonost određenim obrascima ponašanja poput laganja, varanja, manipulativnosti koji koreliraju sa psihopatijom, kao i prisustvo određenih neurotskih i psihosomatskih poremećaja koji su posledica profesionalne deformacije. Akcenat je isključivo na osobama koje su podlegle kriminalnim aktivnostima zarad sticanja ekstra profita, odnosno učinocima instrumentalnih krivičnih dela. Ukrštanjem socio-demografskih karakteristika, osobina ličnosti i preferiranih krivičnih dela dobijen je profil učinilaca dela iz oblasti ekonomskog kriminala.

**Ključne reči:** ekonomski kriminal, instrumentalna krivična dela, profil, osobine ličnosti.

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PSYCHOLOGICAL AND CRIMINOLOGICAL  
CHARACTERISTICS OF ECONOMIC  
CRIME PERPETRATORS

SUMMARY

Profiling perpetrators of economic crime, persons which committed abuse of official position, crimes against property and businesses, destroying the economy of their country, damaging the state budget, compromising citizens standard is multidisciplinary research which for is used knowledge from economics, psychology and law. Psychological analysis of perpetrators is implemented by Cybernetic battery of conative tests – KON 6 (Momirović at al., 1992) and AMRL 23 (Knežević, Radović, 1994). Research was conducted at prisons Sremska Mitrovica and Zabela on fraud convicted male persons sentenced to more than one year in jail. Based on a representative sample, there is no significant deviation from normal population, but division into two groups by age, resulted in specific psychological characteristics of the perpetrators: elevated levels of passive amorality (AMRL 23), extraversion, activity (EPSILON), above-average functioning of defending regulators (ALFA), dominance and reduced levels of violent aggression (SIGMA), insensitivity, psychopathy (DELTA) and high level of socialization (ETA). There was a regularity in behavior depending of the age of respondents, specialization for certain criminal offenses, intelligence and education. Pairing socio-demographic characteristics, personality traits and preferred offenses resulted in construction of criminalistic profile of perpetrators who committed instrumental crime motivated exclusively by profit gain.

**Key words:** economic crime / instrumental crime / fraud / profile / psychological analysis.

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## HULIGANIZAM, VANDALIZAM I NASILNIČKO PONAŠANJE<sup>1</sup>

**Apstrakt:** U radu su prikazane pojedinačne karakteristike oba oblika destruktivnog ponašanja, radi njihovog boljeg razumevanja, uz prethodni osvrt na problematiku definisanja i određivanja pojmova. Nakon toga, sledi kraći pregled pitanja vezanih za pojam nasilja u sportu, kao karakterističnog foruma gde se ispoljavaju oba pojma koja su u fokusu ovog rada. Nadalje, budući da rad ne pledira da zauzme monofaktorski pristup prilikom razmatranja pitanja kauzalnosti fenomena, dat je prikaz i društvene i biološke uslovljenosti nastanka nasilničkog ponašanja. Ta pitanja razmatrana su u delu posvećenom samom nasilju iz razloga što je ono sastavni deo i centralni pojam unutar pojmova huliganizma i vandalizma. Osnovna hipoteza koja je u radu postavljena je da na huliganizam i vandalizam, kao i nasilje uopšte, jednako utiču svi razmotreni uslovi, te da je rešavanju problema iz domena nasilničkog ponašanja neophodno prići na multidisciplinarni i interdisciplinarni način, primenom triangulacionih metoda.

**Ključne reči:** huliganizam, vandalizam, nasilje, nasilje u sportu, društvena uslovljenost.

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## HOOLIGANISM, VANDALISM AND VIOLENT BEHAVIOR

### SUMMARY

This paper presents key issues surrounding hooliganism, vandalism and violent behavior. The author explains the basic elements of the phenomena in question starting at the consideration of definitions, having in mind that there are a lot of ambiguity in that filed. For that purpose, the author elaborates not only some notable theoretical definitions and explanations, but also definitions laid down in the Serbian legislation. Furthermore, the paper gives some detailed overview of hooliganism and vandalism in the context of sport. This is because sport could typically generate, beside all the positive things, the kind of hooligan and vandal acts which lead to easy-identifying them for the sake of research. After that, the detailed analysis of hooliganism and vandalism separately, followed with considerations about the notion of violence since this could be also helpful in determining hooliganism and vandalism as concepts. In accordance with strict academic approach, violence is the central point in hooliganism, while, in the wider academic approach this could be also said for vandalism but with a note that when it comes to vandalism, violence is manifested towards material items. In order to identify the conditions for violent behaviour (including hooliganism and vandalism) this paper gives a scope of social conditions dividing them into a few categories for systematic purposes. After that the paper presents some remarks on biological conditions in short. It is of great importance to include such theories while considering violent behavior since it should be noted that despite many different definitions and theoretical approaches, frustrations need to be considered as a very important element in violent behavior emergence. Finally, the author wants to emphasize the necessity of creating such cultural patterns that would reduce violent behavior. It seems like the first step in that effort, but also the most important.

**Keywords:** Hooliganism, Vandalism, Violence, Sports violence, Conditionality.

# ZAKONODAVSTVO I PRAKSA

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## KRIVIČNA DJELA TERORIZMA U KRIVIČNOM ZAKONIKU REPUBLIKE SRPSKE

**Apstrakt:** Krivičnim zakonikom Republike Srpske predviđena je nova grupa krivičnih djela pod nazivom Krivična djela terorizma (Glava XXIII) u kojoj se, pored krivičnog djela terorizma i krivičnog djela finansiranje terorističkih aktivnosti, koja su i ranije bila dio krivičnog sistema Republike Srpske, nalaze i posve nove inkriminacije. Nova krivična djela u ovoj oblasti su uvedena kako bi se ispunili zahtjevi koje je pred Bosnu i Hercegovinu postavio Komitet za evaluaciju mjera za sprečavanje pranja novca i finansiranja terorizma. U radu se ukratko obrazlažu pojedine inkriminacije iz ove grupe krivičnih djela.

**Ključne riječi:** terorizam, finansiranje terorizma, terorističke grupe ili organizacije, terorističke aktivnosti.

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CRIMES OF TERRORISM  
IN THE REPUBLIKA SRPSKA CRIMINAL CODE

SUMMARY

The Criminal Code of the Republika Srpska foresees a new group of criminal offenses entitled Criminal Offenses of Terrorism (Chapter XXIII) in which, in addition to the criminal offense of Terrorism and Crimes, the financing of terrorist activities, which were previously part of the criminal justice system of the Republika Srpska, contains completely new incriminations. New criminal offenses in this area have been introduced to meet the requirements set by the Committee for the Evaluation of Measures to Prevent Money Laundering and Terrorist Financing before Bosnia and Herzegovina. The paper summarizes the individual incriminations from this group of criminal offenses.

**Key words:** terrorism, terrorist financing, terrorist group or organization, terrorist activities.