

UDK: 343.157 (497.5)

343.14 (497.5)

Review paper

Andrej Bozhinovski, PhD student

Faculty of Law, University of Zagreb, Croatia

E-mail: Abozinovski1@pravo.hr

ORCID ID: 0000-0003-4767-5227

PROVING INNOCENCE THROUGH NEW EVIDENCE: THE TREATMENT OF NEW EVIDENCE IN THE REOPENING OF CRIMINAL PROCEEDINGS*

ABSTRACT

This article focuses exclusively on the reopening of criminal proceedings as an avenue to prove innocence. Within that scope, it examines how new evidence, with particular emphasis on new scientific methods, is defined and assessed in U.S. and European practice. It then turns to Croatia, where it outlines the reopening procedure, the applicable standards for new evidence, and the institutional roles involved, before analysing two Croatian cases in which courts evaluated new scientific findings. Methodologically, the article combines legal analysis of the applicable rules on reopening of criminal proceedings, a comparative analysis of selected standards governing the evaluation of new scientific evidence, and case analysis. It concludes with proposals aimed at strengthening the Croatian approach so that genuine innocence claims are not blocked by an overly restrictive gatekeeping approach by the courts.

Keywords: *Innocence, reopening of the criminal procedure, scientific evidence, Croatia*

1. INTRODUCTION

You can go to prison, even though you are innocent. It really can happen to you! This is how Justin Brooks, the Director of California Innocence Project, started his lecture a year ago, which inspired me to analyze and publish this paper. Proving innocence is very hard and different sort of procedure. As academics, we analyze and scrutinize the criminal procedure, the fair trial rights, the limitation of freedom, equality of arms, etc. However, it must be noted, that during the criminal procedure, the burden of proof is on the prosecution, and the presumption of innocence is on the defendant. In proceedings after the finality of the judgement,

it is the judgment (or the system) that enjoys trust, and is presumed trusted, not the convicted person.

Once convicted, the only legal remedy to prove innocence is reopening of the criminal procedure.¹ However, how can a reopening be obtained? Well, most laws, first prescribe that you must prove that the prosecutor, or the judge, or the expert or the witness committed a criminal act (official misconduct), false testimony/expertise. Ok, what is their second option? Their second option as prescribed by law is to present new evidence which will determine that the court made a mistake *error facti*. However, if you are innocent, you need to prove that you are actually innocent, meaning you had nothing to do with the crime, not procedurally innocent (some procedural right was violated, such as, for example, not being properly summoned to a second instance hearing). That is not actual innocence. Perfect, this sounds promising. Reopening is the avenue to be pursued. However, now we get to the point where more complex questions need to be answered. First, what constitutes a new evidence? Second, can a changed testimony be considered as new evidence? Third, if there is a new scientific method to retest the evidence, developed after the trial, does that constitute new evidence? Fourth, what is the admissibility threshold of new evidence? Once the wrongfully convicted has the answers to these questions, they can proceed to the more practical; does the convicted have the same equality of arms standards as the prosecutor, the meaning of unlimited funds, team of researchers, investigators, position of power, trust by the state, forensic laboratory? Of course the answer is no. The convicted person does not even have the liberty to move freely (they are in prison), or the financial liberty to order new expertise.

* This paper is a result of research under the Project for the Career Development of Young Researchers – Training of New Doctoral Researchers (DOK-2021-02-5858), also funded by the Croatian Science Foundation (HRZZ).

¹ Although there are other extraordinary legal remedies, only reopening has been recognized as an avenue to prove substantive innocence. Croatian legislation, as well as the regional legislations have the Request for Protection of the Legality as an extraordinary legal remedy. This remedy is also not discussed here. It is an opinion of this author, that such a remedy is illogical with the new concept of adversarial or mixed procedure because it presumes that the prosecutor, apart from being a party to the procedure and has an interest in the case, at some point, will put his interest aside, and put on a cap of some kind of ombudsman of the procedure to protect procedural right the defendant. Further, only the prosecutor has the right to file a motion to the Supreme Court for such a remedy, and the defendant does not. He/she needs to request it from the prosecutor, which is illogical. The regular court and the presiding panel of judges/judge are the ones who are bound by duty and law to care about the correctness of the procedure, and the correct application of the law. However, this is a material for another article.

Bearing in mind the previous research conducted on wrongful conviction in Croatia covered rights of the wrongfully convicted people², Innocence Projects and Wrongful Convictions and other crucial perspectives.³ The aim of the article is to assess and conclude how new scientific methods are accepted as new evidence, and how new evidence thresholds are defined as opposed to Croatia, and offer practical recommendations on improving the Croatian legal framework and practice.

This article focuses exclusively on the reopening of criminal proceedings as an avenue to prove innocence. Within that scope, it examines how new evidence, with particular emphasis on new scientific methods, is defined and assessed in U.S. and European practice. It then turns to Croatia where it will outline the reopening procedure, the applicable standards for new evidence, and the institutional roles involved, before analyzing two Croatian cases in which courts evaluated new scientific findings. From the methodological approach, this article conducts legal analysis of the applicable standards on the reopening of the criminal procedure, the comparative approach to selected standards on evaluating new scientific evidence, and case analysis. Then the article will conclude with approachable proposals from the comparative analysis on how to strengthen the Croatian reopening approach so that genuine innocence claims are not blocked by overly restrictive gatekeeping process by the courts. These cases were carefully selected to capture the judicial reasoning when new scientific evidence is invoked and should be enough to illustrate the gatekeeping logic and the decisive factors without distracting the reader with repetitiveness.

2. THEORETICAL ASPECTS OF THE REOPENING OF THE CRIMINAL PROCEDURE

When it comes to the reopening of the criminal procedure based on new facts or new evidence, the most common hypothesis used is the notion of new evidence. Consequently, this aspect has been at the core of numerous jurisprudential reforms, aimed at explaining its meaning, alternatively enlarging or reducing the application perimeter of the reopening. Even today, and among the analyzed jurisdictions here, there is no academic, nor hermeneutical consensus deriving

² Primorac, D.; Soćanović, L.; Bozhinovski, A., *Correcting Miscarriages of Justice: Innocence Project Croatia*, in: *Forensic Science and Molecular Anthropology: Topics Selected from 12th ISABS Conference on Forensic and Anthropological Genetics*, BoD–Books on Demand, 2024, p. 83.

