

*Stojana Petrović, Ph.D.\**  
Faculty of Law, University of Banja Luka  
ORCID: 0000-0002-9507-8585

## **ENFORCEMENT AGAINST REAL ESTATE THAT IS NOT REGISTERED BECAUSE THE RECORDS HAVE BEEN DESTROYED OR DAMAGED\*\***

**ABSTRACT:** In both observed entities of Bosnia and Herzegovina, the Republika Srpska and the Federation of Bosnia and Herzegovina, there are areas where the existing real estate records have been destroyed or damaged, and their restoration will certainly be carried out. Since establishing real estate records is a lengthy process, legislators provide for special procedural rules when such real estate is proposed as an object of compulsory enforcement. In this way, legislators are trying to compensate enforcement creditors for the still-present irregular maintenance of public registers, or rather their non-existence in certain areas, and to enable carrying out compulsory enforcement against such real estate as well. This is especially true in situations where the enforcement debtor has no other object of enforcement that they could propose.

The aim of this research is a normative-dogmatic analysis of the domestic legislative model for enforcement against real estate that is not entered in the public register because the register has been destroyed or damaged. The analysis of domestic and comparative

---

\* e-mail: [stojana.petrovic@pf.unibl.org](mailto:stojana.petrovic@pf.unibl.org), Associate Professor.

\*\* The paper was received on August 9, 2024, and it was accepted for publication on February 19, 2026.

The translation of the original article into English is provided by the *Glasnik of the Bar Association of Vojvodina*.

procedural doctrine and the available, current domestic case law indicates that the special procedural rules applied in this situation in both entities of Bosnia and Herzegovina do not correspond to the interest of the enforcement creditor in the realization of efficient enforcement against such real estate. Given the observed weakening of the general principle of judicial management of the proceedings, a conclusion can be drawn about the excessive burden on the enforcement creditor, as well as the unjustified, overly conditional, and therefore rare judicial conduct of such real estate seizure inventory.

**Keywords:** enforcement proceedings, real estate, registration of real estate rights, cadastre, land register

## INTRODUCTION AND IDENTIFICATION OF THE RESEARCH PROBLEM

A complete and accurate real estate register<sup>1</sup> is the aim of every modern state. However, this intention has been known for a long time; only the motives have changed. In the past, complete and accurate public real estate records served to enable the state to identify taxpayers.<sup>2</sup> Today, however, beyond this purpose, the goal is legal security and legal certainty, not only for title holders, but also for subsequent acquirers, especially in the context of legal transactions. In this way, disputes over real estate are prevented. The principle that

---

<sup>1</sup> In the Republika Srpska, as early as 2012, i.e., as of the entry into force of the Law on Survey and Cadastre, *Official Gazette of the Republika Srpska*, No. 6/12, 110/16, 22/18, 62/18, 95/19, 90/23, (hereinafter: LSC RS), the real estate cadastre was introduced as a single register of real estate and real rights (see: Art. 4, para. 1 of the LSC RS). Despite this, the legislator in the Republika Srpska has not aligned the terminology of enforcement procedural rules with the terminology of the applicable substantive law. The Federation of Bosnia and Herzegovina still uses the dual-record system – land registers and the cadastre (see: Art. 1 and Art. 2, para. 1, point 1 of the Law on Land Registers, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 58/02, 19/03, 54/04, 32/19, 61/22, (hereinafter: LLR FBiH).

In this paper, general terms such as “public real estate records” and “real estate register” will be used when speaking in general terms. When referring to the specific law of each entity, in addition to general terms, the statutory terminology from the applicable substantive law will be used.

<sup>2</sup> Sič, M. (2013). Katastri, zemljišni registri i isprave o kupoprodaji u starom Rimu – elementi modernih zemljišnih knjiga. *Collected Papers of the Faculty of Law in Novi Sad*, 47(2), 298.

From a comparative-law perspective, the same purpose underlay the establishment of the first complete cadastre in the mid-19th century in Austria as well. (Nikolić, S. (2011). Evidencija nepokretnosti u Austriji – (pravno nasleđe, aktuelni koncept i trendovi). *Glasnik of the Bar Association of Vojvodina*, 83(10), 504).

registration is constitutive for rights in real estate acquired by legal transaction, and the principle of trust of all third parties in the completeness of data in the public register, correspond to these goals by emphasizing the importance of public records.<sup>3</sup>

Committed to complete and accurate real estate records as the ultimate goal, the entities of Bosnia and Herzegovina have worked to find the optimal form of their organization. In particular, a reform process was carried out in the Republika Srpska. The dual-record system – the cadastre, as a register of real estate and its users, and the land register, as a register of title holders and rights in real estate, was, as of 2012, replaced by the real estate cadastre as a single register not only of real estate but also of the rights in it.<sup>4</sup> The Federation of Bosnia and Herzegovina has remained committed to the dual-record system.

In both observed Bosnian-Herzegovinian entities, there are areas affected by the most recent wartime events, where real estate records previously existed but have been destroyed or damaged. In such areas, the process of establishing the real estate cadastre, i.e., the real estate register, is still ongoing. Surveying and establishing the real estate cadastre in the Republika Srpska, in each individual cadastral municipality, is carried out on the basis of planning documents – medium-term programs and the annual work plan. In addition, there are areas where public records have never existed, and it is not certain when they will be established.<sup>5</sup>

In order to enable enforcement creditors to obtain compulsory satisfaction even against real estate located in areas where the public register has been destroyed or damaged and the process of its establishment has not yet been completed, as well as in areas where the register never existed at all, legislators in the entities of Bosnia and Herzegovina provide for special rules of enforcement proceedings tailored precisely to these situations. Article 113, paragraph 1 of the Law on Enforcement Procedure<sup>6</sup> in both entities stipulates that the

---

<sup>3</sup> Ernst, H. (2022). Publicijansko vlasništvo nekretnina. *Collected Papers of the Faculty of Law of the University of Rijeka*, 43(3), 739. Cf. Petrović, S. (2023). Suvlasništvo trećeg lica na predmetu izvršenja kao pravo koje (ne) sprečava izvršenje. *Pravni vjesnik*, 39(3–4), 220.

<sup>4</sup> For more on the reform process, see: Kopanja, S. (2012). O reformi zemljišno-knjižne evidencije u Republici Srpskoj. *Pravni savjetnik*, 5, 66.

<sup>5</sup> There is no publicly available data on the number of cadastral municipalities that still do not have an established real estate cadastre, i.e., where this data is still incomplete. Currently, at least 15 cadastral municipalities in the Republika Srpska do not have a real estate cadastre. Available at: <https://www.rgurs.org/stranica/rerp>, accessed on July 27, 2024. It can be assumed that the number of such cadastral municipalities is even greater.

<sup>6</sup> *Official Gazette of the Republika Srpska*, No. 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13, 98/14, 5/17, 58/18, 66/18, (hereinafter: LEP RS); *Official Gazette of the*

*lex generalis* provisions of the Law governing enforcement against real estate shall also apply in proceedings for enforcement against *real estate that is not entered* in the land register. Priority in application is given to the provisions of Article 113 of the LEP RS/ LEP FBiH, as *lex specialis* rules that specifically concern enforcement against real estate that is not entered in the register.

