EVROPSKI DAN PRAVDE

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Pregledni članak

SAŽETAK

Evropski dan pravde ustanovljen je 5. juna 2003. godine od Vijeća Evrope i Evropske komisije. Osnovni cilj je približavanje građanima pravosudnog sistema, da boilje upoznaju svoja prav i upoznaju sredstva koja im stoje na raspolaganju radi ostvarivanja njihovih prava. Osnovna svrha dana pravde je da educira i informira opštu populaciju o njihovim svakodnevni pravima, te da okupi stručnjake iz pravne oblasti kako bi razmijenili informacije iz oblasti građanskih prava i susreli se sa korisnicima sudova. Države su pozvane da obavijeste Vijeće Evrope i Evropsku komisiju za efikasnost pravosuđa Evropska komisija za efikasno suđenje (CEPEJ) o programu obavijetenja Evropskog dana pravde. Evropski dani pravde imaju za cilj da se povuče pažnja evropske javnopsti na važne međunarodne interese ili probleme da se obilježe ili promovišu, a tiču se zaštite prava građana u nerješavanju sporova.

Ključne riječi: *Evropski dani pravde, Vijeće Evrope, Evropska komisija, građani, prava građana, Evropska komisija za efikasanost sudova (CEPEJ).*

EUROPEAN DAY OF JUSTICE

SUMMARY

The European Day of Justice was established on June 5, 2003 by the Council of Europe and the European Commission. The main goal is to bring the citizens closer to the judicial system, so that they know their rights and the means available to them in order to exercise their rights. The main purpose of Justice Day is to educate and inform the general population about their everyday rights, and to bring together legal experts to exchange information in the field of civil rights and meet users of the courts. States are invited to inform the Council of Europe and the European Commission for the Effectiveness of Justice (CEPEJ) about the notification program of the European Day of Justice. European Days of Justice aim to draw the attention of the European public to important international interests or problems to mark or promote, and concern the protection of citizens' rights in non-resolution of disputes.

Keywords*: European Days of Justice, Council of Europe, European Commission, citizens, citizens' rights, European Commission for the Efficiency of Courts (CEPEJ).*

1 UVOD

Romanisti su u zadnje pola stoljeća izučavali, mnogo knjiga i naučnih radova, izdali o rimskom pravu. Institucije su izučavanje više na području privatnog prava. Međutim za buduće pravne praktičare nisu dovoljne samo dogmatske osnove institucija rimskog prava. Rimsko pravo kao dio antičke kulture, ima istorijsku dimenziju, kao što i moderno pravo ima svoju istorijsku uslovljenost i utemeljenost u pravnoj tradiciji. Pravni instituti nastaju kao posljedica međusobne povezanosti opštih društvenih okolnosti, raznih društvenih protivurječnosti i međusobne uslovljenosti i zavisnosti pojava na svim poljima javnog i privatnog života. Veoma je značajno saznati u kojem vremenu i u kojim privrednim, političkim i socijalnim okolnostima se razvila nauka institucija ili nastalo neko pravno rješenje koje i danas koristimo.

Rimsko iskustvo tokom trinaest stoljeća pokazuje kakvom se državnom uređenju razvijalo rimsko pravo, kakva je privredna snaga održavala pravo, koliko su bili poštovani zakoni i kako su pravnici podigli pravo na nivo pravne nauke koje je i samo rimsko pravo postalo izvor prava. Rimsko pravo spada, bez sumnje, u temelje pravne obrazovanosti evropskih pravnika. Uvijek moramo imati u vidu da je pravna nauka slijepa bez istorije. Oni koji spoznaju da je istorijsko znanje svjetovnik za budućnost, neće imati potrebe da istoriju ponavljaju. Oni će sebi i zajednici u kojoj žive, krčiti puteve budućnosti, poštojući svoje pravo kao najviše kulturno dobro svoje zajednice. Pravnoistorijsko znanje daje sigurnost i mudrost.

U istoriji evropske civilizacije rimsko pravo (ius Romanorum, ius romanum) ima svoje posebno mjesto. Porjeklo mu je u antičkom periodu u kome je bilo osnova društvenog uređenja i života rimskog naroda i rimske države. I nakon propasti rimskog carstva važilo je u Istočnom, rimskom carstvu poznatom kao Vizantija. U samoj suštini ovog prava od početka njegovog razvoja krio se duh rimskog načina života i vjerovanja, običaja, jezika, umjetnosti i literature. Dakle, pravo je najbolji reprezent duhovnog života građana jedne države.[1]

U životu evropskih naroda, na prostorima nekadašnjeg Rimskog carstva, počevši od renesanse sjevernoitalijanskih gradova u XI stoljeću, obnovila se snaga duha antičke rimske države na čemu se zasnivala naučna radoznalost prema „pravnim tajnama“ i pravnim rješenjima koja je krila kodifikacija prava cara Justinijana u VI stoljeću nove ere. Porjeklo mu je u antičkom periodu u kome je bila osnova društvenog uređenja i života rimskog naroda i rimske države. Rimsko pravo je proizvod rimske pravne svijesti u dugom periodu od nastanka Rima (754 god. p.n.e.) do smrti Justinijana 8565. god. n.e.). Nakon toga sve do 1453. godine važilo je u Istočnom rimskom carstvu poznato kao Vizantija. U samoj suštini ovog prava od početka njegovog razvoja krio se duh rimskog načina života i vjerovanja, običaja, običaja, jezika i literature. Rimsko pravo je i razlog kojim se objašnjava dugotrajnost i slava rimske imperije. Međutim, ono nije nestalo sa istorijske scene kada je nestala rimska imperija.