³ Bozhinovski, A., *Protection of the Rights of Wrongfully Convicted Persons in Croatia*, SPLITLAW, 2025, p. 253.

from the fact as to what is and how should new evidence be evaluated.⁴ the classical criminal law hypothesis recognizes 3 (three) types of new evidence: *noviter productae* (pre-existing evidence, never evaluated nor presented at the trial), *noviter repertae* (evidence that has emerged after the finality of the judgment) and *noviter cognitae* (elements that were gathered during the trial but not assessed by the judge). Even though classical legal theory recognizes 3 (three) kinds of the new evidence, Luparia argues that in the judicial practice only *noviter repertae* evidence is accepted by the courts, when motions for reopening of the procedure is being filed.⁵

As to why this is the case, Pituritti and Luparia further argue that it is due to owing to the traditional necessity of stability of the judicial decisions and of protection of the normative status quo related to criminal justice.⁶ However, it should be mentioned that as a result, the possibility to file a motion for reopening was and it is still narrow. What is relevant for this paper, is that many jurisdictions, in recent development have undergone somewhat a new change, on the correct assumption that as technology changes, there are many new and modern ways to perform a retesting of already presented evidence, and that should constitute a novum. Hence, the most recent orientation is one that allows admission in the reopening of any evidence that escaped the appreciation of the judges, therefore including in the notion of 'new' evidence all the three types of evidence described. Reopening of the procedure can be filed on many grounds, and this is evident in the comparative proceedings which more or less are the same everywhere: against false testimony, false expertise, official misconduct by the actors of the procedure (prosecutor, judge, police, etc), furthermore, new evidence, trial in absentia and after a judgment of the ECtHR or the Constitutional Court, where some infringement of a procedural right is detected.⁷

There is an interdependence between reopening of the criminal procedure and judicial error, and in order to file a motion for a reopening, the only precondition is finality of the judgment or *res iudicata*. This is an extraordinary legal remedy, and it is interdependent with the *res iudicata*. The aim of this remedy is to prove judicial error or *error facti*, i.e. that the court has promulgated a wrongful judgement, and request to be removed from legal traffic. The purpose is to reveal the judge's faulty evaluation of the facts contained in the final decision, thus leading to its reversal. Therefore, the universal hypothesis of this legal remedy is

⁴ Lupária, L.; Cagossi, M.; Pittiruti, M., *Miscarriages of justice in Italy*, in: *Murder, Wrongful Conviction and the Law*, Routledge, 2023, pp. 113–114.

⁵ *Ibid.*, pp. 114–115.

⁶ *Ibid.*, pp. 68-69.

⁷ Bozhinovski, *op. cit.* note 3, pp. 260-264.

to correct a substantial injustice of the ruling, that is to say an error in the reconstruction of the historical event, leading to an unjust overcoming of the presumption of innocence.⁸

However, there is a relationship of interdependence, as described by Luparia. On the one hand, the alleged error is a prerequisite for the request of reopening, while, on the other hand, the judicial error acquires legal significance only following its assessment through the reopening judgment.⁹ With this in mind, it can affirm that reopening represents a system security mechanism, capable of guaranteeing the individual's personal freedom, in cases where an antinomy between the definitive statement of guilt pronounced and the historical truth is ascertained. This is why laws on criminal procedure, almost everywhere envisage that this extraordinary legal remedy can be filed by the convicted person, their defense counsel, family, partners, and even public prosecutor. The idea is to not to correct a private injustice, but public injustice (having in mind that correcting injustice is a public interest). Therefore, only the error that emerges from new facts can justify the overcoming of a final judgment, thus avoiding that the review may turn into a fourth degree of judgment.¹⁰ When it comes to new scientific evidence, this type of evidence relies on newly developed and highly specialized scientific methods which of course in a course of time are gradually changing and evolving. Therefore in principle, that evolution can expand and already presented evidence with an older method, can be retested with a newly developed method and yield a different result. Of course, given how the procedural rules for reopening of the procedure are envisaged in European legislations, the harder cases are those where the applicant seeks a new analysis of material already collected at trial, using evaluations that were not conducted at the time. The hardship in this is observed through the reassessment of evidence already examined.

However, the most contested ground for reopening represent the introduction of new evidence, which is the object of analysis in this paper. Gathering new evidence is one side of the coin, and how it is defined in the law is another. In assessing new scientific evidence, American standards developed through the doctrines of *Frye* and *Daubert* cases which will be discussed below, are much more developed than the European standards which do not have a single doctrine on how to evaluate new scientific method applied to a case. An exception to this rule is the Ghiri case, from the jurisprudence of the Italian Supreme Court, which mirrors the *Frye* standards, and sets the precondition on admissibility of new scientific evidence.

⁸ Lupária et al., *op. cit.* note 4, pp. 120–123.

⁹ *Ibid.*, p. 125.

¹⁰ Nan, J.; Holvast, N.; Lestrade, S., *A European approach to reopening in criminal matters?*, *Erasmus L. Rev.*, 13, 2020, pp. 102-104.

However, to present the full picture, the analysis first outlines the American and European standards governing when a new scientific method may be treated as "new evidence" for reopening purposes. It then turns to the national rules and judicial tests in a selected group of European jurisdictions, mapping how each system defines new evidence and how courts assess theirs.

3. AMERICAN AND EUROPEAN STANDARDS ON ADMISSIBILITY OF NEW SCIENTIFIC EVIDENCE

New scientific evidence is accepted in the U.S. court system, through 2 (two) established available standards. The first standard is the *Frye standard* or the *Frye test* which originated from the case of *Frey v. the United States*.¹¹ The Second standard is the *Dauber Standard* which originates from the landmark Supreme Court decision of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*¹² *Frye test* or *Frye Standard* is employed by the court to assess whether the methodology or the scientific principle which was employed in the analysis of the DNA material, upon which the opinion of the expert is based is *sufficiently established to have gained general acceptance in the particular field in which it belongs in the relevant scientific community*.¹³ In other words, whether the employed standard is scientifically accepted and substantiated. Similar to this is the *Daubert* test or standard, which assigns the role to the judge as a gatekeeper on new scientific method, and evidence. The judge has to determine whether the reasoning of the expert, or the employed methodology can be applied to the facts of the case. The focus here is on the methodology used, and not on the conclusions that they generate. In practical implementation of this standard, the courts have established the following factors as guideposts for judges to assess: (1) Whether a theory or technique employed in the analysis of the material can be tested, (2) Whether the theory or technique has been subjected to peer review and publication, (3) the known potential rate of error, (4) the existence and maintenance of standards controlling the technique's operation, (5) the degree of general acceptance within the relevant scientific community.¹⁴

¹¹ *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), *United States Court of Appeals for the District of Columbia Circuit*.