In enforcement against real estate in areas where the previously existing register has been destroyed, lost, or damaged, but where its re-establishment is certain, domestic legislators do not condition the first phase, i.e., the phase of ordering enforcement, on the existence of a public register, nor on the registration of the enforcement debtor as the title holder. In a normative-law sense, it is possible to carry out the second phase of enforcement proceedings as well, namely the first enforcement act – the publication of the enforcement order with the effect of its registration as a notice. Despite this, the enforcement creditor may encounter problems in carrying out enforcement against such real estate because the burden of obtaining proof of the enforcement debtor's *titulus* has been shifted precisely onto the enforcement creditor. Even after the register is established in the given area, an enforcement creditor who does not possess and cannot obtain the enforcement debtor's basis of acquisition for such real estate is not adequately protected by law.

The paper addresses a normative-dogmatic and theoretical-doctrinal assessment of the quality of procedural rules relating to enforcement against real estate located in areas where the existing register has been destroyed or damaged, but where it is certain that it will be re-established, i.e., restored. This is examined from the perspective of protecting the enforcement creditor's interest in the efficient conduct of enforcement proceedings against such real estate. The subject of analysis will not be enforcement against real estate in areas where records have never existed, nor where it is uncertain whether they will be established.

Although it is commendable that domestic legislators allow real estate that is not entered in the register, solely because the register has been destroyed or damaged, to be proposed and ordered as the object of enforcement, the paper addresses certain domestic positive-law solutions regulating this situation. It is primarily posited that the observed contradictions among the provisions should, in case law, be interpreted *in favorem* of the enforcement creditor's interest in obtaining compulsory satisfaction. This general premise is concretized through the idea, or rather the proposal, to strengthen the role of the court in carrying out enforcement against such real estate, instead of shifting the initiative for carrying out official court actions onto the enforcement creditor. The legal phrase "provided that registration is not contrary to law," which is set as a condition

---

*Federation of Bosnia and Herzegovina*, No. 32/03, 52/03, 33/06, 39/06, 39/09, 35/12, 46/16, 42/18, (hereinafter: LEP FBiH).

for the court to resort to a seizure inventory, should likewise in domestic case law be interpreted as applicable in situations of destroyed or damaged registers, and not infrequently, as is the current situation in domestic case law, only where public real estate records never existed and their establishment is uncertain.

## **THE DOMESTIC LEGISLATIVE MODEL OF ENFORCEMENT – AN ANALYSIS OF THE MODEL AND CRITICAL REMARKS**

The provisions of Article 113, paragraphs 1 through 5 of the LEP RS/LEP FBiH refer to the rules on enforcement against real estate that is not entered in the register because the register has been destroyed or damaged, and is planned to be restored. The manner in which they are formulated leaves room for interpretation.

In order for the enforcement court to be able to order enforcement against real estate located in an area where public records previously existed, but at the time the motion for enforcement is filed they have been destroyed or damaged, and it is certain that they will be restored, or that the restoration procedure is in progress, the enforcement creditor must prove, in the motion for enforcement before the court, the enforcement debtor's ownership. If the enforcement creditor does not possess such proof, they may request that the court conduct proceedings identifying the enforcement debtor's property, pursuant to Article 37 of the LEP RS/LEP FBiH, in order to obtain it.<sup>7</sup>

If the enforcement debtor acquired the real estate that is the object of enforcement by legal transaction, an enforcement creditor who decides to propose such real estate as the object of enforcement will find themselves in a complicated legal situation. Namely, most often this is a situation where there is no public register; it existed in the past and its re-establishment, i.e., restoration, is planned, but it is not certain when it will occur. Although the enforcement creditor knows that the enforcement debtor was registered as the title holder of such real estate while the register existed, they do not possess proof of this fact in the form of an extract from the register while it existed, nor can they easily obtain it at the time of filing the motion for enforcement, because the register has been destroyed or damaged. The proceedings to identify the enforcement debtor's property, referred to by legislators as the solution to the problem of obtaining proof of the enforcement debtor's ownership, have long shown their shortcomings in practice.<sup>8</sup> Although the enforcement

---

<sup>7</sup> Art. 113, para. 2 of the LEP RS / LEP FBiH.

<sup>8</sup> Račić, R. (2021). *Izvršno procesno pravo*. Banja Luka: Faculty of Law, University of Banja Luka, 172.

debtor has a duty to provide evidence of their right to the real estate that is the object of enforcement,<sup>9</sup> they may disregard this duty by refusing to produce the document as proof of their ownership, even at the cost of paying a fine. Domestic legislators do not offer a way out of the *circulus vitiosus* in which the enforcement creditor finds themselves, unless they propose a new object of enforcement, if the enforcement debtor has one. A similar situation exists where the enforcement debtor was not entered in the previously existing records as the owner of the real estate that is the object of enforcement, solely due to their negligence. The enforcement creditor will face an equal, or even greater, problem in obtaining the enforcement debtor's *titulus* and, only after the register is established or restored, in securing the registration of the enforcement debtor's right in that real estate, and then attaching to the motion for enforcement the decision on registration of the enforcement debtor or an extract from the register.

The enforcement creditor is in a somewhat more favorable procedural position if the enforcement debtor acquired the real estate proposed as the object of enforcement on the basis of law, a court decision, or inheritance. In that case, registration of the enforcement debtor's right has only declaratory significance,<sup>10</sup> serving to notify third parties of that fact. If the enforcement creditor has the enforcement debtor's *titulus* as proof of the enforcement debtor's ownership, the enforcement creditor may, even in the absence of real estate records, proceed under Article 113, paragraph 2 of the Law and attach proof of the enforcement debtor's ownership to the motion for enforcement. If they do not have such proof of ownership, they will be in an equally difficult position as the enforcement creditor whose enforcement debtor acquired the real estate that is the object of enforcement by legal transaction.

If the enforcement creditor does not attach to the motion for enforcement proof that the enforcement debtor is the owner of the real estate proposed as the object of enforcement, or if such proof cannot be obtained in the proceedings to identify the enforcement debtor's property, the enforcement court will dismiss the motion.<sup>11</sup>

This leads to the conclusion that the phase of ordering enforcement against real estate that is not entered in the public register, because it

---

<sup>9</sup> Keča, R., Knežević, M. (2021). *Građansko procesno pravo*. Belgrade: Official Gazette, 619.

<sup>10</sup> Art. 23 of the Law on Real Rights, *Official Gazette of the Republika Srpska*, No. 124/08, 3/09, 58/09, 95/11, 60/15, 18/16, 107/19, 1/21, 119/21, (hereinafter: LRR RS). The same provision is contained in the Law on Real Rights, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 66/13, 100/13, 32/19, (hereinafter: LRR FBiH).

