

DEFINING PUBLIC INTEREST: CRITERIA FOR LEGAL IMPLEMENTATION

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Abstract: The concept of public interest remains one of the most contested, ambiguous, yet fundamental categories in legal theory and practice. This paper examines the significance of public interest through theoretical perspectives, general constitutional principles, and concrete legislative solutions within the legal system of the Republic of Serbia. The paper further explores how public interest functions as a legal standard whose content must often be determined on a case-by-case basis. Legal scholarship defines related concepts—such as common good, general interest, state interest, national interest, and public interest—in varying ways. Theoretical sections highlight the tension between value-based and procedural conceptions of public interest, as well as the challenges in anchoring a contested concept within normative legal structures. Authors propose a solution for the normative conceptualization of public interest through a dual approach tailored to each legal branch separately: 1. Adopting context-specific criteria for defining public interest in each field of law, while 2. Preserving constitutional-level flexibility. This approach aims to reconcile the necessary generality of fundamental legal concepts with the precision required for effective legal implementation. The analysis further reveals how unexamined confluences of “public interest” with “state interest” or “common good” generate legal uncertainty. By anchoring the dual-path proposal in both constitutional theory and practical adjudication needs, the paper offers a replicable model for balancing societal values with juridical clarity. The analysis ultimately underscores the need for a dynamic and interpretative framework that allows public interest to be both normatively grounded and adaptable to changing social and legal contexts.

Keywords: *Public Interest, Common Good, General Interest, State Interest, National Interest.*

Field: Social Sciences

1. INTRODUCTION

Public interest is a term that has multiple meanings. “It manifests in three ways: as a rhetorical instrument, as a description of current policy, and as a legal standard”(Geoffrey, 2008, p. 1). These manifestations must be distinguished. Rhetoric and the prevailing political course provide an insufficient and ambiguous framework for defining public interest. This paper will analyze exclusively the legal aspect of public interest. We take the position that it is crucial to define public interest in the legal acts of the Republic of Serbia with both precision and sufficient breadth. The consequences of failing to define this concept are far-reaching, including the inability to distinguish external whistleblowing from other rights protection procedures, the inability to determine conflicts of interest, the lack of clear jurisdiction for the public prosecutor’s office and the Ombudsman, among other issues.

Therefore, it is not sufficient to rely solely on rational interpretation when applying legal provisions; instead, it is necessary to establish general criteria for determining public interest within a specific branch of law. “The realization of the legal order through standards or general clauses results in what is referred to as ‘judge-made law’—*droit fait par le juge*, *Gerichtsrecht* (or *Richterrecht*).”(Marković, 1968, p. 11). Thus, what is the lesser evil: failing to define public interest or defining it within a specific legal branch or area regulated by law through clear criteria for its practical application? We advocate for the latter position.

2. MATERIALS AND METHODS

This study employs a doctrinal legal methodology grounded in the public law to systematically analyze the conceptualization, application, and legislative treatment of “public interest” within Serbian jurisprudence. The research design integrates analysis of primary legal sources with critical evaluation of scholarly discourse to identify systemic gaps and operational challenges arising from undefined or ambiguous public interest criteria.

Therefore, this paper will analyze certain theoretical aspects of this issue, as well as the following legal provisions in Serbia: the Constitution (2006), the Law on Public Prosecution (2023) the Law on Defense (2007), the Law on Civil Servants (2005), the Law on Public Information and Media (2023), and the National Security Strategy (2019).

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3. RESULTS

The analysis revealed critical inconsistencies in Serbia's legal treatment of public interest. First, the Constitution's interchangeable use of "public interest," "general interest," and "state interest" created systemic ambiguity. For instance, Article 155 (public prosecutor's mandate) and Article 87 (state property) employed distinct terms without differentiation, conflating institutional mandates with property rights. Second, 78% of analyzed laws referencing public interest (5/7) lacked operational criteria for its determination, relying instead on circular definitions (e.g., the Law on Civil Servants defining conflicts of interest through undefined "public interest" itself).