¹² *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *United States Supreme Court*.

¹³ *Primorac et al.*, *op. cit.* note 2, pp. 434-436

¹⁴ Federal Rules of Evidence, Committee Print No. 11, 118th Congress, 2nd Session, December 1, 2024, *U.S. House Committee on the Judiciary*, U.S. Government Publishing Office, Washington, 2025. Rule 702, 703, and 404

Bearing in mind the nature of the scientific evidence (in all forms), and how very persuasive it is in determining material truth, it therefore must be handled very carefully, otherwise it will become misleading and may lead to wrongful convictions. When it comes to such limited profiles, the Federal Rules of Evidence imply that the court must take into consideration whether the prejudicial effect of such evidence substantially outweighs its probative value. In other words, the court must determine whether the introduction of such evidence unfairly prejudices a defendant by misleading the jury.

The treatment of scientific evidence in the continental European jurisdictions is regulated on a national and supranational level. However, importantly on a supranational level, the ECtHR addresses related issues through the lens of Articles 8 and 6 of the European Convention of Human Rights (hereinafter ECHR), thereby unifying the standards for all countries. The major discrepancy with the U.S. approach is that new scientific evidence in Europe, is not filtered through a Daubert/ Frye style test, and instead, judges assess credibility within the fact-finding process by exercising the principle of free evaluation of evidence. Concerning the admissibility standards of a scientifically new method, the European Court of Human Rights (hereinafter ECtHR) has established three pronged test, called the *Marper test*¹⁵, to take into account when assessing admissibility: (1) Legality of the measure, and (2) Proportionality of the retention period of DNA materials, meaning for severe crimes, the retention period must be longer, and (3) Removal of the DNA samples from the national database.¹⁶ When handling this information, there are two main requirements for the national authorities: The interference of the measure should have some basis in domestic law or a member state; and the law must be clear, foreseeable, and adequately accessible. Deviation from this criterion will result in a breach of Article 8 of the European Convention on Human Rights.¹⁷ The most notable ruling, which consequently established the admissibility test is the *S. and Marper v. the United Kingdom*¹⁸ case concerning the police retention of DNA profiles of individuals arrested but not convicted. In this case, the Court criticized the UK's practice of nonselective and indefinite retention as a significant invasion of privacy, especially problematic for minors and those not convicted, potentially impacting

¹⁵ This test is concerning the ramification, collection and storage of DNA evidence, but courts are applying the test to new scientific evidence as well, once it emerges.

¹⁶ Primorac, D.; Božhinovski, A., *Correcting Miscarriages of Justice in Croatia: Accession and Time-Limited Retention of DNA Profiles in the Jurisprudence of the European Court of Human Rights, EU and Comparative Law Issues and Challenges Series (ECLIC)*, vol. 7, 2023, pp. 487–490.

¹⁷ *Ibid.*

¹⁸ *S. and Marper v. the United Kingdom*, Applications nos. 30562/04 and 30566/04, Judgment of 4 December 2008, *European Court of Human Rights*.

their societal reintegration and violating children's rights protections under international law.

A key observation is that the U.S. and European approaches address new scientific evidence through different control points. In the United States, admissibility is structured around formal gatekeeping standards regulated in the Frye and Daubert standards, and the Federal Rules of Evidence, with the judge filtering scientific evidence primarily by scrutinizing the methodology. This reflects how cautious the American judiciary is in evaluating forensic science, especially in borderline scenarios (such as partial DNA matches). In continental Europe, by contrast, scientific evidence is typically not prefiltered through an equivalent methodology-focused admissibility test; it is instead observed into the broader fact-finding framework under the principle of free evaluation of evidence, with reliability debates often occurring within the merits assessment rather than at an admissibility "gate. However, interestingly, at the supranational level, the ECtHR's jurisprudence provides a different concept of the interpretation of new scientific method in new evidence.

4. DIVERGENT CONCEPTS ON NEW EVIDENCE IN EUROPEAN JURISDICTIONS

To further understand how new evidence standard impacts the reopening of the criminal procedure, a brief overview of how selected European jurisdictions define and assess new evidence in the context of reopening of criminal proceedings is needed. In this segment, the paper will focus on: France, Germany, Italy, the Netherlands, and Belgium, selected as countries that underwent major reform in the area of extraordinary legal remedies and post-conviction proceedings in general and expanded their definitions on what constitutes a new evidence or novum. The purpose here is to provide a full doctrinal account of each national remedy, and map definitional choices, whether these systems interpret new evidence in an extensive or restrictive manner.

In the Netherlands, reopening in favor of the convicted (*herziening ten voordele van een gewezen verdachte*) is an extraordinary legal remedy available. Once the initial trial finishes with the judgement, the parties of the procedure can file an appeal before the Court of Appeal. In this process, the judges will review the entire case again and should they decide not to accept the appeal, the parties then have the right to appeal to the Supreme Court, which investigates whether there was a proper application of the Law, and does not review the actual case, like some sort

of third instance.¹⁹ After the Supreme Court, the next phase is to file an application to the ECtHR whether some right of the ECHR was infringed. As soon as the term to do so has expired, or as soon as the ECHR procedure rejected the complaint, a conviction is irrevocable. The only way a case can be revised again, is by filing a successful request for review (*herzieningsverzoek*) at the Supreme Court or *ex officio* by the procurator general of the Supreme Court.²⁰ As to what changes were introduced concerning new evidence or fact, the latest amendments of the Law on Criminal Procedure stipulate Article 457 et seq from the Dutch Code on Criminal Procedure, regulates the cases when such a request can be filed. The first case is *on the grounds that in various judgments or judgements which have become final or were rendered by default, convictions have been rendered which cannot be reconciled*. The second case is *on the basis of a judgment of the ECtHR, for violation of some right within the ECHR*. The third, and relevant to this paper, is *if there is a fact that was not known to the judge during the investigation at the hearing and that, either in itself or in connection with the evidence previously provided, does not seem to be compatible with the ruling, such that a serious suspicion arises that if this fact had been known, the investigation of the case would have led either to an acquittal of the former suspect, or to a dismissal of all prosecution, or to the inadmissibility of the Public Prosecution Service, or to the application of a less severe penal provision*.²¹ Noted from the definition, the word fact is used. This prompted the Supreme Court on occasion to make an exception to the requirement that the new forensic evidence was of a factual nature and broadened its scope. Furthermore, Nan and Holvast, argue that new forensic expertise is considered a new fact, because bearing in mind that most wrongful conviction cases were based on faulty forensic expertise.²²

