

UDK: 347.155:391.91

UDK: 391.91:347.441.11

ОРИГИНАЛНИ
НАУЧНИ РАД

Рад примљен: 16.06.2024.

Рад прихваћен: 23.10.2024.

Prof. Srđan Radulović, LL.D.,*

Associate Professor,

Faculty of Law, University of Priština- Kosovska Mitrovica,
Republic of Serbia

DOI: 10.5937/zrpfni-51668

CONSENT TO TATTOOING**

Abstract: Bearing in mind the five-thousand-year long tradition, tattooing is considered to be one of the oldest art forms. Due to the gradual development of new techniques, materials, styles and approaches aimed at resolving even the most difficult technical problems, tattooing has become a highly appreciated form of self-expression for tattoo artists and proud owners of tattoos alike. However, there is a number of legal issues associated with tattooing. Copyright restrictions, health and safety concerns, licensing and even discrimination issues (to name just a few) have drawn special attention of legislators and legal experts. From the legal standpoint, the central question or a cluster of questions (to be precise) revolves around the consent to tattooing. Numerous issues related to personal autonomy arise at the moment when autonomy is expressed through consent, and the most important one is certainly the issue of capacity for self-expression. In the Republic of Serbia, there is no adequate or, at least, sufficiently precise normative framework on tattooing practices. In this article, relying on different analytical and normative method techniques, the author presents the dilemmas and discusses the different aspects of capacity to express personal autonomy by consenting to being tattooed.

Keywords: tattooing, consent, contract, capacity, personal autonomy.

* srdjan.radulovic@pr.ac.rs; ORCID ID: 0000-0001-9347-3031.

** The article is the result of research funded by the Ministry of Science, Technological Development and Innovation (Contract Number 451-03-65/2024-03/200254 dated 5 February 2024).

1. Introduction

Tattooing, an ancient art form, holds a significant place in human culture. Tattooing does not have a single origin point (Takač, Pilija, 2012: 249), but archaeological evidence indicates that this practice was widespread even in prehistoric times. The discovery of Ötzi the Iceman, a naturally mummified body dating back 5300 years, along with tools possibly used for tattooing, suggests that tattooing may have been practiced seven to ten millennia ago, with some estimates even tracing its origins twelve millennia back (Takač, Pilija, 2012: 249).

Charles Darwin noted an interesting phenomenon: the presence of permanent decorative body modification transcends geographical boundaries, underscoring a shared human trait among global cultures and different nations (Darwin, 1889: 574-577). From his records, we may easily conclude that, of all described forms of decorative modification, tattooing was most commonly practiced around the world. Scholars widely agree that tattooing carried profound cultural, social, and religious implications in ancient times. Being so, it may be assumed that this activity was highly regulated at the time. The legal framework was certainly not as sophisticated as it is today, particularly given the fact that regulations were governed by religious or tribal norms, and oral traditions. Moreover, the regulatory focus of that era differed from modern legal concerns.

Some researchers claim that tattooing may be the oldest profession (Takač, Pilija, 2012: 249). While this is debatable, it is irrefutable that tattooing is the sixth fastest growing retail industry today, and the most commonly purchased form of original art (Weimar, 2014: 721). Consequently, contemporary legal experts grapple with an array of complex issues surrounding tattooing, including licensing, health and safety standards, copyright matters, ownership disputes, the validity of medical tattoos, various forms of discrimination, tattooing as an expression of free speech, and the visibility of tattoos or other bodily modifications among public servants.

Yet, the central concern regarding tattooing revolves around the concept of consent to be subjected to such body modifications. Notably, historical records include instances and documented cases of involuntary body modifications through tattooing, either punitive or to a certain extent mandatory. Nowadays, humanistic principles have evolved to uphold individual autonomy, making consent paramount for any form of body alteration. Today, to our knowledge, comparative law does not record any known cases of mandatory or punitive body modifications. Nonetheless, the concept of consent in this context remains incompletely defined and regulated.

It is evident that there is no definitive answer as to whether tattooing operates on a consent-based or a consensus-based model. Given the diverse conclusions drawn from debates on this matter, this article endeavors to compare the consent-based and the consensus-based approaches, exploring optimal solutions for the present and future regulation of tattooing within the legal framework of the Republic of Serbia.

