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UNIVERSITY OF BELGRADE

FACULTY OF LAW

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**GENERALLY-KNOWN AND
ADJUDICATED (FINAL) FACTS IN
CRIMINAL PROCEDURE**

Doctoral Dissertation

Belgrade, 2014

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: 341.1(043.3)

**TITLE: GENERALLY- KNOWN AND ADJUDICATED (FINAL) FACTS IN
CRIMINAL PROCEDURE**

Summary:

Doctoral dissertation about “Generally Known and Adjudicated Facts in Criminal Procedure- Judicial Notice”, mostly deals with facts and factual issues in criminal procedure, both in terms of mixed and inquisitorial model of procedure, traditionally represented in the countries of continental Europe, and from the perspective of adversarial model, that was introduced in Serbia by the CPC of 2011.

Basic purpose of the research was to provide certain, practically implemented answers on these “factual issues”, that were showed as the most problematic in the practice of the courts, and which require a different answers, in accordance with the newly adopted procedural model. In addition, the subject of research is the institute of judicial notice, related to generally known and adjudicated facts in Serbian, comparative and international criminal law. Regarding this, case-law of the International Criminal Tribunals for former Yugoslavia and Rwanda, related to Rule 94 of the Rules of Procedure and Evidence is matter of detailed analysis. The research showed that the main problems in the application of the Rule 94 emerged from unclear distinction between factual and legal categories, uncertain Tribunal’s jurisprudence that frequently changed and differently interpreted the admissibility requirements, that judicially noticed adjudicated facts without the consent of the parties, what resulted in transfer of the burden of the proof on the defendant, and put under the question the other principles of the fair trial.

The issue of judicial notice, adjudicated and generally known facts could not be analyzed separately from the issue of the facts in general and their determination in different procedural models. Serbian criminal procedure traditionally based on the “principle of truth” that implies the active judge and passive parties, recently experienced the radical reforms, transferring to the adversarial model where the parties have the “main word” in collection and presentation of evidence. Therefore, the old procedural dilemmas like differentiation between facts and law, identity of the indictment and judgment, burden of proof and presumptions, etc, are analyzed through the lens of recently adopted adversarial model, adjusted to Serbian circumstances. In the scope of the

part that deals with adjudicated or final facts, the matter of particular examination is *ne bis in idem* rule (or double jeopardy prohibition), extraordinary legal remedies and prejudicial question in criminal procedure.

The research is primarily based on case-study method, which sources of data are decisions of Serbian courts, common-law decisions, ICTY and ICTR decisions as well as decisions of European Court of Human Rights. In addition to that, comparative, normative and historical methods of legal research are used as well. The basic purpose of the research is to provide a comprehensive study of the factual issues in criminal procedure, and to serve as some kind of guidance for the courts and legal practice.

Key words: facts - adversarial procedure - inquisitorial (mixed) procedure - generally known facts - adjudicated (final) facts - judicial notice - International Criminal Tribunals.

Field of study: LAW

Specific field of study: CRIMINAL PROCEDURE

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, *ex officio*

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, *ex officio*

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going forward)²⁰³

(burden of persuasion).²⁰⁴

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” (prima facie case). ()

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(legal burden)
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(*reponderance of evidence, clear and convincing evidence beyond reasonable doubt*)
 (*strong and convincing evidence, very clear and decisive evidence* . . .).
 (*proof on the balance of probabilities*)
 ” (*beyond reasonable doubt*).²¹²

(*reponderance of evidence*)

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(clear and convincing evidence)

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(beyond reasonable doubt)

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dubio pro reo, in

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Bling-a. : M. /1980/: 60-61.

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Glaser-a, Kries-a i Bennecke-

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in dubio pro reo.

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” *i incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit* ”

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in
dubio pro reo.

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(poena extraordinaria)
absolutio ab instantia (
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(*praesumptio iuris tantum*)

(*praesumptiones iuris et de iure*).

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Прилог 1.

Изјава о ауторству

Потписани-а ВАЊА БАЈОВИЋ

Изјављујем

да је докторска дисертација под насловом

"Процесноправни значај општепознатих чињеница и чињеница утврђених у правноснажним судским одлукама"

- резултат сопственог истраживачког рада,
- да предложена дисертација у целини ни у деловима није била предложена за добијање било које дипломе према студијским програмима других високошколских установа,
- да су резултати коректно наведени и
- да нисам кршио/ла ауторска права и користио интелектуалну својину других лица.

Потпис докторанда

У Београду, 24.01.2014. године



Прилог 2.

Изјава о истоветности штампане и електронске верзије докторског рада

Име и презиме аутора ВАЊА БАЈОВИЋ

Број индекса _____

Студијски програм: Кривичноправна научна област – кривично процесно право

Наслов рада "Процесноправни значај општепознатих чињеница и чињеница
утврђених у правноснажним судским одлукама"

Ментор Проф. др Милан Шкулић

Потписани/а Вања Бајовић

Изјављујем да је штампана верзија мог докторског рада истоветна електронској верзији коју сам предао/ла за објављивање на порталу **Дигиталног репозиторијума Универзитета у Београду**.

Дозвољавам да се објаве моји лични подаци везани за добијање академског звања доктора наука, као што су име и презиме, година и место рођења и датум одбране рада.

Ови лични подаци могу се објавити на мрежним страницама дигиталне библиотеке, у електронском каталогу и у публикацијама Универзитета у Београду.

Потпис докторанда

У Београду, 24.01.2014. године



Прилог 3.

Изјава о коришћењу

Овлашћујем Универзитетску библиотеку „Светозар Марковић“ да у Дигитални репозиторијум Универзитета у Београду унесе моју докторску дисертацију под насловом:

"Процесноправни значај општепознатих чињеница и чињеница утврђених у правноснажним судским одлукама"

која је моје ауторско дело.

Дисертацију са свим прилозима предао/ла сам у електронском формату погодном за трајно архивирање.

Моју докторску дисертацију похрањену у Дигитални репозиторијум Универзитета у Београду могу да користе сви који поштују одредбе садржане у одабраном типу лиценце Креативне заједнице (Creative Commons) за коју сам се одлучио/ла.

1. Ауторство
2. Ауторство - некомерцијално
3. Ауторство – некомерцијално – без прераде
4. Ауторство – некомерцијално – делити под истим условима
5. Ауторство – без прераде
6. Ауторство – делити под истим условима

(Молимо да заокружите само једну од шест понуђених лиценци, кратак опис лиценци дат је на полеђини листа).

У Београду, 24.01.2014. године

Потпис докторанда