Značaj rimskog prava kao kulturnog nasljeđa antičkog svijeta u evropskoj kulturi uopšte nije samo u preuzimanju njegovih pravnih rješenja u pravne sisteme evropskih država, nego i u tome što pored grčke filozofije predstavlja jedno od najdragocjenijih duhovnih ostataka antičke civilizacije koji su

[1] V. Surovjecki je isticao osnovna načela istorijskog shvatanja prava. Ovaj istaknuti pravnik je ukazivao na pravo kao jedan od bitnih elemenata narodnog obilježja i kao jedan od bitnih izraza narodnog duha, pravo kao neuništivu samosvojinu sintezu narodnog bića i osnovu njegove duhovne konstitucije, Kasagić, R., Salkić, A., Osnovi prava i poslovno pravo, Internacionalni univerzitet Travnik u Travnik 2015., str. 86.

uticali na evropsku kulturu. Rimski pravnici su stvorili pravnu tehniku i pravnu tehnologiju koji su koristili da bi došli do takvih rješenja pravnih pitanja koji su primjenjivani u raznim društvenim sistemima i pravnim procesima do danas, tako da se moderni svijet ne odriče tog dragocjenog iskustva. Prilagođavano je promjenjenim društveno ekonomskim stanjima putem glosatora i postglosatora i predstavljaju osnov evropskih građanskih zakonika kao pisani izvori prava za razliko od anglosaksonskog pravnog sistema gdje su izvori prava: pisani izvori prav (zakoni, Magna charta libertatum, Peticija o pravima, Zakon o pravima), akti parlamenta, sudske odluke, pravna pravila Common law, običaji i konvencije. Znanje glosatora iz rimskog prava bilo je veoma privlačno za pravnu nauku i njemačkim carevima koji su nastojali da iskoriste autoritet rimskog cara i rimske imperije za podizanje svog vlastitog, rukovođeni dogmom da su njemački carevi nastavljači i neposredni zakoniti nasljednici rimskih careva.[2]

Uporednim izučavanjem prava drugih u prošlosti i sadašnjosti dolazimo do realnije slike shvatanja svog vlastitog prava. Najveći rimski učitelj retorike Kvintilijan je govorio da se sadašnjost prosuđuje prema prošlosti (Ex proaeteristis praesentia aestimantur). [3]

Dakle, evropski pravni sistem nalazi genezu svog nastanka na izvorima Rimskog prava prilagođavajući ga promjenjenim društvenoekonomskim i političkim situacijama kao i kulturi naroda jedne države. Njegovo ponovno oživljavanje u srednjem stoljeću i današnjem pravu predstavlja osnov za povezivanje pravnih istorija nacionalnih prava. Izučavanje istorije prava i faktora koji su stvaraqli pravo ili ga primjenjivali, okolnosti u kojima se mijenja poredak, oblici vladavine kroz koje prolazi država, pravne i političke reforme, pomaže nam da shvatimo nastanak i razvoj pojedinih pravnih institucija.
U svim pravnim sistemima zahtjeva se vladavina prava, brzo i efikasno rješavanje sudskih sporova.

Postupajući u parnicama iz radnog odnosa detaljno su uređeni zakonom o parničnom postupku u BiH i njezinim entitetima. Za radne sporove propisano je da se rješavaju u hitnom postupku. Rok za odgovor na tužbu iznosi 15 dana . Ročište za glavnu raspravu mora biti održano u roku 30 dana od prijema odgovora na tužbu. Postupak pred prvostepenim sudom mora biti okončan u roku od šest mjeseci od dana podnošenja tužbe.[4]

1.1 Aktivnosti prilikom obilježavanja Evropskog dana pravde

Bosna i Hercegovina je politički siu generis država sa vrlo složenim pravnim sistemom podijeljena na dva entiteta, 10 kantona i jednim distriktom.[5]
Kantonalni kao i entitetski sudovi kao predstavnici Bosne i Hercegovine u Evropskoj mreži pilot sudova otvaranjem vrata suda vrši se podijela promotivnog materijala – brošure sudske nagodbe i smjernice za zaključenje sudske nagodbe kao i promotivni materijal u vezi Evropskog dana pravde. Istovremeno dodjeljuje se promotivni materijal na adresu privatnih subjekata i

[2] Značaj rimskog prava ogledao se i u rada sudova. Sudijama i strankama bilo je dopušteno da se pri regulisanju odnosa koji nisu bili uređeni imperativnim konstitucijama, pozivaju na rješenja sadržana u djelima istaknutih pravnika, naročito: Modistena, Gaja, Paulusa, lpijana i Papinijana. U slučaju različitih mišljenja ovih pravnika prevagu je imalo pravničko mišljenje Papinijana, a bilo je slabije od istovjetnog mišljenja dvojice.