Belgium on the other hand, reopening is envisaged in Article 443 of the Law on Criminal Procedure envisages 3 (three) grounds for reopening of the criminal procedure.²³ The first envisages that *two (or more) distinct convictions that find different defendants guilty of the same fact and that are irreconcilable, so that one of the convicted persons has to be innocent*.²⁴ the second is the *after a conviction*,

¹⁹ Geven, L.; van den Doel, K., *Miscarriages of justice in the Netherlands*, in: *Murder, Wrongful Conviction and the Law*, Routledge, 2023, pp. 58–59.

²⁰ *Ibid.*, pp. 59-60.

²¹ Wetboek van Strafvordering, Article 457(1)–(2).

²² Holvast, N.; Nan, J.; Lestrade, S., *Between legal certainty and doubt: The developments in the procedure to overturn wrongful convictions in the Netherlands*, *European Law Review*, 4, 2020. <https://doi.org/10.5553/ELR.000188>.

²³ Article 443, *Code of Criminal Procedure [Wetboek van Strafvordering (Code d'instruction criminelle)]*, in force 7 December 1808 (consolidated version, 20 November 2025), *Federale Overheidsdienst Justitie (JUSTEL)*, available at: https://www.ejustice.just.fgov.be/img_l/pdf/1808/11/17/1808111701M_N.pdf

²⁴ Belgian Code of Criminal Procedure, Article 443 (1) (a)

*a witness that was heard is convicted for false testimony concerning the defendant.*²⁵ The third and important for our analysis here is *an element that was unknown to the judge during the initial proceedings and impossible for the convicted person to demonstrate at that time and that, alone or combined with the evidence that was gathered before, seems incompatible with the conviction, thus creating a strong suspicion that, if the element had been known, it would have led to an acquittal, a discontinuance of the proceedings or the application of a less strict criminal provision.*²⁶ Though the legal reforms were inspired by the Dutch approach to redefine the definition of what constitutes new evidence, the Belgian approach changes the word fact or evidence, with the word element. Verhesschen and Fijnaut note further that adding the word element extended the definition, and now new witness statement can be taken as evidence, and if reliable, they can be contested in new trial. Also, they argued it that the previous definition that mentioned only new evidence or a new fact (new testimony, new expertise) was deemed to be narrow, and unusable.²⁷

France has been the most pioneering in redefining the concept of reopening of the procedure to the advantage of the convicted person. Verhesschen and Fijnaut note that similar to Belgium, the application for a reopening is only allowed for more serious crimes which under the Criminal Code are the first and the second category: felonies, and ordinary offences, or misdemeanors (Art. 111-1 Code pénal).²⁸ Under Article. 622 of the Law on Criminal Procedure in France, simple finding of guilt is sufficient to initiate the proceedings, so the imposition of a penalty is not required. Moreover, the reopening procedure concerns only criminal decisions that are final.²⁹ Concerning the grounds of *novum* the French legislator unified all the grounds into one. Article 622 (1) of Law on Criminal Procedure stipulated that *A reopening can be requested when, after convictions, a new fact or an element unknown to the court at the time of trial emerges, and is of such a nature as to establish the person's innocence or raise doubt about their guilt.*³⁰ Prerequisite is new fact or the unknown element must not have been known to the court during the original proceedings, but may have been known to the applicant.

²⁵ Belgian Code of Criminal Procedure, Article 443(1) (b)

²⁶ Belgian Code of Criminal Procedure, Article 443 (1) (c).

²⁷ Verhesschen, K.; Fijnaut, C., *Chosen Blindness or a Revelation of the Truth?: A New Procedure for Reopening in Belgium*, *Erasmus Law Review*, 13(4), 2020, pp. 13–21. <https://doi.org/10.5553/ELR.000183>

²⁸ Article 111 (1) Code pénal (LEGITEXT000006070719). (n.d.). République française (Légifrance). Accessible at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070719

²⁹ Verhesschen, K.; Fijnaut, C., *Correcting wrongful convictions in France: Has the Act of 2014 opened the door to reopening?*, *Erasmus Law Review*, 13(4), 2020, pp. 22–23.

³⁰ Code de procédure pénale, Article 622 (1),

However, prerequisite for a reopening to happen is a new fact or any unknown element (new) must not have been known to the court during the original proceedings.³¹ However, briefly stating in this segment, that the reforms of the Law on Criminal Procedure, also established the new court (*Cour de révision et de réexamen*) or the reopening court specialized only for reopening cases and composed of total of eighteen judges.³² The reopening court consists of two commissions: The *Commission d'instruction* (Investigation Commission), responsible for filtering and assessing the admissibility of reopening requests, and *The formation de jugement* (Adjudication Commission) which is a commission which decides on the substance and merits of the case.

Italy, a jurisdiction which is very close to the Croatian legislation has valuable lessons on the treatment of the scientific evidence. However, first reopening of the criminal procedure for the benefit of the convicted is stipulated in Article 630 of the Italian Law on Criminal Procedure, which is an extraordinary appeal to annul a wrongful conviction, and extraordinary appeal for factual errors.³³ This Article stipulates that reopening of the criminal procedure on the benefit of the defendant is permissible on 5 (five) grounds. First *if the facts underlying the judgment or the criminal decree of conviction are incompatible with those established in another final criminal judgment issued by the ordinary court or by a special court*. Second *if the judgment or criminal decree of conviction has based its decision on a judgment issued by the civil or administrative court and subsequently revoked, if a decision has been taken on one of the preliminary issues provided for in Article 3 of the Law on Criminal Procedure*. Third, (relevant to this analysis), *if new evidence is found or discovered after conviction and, either independently or together with already assessed evidence, proves that the convicted person must be acquitted*. Fourth *if it is proven that the judgment of conviction has been delivered on the basis of or as a consequence of false documents or statements provided during the trial or of any other criminal act deemed an offence by the law*. This ground must be integrated with the previous or established jurisprudence. Fifth, *reopening is based on compliance with a final judgment of the European Court of Human Rights*³⁴ However, a major breakthrough was made about the admissibility of new scientific methods applied to previously collected evidence. The Court of

³¹ Tourret, A., & Fenech, G. (2013). *Rapport d'information n° 1598 sur la révision des condamnations pénales*. Assemblée nationale, XIV^e législature. <https://www.assemblee-nationale.fr/14/rap-info/i1598.asp>

³² Code de procédure pénale Article 623 (1) and 624(2)-(6).