<sup>11</sup> Triva, S., Belajec, V., Dika, M. (1980). *Sudsko izvršno pravo, opći dio*. Zagreb: Informator, 184.

has been destroyed or damaged, but whose re-establishment is certain, is not conditioned on the prior establishment of the register. The court issues an enforcement order even against such real estate, applying the *lex generalis* provisions on enforcement against real estate. However, conditioning the enforcement order on proof of the enforcement debtor's ownership, and especially shifting the burden of proof onto the enforcement creditor, places them in an unfavorable procedural position from which the applicable procedural rules offer no way out.

Because the public register does not exist or has been damaged, the enforcement creditor is obligated to identify the real estate in the motion for enforcement, that is, to indicate where it is located, its designation, boundaries, and surface area.<sup>12</sup>

If the court finds the motion for enforcement well-founded and orders enforcement against such real estate, the law also provides that the first enforcement act may be taken. Because there is no register in that area, it is impossible to make a record in the register. The rules on enforcement against real estate located in areas where there is no register, i.e., where it has been destroyed or damaged but its re-establishment is certain, differ from the general rules of enforcement against real estate not only regarding the form of this first enforcement act, but also who is authorized to take it. Namely, the general rule contained in Article 72, paragraph 1 of the LEP RS/LEP FBiH is that the court will, immediately upon issuing the enforcement order, *ex officio* order that a notice of enforcement be entered in the real estate register.<sup>13</sup> The *lex specialis* rule for such real estate does not provide for such action by the court. Instead, it is provided that, upon the enforcement creditor's request and at their expense, the court will publish the enforcement order in the entity's official gazette and in at least two daily newspapers distributed in the entity.<sup>14</sup> The realization of the procedural and substantive effects of such an enforcement notice carried out in this manner, even after the real estate register is established, is guaranteed by the *ex tunc* effect of publication, from the moment the order is published in the official gazette and in the daily newspapers.

Under the general rules of enforcement, the principle of officiality predominates in undertaking the first enforcement act – the registration of a notice

---

<sup>12</sup> Art. 113, para. 2 of the LEP RS/LEP FBiH. The legislator in the Republika Srpska has not yet amended this provision and aligned it with the provisions of the LSC RS, which stipulates that the enforcement creditor must identify the real estate according to the data from the cadastre (referring to data on real estate which, under the former dual-record system, were contained in the cadastre).

<sup>13</sup> The legislator in the Republika Srpska incorrectly uses the term *land register*, even though the land register system was abandoned back in 2012.

<sup>14</sup> Art. 72, para. 4 of the LEP RS/LEP FBiH.

of enforcement. Under the special rules for real estate that is not registered, the official action of the court – publication of the enforcement order with the effect of a notice – is conditioned on the disposition of the enforcement creditor and is placed at their expense. The general principle of the court-driven movement of the proceedings does not apply. As a result of such regulation, enforcement creditors, probably due to insufficient knowledge of their rights, very rarely use this authorization in practice.

In addition to this departure to the detriment of the enforcement creditor of the *lex specialis* rules relating to enforcement against real estate in areas where the register has been destroyed or damaged, compared to the general rules for enforcement against real estate entered in the public records, it is noticeable that these special rules are also mutually contradictory. Namely, the provision prescribing the procedure for publication of the enforcement order with the effect of a notice of the enforcement order, upon the enforcement creditor's request, contained in Article 72, paragraph 4 of the LEP RS/LEP FBiH contradicts Article 113, paragraphs 3 and 4 of the LEP RS/LEP FBiH, according to which the enforcement court, *upon issuing the enforcement order* (emphasized by the author), will suspend the enforcement proceedings until the completion of the procedure for establishing the public records and registering the enforcement debtor's right in the real estate that is the object of enforcement. The first provision provides for the commencement of the second phase of the enforcement proceedings and the undertaking of the first enforcement act, while the second provision provides for suspending enforcement proceedings before the second phase begins, i.e., before enforcement is carried out.

Here, the actions of both the court and the enforcement creditor are suspended until the administrative procedure is completed, primarily the establishment of the real estate register, and then the procedure for registering the enforcement debtor's right.<sup>15</sup>

The provision of Article 113, paragraph 5 of the LEP RS is not complementary to the provision of Article 113, paragraph 4 of the LEP RS. Although registration of the enforcement debtor's right in the real estate that is the object of enforcement, as well as the burden of obtaining the *titulus* for that registration, is shifted onto the enforcement creditor, it appears that paragraph 5 of Article 113 of the LEP RS/LEP FBiH is not applicable in this situation – where public real estate records previously existed, but have been destroyed or damaged and it is certain that they will be re-established. Namely, this provision regulates the enforcement creditor's action aimed at requesting registration of the enforcement debtor's right in the real estate that is the object of enforcement. The enforcement creditor is obliged, within the statutory

---

<sup>15</sup> Art. 113, paras. 3 and 4 of the LEP RS/LEP FBiH. See also: Račić, R. (2021). *Izvršno procesno pravo*. Banja Luka: Faculty of Law, University of Banja Luka, 173.

time limit of 15 days from the date the enforcement order is issued, to request registration in the public register and to notify the enforcement court of this within a time limit set by the court. Although the legislator explicitly directs the application of this provision to the situation where the public real estate register does not exist, i.e., has been destroyed or damaged and it is certain that it will be re-established, but it is not known with certainty when this will occur, the impression is that it serves no purpose for the enforcement creditor, within 15 days from the issuance of the enforcement order, to request registration of real estate located in that area for at least two reasons. The first is that the register does not exist, i.e., it is damaged, and the second is that it is not known for certain when it will be restored, even if such restoration is planned by the competent authority.

In the law of the Republika Srpska, before the 2018 amendment to the LSC RS,<sup>16</sup> it was possible to form a real estate cadastre for a single parcel in an individual public display procedure.<sup>17</sup> After the deletion of paragraph 3 of Article 71 of the LSC RS, this is no longer possible; rather, the real estate cadastre is established for an entire cadastral municipality.<sup>18</sup> Because it is impossible to secure the establishment of a cadastre for a single parcel in an area where it has not been established, the enforcement creditor's legal position has become significantly more difficult with respect to registration of the enforcement debtor's real estate, compared to the period before this statutory amendment.<sup>19</sup> Paragraph 5 of Article 113 of the LEP RS made sense in

---

<sup>16</sup> Law on Amendments and Supplements to the Law on Survey and Cadastre, *Official Gazette of the Republic of Srpska*, No. 62/18, which entered into force on July 18, 2018.

<sup>17</sup> Not only was Art. 71, para. 3 of the LSC deleted, but this legislative amendment also provided, in Art. 21 of the Law on Amendments and Supplements to the Law on Survey and Cadastre, that the procedure for establishing the real estate cadastre, which was initiated before the entry into force of this law, would be completed in accordance with that law. Therefore, its retroactive application was also provided for even to procedures that had begun before its entry into force. By Decision No. U-74/18 of October 30, 2019, the Constitutional Court of the Republika Srpska found Article 21 incompatible with the Constitution of the Republika Srpska, because the consequences of applying that provision to procedures for individually establishing cadastral parcels for a single parcel were not consistent with the legitimate expectations of the parties.