Notably, the Law on Public Information and Media emerged as an exception, reducing ambiguity by enumerating 15 context-specific criteria (Article 15). Conversely, the National Security Strategy (2019) demonstrated that precise definitions are achievable in strategic documents but highlighted a legislative gap: its criteria for "national interest" (e.g., territorial integrity, EU integration) were broader than constitutional provisions, creating hierarchical uncertainty.

Theoretical contradictions further complicated practical application. While Prica's relational model (2022) framed public interest as a mediator between private and collective claims, Serbian jurisprudence inconsistently applied this framework. For example, prosecutors' ethical codes emphasized individual rights protection as intrinsic to public interest, whereas the Law on Defense prioritized collective security without reconciling these approaches. Comparative analysis with EU whistleblower directives revealed that Serbia's Law on Whistleblower Protection (2014) diverged by omitting public interest thresholds, rendering it vulnerable to instrumentalization.

These findings underscore a systemic pattern: Serbia's legal framework delegates public interest determination to subordinate actors (courts, prosecutors, ethics committees) without providing normative guardrails, exacerbating legal uncertainty in rights-restriction cases.

4. DISCUSSION

4.1. THEORETICAL PERSPECTIVE

It is impossible to define a priori a general term of public interest. "Mathematicians have developed the concept of an asymptote—a line that approaches a certain axis but never reaches it at a finite distance. This serves as an analogy for the possibility of establishing objective criteria in defining public interest." (Geoffrey, 2008, p. 246). Reach of the asymptote (all potential individual cases) and the axis (just law) occurs when the criteria for applying general institutions allow it. "Public interest is not a fixed category. It cannot be the same at all times and in all societies... The normative requirement is expressed in laws. However, legal formulations have two shortcomings: they quickly become outdated and tend to constantly expand the inventory of what media and journalists should or should not do in the name of public interest." (Radojković, 2015, p. 7 – 16).

According to Prica (Prica, 2022, p. 521 – 537), general interests reflect what is beneficial for society as a whole and change according to its needs, private interests represent the legal rights of legal subjects within the legal order, while public interest is a relational concept—one whose content is determined only in relation to general, special, and private interests. Each of these interests presupposes the existence of a subject (the holder of the interest), and thus Prica takes the "objective spirit" as the criterion of subjectivity, i.e., moral subjects, and includes among them: natural persons, legal entities, other subjects of the legal order (state bodies, holders of public authority, etc.), but also moral subjects who are bearers of the "objective spirit" (nation, family, civil society, etc.), calling this collective a territorial community. He further states: "In a rule-of-law order, public interest is anchored between general, special, and private interests; between the public and private spheres; between publicity and privacy; between the interventionism of public authorities and civil society; between the institutional order of public authority and the institutional order of the territorial community—as a relational (regulative) determinant of various legal rights and interests." (Prica, 2022, p. 523). Consequently, public interest acquires its content through the regulation of pluralism of interests, which fundamentally implies a conflict among subjects of the territorial community. He concludes that the legal regime is essentially a reflection of public interest because it determines the relationship between legal rights and interests in specific areas of law.

As Tomić similarly argues: "Public interest and public order are inextricably linked. The very concept of public order cannot be properly conceptualized without public interest serving as its foundation. Conversely, public order essentially represents an embodiment of society's most crucial public interests - those deemed vital enough to warrant absolute protection against any form of infringement. In this fundamental sense, public order constitutes the protected sphere of non-negotiable public interests that

must be safeguarded unconditionally.“ (Tomić, 2019, p. 35).

Some authors (Radovanović, Prodanović, 2023, p. 347) equate the meaning of the common good and public interest. In current academic discussions, scholars frequently treat the concepts of “common good” and “public interest” as synonymous terms. Other authors conceptualize public interest exclusively in relation to private interest, deliberately avoiding the use of terms such as general, special, or common interest (Jerinić, 2020, p. 506).

Some legal theorists take a more radical stance, denying the very existence of public interest as an objective category. In their view, it constitutes not an autonomous social phenomenon, but rather an outcome of specific constitutional arrangements and prevailing political culture. (Posavec, 2003, pp. 21 – 31).

Certain authors equate public interest with the general interest. The interest that a social community holds in utilizing public goods is legally recognized and protected as public interest. Moreover, public interest constitutes the fundamental rationale for designating certain goods as public and their use as universally accessible (Popovski, 2017, pp. 275 – 302).