[3] Quintians, 5.10,28. Ciceron je za istoriju izjavio da je „svjedok vremena, svjetlost istine, život uspomena i vjesnica starine (Cic. De orat. 2, 36), prema Mojević, N., Rimsko pravo, Banja Luka, 2008.

[4] Tužba u radnom sporu prodnesena je Osnovnom sudu u Banjoj Luci 11. januara 2021. godine. Do januara 2023. god. ročište nije zakazano.

[5] Bosna i Hercegovina je pravno nefunkcionalna sa 14 pravnih sistema, 14 administracija, isto toliko različitih funkcija vlasti.

stranaka u postupcima koji se vode pred sudom kantona ili entiteta. Postupak pred sudom je uređen Zakonom o parničnom postupku.[6]

Bosna i Hercegovina je pristupila Vijeću Evrope 2002. godine kojeg čine 47 zemalja. Pristupanjem Vijeću Evrope Bosna i Hercegovina je ratifikovala Evropsku konvenciju o ljudskim pravima i slobodama. Sudovi Bosne i Hercegovine na taj način su ušli kao predstavnik BiH u mreži pilot sudova koju je oformila Evropska komisija za efikasnost pravosuđa (CEPEJ) te iz tog članstva proizilazi evropskog dana pravde. Cilj Evropskog dana pravde je priprema, obuka i informisanje građana kako efikasno i pravično da ostvare svoja prava pred sudom. Postavlja se pitanje šta pravosudne institucije mogu ponuditi građanima, široj pravosudnoj zajednici, te privrednim subjektima, imajući u vidu ograničenja koja su se nametnula radi potrebe da zaštiti živote i zdravlje građana. S druge strane kako osigurati pojedinačna ljudska prava u jednom takvom ambijentu kada su ugroženi životi zbog COVID ograničenja. U složenijim uslovima rada sudovi imaju na raspolaganju jedan institut predviđen Zakonom o parničnom postupku, koji treba da se sve češće primjenjuje, a to je sudska nagodba. Kroz organizovanje sudske nagodbe, te podizanje svijesti parničnih stranaka o tome želi se postići brže efikasnije i mirno rješenje spora. Stranke pokreću sporove, sudovi ih moraju rješavati bez obzira na okolnosti u kojima rade kako bi pružili zaštitu ličnih i imovinskih prava pojedinaca, fizičkih lica tako i zaštitu prava i ekonomskih interesa privrednih subjekata. Na raspolaganju su i Smjernice Visokog sudskog i tužilačkog savjeta Bosne i Hercegovine koje predstavljaju oruđe svim pojedincima da se što prije postigne i brže i jednostavniji, prijateljski način rješavanja sporova.

Evropski dan pravde održava se u okviru okruglog stola s ciljem da se podstiče pravednije i bolje društvo, te učini svakodnevni život boljim i lakšim pravima.

1.2 Sudske nagodbe

Sudske nagodbe imaju preimućstvo u mirnom rješavanju spora među strankama, jer nudi sigurnost i presude koje se donose u sudskim postupcima, s tim što se pokušavaju načini komunikacije među strankama izbjegavajući konfliktno stanje među strankama. Sudske nagodbe je institut građanskog, odnosno materijalnog i procesnog prava. S druge strane to su procesne pretpostavke o kojima sud vodi računa po službenoj dužnosti. Tu su prije svega nadležnost suda i sposobnost stranaka, te su to razlozi o kojima i drugostepeni sud, prilikom odlučivanja po žalbi, vodi računa po službenoj dužnosti kao i prvostepeni sud je u takvim situacijama, ako se pojavi neka pretpostavka koja ne ispunjava uslove, sud odbacuje tužbu.

Sudska nagodba daje jednu sigurnost, zaključuje se pred sudom, sud je kontrolor postupka u sporu i samim tim ona dobiva snagu pravomoćne sudske odluke. Ako je istom naložena činidba ona istovremeno postaje i izvršna isprava koja daje mogućnost strankama da mogu prinudnim putem izvršiti takvu odluku.

Mirno rješavanje spora podrazumijeva dobrovoljnost raspolaganja stranaka sa predmetom spora jer sud mora voditi računa da predmet raspolaganja ne može biti nešto što je protivno prinudnim propisima, a u određenim predmetrima i spornim situacijama posebnim zakonima je izričito propisano da se ne može zaključiti sudska nagodba kao što su obiteljski, odnosno statusni bračni sporovi, odnosi između roditelja i djece, tako da u tim situacijama sud

[6]Sl. glasnik FBiH br. 53/03, 73/05, 19/06, 98/015, Sl. glasnik RS br. 58/03, 74/05, 63/07, 105/08, odluka US 49/09, 61/13, 109/21.

mora voditi računa da se u tim spoprovima ne može postići nagodba.