<sup>18</sup> Art. 71 of the LSC RS.

<sup>19</sup> For more, see: Majkić, M. (2020). Osvrt na primjenu pojedinih odredaba Zakona o izvršnom postupku Republike Srpske – neka sporna pitanja u sudskoj praksi. *Yearbook of the Faculty of Law, University of Banja Luka*, 1(42), 136.

The constitutionality of Arts. 71, 79 and 198 of the LSC RS and Art. 113, paras. 4 and 5 of the LEP RS were subject to review before the Constitutional Court of the Republika Srpska. By Decision No. U-14/20 of February 24, 2021, the Court decided not to accept the initiative for constitutional review of the cited provisions. The applicant, *inter alia*, argued that these provisions prevent re-establishing the cadastre for a single piece of

this situation, but only prior to the above-mentioned amendment to the LSC. The enforcement creditor could, within 15 days from the date the enforcement order was issued, request that the real estate be entered, i.e., request that the real estate cadastre be established only for that parcel in an individual public display procedure. Now, since the law no longer provides for that possibility, proceeding under paragraph 5 of Article 113 of the LEP RS is fruitless.<sup>20</sup> This line of reasoning leads to the conclusion that this provision has remained as a relic of an earlier, different substantive-law regulation of the procedure for entering real estate in the public register, and that it is necessary to harmonize it with the rules currently in force.

However, a different approach is possible, i.e., it could be taken that paragraph 5 of Article 113 of the LEP RS could be applied in a situation involving real estate located in an area where the public register existed but has been destroyed or damaged, and its re-establishment is certain. If, in such circumstances, an enforcement creditor who has the enforcement debtor's *titulus* were to file a request for registration of the enforcement debtor's right in the real estate, the competent local office would reject the request.<sup>21</sup> Such a decision rejecting the request to register the enforcement debtor's right may serve the enforcement creditor as proof that registration in the cadastre cannot be carried out in accordance with the Law. By informing the enforcement court that the request to register the enforcement debtor's right in the real estate has been rejected, the enforcement creditor will achieve a twofold goal: they will prevent termination of enforcement, and at the same time will satisfy the condition for scheduling a hearing for a seizure inventory of the object of enforcement, pursuant to paragraph 6 of Article 113 of the LEP RS.

---

real estate for which records have not previously been established, thereby violating the property rights of enforcement creditors seeking to enforce a final and enforceable court judgment where the object of enforcement is real estate not entered in the public register. In that situation, the judgment is unenforceable, while the enforcement debtor is placed in a more favorable position because there is a high likelihood that they will avoid enforcement to the detriment of the enforcement creditor. In that case, the Constitutional Court did not examine the applicant's allegations of constitutional violations because the initiative did not state reasons or explanations as to how the constitutional provisions had been violated.

<sup>20</sup> Such a conflict between Art. 113, para. 5 of the LEP RS and Art. 71 of the LSC RS has been recognized both in domestic legal theory and in case law; see: Decision of the Basic Court in Prijedor, No. 77 0 I 015887 18 I 2, cited in: Majkić, M. (2020). Osvrt na primjenu pojedinih odredaba Zakona o izvršnom postupku Republike Srpske – neka sporna pitanja u sudskoj praksi. *Yearbook of the Faculty of Law, University of Banja Luka*, 1(42), 136.

<sup>21</sup> This follows from the reasoning of the Judgment of the Supreme Court of the Republika Srpska, No. 12 0 U 005812 18 Uvp of August 21, 2019, available at: <https://sudskapraksa.pravosudje.ba/>, (accessed on July 20, 2024).

In the Federation of Bosnia and Herzegovina, under the LLR FBiH, the main land register is kept for one cadastral municipality.<sup>22</sup> It is also possible to create a new land register entry for a single piece of real estate, either *ex officio* or upon request.<sup>23</sup> Therefore, an enforcement creditor could, if they possess a *titulus* for the registration of the enforcement debtor's ownership right in the real estate, request the establishment of a new land register entry. It is considered that, in this situation, the court could not refuse such a request by the enforcement creditor.<sup>24</sup> Within such a substantive-law framework, as it exists in the Federation of Bosnia and Herzegovina, paragraph 5 of Article 113 of the LEP FBiH may be applied. The enforcement creditor could request the notice of enforcement, and if they did not do so and did not notify the court of this within the prescribed time limit, the court would terminate enforcement.<sup>25</sup>

After the establishment of the real estate cadastre (under the law of the Republika Srpska), i.e., after the creation of a new land register entry (under the law of the Federation of Bosnia and Herzegovina), the general provisions of Article 72, paragraphs 1 through 3 of the LEP RS/LEP FBiH apply. This also expressly follows from Article 72, paragraph 5 of the LEP RS/LEP FBiH. The only point is that the effect of the notice of enforcement, where it was carried out by publication upon the enforcement creditor's request, extends into the past due to its *ex tunc* effect and applies not from the moment of the actual entry of the notice of enforcement in the newly established or restored register, but from the moment when the enforcement order was first published in the media.<sup>26</sup>

### **PROCEDURAL DOCTRINE ON ENFORCEMENT AGAINST REAL ESTATE IN AREAS WHERE THE EXISTING PUBLIC REGISTER HAS BEEN DESTROYED OR DAMAGED**

The issues surrounding enforcement against real estate located in areas where public records previously existed and have been destroyed or damaged, and whose establishment is underway or can reasonably be expected, although practically relevant for any court situated in an area where such records do

<sup>22</sup> Art. 15, para. 2 of the LLR FBiH.

<sup>23</sup> Arts. 66 and 67 of the LLR FBiH.

<sup>24</sup> Račić, R. (2021). *Izvršno procesno pravo*. Banja Luka: Faculty of Law, University of Banja Luka, 173.

<sup>25</sup> Račić, R. (2021). *Izvršno procesno pravo*. Banja Luka: Faculty of Law, University of Banja Luka, 173.

<sup>26</sup> For a different understanding, see: Račić, R. (2021). *Izvršno procesno pravo*. Banja Luka: Faculty of Law, University of Banja Luka, 173.

not exist, have not so far attracted particular attention in procedural theory. It is noticeable that this is to some extent conditioned by the existence or non-existence of statutory regulation of the matter and by the state of the register in the particular country.

In earlier domestic procedural doctrine, Triva, Belajec, and Dika,<sup>27</sup> as well as Poznić,<sup>28</sup> (only) generally note that the rule imposing on the enforcement creditor the duty to attach to the motion for enforcement proof of the enforcement debtor's ownership of the object of enforcement also applies, *mutatis mutandis*, to enforcement against real estate in areas where registers do not exist. The authors do not examine in more detail how the enforcement creditor is to attach proof of the enforcement debtor's ownership if the register does not exist, nor which document could serve to prove the enforcement debtor's ownership. Nor do they address how the enforcement creditor is to obtain such proof, since the enforcement debtor will certainly not voluntarily provide it.