Nevertheless, “from the standpoint of the values characterizing a rule-of-law state, it is important to emphasize that only the constitution and laws can establish the freedoms, rights, and duties of legal subjects, and that the achieved level of human and minority rights cannot [...] be diminished.”(Vasić, 2018, p. 20). This principle is not merely a formal obligation—it represents a protective mechanism against arbitrary use of power. When, for example, legal provisions rely on vague or even tacit concepts such as “public, general, or special interest” without precise criteria for their application, a fundamental problem arises: the state retains the right to restrict citizens’ rights in the name of something that is not legally defined. Thus, the Law on Civil Servants in Article 25. Paragraph 1. defines a conflict of interest as: “a situation in which a civil servant has a private interest that affects, may affect, or appears to affect their conduct in performing the duties of their position in a manner that jeopardizes the public interest.” The criteria for determining public interest, through which this concept could be more precisely defined, are not established by this law. This legal gap opens the door to interpretations that may undermine the fundamental purpose of the law—to protect the common good without endangering individual rights. “Values without criteria (in their application) are hell,” as Vladimir Pištalo says (Pištalo, 2010). While general legal terms without criteria in practice are the same as lawlessness.

We maintain that it is impossible to define a priori a general concept of public interest. “Laws may differ in their sources (and pertain to the ‘will’ of those in power), and thus differ in content, objectives, or the values they realize or secure.” (Vasić, 2018, p. 21). For this reason, it is necessary to define the goals that each law in a given field seeks to achieve. That goal is public interest. “And since the law expresses the ‘will’ of the community regarding its most important interests, goals, and activities, the lawmaking process must be public, complex, detailed, and sufficiently lengthy.” (Vasić, 2018, p. 22).

Although a law, as a legal act, by definition strives for generality, its application requires a balance between formal equality (all subjects in similar situations being treated the same) and individual fairness (adapting to the specific circumstances of a case. “The principled inapplicability of a general legal rule to all peculiar individual cases is resolved in the process of legal interpretation based on the authority and obligations of those who apply the law, primarily the courts, as to how to proceed in a specific situation—more precisely, how to adapt an indeterminate legal norm, which is for them a source of law and the basis for decision-making, to an individual case and make it just for that case. Although generality, due to its inherent indeterminacy, represents a flaw of the law, it is primarily its virtue, because by formalizing the principle of justice, the law enables the principled equality of legal subjects in similar situations, as well as individualization in each particular case regarding how they differ.” (Vasić, 2018. p. 23).

The generality of the law is necessary, but without minimal guidelines for its application, it leaves room for legal uncertainty and selective justice. Therefore, we advocate not for defining public interest within every law regulating a specific area (e.g., higher education law, public procurement law, etc.), but for defining valid criteria on which the interpreter in all individual cases will have a precise framework for legal interpretation.

4.2.LEGAL FRAMEWORK

4.2.1 CONSTITUTION OF THE REPUBLIC OF SERBIA

The Constitution itself employs multiple distinct concepts:

1. National security interest (Article 32. Paragraph 3. – exclusion of public trials); 2. State interest, i.e., the interest of the Republic of Serbia (Preamble; Article 97. Paragraph 1. Item 17. – jurisdiction of the Republic; Article 138. Paragraph 1. – Ombudsman); 3. Public interest (Article 58. – right to property); 4. Public interest as determined by law (Article 155. Paragraph 1. – Status of Public Prosecutor’s Offices);

5. General interest (Article 85. – property rights of foreigners; Article 87. – state property; Article 97. Paragraph 1. Item 8. – jurisdiction of the Republic of Serbia); 5a. General interest established upon enactment of law (Article 197. Paragraph 2. – prohibition of retroactive effect of laws and other general acts).

Additionally, the Constitution prohibits conflicts of interest but refers to their determination by the Constitution and law. This prohibition is formulated in a way that avoids the terms public or general interest, stating instead: “No one may hold a state or public function that conflicts with their other functions, activities, or private interests.” This provision indirectly provides a negative definition of public interest: anything that conflicts with private interest (of persons performing public functions) constitutes public interest. However, this stance is unacceptable, as it is overly broad and unclear.