³³ *Italian Code of Criminal Procedure [Codice di Procedura Penale]*, 1988, Arts. 3, 11, 127, 420-bis, 529, 530, 606, 625-bis, 629, 629-bis, 630, 632–634, 636–637, 640–641, 643, 648–649, 479, available at: <https://www.normattiva.it/uri-res/N2Ls?>

³⁴ Italian Code of Criminal Procedure, Article 630 (1)

Cassation in the Ghiri case³⁵ has developed criteria for assessing reopenings based on new scientific methods. In this case the court has accepted that the new scientific method can serve as a *novum* as it was not in existence during the trial. In this judgement the Court of Cassation introduced the 5 (five) indicators on assessing the novelty of the method: a) the novelty of the scientific method (the method must be new in nature), b) the scientific credibility and reliability of the method (the method must be approved by the scientific community and widely published; it must not be experimental), c) the method should be applied to previously assessed evidence, d) the results should be novel in order to establish whether they are suitable to determining a new sentence, and e) the new results, should be able to justify a different outcome.³⁶ These conclusions of the Court of Cassation mirror the *Frey* and *Daubert* standards established by SCOTUS in assessing new scientific evidence.

German experiences indicate a different approach. Concerning the reopening based on new evidence, the Law stipulates that *if new facts or evidence are presented which, alone or in conjunction with the evidence previously gathered, are capable of justifying the acquittal of the accused or, by applying a more lenient penal law, a lesser punishment or a substantially different decision regarding a measure of rehabilitation and security*³⁷. Defining what facts are in this definition, the position of the Federal Constitutional Court is that *facts shall be understood as existing, identifiable occurrences or circumstances which belong to the past or the present. Whether a fact is new or not shall be judged solely according to whether or not the court has already utilized it. Therefore, in principle new is everything which the court has not taken as a basis for forming its opinion, even if it could have taken such as a basis*.³⁸ According to the research done by Lindemann and Lienau, it must be taken into account though that criminal courts are not obliged to address every taking of evidence made in the main proceedings within the context of its grounds for the ruling, therefore, in the failure to mention a piece of evidence which is substantial with respect to the basis of facts for the decision, one may see an indication of a failure to take such into account.³⁹

³⁵ Court of Cassation, Sec. I, 8 March 2011, Ghiri, in *C.E.D. Cass.*, no. 249864.

³⁶ *Ibid.*

³⁷ Article 359., *German Code of Criminal Procedure [Strafprozessordnung (StPO)]*, Bundesministerium der Justiz and Bundesamt für Justiz, available at: https://www.gesetze-im-internet.de/stpo/_359.html

³⁸ BVerfG, Resolution of the 2nd Chamber of the Second Senate, 19 July 2002 – 2 BvR 18/02, 2 BvR 76/02, *StV*, 2003, p. 225.

³⁹ Lindemann, M.; Lienau, F., *Mechanisms for correcting judicial errors in Germany*, SSRN, 5 May 2021, pp. 77–78.

Obviously, the new evidence is defined differently. Some jurisdictions have expanded the scope and ground of new evidence, by introducing the word element, instead of fact. Others have merged all grounds into one, and others simply kept the narrow interpretation of new evidence or new facts. However, two positive practices can be taken from this analysis in regard to Croatia.

The first is the Belgian definition of what constitutes new evidence. the LCP defines it as an element that was unknown to the judge during the initial proceedings and impossible for the convicted person to demonstrate at that time and that, alone or combined with the evidence that was gathered before, seems incompatible with the conviction, thus creating a strong suspicion that, if the element had been known, it would have led to an acquittal, a discontinuance of the proceedings or the application of a less strict criminal provision. The second positive experience is the Italian interpretation in the Ghirelli case, of what is a new scientific method, and how the court should reapply that method on already presented evidence.

5. CROATIAN LEGAL FRAMEWORK AND PRACTICE

5.1. Legal Framework

The Croatian legislator provides two kinds of reopening: extraordinary (triggered only in the sentencing part, where the court failed to account former convictions of the defendant, without entering the merits of the case) and proper reopening (where there are circumstances that the court might have made a mistake in application of substantial law).⁴⁰ Further, reopening of the criminal procedure can be on the benefit of the convicted person, and to the detriment of the convicted person, which is also not topic of analysis in this paper.

Reopening of the criminal procedure for the benefit of the convicted person, stipulated in Article 501 of the Law.⁴¹ This procedure and the processes are regulated in Articles 501–508 and it is intended as a safety net against miscarriages of justice. There are in total 5(five) grounds for reopening of the criminal procedure, where the first 2 (two) grounds cover reopening due to official misconduct committed through false testimony of experts, interpreters, witnesses,

⁴⁰ Criminal Procedure Act [*Zakon o kaznenom postupku*], consolidated text, Narodne novine, nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24, 72/25, 30 April 2025, available at: <https://www.zakon.hr/z/174/zakon-o-kaznenom-postupku>

⁴¹ CPA, Article 501 (1)

prosecutors, judges, jury members, investigators, police and any other person affiliated with the criminal procedure. Garačić further notes that the new evidence must establish a causal relationship between the crime committed and the final judgment passed, to provide concrete evidence that the final judgment is a result of official misconduct.⁴² For these 2 (two) grounds, paragraph 2 of the Law stipulates that new evidence can be considered only a judgment rendered against the person who committed official misconduct (false expertise, false testimony, etc). No other evidence except for a judgment, which indicates high threshold at the off start.