In more recent Serbian procedural theory, at a time when, in the territory of the Republic of Serbia, there was a problem of incomplete real estate registers, i.e., of their non-existence in certain areas, Keča and Starović observe that the enforcement creditor<sup>29</sup> may submit, as proof of the enforcement debtor's ownership right, either an extract from the real estate records, if they exist, or the basis for registering the enforcement debtor as owner, if the enforcement debtor is not registered as such. With respect to enforcement against real estate in areas where no register exists, reference is made to the provisions of the procedural and substantive rules in force at that time.<sup>30</sup>

Poznić and Rakić Vodinelić, in the part dealing with enforcement against real estate, appear to distinguish the situation where enforcement is carried out against real estate located in an area where no records are kept from the situation where real estate is the object of enforcement but is not registered for other reasons. The issues connected with this are not examined in more detail; rather, the discussion merely refers to the statutory provision.<sup>31</sup>

---

<sup>27</sup> Triva, S., Belajec, V., Dika, M. (1980). *Sudsko izvršno pravo, opći dio*. Zagreb: Informator, 162.

<sup>28</sup> Poznić, B. (1987). *Građansko procesno pravo*. Belgrade: Savremena administracija, 458.

<sup>29</sup> Legislators in the observed neighboring states do not use uniform technical terms for parties to enforcement proceedings. Since the focus of the research is on the rights of the observed entities of Bosnia and Herzegovina, the paper will use the terminology specific to legislators in the entities of Bosnia and Herzegovina.

<sup>30</sup> Keča, R., Starović, B. (2004). *Građansko procesno pravo*. Novi Sad: Faculty of Law, University of Novi Sad, 628.

<sup>31</sup> Poznić, B., Rakić Vodinelić, V. (2010). *Građansko procesno pravo*. Belgrade: Savremena administracija, 520.

Certain representatives of contemporary Serbian procedural doctrine – Bodiroga,<sup>32</sup> as well as Keča and Knežević,<sup>33</sup> refer to the positive-law regulation of an issue that is similar in form but substantively quite different – enforcement against real estate that is not registered and for which registration cannot be effected because it involves off-register ownership. Similarly, Stanković, Palačković, and Trešnjev<sup>34</sup> address the issue of enforcement against real estate that is not registered in the cadastre as a real estate record because the conditions for its registration do not exist, and which is held in off-register ownership by the enforcement debtor. It is a well-known fact that there are many such properties in the territory of the Republic of Serbia.

It could be concluded that the reason for the limited interest of contemporary procedural theory in the Republic of Serbia in the question of enforcement against real estate located in an area where no register exists, or where it has been damaged, lies in the fact that this country has reached the commendable goal of complete and accurate real estate records, i.e. there is no area where a real estate cadastre has not been formed, or where it is incomplete.<sup>35</sup> Therefore, this issue has no procedural positive-law formulation. The law of the Republic of Serbia is instead confronted with enforcement against real estate held in off-register ownership by the enforcement debtor as a current issue in practice. This concerns real estate in respect of which the enforcement debtor's right cannot be registered in the existing records because they do not possess either a use permit or a building permit; i.e., it concerns an illegally constructed building.

Since there are areas in Montenegro without complete and accurate real estate records, proceduralists have dealt with this issue to some extent from the perspective of Montenegrin procedural legislation. In the case of enforcement against real estate located in areas where a real estate cadastre has not been established, proceduralists refer to the statutory provision according to which the rules applicable to documents submitted with the motion for enforcement, as proof of the enforcement debtor's ownership in that area, apply *mutatis mutandis*. If no register has been formed for the area in which the real estate that is the object of enforcement is located, Stanković and Račić

---

<sup>32</sup> Bodiroga, N. (2012). *Teorija izvršnog postupka*. Belgrade: Faculty of Law, University of Belgrade, 324.

<sup>33</sup> Keča, R., Knežević, M. (2021). *Gradansko procesno pravo*. Belgrade: Official Gazette, 619.

<sup>34</sup> Stanković, G., Palačković, D., Trešnjev, A. (2018). *Komentar Zakona o izvršenju i obezbeđenju*. Belgrade: Official Gazette, 707.

<sup>35</sup> See also: Dolović Bojić, K. (2019). Održaj kao način sticanja prava svojine na nepokretnosti. *Annals of the Faculty of Law in Belgrade*, 67(1), 175.

direct the enforcement creditor to submit a title deed as a means of proof.<sup>36</sup> If the enforcement creditor is unable to obtain proof of the enforcement debtor's ownership of the real estate in question, they will, in the motion for enforcement, indicate its characteristics.<sup>37</sup> In this situation, the Montenegrin legislator provides for an inventory of the real estate, to which the parties to the enforcement proceedings and the owners of neighboring real estate are summoned. The record of the inventory of the real estate according to its physical characteristics is published with the effect of a notice of enforcement, and it may serve as a basis for registering the real estate.<sup>38</sup>

In Croatian procedural theory, relying on positive law, it is argued that enforcement can also be ordered against real estate that is not registered. The authors Šago and Milanović identify all three possible situations where such real estate may be proposed as the object of enforcement: real estate located in an area where land registers existed but have been destroyed, real estate where land registers never existed, and real estate that is not registered due to the enforcement debtor's negligence, even though public records exist. They do not specifically address the issues where enforcement is carried out against real estate that is not registered because the records have been destroyed or damaged, though they previously existed before and their re-establishment, i.e., restoration, is expected.<sup>39</sup> They note the statutory provisions on a seizure inventory in this situation, carried out in the presence of the parties to the enforcement proceedings and the owners of neighboring real estate.<sup>40</sup> Based on an analysis of current case law, the authors argue that enforcement creditors rarely choose to propose, as the object of enforcement, real estate that, for any reason, is not registered in public records.<sup>41</sup> This conclusion applies to Croatian law if the enforcement debtor has some other object of enforcement from which the enforcement creditor could obtain satisfaction. This is due to the statutory protection of the enforcement debtor's only real estate, which is

---

<sup>36</sup> Stanković, G., Račić, R. (2019). *Vanparnično procesno pravo i pravo izvršenja i obezbjeđenja*. Podgorica: Mediterranean University, Faculty of Law, 356.

<sup>37</sup> See: Art. 199 of the Law on Enforcement and Security, *Official Gazette of Montenegro*, No. 36/11, 28/14, 20/15, 22/17, 76/17, 25/19, (hereinafter: LES CG).

<sup>38</sup> Stanković, G., Račić, R. (2019). *Op. cit.*, 357. Cf.: Art. 199, paras. 3–5 of the LES CG.

<sup>39</sup> Šago, D., Milanović, R. (2022). Ovrha na nekretninama u hrvatskom zakonodavstvu. *Collection of Works "Current Issues in Civil and Commercial Legislation and Legal Practice"*, 19, 248.

<sup>40</sup> *Ibid.*, 248.

<sup>41</sup> *Ibid.*, 249.

also their home,<sup>42</sup> from compulsory enforcement – if that real estate is not registered as the property of the enforcement debtor.