Zakon o stvarnopravnim odnosima je regulisao da se ne može postići nagodba u predmetima kojima se ne može raspolagati, dobra od opšteg interesa gdje je propisanop kada se može raspolagati. Potpisivanjem sudske nagodbe u zapisnik se pravomoćno isključuje pravo stranaka da redovne pravne lijekove. Time je skraćen postupak, jer se odluka suda može pobijati samo zbog mana volje koja se cijeni prema odredbama Zakona o obligacionim odnosima.[7]

Rokovi su dosta skraćeni kada se pojave razlozi da se pobija sudska odluka. Pobijanje sudske odluke o nagodbi moguće je samo tužbom pred sudom u roku od 3 mjeseca od dana saznanja, u okviru objektivnog roka od 5 godina. To su pokazatelji zašto treba više posezati za sudskom nagodbom.

Ključne radnje koje poduzima sud u cilju zaključivanja sudske nagodbe je analiza i procjena mogućnosti zaključenja sudske nagodbe, predočavanje takve mogućnosti strankama, pomoć strankama kod dogovaranja i zaključenja sudske nagodbe, te prećutna saglasnost na zaključenje sudske nagodbe. Kada tužena strana dobije tužbu na odgovor, već tada bi trebala razmisliti da li je potrebno da prolazi kroz cijeli sudski postupak u kojem će biti prinuđena da sprovodi dokaze kako bi osporila zahtjeve i navode tužiteljske strane ili je korisnije da što prije stupi u pregovore sa tužiteljskom stranom kako bi sporni odnos riješila sporazumno pred sudom. Ukoliko ne dođe do sporazuma bitno je da stranke komuniciraju, jer se na taj način relaksiraju međusobni konfliktni odnosi, s druge strane dat je signal tužiteljskoj strani da je tužena strana spremna za dogovore i zaključenja sudske nagodbe u toku predstojećeg postupka.

Kada sud dobije odgovor na tužbu on već tada ima saznanje šta je sporno i u čemu se ogledaju neslaganja između stranaka, te da li postoje izgledi da se zaključi sudska nagodba. U pozivu za pripremno ročište sud je obavezan da pouči stranke na mogućnost zaključenja sudske nagodbe kako na pripremnom ročištu tako i u toku cijelog postupka, sve do donošenja pravomoćne odluke. Takvu pouku sud ponavlja i na pripremnom ročištu i pobliže upoznaje stranke na prednost zaključenja sudske nagodbe – da se spor rješava na brz i efikasan način bez odugovlačenja i nagomilavanja sudskih troškova kao i neizvjesnosti sudskog spora. Na pripremnom ročištu sud bi trebao da utvrdi koje su sporne činjenice i što je manje spornih činjenica to su veći izgledi za zaključenje sudske nagodbe. Ako tužena strana u odgovoru na tužbu ne ospoprava pravni osnov, već samo visinu novčanog potraživanja onda je sasvim izvjesno da postoje veliki izgledi za zaključenje sudske nagodbe.

Sud prati u kom pravcu je moguća sudska nagodba i oko čega se stranke mogu nagoditi. Pouka o mogućnosti sudske nagodbe obavezno se konstatuje u zapisnicima u pripremnom ročištu i na glavnoj raspravi. Sudska nagodba u najvećim slučajevima se zaključuje pred prvostepenim sudom, jer je u interesu stranaka na način koji im odgovara i na obostrano zadovoljstvo. Ovakav način rješavanja sporova pogoduje i sudovima koji su opterećeni velikim brojem predmeta.[8]

[7]Sl. list BiH br. 2/92, 13/93, 13/94, Sl. novine 29/03, 42/11, Sl glasnik RS. 17/93, 39/03, 3/96, 37/01, 74/04.
[8]Aktivnosti "Tjedan sudske nagodbe" koje kantonalni sud u Novom Travniku preduzima je u u okviru projekta u organizaciji Visokog sudskog i tužilačkog savjeta BiH je ustvari projekat. Projekat su implementirali: VSTS BiH, Vlade Norveške i Vlade Švedske, Bilten Kantonalnog suda Novi Travnik, Posebno izdanje u povodu Evropskog dana pravde, oktobar, 2021.

1.3 Primjena načela ex aequo et bono – načelo pravičnosti

Praksa u pogledu primjene suđenje po pravičnosti varira. U nekim zemljama je nepoznato, a u nekim rijetko, mada u promjenjenim okolnostima zbog pandemije COVID bi se moglo primjenjivati poštujući imperativne propise i volju strana. U francuskom pravu po načelu pravičnosti sud ne mora primjeniti dispozitivne propise materijalnog prava, iz čega proizilazi da imperativni propisi moraju biti primjenjeni i u pravičnom postupku. U njemačkom pravu sud može biti oslobođen primjene materijalnog prava u granicama dobrih običaja i javnog poretka. Englesko pravo je stalo na čvrstom stanovištu da sporove treba rješavati u skladu sa pravnim načelima.