2. Tattooing as (in)voluntary and (il)legal activity

Nowadays, tattooing is widely recognized as a voluntary and generally allowed activity. However, historically, it has not always been so. Tattooing carried a bad reputation throughout history and was frequently banned, mostly due to religious, cultural, or sometimes medical reasons (Weimar, 2014: 722-725). Surprisingly, prohibitions and restrictions on tattooing are even part of modern history in many developed countries. For instance, in New York, tattooing was illegal from 1961 and remained so for over 37 years (Weimar, 2014: 724). Additionally, tattooing may be prohibited or restricted for certain groups, typically public servants. In the Republic of Serbia, for example, police officers are not allowed to have visible tattoos.¹ It is worth mentioning that throughout history, even when not strictly prohibited, a cultural stereotype persisted that tattoos were marks of shame worn only by those who had fallen from social grace (Atkinson, 2003: 23). Even early scientific criminological theories were based on

¹ Art. 25, p. 5 of the Rulebook on the behavior and personal appearance of police officers and other employees of the Ministry of Internal Affairs, *Official Gazette of the Republic of Serbia*, 13/2018 and 83/2021.

In the Republic of Croatia, the Constitutional Court of RC (in the decision on case U-II-2064/2010) found that the prohibition of tattoos on visible parts of the body for police officers is unconstitutional (Decision of the Constitutional Court of the RC of 23.04.2018 in case U-II-2064/2010, *Official Gazette* RH, br. 51/2018).

In the Republic of Slovenia, internal police acts were changed in 2019, and now police officers are generally allowed (with few exceptions), to have visible tattoos (Art. 9, p. 2, Rulebook on police uniform and allowances, *Official Gazette of the Republic of Slovenia*, 14/14 and 26/19). In 2022, acting upon the request of the Professional Police Association from Novi Sad, the Commissioner for Protection of Equality of the Republic of Serbia submitted a proposal to the Ministry of Internal Affairs (MIA) to amend Article 25§5, Article 27§1, and Article 28 §2 of the Rulebook on conduct and personal appearance of police officers and other MIA employees (Commissioner for Equality Protection, 2024). Due to MIA's failure to respond, the Commissioner submitted an initiative to the Constitutional Court of Republic of Serbia to assess the constitutionality and legality of the articles which prohibit visible tattoos for police officers and determine whether they are in accordance with the Constitution and the Act on the Prohibition of Discrimination (Radio Free Europe, 2022); Radio Slobodna Evropa (2022). Ustavni sud Srbije odlučuje o tetovažama u policiji. 15 nov. 2022 (The Constitutional Court of Serbia to rule on tattoos in the Police), <https://www.slobodnaevropa.org/a/srbija-policija-tetovaze-regija/32130372.html>

this premise, viewing body ornamentation with disapproval and urging people to avoid such activities to evade social stigma (Lombroso-Ferrero, 1911: 46-48).

On the other hand, tattooing was mandatory or at least a required activity in some (sub)cultures because it served as a gateway to various social structures. For example, numerous tribes worldwide practiced different forms of initiation, many of which involved tattooing as part of the induction ritual into full tribal membership (Bell, 1962: 256). In Japan, before the Edo period, facial tattoos identified untouchable classes (Weimar, 2014: 723). In Tahitian, Samoan, and Māori cultures, tattoos, especially facial ones, indicated specific social status, lineage, or served as protection against spiritual or physical harm (Atkinson, 2003: 32). In ancient Greece, although considered barbaric, certain groups, usually cults of different gods, had specific tattoo body marks to indicate members hierarchy within the group. There are also speculations that, during the so-called paternalistic era of medicine, tattooing was used for therapeutic purposes, possibly to relieve joint pain (Weimar, 2014: 722). Finally, among military personnel, tattoos were and still are commonly used as signs of faith, camaraderie, and affiliation with specific units (Weimar, 2014: 722-274).

In addition, there is a punitive aspect of tattooing, aimed at marking criminal slave, criminal offenders, prisoners of war, captured deserters, etc. It is a well-known fact that in Japan, as well as in France and England, repeat criminal offenders (recidivists) were permanently marked with tattoos, leading to their exclusion from society in various ways. A similar practice, although not as extensive, was established in China during the Qin dynasty (Atkinson, 2003: 38-39). Roman emperors Caligula and Theophilus were especially prone to use tattooing as a form of degrading penance (Weimar, 2014: 722). In Africa, tattooing the cheeks of captured members of rival tribes with signs of the captor was a common practice used to embarrass the person within their own tribe upon release or escape (Bell, 1962: 256). Until 1972, the British army had strict and formal procedures for tattooing and branding of deserters or soldiers of “bad characters” (Bell, 1962: 255). Perhaps the most well-known examples of punitive tattooing were recorded during World War II, when forced numerical tattoos, similar to the Greek and Roman marking of slaves and gladiators as property (Atkinson, 2003: 38; Weimar, 2014: 722),² were an important part of the Nazi concentration camp guards’ efforts to further degrade and dehumanize prisoners.

² It is a less known fact that Romans maintained a class of physician who specialized in removal of these badges of degradation from the skins of successful gladiators and slaves who were granted their freedom (Bell, 1962: 255).