Further, the 3rd (third) ground is reopening based on new evidence or *novum*. The full legal provision is: *if new facts or new evidence emerge, which on their own or in connection with the previous evidence can lead to an acquittal or a conviction under more lenient criminal law*. Legal commentators, Zlatarić and Damaška argue that if the facts or evidence were already raised or assessed during the original trial or in a prior, dismissed reopening request, they do not qualify as new. This is the current position of the judiciary as well, because the burden is on the applicant to plausibly show that the new material could have changed the outcome. If the request relies only on previously considered facts or evidence, the court will dismiss it.⁴³ However, this definition must be observed through comparative analysis in other countries. It can be deducted that the legislator followed the German definition and provided a high degree of trust into the *res iudicata*, as well as the threshold upon which new evidence is admitted. The last 4th (fourth) and 5th (fifth) ground are reopening of the procedure due to incompatibility between final convictions, and cases of continued offence. Also connected with sentencing, this provisions regulates new facts which are affecting the scope of the sentence.⁴⁴ In the 5th (fifth) ground, reopening of the procedure is allowed in the cases of final judgments by the Constitutional Court of Croatia as well as a final judgment from the ECtHR (the European reopening), and for both cases the deadline for submission is 30 days, starting from the finality of the judgment.

⁴² Garačić, A., *Prava i neprava obnova kaznenog postupka*, Hrvatska pravna revija, Zagreb, 2005, p. 112, available at: https://www.vsrh.hr/CustomPages/Static/HRV/Files/AGaracic_Prava-i-neprava-obnova-postupka_2005.pdf

⁴³ Zlatarić, B.; Damaška, M., *Rječnik krivičnog prava i postupka*, Informator, Zagreb, 1966, p. 191.

⁴⁴ Lasan, V. D., *Obnova kaznenog postupka de lege lata i analiza odluka Ustavnog suda Republike Hrvatske donesenih u povodu ustavnih tužbi nakon obnove kaznenih postupaka na osnovi konačne presude Europskog suda za ljudska prava*, Hrvatski ljetopis za kaznene znanosti i praksu, 25(2), 2018, pp. 171–172.

Article 504 – 508 regulate the procedure of the motion for reopening of the procedure, who may submit the motion (the parties and the defense counsel; the state attorney and the persons listed elsewhere in the Law). It also clarifies that such motion can be submitted if the accused was tried *in absentia*, and regardless of whether the convicted person is present. Additionally, it states that reopening may be sought even after the sentence has been served, and irrespective of limitation, amnesty, or pardon. This is similar to the American solution of *Coram Nobis*. Furthermore, Article 505 regulates that the motion is decided by a panel of judges, of the court that tried the case at first instance in the earlier proceedings.⁴⁵ The motion can be submitted without the required form, but it must be clear on which ground the reopening is based, and what new elements are proposed. Furthermore, if any of those elements are missing the court can invite the applicant to supplement the request within a set deadline. Additionally, and relevant to the procedure, it excludes the participation of the judge or the panel of judges, who promulgated the earlier judgment. Additionally, Article 506 regulates the initial screening of the motion, and fact checking stage. Rejection of the motion is always granted, should it were filed by an unauthorized person, the statutory conditions or the threshold for reopening is not met, or the alleged new facts in the motion, were already presented and incapable of reaching the threshold of new evidence justifying reopening, or the applicant failed to comply by providing the court with additional materials.⁴⁶

The path of the motion is relatively straightforward and clear. Once the convicted person files the motion for reopening of the criminal procedure pursuant to Article 503 (1) (3), to the court which tried the case at first instance (this court can be either municipality court or county court, depending which one of them promulgated the first decision), the court decides upon the motion in a panel of judges. It is decided in the same court which promulgated the decision, but a different new panel. Then this panel starts the screening phase of the motion, assessing admissibility and plausibility whether is sufficient to engage a reopening. In this stage the panel may promulgate 3 (three) decisions: *to dismiss it* (it will dismiss it if the legal grounds are not met, such as: no statutory convictions, unauthorized person, repetition of the same facts, evidence, or the applicant failed to provide the court with supplemental document), *to accept it* (this does not automatically mean a new trial). Acceptance here means that the court considers the motion credible for further consideration, Then the president of the panel (personally or through an investigative judge) verifies and evaluates the new facts in the motion and initiates an investigation to collect that evidence.

⁴⁵ CPA, Article 505 (1)

⁴⁶ CPA, Article 506 (1) - (2).

After all actions are completed it sends the case to the opposing party to provide an opinion, which must be submitted in a period of 8 (eight) days. After this the court promulgates a decision on whether to grant reopening and schedule a new trial or reject the motion.), to *reject it*. It will be rejected when the court considers that the new evidence is not sufficient to reach the threshold of *novum*. Against this decision for rejection of dismissal, the convicted person, or their defense counsel are eligible to file an appeal to the second instance court. If first instance was municipal court, the appeal would be lodged to the county court, as second instance. If the first instance was the county court, the appeal will be lodged to the High Criminal Court, who is authorized to decide upon appeals in cases of reopening of the procedure.⁴⁷

The Croatian legal framework is forward-looking, and provides available legal avenues, available to persons who wish to challenge the validity of the judgment and prove judicial error. However Several observations need to be placed on the current definition on new evidence and new facts, the Croatian definition lacks a word of *new element* which in practical reference, places the threshold very high to introduce a new evidence.

5.2. Case Analysis

In this segment two selected cases from the jurisprudence of the County Court of Split, and the High Criminal Court will be reviewed to illustrate how in different cases the court evaluate and accept new scientific evidence. Both cases are approved for reopening, and contain different interpretation.

