

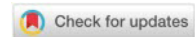
(UN) EQUAL POSITION OF BUSINESS ENTITIES IN PRACTICE – THE CASE OF SERBIA

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Abstract: Business entities in the Republic of Serbia are, by law, granted equal position, whether the business activity is conducted individually or collectively. Since the major reform of company legislation in 2004, there has been a significant increase in the number of newly established business entities, both entrepreneurs and companies. However, only a few years later, legislative changes placed entrepreneurs at a disadvantage compared to business companies. Moreover, small companies in practice face numerous challenges, due to which many of them cease operations and are removed from the business register. Although the conditions for establishing a business are relatively simple, access to sources of financing is quite limited. As a consequence, in many businesses, the personal assets of the owner of capital are confused with business assets. Besides that, bankruptcy and enforcement laws, in particular, fail to ensure equal treatment of business entities. As a final outcome, there is a high level of illiquidity among small businesses and an increased number of bankruptcies and liquidations. Therefore, it is necessary to consider legal instruments that would restore the balance between business entities established by the constitution and laws, but disrupted in practice. The aim of this paper is to highlight the need to restore equal treatment of all business entities in the Republic of Serbia — during establishment, operation, and voluntary or compulsory liquidation — through a fair and balanced legal framework. It will also propose possible legal solutions adapted to modern market trends and the harmonization of legislation with the EU *acquis*. The analysis employs normative, logical, comparative, and statistical methods.

Keywords: *business entities, legal position, equality, Republic of Serbia.*

Field: Social Sciences

1. INTRODUCTION

The freedom of enterprise belongs to the group of relatively early-won freedoms, in comparison to human and civil rights acquired just over two hundred years ago. As such, it represents a precursor to a free society and market. Since the adoption of the current Constitution of Serbia, but also during the validity of the previous one, Serbian legislation is based on a modern approach that guarantees the equality of all economic entities, regardless of the form of ownership. In the process of continuous modernization of regulations and harmonization with the legislation of the European Union, small business development strategies were adopted as the backbone of the domestic economy. Contrary to the proclaimed principle, in practice there are different situations in which business entities are treated differently. The difference can be seen both in legal regulations and in business. The number of such situations results in factual inequality. This is especially reflected in the approach to small businesses and entrepreneurs. In addition, they face the problem of illiquidity due to difficult sources of financing. Finally, when business entities are faced with difficulties in doing business, the legislator does not take into account their specificities, but treats them unequally. The analysis of this topic is based on the normative framework. Then, illogical phenomena in the legislation will be reviewed. In order to substantiate the presented theses with facts, a statistical data will be presented. Relatively little has been written about this topic in domestic legal literature. Also, there are only a few proceedings conducted, mostly without success, before the Constitutional Court of Serbia. Thus, the first part of this paper discusses the legal framework in the Republic of Serbia. The second part analyzes cases of inequality among business entities in law and practice. Finally, the third part focuses on proposals to mitigate such disparities and improve the legislative framework.

2. LEGAL FRAMEWORK OF BUSINESS ENTITIES IN THE REPUBLIC OF SERBIA

The legal framework for conducting business in the Republic of Serbia is based on the Constitution from 2006 (Art. 82–86 Constitution of the Republic of Serbia). Specifically, it stipulates that all participants have equal position in the market; that it is prohibited to restrict free competition contrary to the law by

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creating or abusing a monopolistic position; and that foreign persons are equal to domestic ones in the market (Art. 84, Constitution). Furthermore, the Constitution guarantees equality of all forms of ownership. In addition, Serbia has adopted numerous international standards and, since 2012, has been formally obliged to harmonize its legislation with the legal framework of the European Union. The EU *acquis* is based on the principle of a free market where all participants are equal (Art. 28 to 37 of the TFEU). Specifically, Chapters 6 and 8 of the EU *acquis* relate to company law and competition policy, respectively.

The modernization of legislation began with the adoption of the Law on Business Companies in 2004. However, it was only the first step and in 2011 a new Law on Business Companies was adopted. This law regulates the legal position of companies (legal persons) and other forms of organization, especially their establishment, management, status changes, changes in legal form, termination and other matters of importance for their position, as well as the legal position of entrepreneurs (natural persons as business entities) (Art. 1 al. 1 Law on Business Companies). Building on the constitutional framework, the Law on Companies of 2011 plays a key role. However, the question in the practice remains whether legally proclaimed equality really imply the absolute equality of all business entities.

3. UNEQUAL POSITION OF BUSINESS ENTITIES IN PRACTICE

As it is mentioned above, the Constitution of Serbia proclaims the equal legal position of economic entities on the market. However, practice in the Republic of Serbia provides many examples of unequal treatment of business entities. This inequality stems not only from differing legislative approaches but also from a combination of legal and factual disparities. Legal inequality can be observed through company law, contract law, competition law, accounting regulations, and bankruptcy law.