It is exactly the actions of the Nazis which led to successfully organized resistance against all forms of punitive body projects, tattooing included.³ Namely, during the Nuremberg trials of major war criminals, numerous standards were formulated, primarily but not exclusively on the matter of medical conduct (Radulović, 2022: 101). These standards were first incorporated in the Nuremberg Code, and then summarized and included in the UN Universal Declaration of Human Rights (UDHR, 1948).⁴ Among other universally recognized “standards of achievements for all people and all nations”, the UDHR resolutely stated that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment (Article 5, UDHR). In addition to prohibiting torture and cruel, inhuman and degrading treatment and punishment, the International Covenant on Civil and Political Rights (ICCPR)⁵ also stipulates that no one shall be subjected to any sort of medical or scientific experimentation without their free consent (Article 7, ICCPR).

Consequently, the concept of free (informed) consent, although not entirely new, gained momentum and became an international norm that is not restricted to any single jurisdiction (Beran, 2016: 110). Moreover, its importance extends beyond medical interventions or experiments to encompass all situations involving compromising personal integrity, both physical and psychological.

We live in a society where it is almost entirely socially accepted to engage in different body modification practices, including routine visits to hair or nail salons, unsupervised use of supplements, and even physically traumatic procedures like breast augmentation or rib removal (Atkinson, 2003:3). It is not an exaggeration to say that “we are a culture of body modificationists, with our hunger for altering the corporeal only frustrated by the limits of our imagination, financial resources, products at our disposal, and scientific-medical technologies” (Atkinson, 2003: 3). Therefore, tattooing is not just a generally allowed body modification activity but also one observed with admiration and, in certain cases, even recommended.⁶ For these reasons, its voluntary nature

3 In the course of history, there were examples of organized actions against punitive body projects. Some of them proved to be highly successful, such as development of unique tattoo decorations to cover prison markings among Yakuza, or proud display of numerical tattoos in public by concentration camp prisoners in the post-war era.

4 UN Universal Declaration of Human Rights (UDHR, 1948), United Nations General Assembly resolution 217 A of 10 December 1948, Paris; <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (accessed 20.02.2024).

5 The International Covenant on Civil and Political Rights (1976). [Electronic version] accessed on 20.02.2024 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

6 For example, the final step of breast reconstruction process (after full or partial mastectomy) is the nipple and areola reconstruction. Among different reconstructive techniques, the

is indisputable in the modern legal environment. It means that a person may be tattooed only if the person who is subject to such treatment is willing to dispense with his/her own bodily integrity and has adequate capacity to do so. This is the ethical and legal minimum, signifying that tattooing is permitted only if the person consents to this type of body modification. Otherwise, the tattoo artist may be subject to civil and even criminal liability.

3. The legal basis for voluntary nature of tattooing

Setting aside the historical background, the voluntary nature of tattooing aligns with several complementary ideas well-established in legal theory and normative framework. First, it resonates in the constitutional principles proclaimed in the section on individual rights and freedoms⁷, and then in the principle of autonomy of the will which is the cornerstone of civil law.

According to the autonomy of will principle, the holder of legally protected assets is *inter alia* entitled to freely dispose of his/her goods in advance by waiving the right to legal protection if the goods are compromised, or the right to seek compensation in case their rights are violated. Under Article 163 of the CO Act (consent of the injured party), one may generally allow another to undertake an action and thus willfully expose his/her assets to harmful acts of others but, in such a case he/she cannot demand compensation for damage caused by such action (Article 163 §1 CO Act). However, while the autonomy of will principle is fundamental, it must be balanced against legal certainty and the interests of others. It must be subordinated to what seems to be higher values recognized by the legislator.⁸ Despite this, tattooing remains largely unregulated. Truly, there are no compelling legal, sociological, cultural, or ethical justifications for additional restrictions on individuals freedom to choose tattoos, their placement, and whether to alter or remove them.

Consent, especially informed consent, is the next principle in which the idea of voluntary nature of tattooing is rooted. At first sight, informed consent is just one of many forms of demonstrating the personal autonomy. However, from the perspective of tort law, it serves as the primary medium through which

one which is probably the most commonly recommended by specialists is nipple and areola tattooing, which is performed by an esthetic surgeon or (quite frequently) by a tattoo artist. For more on this type of tattooing, see: Bogoslović, Tasić, Mitrović, 2015: 124-126.

7 For example, Article 23 (Dignity and free development of individuals), Article 25 (Inviolability of physical and mental Integrity), Article 46 (Freedom of thought and expression), and Article 48 (Promotion of respect for diversity) of the Constitution of the Republic of Serbia, *Official Gazette RS*, 98/2006 and 115/2021. <https://www.paragraf.rs/propisi/constitution-of-the-republic-of-serbia.html>;

8 Article 163 §2 of the Civil obligations Act states: "The statement of the injured party in which he/she agreed to be harmed by an act which is prohibited by law is null and void".

individuals exercise personal autonomy. Actually, the idea of consent is much more than a legal norm; it is a fundamental value.