In the jurisdiction of the County Court in Split, in this case, the court acting as an appellate court granted a reopening of the criminal procedure on the benefit of the defendant based on new evidence. The defendant was found guilty of the criminal offense of forgery of a document and sentenced to 2 (two) years in prison. The applicant filed a motion for reopening of the criminal procedure, based on new evidence, more specifically a new graphological expertise. The first instance court rejected this request stipulating that the evidence was already evaluated and it is not credible enough to cause exoneration. and the County Court accepted his request and order a reopening of the case. The second instance court further

⁴⁷ Conclusions adopted at the meeting of presiding judges and registry judges of the Criminal Division of the Supreme Court of the Republic of Croatia with the presiding judges of the High Criminal Court of the Republic of Croatia and the presidents of the Criminal Divisions of all county courts, held on 9 June 2022] (Su-IV-21/2022-11), accessible at: www.vsrh.hr/EasyEdit/UserFiles/zakljucci-ko/2022/su-iv-21-2022-11.pdf

stipulated that during the proceedings before the first instance court, witnesses were examined, including SMS correspondence between the convict and the witness and based on these evidence, and without graphological examination, the applicant was found guilty of committing the criminal offence of forgery of a document. However, the second instance court, has established that in the new evidence, submitted as part of the motion (new expert opinion), contained graphology examination of the signature of the applicant, using a new developed method which was not in existence during the first trial. The new expertise concluded that the signature of the applicant on the purchase and sale contract for the motor vehicle almost certainly did not belong to the applicant. Therefore the aforementioned expertise points out that this new fact is appropriate to lead to an acquittal, especially since the convict was finally convicted without conducting a graphological expertise in the first trial⁴⁸

The second case answers the question, what if the new evidence is a new technique which was not existent at the time of the trial? Would that be counted as new evidence or not? Such was the decision of the Supreme Court allowing reopening of the procedure based on new evidence to take place based on new expertise. The County Court of Bjelovar as first instance court in this case, has rejected the motion of the applicant for reopening of the criminal procedure based on new evidence, claiming that the supplementary expertise did not indicate new evidence, rather provided just an interpretation of the evidence which was presented in the original trial. However, the Supreme Court appraised the situation, and decided differently, upheld the appeal from the applicant and ordered the court to take additional investigatory actions, based on the presented new evidence, and to test them in a new trial. The case revolves around attempted robbery, and the applicant was sentenced to 3 (three) years in prison. He filed a motion for reopening, based on new evidence, which in this case was a supplementary expertise, a forensic 3D reconstruction and biometrical analysis conducted by a registered expert, which concluded that due to a significant height difference of the applicant (14.8 to 17 cm), the applicant could not have been one of the masked perpetrators captured on the security camera footage of the crime, as he was taller than them. The new scientific method presented used a new version of photogrammetric software and the latest laser 3D scanner, which was not used in practice during the first trial (before 2009). However, in evaluating what new evidence represents, the Supreme Court found the decision of the first instance court to be premature and failed to take into consideration the fact that such technology had not existed during the first trial. The court reasoned that the new

⁴⁸ County Court in Split [Županijski sud u Splitu], Decision [Odluka], Kž-200/2022-5, 2022.

expert analysis, which used technology not available at the time of the original trial, presented potential new facts that could indeed impact on the factual basis of the conviction. Therefore, instead of dismissing it, the first instance court was instructed to send the request to the opposing party for a response, conduct an inquiry to verify the facts, and only then make a decision on whether to allow or deny the reopening.⁴⁹ Another interesting point raised in this case, was that the second instance court stipulated that the *judge cannot place himself in a role of a court expert*, although it does not possess the expert knowledge to assess the reliability of the forensic 3D reconstruction using laser 3D scanning of the crime scene.

These cases illustrate patterns of changed behavior of the judicial position concerning interpretation of new evidence or new facts when new forensic techniques are used to reevaluate evidence which was previously presented. This is an approach in a positive direction, and it is in line with the Italian standards established in the Ghiri case. Although Ghiri was evaluating newly presented scientific evidence, and established the admissibility criteria for forensic DNA evidence, such practice was not detected during the analysis of the judicial practice. However, the following case demonstrates the position of the Supreme Court in terms of new scientific evidence when DNA evidence is in question. However, no unified position exist on how to evaluate new evidence, especially scientific evidence, using the Ghiri method.

6. CONCLUSION

As mentioned in the prior text, the grounds for the possibility of filing a motion for reopening was and it is still narrow. What is relevant for this paper, is that many jurisdictions, in recent developments have undergone a new change, on the correct assumption that as technology changes, there are many new and modern ways to perform a retesting of already presented evidence, and that should constitute a *novum*. Therefore, changes in the Croatian definitions and the method of interpretation of new evidence need to be made.

Reopening of the procedure can be filed on many grounds, and this is evident in the comparative proceedings which more or less are the same everywhere: against false testimony, false expertise, official misconduct by the actors of the procedure (prosecutor, judge, police, etc), furthermore, new evidence, trial in absentia and

⁴⁹ Supreme Court of the Republic of Croatia [Vrhovni sud Republike Hrvatske], Judgment [Presuda], I Kž-153/2018-4, Zagreb, 2018.

after a judgment of the ECtHR or the Constitutional Court, where some infringement of a procedural right is detected. There are different definitions of *novum*, some countries are more explicit, other less, but the Belgian solution would be more approachable and applicable. The reason for that is because it contains the word *element* instead of facts. New element in this context, does not explicitly related to a new fact. Element is broader term, and can capture new expert development, or scientific reevaluation, a new witness coming forward, or a new digital trace. Furthermore, the definition stipulates that this element must have been unknown to the judge. the focus here is on what the court did not know, not on whether the court case technically contained something. That helps when the problem was misinterpretation or when the relevance of a piece of information only becomes clear later. Further, the definition captures the moment impossible for the convicted person to demonstrate at that time. This is based on protection of the wrongfully convicted as it covers few logistical problems such as: no access to forensic testing, no financial resources, or no legal aid. Finally, the definition contains the conjunctive and states that this element alone or combined with the evidence already gathered. This wording obligates the court to reassess the impact and strength of this element, and determine does this change the overall evidentiary picture. Furthermore, the lessons from the Italian jurisprudence need to be taken as an example. In this judgement the Court introduced the 5 (five) indicators on assessing the novelty of the method: a) the novelty of the scientific method (the method must be new in nature), b) the scientific credibility and reliability of the method (the method must be approved by the scientific community and widely published; it must not be experimental, c) the method should be applied to previously assessed evidence, d) the results should be novel to establish whether they are suitable to determining a new sentence and e) the new results, should be able to justify a different outcome.

In Croatia, reopening of the criminal procedure should be a subject of several changes. First, as seen from the comparative experiences, adding *new element* to this definition will lower the threshold for admissibility of new evidence. Furthermore, this definition does not contain the word *unknown to the court during the trial*, as in other jurisdictions analyzed where it is explicitly mentioned that the new element, new facts or new evidence, were not known to the court during the trial. This can lead to reading new evidence and new facts, very strictly and in further application, it may lead to inconsistencies in the interpretation of the same evidence. In practice, usually this is new forensic or scientific expertise. However, doctrinally this formulation needs to be amended and made more precise, to include new element, and add the wording unknown to the court during the first trial.