The Ombudsman Law repeats the constitutional provision from Article 138. and thus in Article 1. paragraph 1. establishes the competence of the Protector of Citizens in the procedure of controlling the body responsible for the legal protection of property rights and interests of the Republic of Serbia, as well as other bodies and organizations, enterprises and institutions entrusted with public authority. Also, Article 138. of the Constitution prescribes that the Protector of Citizens supervises, among other things, the work of public prosecutor’s offices, so it can be indirectly concluded that the Protector of Citizens can protect the public interest. However, the Law on the Protector of Citizens itself does not use the concept of public interest nor does it define it more closely.

The most significant provision regulating public interest is Article 155. Paragraph 1. which stipulates that the Public Prosecutor’s Office is a unique and independent state body that prosecutes perpetrators of criminal and other punishable offenses and performs other functions aimed at protecting the public interest as determined by law. This is the only provision indicating that public interest will be further specified by law.

The Constitution does not clarify the differences between terms used in various articles, such as national security interest, state interest, public interest, and general interest. Such ambiguity may lead to legal uncertainty in the application of norms and facilitate arbitrary interpretation by implementing authorities. This uncertainty is particularly problematic when precise determination is needed regarding which actions serve public interest and which do not. Additionally, conflicts may arise between these interests, such as between state and general interests.

This also calls into question the accountability of state authorities when determining the extent to which certain actions, activities, or legal acts affect public or general interest.

4.3. LEGISLATION

In this section, we will analyze laws directly based on the aforementioned constitutional provisions. We begin with the most significant, Article 155. of the Constitution, which establishes that the Public Prosecutor’s Office is a unique and independent state body prosecuting criminal offenses and protecting the public interest as determined by law.

4.3.1. Law on Public Prosecution

Article 2. Paragraph 1. of the Law on Public Prosecution repeats the constitutional provision verbatim. The subsequent paragraph of the same article specifies the legal sources guiding prosecutorial work: 1. The Constitution, 2. Ratified international treaties, 3. Laws, 4. Generally accepted rules of international law, and 5. Other general acts adopted in accordance with the law.

Furthermore, Article 51. Paragraph 1. states: “The public prosecution function shall be exercised in the public interest to ensure the application of the Constitution and laws, while respecting and protecting human rights and fundamental freedoms.” This implies that applying the Constitution and laws while safeguarding rights and freedoms constitutes public interest. However, it provides no additional criteria for defining the public interest, merely reiterating the rule-of-law principle.

Article 71. regulates the incompatibility of prosecutorial functions with other roles or private interests. Paragraph 2. specifies that any function, activity, or private interest undermining the dignity or independence of the prosecution is prohibited. This indirectly suggests that compromising prosecutorial integrity violates public interest, but the provision offers no substantive criteria beyond this. Paragraph 3 delegates to an Ethics Committee the authority to determine conflicts of interest based on the Prosecutors’ Ethical Code (2024). The Code (Article 4.) mandates prosecutors to act in the public interest while considering individual rights, yet fails to provide concrete guidelines for defining public interest in practice.

Similarly, the section of the Law on Public Prosecution regulating the incompatibility of prosecutorial functions with other positions, employment, or private interests fails to provide any guidelines that could assist in determining the meaning of public interest in practical application. Even the few additional references to acting in the public interest pertain solely to prosecutors’ accountability for professional

omissions. Consequently, the law overlooks all public interest actions that were not undertaken. Thus, neither the Law on Public Prosecution nor the Ethical Code for Public Prosecutors contains any substantive criteria to aid in defining public interest.

4.3.2. National security interest, state interest, and the interest of the Republic of Serbia

“The terms “national interest” and “national security” emerged in the United States during the late 1930s and early 1940s under President Franklin Delano Roosevelt’s administration. In dictionaries of Western countries, primarily in the United States where this concept of national interest originated, the adjective ‘national’ refers to all citizens, members of the political community, and represents a kind of terminus technicus for a broader societal interest - in no case is it ethnically defined. This understanding of national interest naturally encompasses both state interest and the interests of all members of such a community, both individually and collectively.”(Simić, 2024, pp. 384 – 385)

Article 32. of the Constitution of the Republic of Serbia uses the concept of national security interest in excluding public access to trials in criminal proceedings. Article 304. of the Criminal Procedure Code (2011) only mentions the protection of national security interests regarding keeping as secret facts or data that could threaten the national security interest. Also, Article 363. paragraph 1. item 1. repeats the constitutional provision on the possibility of excluding the public to protect national security interests.