In order to decide on the merits of a request for compensation for damage, the competent authority should determine whether the prerequisites for civil liability are met and, after that, to test whether there are circumstances that lead to its reduction or exclusion (Vragović, 2019: 872). This often means that it is necessary to determine whether and to what extent the “injured” party contributed to the occurrence of damage by acting or failing to act, but also whether the actions of person who caused damage were unlawful in the first place. In that context, if an individual with relevant capacity consents to possibly harmful act and possesses relevant information regarding the harmful nature and consequences of the action, their claim for damages is typically dismissed. This view has deep philosophical roots in another principle: the prohibition of abuse of rights.

In particular, if a party who has suffered damage, despite previously granting consent, sues the person who caused the damage or the legally accountable party and seeks compensation, then such a plaintiff is acting *contra factum proprium*. In fact, the plaintiff is thus exercising the right to sue and seek compensation, but such action contradicts the party’s prior consent and indirectly indicates lack of intention to ask for compensation. Such action further implies that the right to sue was abused in that specific situation, which ultimately constitutes a violation of the law considering that the legal system strictly prohibits the abuse of rights (Article 13 CO Act).

Although it may not be entirely accurate, one may even argue that the plaintiff has caused damage to the defendant by acting inconsistently (Vuković, 1956: 284)⁹ because the defendant acted on the basis of the plaintiff’s approval or even specific request to perform the harmful action; this is something that definitely needs to be taken into consideration.

Nevertheless, the consequence is not the plaintiff’s loss of the right to sue. The person can still file a lawsuit and may even succeed in his/her claim. The defendant is entitled to defend himself/herself on substantive law grounds by asserting the abuse of rights. In essence, the court will reject the claim for

9 Of course, this is just a theoretical construction. Practically speaking, we cannot defend the position that the plaintiff caused damage to the defendant, and we definitely cannot say that the plaintiff is in any way at fault for that damage, first because no one can be held liable for neglecting or exposing his own goods to harmful acts and, most importantly, because the possibility of consenting to damage was not regulated in the positive law in the section on joint liability of several persons for the same damage.

compensation as ungrounded, but only if the defendant chooses to contest the plaintiff's claim and provides evidence of the previously given consent.¹⁰

4. Consensus-based or Consent-based Tattooing

Former research has indicated that the principle of personal autonomy in terms of tattooing has significant legal weight, bordering to absolute. Yet, there is a persistent dilemma concerning how this autonomy of will shall be articulated, i.e. how individuals should formally declare their intention to get tattooed. Another important question is the legal nature of that statement. Two potential interpretations arise in response to this question: a person's statement can either be construed strictly as a unilateral act or as part of a bilateral agreement. Depending on the perspective adopted, divergent conclusions may be reached.

From the perspective of tort law, the legal nature of the statement expressing one's desire to be tattooed can be explained through the concept of consent of the injured party. In fact, the same legal framework that has been delineated earlier in this paper applies not only to medical procedures and participation in sporting events, which are well-defined instances of this legal doctrine (Radišić, 2004: 224-226), but also to activities such as tattooing and piercing. Specifically, when a person consents to being tattooed or explicitly requests one (which is a more common case), despite the potential pain, scarring, skin peeling and other adverse effects, none of these consequences are deemed unlawful nor considered as damage. Although piercing and tattooing are seen as a form of invasive "attack" on physical integrity, they are not unlawful. According to the maxim '*volenti non fit iniuria*', previously given consent renders these outcomes potentially permissible from a legal standpoint. Indeed, they unequivocally gain legality if the tattoo artist or another responsible party chooses to invoke the defense of prior consent.

However, when viewed through the lens of contract law, tattooing can never ensue solely on the basis of a unilateral statement. While not entirely inaccurate, the concept of "unilateral statement" fails to align with the true legal and practical essence of tattooing. Specifically, the act of body modification through tattooing always emerges from a collaborative decision of two parties of equal standing: the individual who chooses to be tattooed and the tattoo artist, or in some cases, the tattoo studio. Both parties engage in the

¹⁰ If the defendant contests the plaintiff's claim, the answer to complaint must also include the facts that corroborate the defendant's allegations and the evidence used to establish those facts. Technically speaking, the defendant can raise objections at any point before the completion of presenting the answer to complaint (Article 289 § 2 in conjunction with Article 312 § 5 of the Civil Procedure Act, *Official Gazette RS*, 72/2011, 49/2013-Decision CCS, 74/2013-Decision CCS, 55/2014, 87/2018, 18/2020 and 10/2023).

creation and execution of a distinct legal relationship, featuring by a unique set of contractual rights and obligations. To elaborate further, this contractual relationship can aptly be described as a service contract.