Geographically somewhat further away, more recent German procedural theory points to the importance of the existence of public real estate records for the conduct of enforcement proceedings. *Brox* and *Walker* claim that one of the conditions for ordering enforcement is whether the enforcement creditor has proposed as the object of enforcement real estate in respect of which the enforcement debtor is registered in the land records, either as the owner or as the heir of the registered owner.<sup>43</sup> An extract from the land register office serves as proof of the enforcement debtor's right in the real estate. If the enforcement court and the land register office belong to the same court as the court of territorial jurisdiction, reference to the land register is sufficient; an extract is not required.<sup>44</sup> According to these authors, enforcement can also be ordered against real estate in respect of which the enforcement debtor is not registered as the owner. The conditions that the enforcement creditor must meet in order for the motion for enforcement to be granted depend on whether they have registered their claim against the enforcement debtor in the public real estate records with respect to the object of enforcement (German: *dinglichen Gläubiger* – secured creditor), or not (German: *persönlicher Gläubiger* – personal creditor).<sup>45</sup> These considerations begin with the assumption that real estate records exist, but that the enforcement debtor is not registered as the owner of the object of enforcement. Similarly, Austrian procedural theory addresses the question of whether the real estate is registered as the property of the enforcement debtor in whole or in a certain share as a condition for ordering enforcement.<sup>46</sup> The importance of the existence of real estate records is observed from the perspective of achieving the objectives of enforcement proceedings.<sup>47</sup> In addition, compulsory administration and compulsory auction

---

<sup>42</sup> Art. 75, para. 5 of the Enforcement Act, *Official Gazette*, No. 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22.

<sup>43</sup> § 17(1) Gesetz über die Zwangsversteigerung und die Zwangsverwaltung – ZVG, BGBl. I S. 2606, last amended December 19, 2022. See: *Brox, H., Walker, W. D. (2021). Zwangsvollstreckungsrecht*. Munich: C. H. Beck, 463.

*Musielak* and *Voit* do not address these issues (see: *Musielak, H. J., Voit, W. (2022). Grundkurs ZPO, Erkenntnis – und Zwangsvollstreckungsverfahren*, Munich: C. H. Beck Verlag, 450–451).

<sup>44</sup> §17 Abs. 2 ZVG. See: *Brox, H., Walker, W. D. (2021). Op. cit.*, 463.

<sup>45</sup> *Brox, H., Walker, W. D. (2021). Op. cit.*, 463.

<sup>46</sup> § 88 Gesetz über das Exekutions – und Sicherungsverfahren (Exekutionsordnung – EO), RGBl. Nr 79/1896, last amended BGBl. Nr 136/2023. See also: *Rechberger, W., Oberhammer, P. (2009). Exekutionsrecht*. Vienna: Facultas Verlags – und Buchhandels AG, 119.

<sup>47</sup> *Rechberger, W., Oberhammer, P. (2009). Op. cit.*, 121.

are also registered in the real estate records as phases of enforcement proceedings, from which the enforcement creditor's right to satisfaction follows.<sup>48</sup> This leads to the conclusion that neither the Austrian legislator nor procedural theory deals with the problem of enforcement against real estate that is not registered in public records because those records do not exist. Instead, they proceed from the real situation in practice – a complete and accurate public register, which in enforcement against real estate has its role in the form of registering each phase of the enforcement proceedings as a fact significant not only for third parties but primarily for the enforcement creditor, because in that way they obtain the benefits of the procedural and substantive consequences of such registrations.

Given the existing state of real estate records in the Bosnian-Herzegovinian entities and the problems that such a state creates in case law, this topic has been addressed with somewhat greater interest in domestic procedural theory. Proceeding from the positive-law regulation of the issue examined in this paper, Račić<sup>49</sup> considers both situations: where the real estate is located in areas where existing registers have been destroyed or damaged, and where the real estate is located in areas where such registers were never established, and it is uncertain whether they ever will be. The author notes that the current procedural law also provides that the enforcement court, after issuing the enforcement order, will suspend the enforcement proceedings until the records are re-established, i.e., restored, in that area,<sup>50</sup> and that the court, upon the enforcement creditor's request and at their expense, will publish the enforcement order, which, as the law provides, has the effect of a notice of enforcement.<sup>51</sup> Although legislators in both entities regulate the court's conduct in this way after issuing the enforcement order, the author interprets the awkwardly drafted provision as presumably meaning that, in such a situation, the enforcement court will only carry out the first phase of enforcement proceedings – the phase of granting enforcement, after which the enforcement proceedings will be suspended. If the enforcement creditor proposes that the enforcement order be published, the enforcement proceedings move into the second phase – the phase of carrying out enforcement.

---

<sup>48</sup> Rechberger, W., Oberhammer, P. (2009). *Exekutionsrecht*. Vienna: Facultas Verlags – und Buchhadels AG, 121.

<sup>49</sup> Račić, R. (2021). *Izvršno procesno pravo*. Banja Luka: Faculty of Law, University of Banja Luka, 174.

<sup>50</sup> Art. 113, paras. 3 and 4 of the LEP RS/LEP FBiH.

<sup>51</sup> Art. 72, paras. 4 and 5 of the LEP RS/LEP FBiH.

## **CURRENT DOMESTIC CASE LAW ON ENFORCEMENT AGAINST REAL ESTATE FROM AREAS WHERE THE EXISTING PUBLIC REGISTER HAS BEEN DESTROYED OR DAMAGED**

In the territory of both entities of Bosnia and Herzegovina, there is a large number of cadastral municipalities in which a real estate register previously existed but was later destroyed or damaged. In the Republika Srpska, many cadastral municipalities do not have a real estate cadastre; instead, a listed cadastre is used, as well as a land cadastre established on the basis of surveys in polyhedral projection, and a land cadastre and a real estate cadastre with an identified user established on the basis of surveys in Gauss–Krüger projection, along with a land register.<sup>52</sup> This includes, for example, cadastral municipalities in the areas of Gradiška, Laktaši, Mrkonjić Grad, Šipovo, as well as certain municipalities in Herzegovina. Therefore, in case law, the enforcement debtor's factual authority over the real estate, when assessing whether the motion for enforcement is well-founded, is treated as equivalent to their ownership right in the real estate.<sup>53</sup> In the phase of carrying out enforcement, the rules contained in Article 113 of the LEP RS are applied. For the court to correctly apply both procedural and substantive law, it is therefore necessary to first determine whether a real estate cadastre has been established in the area where the real estate proposed as the object of enforcement is located.

With respect to the issue raised in this paper regarding the relationship between Article 72, paragraph 4 of the LEP RS/LEP FBiH, which prescribes the publication of the enforcement order concerning real estate located in an area where the register has been destroyed or damaged, and paragraphs 3 and 4 of Article 113 of the LEP RS/LEP FBiH, which provide for enforcement proceedings to be suspended until the real estate cadastre is established and the enforcement debtor's right in the object of enforcement is registered, case law in the Republika Srpska depends on the conduct of the enforcement creditor. Namely, the courts apply Article 113, paragraph 4 of the LEP RS/LEP FBiH

---

<sup>52</sup> See: Art. 71, para. 1 of the LSC RS.