Unequal treatment appears already at the stage of establishment and registration. The fixed registration costs do not take into account the entity's legal form, size, or financial capacity. Entrepreneurs and micro-enterprises find it difficult to obtain financial resources for starting a business, so they are already faced with serious costs in the initial phase (Serbian Business Registry Agency, Fees for establishing a business company, 2025). Especially, parafiscal duties represent an important burden. Taxes and contributions on wages are a high burden on incomes and amount to almost 64 %. In Serbia, almost 30 % of small business entities cease to exist already in the first year after their registration (Begović, 2022). These factors burden new and small enterprises and often follow them until they cease operations.

After registration, particularly new businesses face the absence of systemic investment and incentive programs, despite the growing number of registered start-ups. According to research, 85% of small businesses in Serbia are started with their own funds (NALED, 2025). Namely, as a rule, commercial banks set strict conditions for the approval of loans, credits and other financial means to finance the start of business. They often require collateral, which new business entities cannot provide. In contrast to them, larger and well-established companies do not have such a problem, because they can provide various means of security for loans and credits (Serbian Business Registry Agency, Info Graphics, 2024).

With the Law on Companies 2012 allowing for the establishment of limited liability companies with a minimum founding capital of only 100 dinars, distrust arose among creditors, especially banks, to provide financing without solid collateral — something small and new businesses typically lack (Art. 145 Law on Companies). This made it easier to legally establish business companies. However, the founders are mostly persons without special assets intended for business. Often, their personal and business assets are not clearly separated, leading to reduced liquidity. This is especially important for commercial banks as potential creditors of financial assets (BizSrbija, 2025).

During business operations, the environment is frequently marked by legal uncertainty and unpredictability. Frequent regulatory changes are an example of it. Additionally, a trend of decreasing competition particularly harms micro and small enterprises. Micro, small, and medium enterprises, which form the largest category of business entities, face a legislative framework largely designed for large corporations, which make up less than 5% of all entities (Statistical Office of the Republic of Serbia, 2023). Legislation in Serbia only recognizes the difference between micro, small, and medium enterprises (MSMEs) in the accounting sense (Art. 6 Law on Accounting). It was only a few years ago, with amendments to the Bankruptcy Law, that such a difference was recognized in terms of prepayment of the costs of starting bankruptcy proceedings (Serbian Business Registry Agency, Info graphics, 2024). However, it is only one step forward in a number of challenges for MSMEs. Still, this is not a situation typical solely for Serbia; similar challenges exist in EU member states, where recent regulations aim to support MSMEs (Guerrera-Martínez, 2021, p. 56–58).

Furthermore, inequality exists between domestic and foreign business entities and their treatment. Subsidy programs often favor foreign investors in Serbia, while domestic businesses face numerous

administrative barriers or are effectively excluded. The EU required from Serbia to abolish by 2027 all direct subsidies to foreign investors (Stevanović, 2024). In this sense, foreign companies are given numerous tax incentives, in order to attract them to open their production and service provision in Serbia (Stjepanović, 2024).

Although the subsidies provided by the Government have been significantly increased and have a wider scope, they are often not affordable for small companies. In order for a company to receive incentives, it generally has to have higher production and a plan to hire more workers (Ministry of Economy, SMEs and Entrepreneurship, 2025). On the other hand, the incentives intended for smaller companies, especially in the field of agriculture and processing industry, are limited and many companies that are interested cannot get them (BizSrbija, 2025)

The price at which domestic companies get money is not a negligible factor in the whole situation, and economists generally agree on that. The reference interest rate is still relatively high, and one of the main problems for small businesses and business beginners is limited access to sources of financing, which is why it is necessary to include private domestic and foreign funds in the capital market (BizSrbija, 2025).

In 2023, the economy in Serbia increased its annual profit by 12%, to 972.4 billion dinars, but this growth was significantly weaker compared to 2022, when annual earnings were higher by a quarter. At the same time, there is an increasing concentration on the domestic market. Over two fifths of last year's total earnings were made by only one hundred companies. They had a profit of 576 billion dinars, and the five leaders realized more than half of that amount, while that share in 2022 was below 43% (Stjepanović, 2024).

Finally, Serbia's bankruptcy legislation treats business entities differently depending on their legal form. The Law on Bankruptcy applies only to legal entities (corporate bankruptcy) (Art. 1 st. 1 Law on Bankruptcy). The previous Law on Bankruptcy Procedures prescribed the bankruptcy of entrepreneurs, but those provisions were absent in the new law (Radović, 2017, p. 109-112). Serbian legislation does not recognize the bankruptcy of a natural person, whether it is an entrepreneur or a consumer (A. Sekulić, 2023, p. 528-529). Creditors' claims against entrepreneurs can only be enforced through civil execution procedures (Art. 30 Law on Enforcement and Securities). It often results in the seizure and sale of personal assets of entrepreneurs and small business owners — leading to their financial ruin and business closure. In this way, there is no legal possibility to recover their business and return to the performance of economic activity (Đurić, Jovanović, 2024, p. 141). This unequal treatment of different business entities is strongly supported by the banking sector in Serbia, as the current enforcement model best suits banks' interests.