Another point here would be to provide whether additional clarification needed in the current phrasing can lead to acquittal or application to more lenient law. As such this is quite a strict threshold, and requires trial before a trial. The wording should not be that determinative especially during the initial screening of the request, because the applicant should not have to prove his/her innocence upfront but should cast a doubt that the evidence he/she is suggesting creates serious doubt about the correctness of the conviction or a realistic possibility of a different outcome. That is what the reopening of the trial is for, to determine the facts.

Another amendment is recommended in the process of deciding whether to accept, dismiss or reject the motion for reopening of the procedure. In the analyzed cases, the Supreme Court suggested that judges are not experts, and because they do not possess the relevant expertise, it would be premature for them to decide whether a new expertise is technically credible or not. They should only focus on admissibility. Therefore, this gatekeeping phase, needs to be a subject for thorough review.

REFERENCES

BOOKS AND ARTICLES

1. Bozhinovski, A., *Protection of the Rights of Wrongfully Convicted Persons in Croatia*, SPLITLAW, 2025. p. 253 – 264.
2. Garačić, A., *Prava i nepravna obnova kaznenog postupka*, Hrvatska pravna revija, Zagreb, 2005., pp. 108-119.
3. Holvast, N.; Nan, J.; Lestrade, S., *Between legal certainty and doubt: The developments in the procedure to overturn wrongful convictions in the Netherlands*, *European Law Review*, 4, 2020., pp. 1-11.
4. Lasan, V. D., *Obnova kaznenog postupka de lege lata i analiza odluka Ustavnog suda Republike Hrvatske donesenih u povodu ustavnih tužbi nakon obnove kaznenih postupaka na osnovi konačne presude Europskog suda za ljudska prava*, *Hrvatski ljetopis za kaznene znanosti i praksu*, 25(2), 2018., pp. 169-196.
5. Lindemann, M.; Lienau, F., *Mechanisms for correcting judicial errors in Germany*, SSRN, 5 May 2021., pp. 73-86.
6. Lupária, L.; Cagossi, M.; Pittiruti, M., *Miscarriages of justice in Italy*, in: *Murder, Wrongful Conviction and the Law*, Routledge, 2023. 103–121.
7. Nan, J.; Holvast, N.; Lestrade, S., *A European approach to reopening in criminal matters?*, *Erasmus L. Rev.*, 13, 2020., pp. 102-109.

8. Primorac, D.; Božinovski, A., *Correcting Miscarriages of Justice in Croatia: Accession and Time-Limited Retention of DNA Profiles in the Jurisprudence of the European Court of Human Rights, EU and Comparative Law Issues and Challenges Series (ECLIC)*, vol. 7, 2023., pp.477-501.
9. Primorac, D.; Sočanović, L.; Bozhinovski, A., *Correcting Miscarriages of Justice: Innocence Project Croatia*, in: *Forensic Science and Molecular Anthropology: Topics Selected from 12th ISABS Conference on Forensic and Anthropological Genetics*, BoD–Books on Demand, 2024. p. 83-101.
10. Verhesschen, K.; Fijnaut, C., *Chosen Blindness or a Revelation of the Truth?: A New Procedure for Reopening in Belgium*, *Erasmus Law Review*, 13(4), 2020., pp. 1-14.
11. Verhesschen, K.; Fijnaut, C., *Correcting wrongful convictions in France: Has the Act of 2014 opened the door to reopening?*, *Erasmus Law Review*, 13(4), 2020., pp. 22-32.
12. Zlatarić, B.; Damaška, M., *Rječnik krivičnog prava i postupka*, Informator, Zagreb, 1966, p. 191.

LEGAL ACTS

1. *Code of Criminal Procedure [Wetboek van Strafvordering (Code d'instruction criminelle)]*, in force 7 December 1808 (consolidated version, 20 November 2025), *Federale Overheidsdienst Justitie (JUSTEL)*
2. *Criminal Procedure Act [Zakon o kaznenom postupku]*, consolidated text, Narodne novine, nos. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24, 72/25, 30 April 2025.
3. Federal Rules of Evidence, Committee Print No. 11, 118th Congress, 2nd Session, December 1, 2024, *U.S. House Committee on the Judiciary*, U.S. Government Publishing Office, Washington, 2025.
4. *German Code of Criminal Procedure [Strafprozessordnung (StPO)]*, Bundesministerium der Justiz und Bundesamt für Justiz.
5. *Italian Code of Criminal Procedure [Codice di Procedura Penale]*, 1988,
6. Turret, A., & Fenech, G. (2013). *Rapport d'information n° 1598 sur la révision des condamnations pénales*. Assemblée nationale, XIVe législature., pp. 1-115.

COURT PRACTICE

1. Conclusions adopted at the meeting of presiding judges and registry judges of the Criminal Division of the Supreme Court of the Republic of Croatia with the presiding judges of the High Criminal Court of the Republic of Croatia and the presidents of the Criminal Divisions of all county courts, held on 9 June 2022] (Su-IV-21/2022-11), accessible at: www.vsrh.hr/EasyEdit/UserFiles/zakljucci-ko/2022/su-iv-21-2022-11.pdf?
2. County Court in Split [Županijski sud u Splitu], Decision [Odluka], Kž-200/2022-5, 2022.
3. Italian Court of Cassation, Section I, 8 March 2011, No. 15139, Ghio, in CED Cass., No. 249864.
4. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *United States Supreme Court*
5. *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), *United States Court of Appeals for the District of Columbia Circuit*.
6. German Federal Constitutional Court [BverfG], Resolution of the 2nd Chamber of the Second Senate, 19 July 2002 – 2 BvR 18/02, 2 BvR 76/02, *StV*, 2003, p. 225.
7. *S. and Marper v. the United Kingdom*, Applications nos. 30562/04 and 30566/04, Judgment of 4 December 2008, *European Court of Human Rights*.
8. Supreme Court of the Republic of Croatia [Vrhovni sud Republike Hrvatske], Judgment [Presuda], I Kž-153/2018-4, Zagreb, 2018.