In effect, the tattoo artist undertakes the obligation to execute a specific primarily physical task (*facere*) involving the placement of tattoo ink into the dermis in a precise manner to create the tattoo (Article 600 of the Civil Procedure Act). However, more often than not, this responsibility extends beyond mere physical labor to encompass intellectual work, such as designing the tattoo and resolving a series of intricate challenges related to composition, coloring, style, potential cover-ups, enhancements or refreshments. Conversely, the purchaser of the service assumes the primary (though not exclusive) obligation of providing adequate monetary compensation in return (Article 600 of the CP Act). Thus, while it is crucial for the individual to express consent to get tattooed, it is equally necessary that the tattoo artist expresses the intention to create the tattoo. In that regard, there must be a concurrence of wills from both parties.

In essence, tattoo artists also have a significant impact in the dynamics, and their personal autonomy is of great relevance. Admittedly, this autonomy may not be as absolute as that of their clients, but tattoo artists retain the authority to decline tattooing for a variety of reasons. The rationale typically aligns with professional considerations, for instance: if the client has skin issues, allergies, or pre-existing medical conditions; if the client consumed alcohol prior to the session which could lead to excessive bleeding; if the proposed tattoo design is too complex for its intended size, risking loss of detail during the healing process; if certain pigment colors may not be distinct due to the individual's skin tone; or simply if the artist disagrees with the final design, placement, or composition, believing that it falls short of the artistic standards, which could potentially tarnish their reputation. In rare instances, ethical concerns may come into play, for example: if the motif is deemed degrading or offensive; if the artist declines to tattoo certain body parts, or if the artist believes, based on the professional judgment, that the individual may later regret the tattoo. Additionally, personal factors may influence the artist's decision, such as perceiving the individual as uncooperative, prior negative experiences with the client, repeated attempts by the client to renegotiate the price, or simply the artist's own scheduling constraints. Whatever the underlying rationale may be, mere consent or a specific request from the client is insufficient to establish a legal relationship. It is imperative that the artist also signify consent, although not necessarily in a strict legal sense, but figuratively speaking.

Hence, the relationship between the tattooist and the client can be explained as either consent-based or consensus-based. Indeed, we argue that considering its dual legal nature is the most apt approach, not solely for theoretical reasons. This approach has significant importance in practice. Depen-

ding on how we conceptualize the legal essence of this relationship, different conclusions can emerge regarding the parameters under which the will can be articulated, particularly concerning the age of the individual seeking a tattoo.

If we perceive the relationship between the tattooist and the client as a contractual relationship, it is evident that the individual seeking the tattoo must have adequate contractual capacity (either full or, at least, not restricted). In the Republic of Serbia, full contractual capacity and the requisite ability to engage in contractual relationships are typically obtained once person reaches the age of 18 or, in certain circumstances, the age of 16.¹¹ Having this in mind, one might reason that only individuals within these age groups are entitled to express their desire to receive a tattoo. Yet, concerning tattooing, a significant discrepancy emerges between this line of reasoning and the broader framework of the Serbian legal system. This inconsistency stems from what we perceive as an unnecessary strictness in contractual prerequisites and a multitude of inconsistencies with other legal provisions and trends.

For instance, under the current legislation in the Republic of Serbia, individuals are granted the autonomy to consent to medical treatment autonomously at the age of 15,¹² without the need to seek prior or subsequent consent of parents or legal representatives. Furthermore, parents and representatives are legally barred from accessing medical records once the individual reaches the age of 15.¹³ This autonomy extends beyond routine medical procedures, encompassing even more intricate body modifications, such as gender reassignment surgery, which carries considerably higher health risks and long-term consequences.

Moreover, beyond the scope of consent of the injured party, the legislator acknowledges the capacity of minors to exercise autonomy in various contexts, each carrying significant legal implications. For instance, individuals above the age of 15, with a few reasonable exceptions, are permitted to exercise their testamentary rights,¹⁴ inspect birth registers, and access documentation pertaining to their origin,¹⁵ make decisions regarding custodial arrangements,¹⁶ choose their educational institution,¹⁷ and even change their name.¹⁸ Notably,

11 Article 11 of the Family Act, *Official Gazette RS*, 18/05, 72/11 and 6/15.

12 Article 19 § 4 of the Patients' Rights Act, *Official Gazette RS*, 45/13 and 25/19.

13 Article 20 in conjunction with Article 24 § 1 of the Patients' Rights Act.

14 Article 79 of the Succession Act, *Official Gazette RS*, 46/95, 101/03 – Decision CCRS and 6/15.

15 Article 59 § 3 of the Family Act.

16 Article 60 § 4 and Article 61 § 4 of the Family Act.

17 Article 63 § 2 of the Family Act.

18 Article 346 § 1 of the Family Act.

individuals within this age group are also empowered to enter into employment contracts.¹⁹ While parental or representative consent is typically required for such actions,²⁰ once they assume employment, the legislature presumes their full contractual capacity in all matters related to the disposal of earnings or property acquired through employment.²¹