U engleskoj se tokom vijekova vormoralo „pravično pravao“ (equity law) na taj način što su stranke, koje su smatrale da je presuda suda izrečena na osnovu pravila običajnog prava, nepravedna u konkretnom slučaju, mogle obratiti specijalnom sudu podređenom neposredno kralju, na čijem čelu je stajao kraljevski kancelar. Kancelar je sudio po „pravičnosti“ i nije bio vezan pravilima običajnog prava niti kojim drugim pravom. Kasnije se stranke počele pozivati i na tako presuđene slučajeve, na koji način se razvio sistem „pravičnog prava“.

Sudskom reformom od 1873. god. ukinut je specijalni kraljevski suda i njegovu funkciju preuzeo Vrhovni sud koji nastoji da sjedini običajno pravo sa pravičnim pravom, dajući prevagu u supropnim slučajevima pravičnom pravu.
Ipak suđenje po osnovu pravičnosti nije nešto što dozvoljava samovolji suda ili pristrasnosti jedne od stranaka. Ono je ograničeno pravnim normama i pravnim poretkom. Stoga se želi polaziti od toga da stranke ne žele neku apstraktnu pravičnost od strane suda.

1.4 Evropska komisija za efikasnost pravosuđa (CEPEJ)

CEPEJ je tijelo Vijeća Evrope osnovano Rezolucijom o osnivanju komisije za efikasnost pravosuđa., Res. (2002) 12. Komitet ministara Vijeća Evrope, kako bi radiloi na poboljšanju efikasnosti i funkcioniranju pravosudnog sistema u zemljama članicama Vijeća Evrope. CEPEJ čine predstavnici svih 47 država članica Vijeća Evrope. Nacionalnog člana CEPEJ-a ima pravosuđe Bosne i Hercegovine imenovano od Visokog sudskog i tužiteljskog vijeća BiH. CEPEJ o svim aktivnostima podnosi godišnje izvještaje Komitetu ministara Vijeća Evrope.
Nacionalni član BiH redovno učestvuje u radu CEPEJ-a.

1.5 Evropska mreža pilot sudova

Evropska mreža pilot sudova uspostavljena je od strane Evropske komisije za efikasnost pravosuđa, s ciljem da se podrži aktivnost CEPEJ-a – kroz bolje razumijevanje svakodnevno razumijevanje funkcionisanja sudova, ukaže na najbolje prakse rada u evropskim sudovima koje bi mogle biti iznijete pred nadležna tijela u državama radi njihovog eventualnog usvajanja s ciljem unapređenja efikasnosti pravosudnih sistema.

Visoko sudsko i tužilačko vijeće redovno dostavlja CEPEJ-u podatke o radu pravosudnih institucija u Bosni i Hercegovini. Ovi podaci se objavljuju u dokumentu „Evropski pravosudni sistem, Efikasnostt i kvalitet pravosuđa“. Podaci se objavljuju svakih dvije godine i sadrži detaljna poređenja evropskih pravosudnih sistema.

ZAKLJUČNA RAZMATRANJA

Istorija prava daje nam putokaz stvaranja pravnog i ekonomskog sistema jedne države kako bi državne institucije bile efikasne u svome radu i prvenstveno na zaštiti prava građana radi njihovog slobodnog života u toj država osjećajući sigurnost ako je u pitanju zaštita prava. Osnovna pretpostavka je da sud, prilikom rješavanja sporova po tužbi mora da bude efikasan, jer pravda bez efikasnosti rada suda i nije ostvarena. Pravni sistem država omogućava sudovima da u promjenjenim uslovima života građana (COVID) primjenuje određene mjere radi efikasnog presuđivanja sporne stvari uz obavezno poštovanje imperativnih pravnih propisa i volje stranaka u sporu.

Evropska komisija za efikasnost sudova, uspostavljanjem pilot sudova u BiH, omogućava bolje razumijevanje funkcionisanja sudova, ukazujući na najbolje prakse rada u evropskim sudovima kako bi se pokazao način uklanjanja smetnji i omogućio efikasan rad sudova. Efikasan rad sudova je uslov za ostvarivanja prava građana ili institucija.

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1 INTRODUCTION

In the last half century, Romanists have studied, published many books and scientific works on Roman law. Institutions are a study more in the field of private law. However, for future legal practitioners, only the dogmatic foundations of the institutions of Roman law are not enough. Roman law, as a part of ancient culture, has a historical dimension, just as modern law has its historical conditioning and foundation in legal tradition. Legal institutes arise as a result of the mutual connection of general social circumstances, various social contradictions and mutual conditioning and dependence of phenomena in all fields of public and private life. It is very important to find out in which time and in which economic, political and social circumstances the science of institutions was developed or some legal solution was created that we still use today.

The Roman experience over the course of thirteen centuries shows the kind of state structure Roman law developed, the economic power that maintained the law, the extent to which the laws were respected and how the jurists raised the law to the level of jurisprudence, where Roman law itself became a source of law. Roman law belongs, without a doubt, to the foundations of the legal education of European lawyers. We must always keep in mind that legal science is blind without history. Those who realize that historical knowledge is worldly for the future, will have no need to repeat history. They will pave the way for the future for themselves and the community in which they live, respecting their right as the highest cultural asset of their community. Legal historical knowledge provides security and wisdom.