<sup>53</sup> This follows from decisions of the District Court in Banja Luka. See the reasoning in the Decision of the District Court in Banja Luka, No. 72 0 P 024800 19 Gži of January 16, 2020 (area of Gradiška), and the reasoning in the decision of the same court in case no. 75 0 I 006049 19 Gž 2 of February 8, 2019 (area of Šipovo). Similar reasoning appears in the decisions of the District Court in Banja Luka in cases nos. 75 0 I 027023 15 Gž of November 14, 2015 and 77 0 I 015887 18 I 2 of February 8, 2019, which affirmed the decision of the Basic Court in Mrkonjić Grad of November 26, 2018 (area of Mrkonjić Grad). See also the reasoning of the Basic Court in Trebinje in case no. 95 01 002889 09 I of June 25, 2010 (area of the municipality of Ljubinje).

and suspend enforcement acts until the real estate cadastre is established,<sup>54</sup> despite not knowing when this will occur. There are also situations where the enforcement court, at the request of the enforcement creditor, publishes the enforcement order after it is issued, in an area where there is no real estate register but one did exist in the past, and its re-establishment, i.e., restoration, is expected, applying Article 72, paragraphs 4 and 5 of the LEP RS, with the effect of a notice of the issued enforcement order.<sup>55</sup> In some cases, courts even resort to terminating enforcement and setting aside all acts carried out after the enforcement order is issued, reasoning that it is not possible to register a notice of the enforcement order due to the absence of records.<sup>56</sup>

In none of the available decisions analyzed concerning enforcement against such real estate was it established that the court conducted a seizure inventory. It would be excessive to claim on that basis that courts do not apply the provision on real estate seizure inventory in this situation; however, it can be concluded that this is done very rarely, without clear justification, and under more difficult conditions for the enforcement creditor than is the case from a comparative-law perspective.

## CONCLUSION

This paper examines the quality of the positive-law solutions governing enforcement against real estate that is not registered because the existing register has been destroyed or damaged, but whose restoration is expected, from the perspective of the enforcement creditor's right to efficient satisfaction of their enforceable claim. The reality is that there are many cadastral municipalities in both observed Bosnian-Herzegovinian entities where the real estate register has been destroyed or damaged, although it existed prior to the most recent wartime events. Where the enforcement debtor has no other asset from which the enforcement creditor could obtain satisfaction, it is necessary that the statutory provisions leave no room for interpretation, and that the possibility be excluded that the enforcement creditor remains unsatisfied.

---

<sup>54</sup> See the reasoning of the Decision of the District Court in Banja Luka in case no. 72 0 P 024800 19 Gži of January 16, 2020 and the decision of the same court in case no. 75 0 I 006049 19 Gž 2 of February 8, 2019.

<sup>55</sup> This follows from the actions of the Basic Court in Trebinje, in case no. 95 0I 002889 09 I of June 25, 2010, as cited in the Decision of the Constitutional Court of Bosnia and Herzegovina, in case no. AP-649/21 of March 16, 2021.

<sup>56</sup> The Municipal Court in Bosanska Krupa proceeded in this way in case no. 18 0 I 019408 09 I by a Decision terminating the enforcement proceedings of September 20, 2016, as cited in the Decision of the Constitutional Court of Bosnia and Herzegovina, in case no. AP-1601/15 of November 23, 2016.

The analysis of the domestic legislative model of enforcement against such real estate, combined with the observed domestic and comparative procedural doctrine and available case law, indicates several weaknesses that have found their way into the work of domestic legislators and which, in practice, affect enforcement creditors.

The topic of a separate study could be whether domestic legislators have imposed an excessive burden on any enforcement creditor who chooses, or who is compelled, to propose such real estate as the object of enforcement by prescribing that the enforcement creditor must prove the enforcement debtor's ownership, while offering no alternative way out of the situation if the enforcement creditor is unable (as is most often the case) to prove it. The fact that, at the time the motion for enforcement is filed, there is no real estate register, and that even if its restoration is planned it is unknown when that restoration procedure will be completed, especially where the enforcement creditor does not possess the enforcement debtor's *titulus*, as well as taking into account that, in the Republika Srpska, the enforcement creditor no longer has the possibility to initiate the establishment of a cadastre for a single cadastral parcel, but must wait for the public display procedure for the entire cadastral municipality, indicates that enforcement against such real estate will not be successful.

Even if the proceedings move to the second phase – the phase of carrying out enforcement, the enforcement creditor's position remains uncertain. Without any logical explanation, legislators have replaced the principle of court-driven movement of the proceedings in enforcement against such real estate with conditioning the undertaking of the first enforcement act – the publication of the enforcement order with the effect of a notice, on the enforcement creditor's request. In this way, the burden of initiative for the court's official act has also been shifted onto the enforcement creditor, which in practice results in its non-performance, likely also due to enforcement creditors' lack of legal knowledge.

The statutory instruction directing the enforcement creditor to initiate, within a prescribed time limit, the registration of such real estate in a register that does not exist, or for which it is unknown when it will be restored, appears, at the very least, absurd. The enforcement creditor therefore has a choice, either to carry the absurdity through to the end so that the decision of the real estate register office, upon completion of the administrative procedure, serves before the enforcement court as proof that *registration* of the enforcement debtor's right would be *contrary to law*; or to allow the enforcement court to terminate the approved enforcement because the enforcement creditor did not initiate that registration.

The conclusion, suggested by the available case law, that courts rarely resort to real estate seizure inventory in such situations, also indicates the very

difficult legal position of an enforcement creditor who proposes, as the object of enforcement, real estate located in an area where, through no fault of the enforcement creditor, no register exists.

The remaining provisions, awkwardly drafted, should, in case law, be interpreted in favor of the enforcement creditor's interest in obtaining compulsory satisfaction from such real estate in an efficient manner. Specifically, the phrase "if registration would be contrary to law," which is statutorily set as a condition for conducting a seizure inventory, should be interpreted more broadly – not only as satisfied in areas where real estate records have never existed and their establishment is uncertain, but also where establishment is planned but it is still uncertain when it will occur. In the domestic positive-law model alone, the enforcement creditor is directed, without justification, to prove this condition by requesting registration of the enforcement debtor's right, for which it is clear in advance that it will be rejected by the competent local office because no real estate cadastre exists. Comparative-law analysis has shown that in neighboring countries that likewise face the problem of areas without complete and accurate records, the enforcement creditor can count on real estate seizure inventory without losing time waiting for the administrative authority to first reject their request to register the enforcement debtor's right.

From all of the above, as a contribution to the position that the enforcement creditor's interest in compulsory satisfaction of their enforceable claim requires better protection, which may also be regarded as a public interest of the state, it is considered justified to recommend that, in future interventions in the statutory text, the legislator should work on strengthening the role of the court in undertaking official procedural acts, rather than shifting the initiative for their judicial undertaking onto the enforcement creditor. Such an additional burden on the enforcement creditor is unjustified, whether they choose to propose such real estate or have no other object of enforcement left to propose.