Furthermore, minors who have attained the age of 17, for example, are permitted to acknowledge paternity,²² contingent upon the mother's agreement if she is older than 16.²³ Additionally, if the minor has reached the age of 16, his consent to the acknowledgment of paternity is required.²⁴ Moreover, under specific circumstances, a court may grant full contractual capacity to a minor who has reached the age of 16, particularly in cases of marriage or parenthood, provided there are justifiable reasons.²⁵

In addition, minors who have reached the age of 10 are granted the autonomy to freely and directly express their opinions in any judicial and administrative proceedings concerning their rights.²⁶ Moreover, they are encouraged to independently address the court or any administrative body to seek assistance in exercising their right to free expression of opinion.²⁷ Notably, these minors are also required to consent to their adoption for the process to be completed.²⁸ They are also entitled to nominate a guardian²⁹ or propose that the court appoint a temporary representative in cases where conflicting interests arise between them and their legal representatives.³⁰ Additionally, minors who have reached the age of 10 retain their voice in any subsequent attempts by their parents or representatives to change their name.³¹

All these examples, and many unmentioned ones, underscore the legislator's progressive stance in regulating this matter. The legislator has demonstrated an admirable ability to carefully balance the significance of

19 Article 24 of the Labor Act, *Official Gazette RS*, 24/05, 61/05, 54/09, 32/13, 75/14, 13/17 – Decision CCRS, 113/17 and 95/18 – authentic interpretation.

20 Article 25 of the Labor Act.

21 Article 64 § 3 of the Family Act.

22 Article 46 of the Family Act.

23 Article 48 § 1 of the Family Act.

24 Article 49 § 1 of the Family Act.

25 Article 11 § 2 and § 3 in conjunction with Article 23 § 2 of the Family Act.

26 Article 65 § 4 of the Family Act.

27 Article 64 § 5 of the Family Act.

28 Article 98 of the Family Act.

29 Article 127 of the Family Act.

30 Article 265 § 2 and § 3 of the Family Act.

31 Article 346 § 2 of the Family Act.

individual legal matters and the need to recognize that each new generation has greater access to information, education and opportunities for research. Thus, it is reasonable to assume that new generations are generally more autonomous than previous ones. Despite the relative nature of this assumption, the legislator's endeavors to empower minors with increased autonomy in matters concerning their rights and interests are entirely justified. As shown by the provided examples, this holds true even in the realm of rather intricate legal affairs.

In light of this, it may appear contradictory to acknowledge that minors, particularly those aged 15 and above, are afforded various avenues to exercise their autonomy independently, but they are yet permitted to autonomously consent to being tattooed. While valid concerns exist and must be appropriately addressed, we firmly believe that minors aged 14 and above, or 16 at least, should be granted the agency to decide for themselves whether to undergo tattooing. It is challenging to justify a stance that a minor aged 15 is deemed fully capable of independently consenting to medical procedures (even the most invasive ones) with minimal parental or legal representative involvement, while he/she is precluded from exercising personal autonomy on the subject matter of tattooing, piercing, or similar forms of body modification.

If the rationale and the overarching logic of the current legal framework are insufficient to entertain the possibility of permitting minors aged 15 and older to autonomously consent to tattooing, it is paramount to underscore two key points within this discourse. First, contemporary advancements in health standards, widespread education, the heightened specialization within the tattoo industry, and the utilization of modern tools and biocompatible ink components have made tattooing a rather safe activity. Second, the perception of tattoos as permanent marks on the body is no longer appropriate, given the advent of remarkably effective and relatively inexpensive techniques for their removal or concealment, albeit occasionally uncomfortable.

5. Conclusion: *de lege lata ac ferenda*

Tattooing as an activity does not only intrigue professionals but also a broader lay audience. It encompasses cultural, sociological, economic, historical, religious, ethical, medical, and legal dimensions. Hence, a successful exploration of the legal dimension of this phenomenon is impossible without understanding its various other aspects. In other words, multidisciplinary is imperative for any research on this topic. Notably, the issue of (informed) consent, as the central legal issue related to tattooing, is no exception in that sense. This issue can be addressed from several different perspectives. The author intends to cover all these segments through a series of papers arising from this research. Therefore, the forthcoming papers will address both the

qualitative and quantitative aspects of the information required for valid consent to tattooing. However, before that, we believe it is necessary to resolve a series of misunderstandings concerning consent, primarily the capacity to make such statements of will.