In the history of European civilization, Roman law (ius Romanorum, ius romanum) has its special place. It originated in the ancient period, when it was the basis of the social organization and life of the Roman people and the Roman state. Even after the fall of the Roman Empire, it was valid in the Eastern Roman Empire known as Byzantium. In the very essence of this right, from the beginning of its development, the spirit of the Roman way of life and beliefs, customs, language, art and literature was hidden. Therefore, law is the best representative of the spiritual life of the citizens of a country. [9]

In the life of European peoples, in the areas of the former Roman Empire, starting with the renaissance of northern Italian cities in the 11th century, the strength of the spirit of the ancient Roman state was renewed, which was the basis of scientific curiosity towards "legal secrets" and legal solutions that hid the codification of the laws of Emperor Justinian in VI century AD. It originated in the ancient period, when it was the basis of the social organization and life of the Roman people and the Roman state. Roman law is the product of Roman legal consciousness in the long period from the foundation of Rome (754 BC) to the death of Justinian in 8565. not.). After that, until 1453, it was known as Byzantium in the Eastern Roman Empire. In the very essence of this right from the beginning of its development was hidden the spirit of the Roman way of life and beliefs, customs, customs, language and literature. Roman law is also the reason that explains the longevity and glory of the Roman Empire. However, it did not disappear from the historical scene when the Roman Empire disappeared.

The significance of Roman law as a cultural heritage of the ancient world in European

[9] V. Surovjecki emphasized the basic principles of the historical understanding of law. This prominent jurist pointed to law as one of the essential elements of the national character and as one of the essential expressions of the national spirit, law as an indestructible self-contained synthesis of the national being and the basis of its spiritual constitution, Kasagić, R., Salkić, A., Basis of law and business Law, International University of Travnik in Travnik 2015, p. 86.

culture is not only in the adoption of its legal solutions in the legal systems of European countries, but also in the fact that, in addition to Greek philosophy, it represents one of the most precious spiritual remains of ancient civilization that influenced European culture. Roman jurists created a legal technique and legal technology that they used to arrive at such solutions to legal issues that have been applied in various social systems and legal processes to this day, so that the modern world does not renounce that valuable experience. It was adapted to changed socio-economic conditions through glossators and post-glossators and represents the basis of

European civil codes as written sources of law, unlike the Anglo-Saxon legal system where the sources of law are: written sources of law (laws, Magna charta libertatum, Petition of Rights, Bill of Rights), acts of parliament, court decisions, Common law rules, customs and conventions. The glossator's knowledge of Roman law was very attractive to legal science and to the German emperors who tried to use the authority of the Roman emperor and the Roman empire to raise their own, guided by the dogma that the German emperors were the successors and immediate legal successors of the Roman emperors.[10]

By comparing the rights of others in the past and present, we arrive at a more realistic picture of the understanding of our own rights. The greatest Roman teacher of rhetoric, Quintilian, said that the present is judged according to the past (Ex proaeteristis praesentia aestimantur).[11]

Thus, the European legal system finds its genesis in the sources of Roman law, adapting it to the changed socio-economic and political situations as well as the culture of the people of a country. Its revival in the Middle Ages and today's law is the basis for connecting the legal histories of national rights. Studying the history of law and the factors that created the law or applied it, the circumstances in which the order changes, the forms of government that the state goes through, legal and political reforms, helps us to understand the origin and development of certain legal institutions. All legal systems require the rule of law, fast and efficient resolution of court disputes.

Acting in labor disputes are regulated in detail by the law on civil procedure in BiH and its entities. For labor disputes, it is prescribed that they be resolved in an urgent procedure. The deadline for responding to the lawsuit is 15 days. The hearing for the main hearing must be held within 30 days of receiving the response to the complaint. The procedure before the first-instance court must be completed within six months from the date of filing the lawsuit.[12]

1.1 Activities during the celebration of the European Day of Justice

Bosnia and Herzegovina is a politically siu generis state with a very complex legal system divided into two entities, 10 cantons and one district.[13]
Cantonal and entity courts, as representatives of Bosnia and Herzegovina in the European network of pilot courts, open the doors of the

[10]The importance of Roman law was also reflected in the work of the courts. Judges and parties were allowed to refer to the solutions contained in the works of prominent jurists, especially: Modisthenes, Gaius, Paulus, Lpianus and Papinianus, when regulating relations that were not regulated by imperative constitutions. In case of different opinions of these jurists, the legal opinion of Papinian prevailed, and it was weaker than the identical opinion of the two.

[11]Quintians, 5.10.28. Cicero declared for history that "it is the witness of time, the light of truth, the life of memories and the harbinger of antiquity (Cic. De orat. 2, 36), according to Mojević, N., Rimsko pravo, Banja Luka, 2008.

[12]The lawsuit in the labor dispute was brought to the Basic Court in Banja Luka on January 11, 2021. Until January 2023. a hearing has not been scheduled.