Such situations found their outcome in several cases in the constitutionality assessment procedure of various legal regulations before the Constitutional Court of Serbia. Thus, in the last years of validity of the previous Constitution from 1990, proceedings were initiated in connection with the equal position of business entities in the performance of public transportation of passengers and goods. The aforementioned Constitution regulated the equal position of economic entities in a similar way as the valid one. In the specific case, the special conditions set by the Law on the Transport of Passengers in Road Traffic (1995) for the performance of a certain type of this transport were disputed. The Constitutional Court of Serbia then assessed that the aforementioned provisions of the law are not incompatible with the Constitution, because the legal regulation of the conditions for the performance of activities is within the scope of the legislative body's authority. Namely, this includes regulating the conditions for performing activities and the rights and obligations of companies and entrepreneurs who perform economic activities. In addition, the legislator is authorized to assess the nature and importance of the relationship in question, the effects that are intended to be achieved thereby and the social justification of regulating such relationships. Therefore, according to the position of the Constitutional Court, by prescribing special legal conditions for economic entities that are in the same legal situations, the principles of free, independent and equal performance of economic activities, under equal conditions, are not violated, nor are such economic entities placed in an unequal position on the market in relation to others in the same activity. Finally, the Constitutional Court of Serbia took the position that the principle of equality, i.e. equality in the management of companies and other forms of organization, does not imply their absolute equality. That principle implies that economic entities enjoy an equal legal position in terms of business conditions in the same types and forms of economic activity, bearing in mind the specific form of activity. Prescribing special conditions for the performance of certain forms of concrete activity is a consequence of their character and specificity, which are regulated by law (Const. Court Dec. 2004.)

4. RECOMMENDATIONS FOR REDUCING DISPARITIES

To avoid an exclusively critical analysis of laws and practices in this paper, it is necessary to consider possible solutions. These solution should mitigate in the short term all effects resulting in unequal position of business entities in the practice and in then, in the longer term reduce the inequality to the legally acceptable level.

Among important steps, in the future, proportional regulation of fixed establishment costs should be considered. That will allow the small businesses to concentrate their finance to the planed start business activity. For new entrepreneurs, systemic investment programs in start-ups would be of great importance. Such a program should be provided not only by the state, but by the business banks, which would unburden the state budget. Besides, the establishing the special business development bank would stimulate business support. Additionally, the formation of cooperatives among small businesses in the same sectors could strengthen competitiveness of their operations. This is especially important for domestic business facing the strong foreign competition.

Regarding the company law reform, along with the existing legal form of the limited company, an additional form with the higher capital requirement. This would allow to select small business forms with the available capital from those lacking capital for starting the business (Đurić, Jovanović et al., 2024, p. 59). Introducing new models of cooperatives, would allow small business to acquire new customers and markets. Finally, the adoption of unified bankruptcy legislation for all business entities would allow entrepreneurs to reorganize their businesses when facing probable or imminent insolvency (Vallender 2021, S. 202).

5. CONCLUSION

Based on the above, it can be concluded that although the Constitution of Serbia guarantees equality among business entities, the legislative framework built upon it maintains both legal and factual inequalities. These factual inequality leads to the relativisation of the proclaimed legal equality of economic entities. They are evident in company law, contract law, competition law, accounting, and bankruptcy legislation. However, the principle of equality, does not imply their absolute equality. That principle implies that economic entities enjoy an equal legal position in terms of business conditions in the same types and forms of economic activity, bearing in mind the specific form of activity. Therefore, prescribing special legal conditions for the performance of certain forms of concrete activity is a consequence of their character and specificity. Experience shows that while the legislative system is largely designed for large companies, it is precisely these entities that most often seek financial assistance from the state budget — funded by all business entities. Conversely, the state rarely, if ever, provides support to small businesses. It is necessary to restore an equal treatment of all business entities in the Republic of Serbia — during establishment, operation, and voluntary or compulsory liquidation — through a fair and balanced legal framework. Therefore, it is essential to reduce the legal inequalities between small and large business entities and to ensure equal rights for all. Justice will reach everyone — sooner or later.