After a thorough analysis of the dual legal nature of client consent – contractual and unilateral, in the absence of specific legal regulations, the author has taken the position that the common understanding that only adults can validly consent to body modifications, including tattooing, is incorrect. The author sincerely believes that consent should also be considered valid when given by individuals who have reached the age of 16, and perhaps even the age of 15. This stance is confirmed through a legal analysis of relevant legal provisions governing the issues of capacity to manifest one's will, and those addressing, loosely speaking, identity matters. Furthermore, and here the idea of multidisciplinary comes into play, this stance seems correct based on insights into cultural, historical, ethical, and partially medical projections and attitudes.

Thus, the author firstly advocates for the enactment of new regulations in this field and the standardization of norms scattered within the Serbian legal framework. Secondly, the author advocates for enacting strict regulations, especially concerning the licensing of artists, education and information of client, health and hygiene protocols in studios, inspectorial supervision, copyright protection, and prevention of "grey" economy. The author also believes that regulations on the appropriate age for giving valid consent should be established in a way that respects the personal autonomy of individuals who are legally considered to be incapable of entering contractual relations, primarily those older than fifteen, or at least sixteen years old. To be precise, persons of limited contractual capacity may conclude only those contracts that are permitted by law without the previous approval of their legal representatives.³² Therefore, the author believes that *lex specialis* norms should be constructed in such a way that the conclusion of tattooing contracts is expressly permitted and pertains to the categories of previously mentioned persons.

Nevertheless, there is a need to emphasize that, despite the author's sincerest intention to base the proposal on an objective analysis of the spirit and goals of the legal system of the Republic of Serbia, the analysis and viewpoints presented in the paper may be colored by the author's subjectivity. The author is not only distinctly liberal-oriented but also an avid enthusiast of tattooing, both as an art form and as a form of self-expression. The author is also an amateur tattoo artist. Thus, the presented conclusions are perhaps set too freely. Consequently, once the paper is subjected to the constructive criticism of professional readership, the author looks forward to revisiting the analysis of this issue and potentially revising the presented viewpoints.

32 Article 56 § 2 of the Civil Obligations Act.

References

- Atkinson, M. M. (2003). *Tattooed: The Sociogenesis of a Body Art*. Toronto: University of Toronto Press
- Bell, R. C. (1962). Some Curious Aspects of Tattooing. *British Journal of Plastic Surgery*, 15, 255-260
- Beran, R. G. (2016). A Unique Approach to Informed Consent When Undertaking Clinical Research within the Private Practice Setting: Respecting the Patient. In Hammond, W. (ed.). *Informed Consent: Procedures, Ethics and Best Practices* (pp. 109-119). New York: Nova Science Publishers, Inc.
- Bogoslović, M., Tasić, M., Mitrović, D. (2015). Tetoviranje kao umetnost u rekonstrukciji dojke. *Timočki medicinski glasnik*, 40 (2), 124-126
- Darwin, Ch. (1889). *The Descent of Man, and Selection In Relation to Sex*. New York: Appleton & Co. [Electronic version]. Retrieved 09.04.2024 from https://darwin-online.org.uk/converted/pdf/1889_Descent_F969.pdf
- Lombroso-Ferrero, G. (1911). *Criminal Man – According to the Classification of Cesare Lombroso*. New York, London: The Knickerbocker Press
- Radišić, J. (2004). *Obligaciono pravo. Opšti deo*. Beograd: Nomos
- Radulović, S. (2022). Non-Promulgation of Mandatory Covid-19 Vaccination in the Republic of Serbia. *Zbornik radova Pravnog fakulteta u Nišu*, 61 (95), 99-118
- Takač, Š., Pilića, V. (2012). Subkultura tetovaže sa aspekta identifikacije. *Glasnik Antropološkog društva Srbije*, 47, 249-259
- Vuković, M. (1956). *Obvezno pravo*. Zagreb: Školska knjiga
- Vragović, D. (2019). Razgraničenje instituta doprinosa oštećenika vlastitoj šteti i podijeljene odgovornosti za štetu. *Zbornik Pravnog fakulteta u Zagrebu*, 69 (5-6), 871-902
- Weimar, K. (2014). Picture is Worth Thousand Words: Tattoos and Tattooing under the First Amendment. *Arizona Summit Law Review*, 7(4), 719-754
- Legal documents**
- UN Universal Declaration of Human Rights (1948); [Electronic version]. accessed on 20.02.2024, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
- UN International Covenant on Civil and Political Rights (1966). [El. version]. accessed on 20.02.2024; <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>
- The Constitution of the Republic of Serbia, *Official Gazette RS*, 98/2006 and 115/2021; accessed on 20.02.2024; <https://www.paragraf.rs/propisi/constitution-of-the-republic-of-serbia.html>
- Porodični zakon (Family Act), *Službeni glasnik RS*, br. 18/2005, 72/2011 and 6/2015.

Zakon o nasleđivanju (Succession Act), *Službeni glasnik RS*, br. 46/1995, 101/2003-odluka USRS, i 6/2015.