#### **BIBLIOGRAPHY**

- Bodiroga, N. (2012). *Teorija izvršnog postupka*. Belgrade: Faculty of Law, University of Belgrade.
- Brox, H., Walker, W. D. (2021). *Zwangsvollstreckungsrecht*. Munich: C. H. Beck.
- Dolović Bojić, K. (2019). Održaj kao način sticanja prava svojine na nepokretnosti. *Annals of the Faculty of Law in Belgrade*, 67(1), 159–181.
- Ernst, H. (2022). Publicijansko vlasništvo nekretnina. *Collected Papers of the Faculty of Law of the University of Rijeka*, 43(3), 737–769.
- Keča, R., Knežević, M. (2021). *Građansko procesno pravo*. Belgrade: Official Gazette.
- Keča, R., Starović, B. (2004). *Građansko procesno pravo*. Novi Sad: Faculty of Law, University of Novi Sad.

- Kopanja, S. (2012). O reformi zemljišno-knjižne evidencije u Republici Srpskoj. *Pravni savjetnik*, 5, 65–70.
- Majkić, M. (2020). Osvrt na primjenu pojedinih odredaba Zakona o izvršnom postupku Republike Srpske – neka sporna pitanja u sudskoj praksi. *Yearbook of the Faculty of Law, University of Banja Luka*, 1(42), 131–150.
- Musić, H. J., Voit, W. (2022). *Grundkurs ZPO, Erkenntnis – und Zwangsvollstreckungsverfahren*, Munich: C. H. Beck Verlag.
- Nikolić, S. (2011). Evidencija nepokretnosti u Austriji - pravno nasleđe, aktuelni koncept i trendovi). *Glasnik of the Bar Association of Vojvodina*, 83(10), 503–520.
- Petrović, S. (2023). Suvlasništvo trećeg lica na predmetu izvršenja kao pravo koje (ne) sprečava izvršenje. *Pravni vjesnik*, 39(3–4), 219–241.
- Poznić, B. (1987). *Građansko procesno pravo*. Belgrade: Savremena administracija.
- Poznić, B., Rakić Vodinelić, V. (2010). *Građansko procesno pravo*. Belgrade: Savremena administracija.
- Račić, R. (2021). *Izvršno procesno pravo*. Banja Luka: Faculty of Law, University of Banja Luka.
- Rechberger, W., Oberhammer, P. (2009). *Exekutionsrecht*. Vienna: Facultas Verlags – und Buchhadels AG.
- Sić, M. (2013). Katastri, zemljišni registri i isprave o kupoprodaji u starom Rimu – elementi modernih zemljišnih knjiga. *Collected Papers of the Faculty of Law in Novi Sad*, 47(2), 279–302.
- Stanković, G., Palačković, D., Trešnjev, A. (2018). *Komentar Zakona o izvršenju i obezbeđenju*. Belgrade: Official Gazette.
- Stanković, G., Račić, R. (2019). *Vanparnično procesno pravo i pravo izvršenja i obezbeđenja*. Podgorica: Mediterranean University, Faculty of Law.
- Šago, D., Milanović, R. (2022). Ovrha na nekretninama u hrvatskom zakonodavstvu. *Collection of Works “Current Issues in Civil and Commercial Legislation and Legal Practice”*, 19, 228–251.
- Triva, S., Belajec, V., Dika, M. (1980). *Sudsko izvršno pravo, opći dio*. Zagreb: Informator.

### Legal sources

- Gesetz über das Exekutions – und Sicherungsverfahren (Exekutionsordnung – EO), RGBL. Nr 79/1896, last amended BGBl. Nr 136/2023.
- Gesetz über die Zwangsversteigerung und die Zwangsverwaltung – ZVG, BGBl. I S. 2606, last amended December 19, 2022.
- Law on Enforcement and Security, *Official Gazette of Montenegro*, No. 36/11, 28/14, 20/15, 22/17, 76/17, 25/19.
- Law on Enforcement Procedure, *Official Gazette of the Republika Srpska*, No. 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13, 98/14, 5/17, 58/18, 66/18.
- Law on Enforcement Procedure, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 32/03, 52/03, 33/06, 39/06, 39/09, 35/12, 46/16, 42/18.
- Law on Amendments and Supplements to the Law on Survey and Cadastre, *Official Gazette of the Republika Srpska*, No. 62/18.

Law on Land Registers, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 58/02, 19/03, 54/04, 32/19, 61/22.

Law on Survey and Cadastre, *Official Gazette of the Republika Srpska*, No. 6/12, 110/16, 22/18, 62/18, 95/19, 90/23.

Enforcement Act, *Official Gazette*, No. 112/12, 25/13, 93/14, 55/16, 73/17, 131/20, 114/22.

### **Case law**

Decision of the Constitutional Court of the Republika Srpska, No. U-74/18, October 30, 2019.

Decision of the Constitutional Court of the Republika Srpska, No. U-14/20, February 24, 2021.

Judgment of the Supreme Court of the Republika Srpska, No. 12 0 U 005812 18 Uvp, August 21, 2019, available at: <https://sudskapraksa.pravosudje.ba/>, accessed on July 20, 2024.

Decision of the District Court in Banja Luka, No. 72 0 P 024800 19 Gži, January 16, 2020.

Decision of the District Court in Banja Luka, No. 75 0 I 006049 19 Gž 2, February 8, 2019.

Decision of the District Court in Banja Luka, No. 75 0 I 027023 15 Gž, November 14, 2015.

decision of the District Court in Banja Luka, No. 77 0 I 015887 18 I 2, February 8, 2019, affirming the decision of the Basic Court in Mrkonjić Grad of November 26, 2018.

Decision of the Basic Court in Trebinje, No. 95 0I 002889 09 I, June 25, 2010.

Decision of the District Court in Banja Luka, No. 72 0 P 024800 19 Gži, January 16, 2020.

Decision of the District Court in Banja Luka, No. 75 0 I 006049 19 Gž 2, February 8, 2019.

Decision of the Basic Court in Trebinje, No. 95 0I 002889 09 I, June 25, 2010, as cited in the Decision of the Constitutional Court of Bosnia and Herzegovina, No. AP-649/21, March 16, 2021.

Decision of the Basic Court in Prijedor, No. 77 0 I 015887 18 I 2, as cited in: Majkić, M. (2020). Osvrt na primjenu pojedinih odredaba Zakona o izvršnom postupku Republike Srpske – neka sporna pitanja u sudskoj praksi. *Yearbook of the Faculty of Law, University of Banja Luka*, 1(42), 131–150.

Decision of the Municipal Court in Bosanska Krupa terminating enforcement proceedings, No. 18 0 I 019408 09 I, September 20, 2016, as cited in the Decision of the Constitutional Court of Bosnia and Herzegovina, No. AP-1601/15, November 23, 2016.

### **Online sources**

<https://www.rgurs.org/stranica/rerp>, accessed on July 27, 2024.

<https://sudskapraksa.pravosudje.ba/>, accessed on July 20, 2024.