[13]Bosnia and Herzegovina is legally dysfunctional with 14 legal systems, 14 administrations, as many different government functions.

court and distribute promotional material - court settlement brochures and guidelines for concluding a court settlement, as well as promotional material regarding the European Day of Justice. At the same time, promotional material is allocated to the address of private entities and parties in proceedings conducted before the court of the canton or entity. The procedure before the court is regulated by the Civil Procedure Act.[14]

Bosnia and Herzegovina joined the Council of Europe in 2002, which consists of 47 countries. By joining the Council of Europe, Bosnia and Herzegovina ratified the European Convention on Human Rights and Freedoms. In this way, the courts of Bosnia and Herzegovina entered as a representative of Bosnia and Herzegovina in the network of pilot courts established by the European Commission for the Efficiency of the Judiciary (CEPEJ), and from that membership comes the European Day of Justice. The aim of the European Day of Justice is to prepare, train and inform citizens how to effectively and fairly exercise their rights before the court. The question arises as to what judicial institutions can offer citizens, the wider judicial community, and business entities, bearing in mind the restrictions that have been imposed due to the need to protect the lives and health of citizens. On the other hand, how to ensure individual human rights in such an environment when lives are at risk due to COVID restrictions. In more complex working conditions, the courts have at their disposal one institution provided for by the Law on Civil Procedure, which should be applied more and more often, and that is court settlement. By organizing a court settlement, and raising the awareness of litigants about it, the aim is to achieve a faster, more efficient and peaceful resolution of the dispute. The parties initiate disputes, the courts must resolve them regardless of the circumstances in which they work in order to provide protection of personal and property rights of individuals, natural persons, as well as protection of the rights and economic interests of business entities. The Guidelines of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina are also available, which are a tool for all individuals to achieve a faster and simpler, friendly way of resolving disputes as soon as possible.

The European Day of Justice is held within the framework of a round table with the aim of encouraging a fairer and better society, and making everyday life better and easier rights.

1.2 Court settlements

Court settlements have an advantage in the peaceful resolution of disputes between the parties, because it offers certainty and judgments that are made in court proceedings, with the fact that ways of communication between the parties are tried, avoiding a conflict situation between the parties. Court Settlements is an institute of civil, i.e. material and procedural law. On the other hand, these are procedural assumptions that the court takes into account ex officio. First of all, there are the jurisdiction of the court and the capacity of the parties, and these are the reasons that the second-instance court, when deciding on an appeal, takes into account ex officio, just like the first-instance court. In such situations, if there is an assumption that does not meet the conditions, the court rejects the lawsuit.

A court settlement gives one certainty, it is concluded before the court, the court is the controller of the proceedings in the dispute and thus it gains the force of a final court decision. If the same action is ordered, it simultaneously becomes an enforceable document that gives the parties the opportunity to enforce such a decision through coercion.

[14]Sl. glasnik FBiH br. 53/03, 73/05, 19/06, 98/015, Sl. glasnik RS br. 58/03, 74/05, 63/07, 105/08, odluka US 49/09, 61/13, 109/21.

Peaceful resolution of disputes implies the voluntary disposal of the parties with the subject of the dispute, because the court must take into account that the subject of disposal cannot be something that is contrary to compulsory regulations, and in certain cases and disputed situations, special laws expressly stipulate that a court settlement cannot be concluded, such as family, that is, status marital disputes, relations between parents and children, so that in these situations the court must take care that no settlement can be reached in these disputes.

The Law on Real Legal Relations regulated that no settlement can be reached in cases that cannot be disposed of, goods of general interest where it is prescribed when they can be disposed of. By signing the court settlement in the minutes, the right of the parties to regular legal remedies is legally excluded. This shortened the procedure, because the court's decision can only be challenged due to lack of will, which is assessed according to the provisions of the Law on Obligations.[15]

The deadlines are considerably shortened when there are reasons to challenge the court decision. Refutation of the court decision on the settlement is possible only with a lawsuit before the court within 3 months from the day of knowledge, within the objective period of 5 years. These are indicators of why it is necessary to reach for a court settlement more often.
The key actions undertaken by the court in order to conclude a court settlement are the analysis and assessment of the possibility of concluding a court settlement, presenting such a possibility to the parties, assisting the parties in negotiating and concluding a court settlement, and tacit consent to the conclusion of a court settlement. When the defendant receives a response to the lawsuit, it should already consider whether it is necessary to go through the entire court procedure in which it will be forced to present evidence in order to dispute the claims and allegations of the plaintiff, or whether it is more beneficial to enter into negotiations with the plaintiff as soon as possible. party in order to resolve the disputed relationship amicably before the court. If no agreement is reached, it is important for the parties to communicate, because in this way mutual conflict relations are relaxed, on the other hand, a signal is given to the plaintiff side that the defendant side is ready for agreements and the conclusion of a court settlement during the upcoming proceedings.