Zakon o obligacionim odnosima (Civil Obligations Act: Contracts and Torts), *Službeni list SFRJ*, br. 29/1978, 39/1985, 45/1989-odluka USJ; 57/1989, *Službeni glasnik FRJ*, br. 31/1993; *Službeni glasnik S&CG*, br. 1/2003-Ustavna povelja, i *Službeni glasnik RS*, br. 18/2020. –

Zakon o parničnom postupku (Civil Procedure Act), *Službeni glasnik RS*, br. 72/2011, 49/2013-odluka US RS, 74/2013- odluka US RS, 55/2014, 87/2018, 18/2020 i 10/2023.

Zakon o pravima pacijenata (Patients' Rights Act), *Službeni glasnik RS*, br. 45/2013 i 25/2019.

Zakon o radu (Labor Act), *Službeni glasnik RS*, br. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017-odluka US RS, 113/2017 and 95/2018-autentično tumačenje

Pravilnik o načinu ponašanju i ličnom izgledu policijskih službenika i drugih zaposlenih u Ministarstvu unutrašnjih poslova (Rulebook on the conduct and personal appearance of police officers and other employees of the Ministry of Internal Affairs), *Službeni glasnik RS*, br. 13/2018 i 83/2021, <https://pravno-informacioni-sistem.rs/eli/rep/sgrs/ministarstva/pravilnik/2018/13/1>.

Pravilnik o policijski uniformi in nadomestilih (Rulebook on police uniform and allowances), *Uradni list Republike Slovenije*, br. 14/2014 i 26/2019; <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2014-01-0392>

Poverenik za zaštitu ravnopravnosti/Commissioner for the Protection of Equality (2024). Inicijativa 670-24 za izmenu člana 25. stav 5, člana 27. stav 1. i člana 28. stav 2. Pravilnika o načinu ponašanja i ličnom izgledu policijskih službenika i drugih zaposlenih u MUPu (670-24 Initiative to amend Article 25§5, Article 27§1, and Article 28§2 of the Rulebook on conduct and personal appearance of police officers and other MIA employees (Ministry of Internal Affairs RS), br. 011-00-4/2024-02, od 3.10.2024; <https://ravnopravnost.gov.rs/rs/670-24-inicijativa-za-izmenu-clana-25-stav-5-clana-27-stav-1-i-clana-28-stav-2-pravilnika-o-nacinu-ponasanja-i-licnom-izgledu-policijskih-sluzbenika-i-drugih-zaposlenih-u-mup-u/>

Judicial practice

Odluka Ustavnog suda Republike Hrvatske od 23.04.2018. u slučaju U-II-2064/2010 (Decision of the Constitutional Court of the Republic of Croatia of 23.04.2018 in case U-II-2064/2010), *Narodne novine RH*, br. 51/2018; Retrieved 30.01.2024. from <https://www.zakon.hr/cms.htm?id=29541>

Online source

Radio Slobodna Evropa/Radio Free Europe (2022). Ustavni sud Srbije odlučuje o tetovazama u policiji. 15 nov. 2022 (The Constitutional Court of Serbia to rule on tattoos in the Police), <https://www.slobodnaevropa.org/a/srbija-policija-tetovaze-regija/32130372.html>

Др Срђан Радуловић,
Ванредни професор,
Правни факултет Универзитета у Приштини - Косовска Митровица,
Република Србија

ПРИСТАНАК НА ТЕТОВИРАЊЕ

Резиме

Са традицијом дугом више од пет хиљада година, тетовирање се сматра једном од најстаријих уметничких форми, а уз постепено развијање нових техника, материјала, стилова и приступа за решавање и најсложенијих техничких задатака, тетовирање је прерасло у изузетно цењен начин самоизражавања, како са тату-уметнике, тако и за поносне власнике нових тетоважа. Наравно, за сам процес тетовирања везано је небројено много правних дилема. Проблеми везани за ауторска права, здравље и безбедност, лиценцирање и регистровање, па и потенцијалну дискриминацију, само су неки од оних који окупирају пажњу правничке јавности. Са становишта права, ипак, централно питање, то јест кластер питања, односи се на пристанак на тетовирање. Бројна питања везана за аутономију личности, наиме, отварају се у моменту изражавања аутономије кроз пристанак на тетовирање, а питања која се тичу способности за самоопредељење кроз пристанак нарочито су значајна. Како у Републици Србији не постоји адекватна или барем довољно конкретна регулатива у овој области, у овом чланку, с ослонцем на технике аналитичког и предности нормативног метода, указујемо на дилеме у вези способности изражавања аутономије кроз пристанак на тетовирање и потенцијалне одговоре на њих.

Кључне речи: тетовирање, пристанак, уговор, пословна способност, аутономија личности.