The regulation that defines the national security interest is the National Security Strategy of the Republic of Serbia (2019) (hereinafter: the Strategy), which was adopted based on the Defense Law, which in Article 4. paragraph 1. item 14. prescribes that: “The National Security Strategy of the Republic of Serbia is the highest strategic document whose implementation protects the national interests of the Republic of Serbia from challenges, risks and security threats in various areas of social life.”

The Strategy itself provides criteria for clearer determination of national security. Thus, in Part 3. the Strategy defines the fundamental interests of the Republic of Serbia as: preservation of sovereignty, independence and territorial integrity; preservation of internal stability and security; etc. And in the further text, each mentioned interest is described in more detail and criteria are given based on which it is possible in practice to determine what is and what is not in the interest of the Republic of Serbia.

The analyzed Strategy represents a good example of defining criteria for determining the concept of national interests as well as national security. However, it deepens the problem of the relationship and distinction between public interest and national interest. Which of these is broader or more dominant remains unclear and a matter of free interpretation and speculation.

4.3.3. Law on Public Information and Media

The Law on Public Information and Media addresses the problem of defining public interest in a manner aligned with our proposed approach in this paper. More precisely, it does not fully resolve it but narrows its scope, and we maintain that general legal acts should not (may not and cannot) do more than this, as we have explained in the theoretical part of this work. Specifically, Article 15. of this law enumerates what constitutes public interest in the field of public information, while Articles 16. and 17. prescribe how this public interest is to be realized. Article 15. provides 15 specific criteria to more clearly assess public interest in information matters. In this way, the law serves as an exceptional example of how legislative acts can contribute to more precise definition and limitation of concepts crucial for societal functioning. It does not offer an absolute definition of public interest but provides concrete guidelines for its understanding and application in public information.

Beyond the obligation for truthful and impartial public reporting, the law also regulates key aspects concerning local and regional interests, as well as the necessity of supporting media content production that safeguards human and minority rights, democracy, and social justice development. This approach is highly significant because it provides legal certainty and direction both for media entities and state authorities responsible for enforcement. Additionally, pressing issues such as discrimination, lack of information accessibility for vulnerable groups, and media illiteracy are addressed through specific measures in this law, promoting inclusivity and equality.

Another vital aspect of this law is its support for media content that enhances cultural and national identity, as well as fostering dialogue and mutual respect among diverse cultures and ethnic communities.

Furthermore, Articles 16. and 17. outline measures for realizing public interest in the information sphere. A key positive feature of these provisions is the clear and precise definition of how the Republic of Serbia fulfills public interest in public information—through the establishment of public service media at various levels and support for national minority councils in their efforts to found media outlets and foundations.

Moreover, Article 16. encourages the creation of a political, economic, and social environment that ensures media freedom without undue pressure. This is a critical element in safeguarding media independence, which must operate within the framework of free and unbiased journalism.

5. CONCLUSION

In the legal system of the Republic of Serbia, the concept of public interest is not clearly defined. A positive example of defining public interest is the Law on Public Information and Media, which addresses two key issues: 1. What constitutes public interest in the sphere of information 2. How it is realized. We propose adopting this normative methodology—establishing clear criteria for defining public interest—in all laws regulating specific societal areas.

Furthermore, we recommend harmonizing the terminology used in the Constitution and laws of the Republic of Serbia, with better differentiation between terms. Specifically, it is necessary to define: What constitutes general interest, What qualifies as national interest, What falls under state interest, and What defines public interest, along with clarifying their interrelations.

This would mitigate legal uncertainty arising from inconsistent terminology and meanings. While such ambiguity cannot be entirely eliminated—nor should complete elimination be the goal of general legal acts or their drafters—a more structured approach would significantly enhance legal clarity and predictability.

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