When the court receives an answer to the lawsuit, it already knows what is in dispute and what the disagreements between the parties are, and whether there are any prospects of concluding a court settlement. In the invitation for a preliminary hearing, the court is obliged to inform the parties of the possibility of concluding a court settlement both at the preliminary hearing and during the entire procedure, until the final decision is made. The court repeats such a lesson at the preliminary hearing and informs the parties in detail about the advantage of concluding a court settlement - that the dispute is resolved quickly and efficiently without delay and accumulation of court costs as well as the uncertainty of the court dispute. At the preliminary hearing, the court should determine what the disputed facts are, and the fewer disputed facts, the greater the chances of concluding a court settlement. If the defendant in the response to the lawsuit does not dispute the legal basis, but only the amount of the monetary claim, then it is quite certain that there are great prospects for concluding a court settlement.

The court monitors the direction in which a court settlement is possible and what the parties can agree on. The instruction on the possibility of a court settlement must be

[15]Sl. list BiH br. 2/92, 13/93, 13/94, Sl. novine 29/03, 42/11, Sl. glasnik RS. 17/93, 39/03, 3/96, 37/01, 74/04.

noted in the minutes of the preliminary hearing and at the main hearing. In most cases, the court settlement is concluded before the court of first instance, because it is in the interest of the parties in a way that suits them and to their mutual satisfaction. This way of resolving disputes also favors courts that are burdened with a large number of cases.[16]

1.3 Application of the ex aequo et bono principle - the principle of fairness

Practice regarding the application of fair trial varies. In some countries it is unknown, and in others it is rare, although in changed circumstances due to the COVID pandemic, it could be applied respecting imperative regulations and the will of the parties. In French law, according to the principle of fairness, the court does not have to apply the dispositive regulations of substantive law, from which it follows that imperative regulations must also be applied in a fair procedure. In German law, the court can be exempted from the application of substantive law within the limits of good customs and public order. English law takes the firm position that disputes should be resolved in accordance with legal principles.

In England, over the centuries, "equity law" was formed in such a way that the parties, who considered that the court's verdict pronounced on the basis of the rules of common law, unjust in the specific case, could turn to a special court directly subordinated to the king, in which the royal chancellor stood at the head. The chancellor judged according to "fairness" and was not bound by the rules of common law or any other law. Later, the parties began to refer to such decided cases, in which way the system of "fair law" developed.

With the judicial reform of 1873. the special royal court was abolished and its function was taken over by the Supreme Court, which strives to unite common law with equitable law, giving precedence in contrary cases to equitable law.
However, a fair trial is not something that allows the arbitrariness of the court or the bias of one of the parties. It is limited by legal norms and legal order. Therefore, one wants to start from the fact that the parties do not want some abstract fairness from the court.

1.4 European Commission for Judicial Efficiency (CEPEJ)

CEPEJ is a body of the Council of Europe established by the Resolution on the Establishment of the Commission for the Efficiency of the Judiciary., Res. (2002) 12. Committee of Ministers of the Council of Europe, in order to work on improving the efficiency and functioning of the judicial system in the member countries of the Council of Europe. CEPEJ consists of representatives of all 47 member states of the Council of Europe. The national member of CEPEJ is the judiciary of Bosnia and Herzegovina appointed by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. CEPEJ submits annual reports on all activities to the Committee of Ministers of the Council of Europe. The national member of BiH regularly participates in the work of CEPEJ.

1.5 European network of pilot courts

The European network of pilot courts was established by the European Commission for

[16]The activities of the "Court Settlement Week" undertaken by the Cantonal Court in Novi Travnik within the framework of a project organized by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina are actually a project. The project was implemented by: the Supreme Court of Bosnia and Herzegovina, the Government of Norway and the Government of Sweden, the Bulletin of the Cantonal Court of Novi Travnik, Special Edition on the occasion of the European Day of Justice, October, 2021.

the Efficiency of Justice, with the aim of supporting the activity of CEPEJ - through a better understanding of the daily functioning of the courts, point out the best practices of work in European courts that could be presented to the competent authorities in the states for their possible adoption with the aim of improving the efficiency of judicial systems.

The High Judicial and Prosecutorial Council regularly submits data on the work of judicial institutions in Bosnia and Herzegovina to CEPEJ. These data are published in the document "European Judicial System, Efficiency and Quality of the Judiciary". The data is published every two years and contains detailed comparisons of European justice systems.

CONCLUDING CONSIDERATIONS

The history of law gives us a roadmap for the creation of the legal and economic system of a country so that state institutions are efficient in their work and primarily in protecting the rights of citizens for the sake of their free life in that country, feeling secure when it comes to the protection of rights. The basic assumption is that the court must be efficient when resolving lawsuit disputes, because justice is not achieved without the efficiency of the court's work. The legal system of the state enables the courts to apply certain measures in the changed conditions of citizens' lives (COVID-19) for the purpose of efficient adjudication of disputed matters with mandatory compliance with imperative legal regulations and the will of the parties to the dispute.

The European Commission for the Efficiency of Courts, by establishing pilot courts in BiH, enables a better understanding of the functioning of the courts, pointing to the best practices of work in European courts in order to show the way to remove obstacles and enable the efficient work of the courts. Efficient work of the courts is a condition for exercising the rights of citizens or institutions.

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