REFERENCES

- Begović, Lj. (2022, August 31). Mala i srednja preduzeća bi trebalo opteretiti u skladu sa njihovom veličinom. Business.rs. www.biznis.rs/preduzetnik/mala-i-srednja-preduzeca-bi-trebalo-opteretiti-u-skladu-sa-njihovom-velicinom/
- BizSrbija (2025, November 26). Banke olakšavaju kredite: Evo zašto se privreda zadužila još 120 miliona evra. Retrieved November 29, 2025, from www.bizsrbija.rs/vesti/banke-olakšavaju-kredite-privreda-se-zaduzila-jos-120-miliona-evra,
- Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, no. 98/2006 and 115/2021
- Decision of the Const. Court of Serbia [1.U.1444/04]. Official Gazette of the Republic of Serbia no. 38/2004 from 10.06.2004
- Đurić, Đ., Jovanović, V. (2024). Insolvency of Micro, Small and Medium Enterprises in the Republic of Serbia. *Akademski pregled* 2024, Vol. 7, no. 2, 132-145, DOI: 10.7251/AP2402132D
- Đurić, Đ., Jovanović, V., Jovanović, M. (2024). Crisis prevention as a chance for business recovery in the European Union, *Ekonomija: teorija i praksa*, Vol. 17, No. 3, 53-74, DOI: 10.5937/etp2403053D
- Guerrera-Martinez, A. (2021). Implementing an Insolvency Framework for Micro and Small Firms. *International Insolvency Review*, 30(S1), 46–66. doi.org/10.1002/iir.1422
- Law on Bankruptcy, Official Gazette of the Republic of Serbia no. 104/2009, 99/2011 - other law, 71/2012 - Cons. Court Dec., 83/2014, 113/2017, 44/2018, 95/2018 and 44/2025 - Cons. Court Dec. <https://propisi.pravno-informacioni-sistem.rs/content/1238>
- Law on Business Companies, Official Gazette of the Republic of Serbia no. 36/2011, 99/2011, 83/2014 - other law, 5/2015, 44/2018, 95/2018, 91/2019, 109/2021 and 19/2025, <https://www.paragraf.rs/propisi/companies-act-of-serbia.html>
- Law on Accounting, Official Gazette of the of the Republic of Serbia no. 73/2019, 44/2021 – other law, <https://www.paragraf.rs/propisi/law-on-accounting-republic-of-serbia.html>

- Law on the Transport of Passengers in Road Traffic, Official Gazette of the Republic of Serbia no. 6/95 and 66/2001, <https://propisi.pravno-informacioni-sistem.rs/content/1701>
- Ministry of Economy of the Republic of Serbia (2025). SMEs and Entrepreneurship Development Sector. Retrieved November 29, 2025, from www.privreda.gov.rs/ministarstvo/organizaciona-struktura/sektor-za-razvoj-malih-i-srednjih-preduzeca-i-preduzetnistva
- NALED (2025, June 19). U Srbiji 85% malih biznisa startuje iz sopstvenih sredstava, Retrieved November 29, 2025, from www.naled.rs/vest-u-srbiji-85-malih-biznisa-startuje-iz-sopstvenih-sredstava-traze-sistemsku-podrsku-10992
- Stevanović, M. (2024, March 9). EU traži ukidanje direktnih subvencija stranim investitorima, Novi Magazin. www.novimagazin.rs/iz-nedeljnika-nm/318345-eu-trazi-ukidanje-direktnih-subvencija-stranim-investitorima
- Radović, V. (2017). Stečajno pravo. Svetska banka, Beograd.
- Sekulić, A. (2023). Basic assumptions for introducing bankruptcy of entrepreneurs in the Republic of Serbia, *Law and Economy* 2023, 61, no. 2, 518-533. doi.org/10.55836/PiP_23214A
- Serbian Business Registry Agency (2025). Fees for establishing a business company. Retrieved November 29, 2025, from www.apr.gov.rs/registri/privredna-drustva/naknade.2044.html
- Serbian Business Registry Agency (2024). Info graphics, Retrieved November 29, 2025, from www.apr.gov.rs
- Statistical Office of the Republic of Serbia (2023). Preduzeća po veličini i preduzetnici u Republici Srbiji. Retrieved November 29, 2025, from www.stat.gov.rs/sr-cyrl/vesti/20230727-preduzecapovel/
- Stjepanović, J. (2024, November 29). Mogu li domaća preduzeća „na crtu“ stranim kompanijama? Biznis i finansije. <https://bif.rs/2024/11/mogu-li-domaca-preduzeca-na-crtu-stranim-kompanijama/>
- Treaty on the Functioning of the European Union, 2012, Official Journal of the EU C 326/49, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>
- Vallender, H. (2021). Das Sanierungs- und Insolvenzrechtsfortentwicklungsgesetz (SanIns-FoG). Neue Sanierungsoptionen für Unternehmen in der Krise. *Monatsschrift für Deutsches Recht* 4/2021, 201-223.