

**MOOT COURT AS A TEACHING METHOD:
ACHIEVEMENTS OF THE FACULTY OF LAW,
UNIVERSITY OF NIŠ IN 2023**


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Abstract. *The author of this paper analyzes Moot Court as a teaching method in law school practice and discusses the advantages and disadvantages of this method. Although the moot court teaching method originated in the Anglo-Saxon legal education, over the past years it has been accepted by the universities of the European-continental legal tradition. By participating in moot court competition, students are provided with in-depth knowledge of different legal issues, related to different legal systems and sources of law. Moot court competitions also contribute to promoting inter-university collaboration of different regions. The Faculty of Law, University of Niš, takes pride in a long-standing history of participation in different moot court competitions. The year 2023 was another successful moot court year for the students of the Law Faculty in Niš. In this paper, the author presents the achievements of the LF Niš moot court students at two prestigious moot court competitions: Human Rights Moot Court Competition (the Regional and European rounds) and the National Moot Court Competition "Condemn Discrimination" (Serb. "Osudi diskriminaciju").*

Key words: *legal education, students' moot court competitions, ECtHR, Human Rights Moot Court, National Moot Court "Condemn Discrimination".*

1. INTRODUCTION

In 2023, the Faculty of Law, University of Niš, published the *Photo-monograph on the participation of students of the Law Faculty in Niš at moot court competitions* (LF Niš, 2023). This photo-monograph is a collection of memories about the 20 years' moot history at the Law Faculty in Niš (hereinafter: LF Niš). In 2023, two LF Niš student teams competed at two moot court competitions. This paper aims to present the moot activities at the LF Niš and acknowledge the students' latest achievements in moot court competitions.

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The primary reason for drawing attention to extracurricular mootting activities is the importance of this practical teaching method in legal education. Although the moot court teaching method originated in the practice of Anglo-Saxon legal education, moot courts have become an important part of the law school curricula within the European-continental legal systems. Moot court competitions are developed around specific area of law (criminal law, commercial arbitration, media law, etc.) or specific legal sources (European Convention for the Protection of Human Rights and Fundamental Freedoms/ECHR, Geneva Conventions, etc). They may be organized at the national, regional or European level. Their geographical reach has a significant impact on the inter-university collaborations in the country, region or worldwide. The mootting method may be used not only in moot court competitions but also in law school courses for presenting persuasive legal arguments on particular issues. Moot court rules may be adjusted to subject-specific purposes. Participation in moots has proven to be beneficial for students, but there are also critical opinions on mootting practices.

The paper is divided into four parts. The first part focuses on the concept of a moot court, moot competition rules and the differences between European moot courts and Anglo-American moot courts. The second part presents the historical development of mootting for educational purposes and discusses the advantages and disadvantages of the moot court as a teaching method. The third part provides a brief insight into the moot court history at the LF Niš, in the past 20 years. The fourth part presents the students' achievements in two moot court competitions in 2023. In the conclusion, the author underscores advantages and disadvantages of law students' participation in moot court competitions.

2. WHAT IS A MOOT COURT?

Moot court and mock trial are traditional forms of legal education practice (LF Niš, 2023:5), aimed at practical training and preparing students for the prospective legal career. The difference between them is embodied in students' roles. In moot courts, students act as legal representatives; in mock trials they have different roles, acting as legal representatives, judges, jurors, plaintiff and defendant, witnesses, etc. Mock trials are simulations of first-instance trial proceedings, where participants present fact findings supported by evidence and apply the law to the case facts (Snape, Watt, 2010:6). Moot courts are simulations of court proceedings on the legal issues arising from undisputable moot case facts. The Serbian word for both activities is trial simulation, but the term "moot court" is used as well.

In English language, the word *moot* may be used as a noun, an adjective or a verb. As a noun, "a *moot* is the argument on the legal issues raised by a hypothetical case which takes place in the imaginary court setting" (Snape, Watt, 2010:3). As an adjective, a *moot* case implies that it is open to debate, or without any practical relevance.¹ Lastly, the verb *to moot* (*mooting*, *mooted*) denotes taking part in a moot court, raising a discussion topic or making a suggestion (OUP, 2024). The meaning of this word has evolved over time. In this article, the term "moot court" is used in its contemporary meaning to denote a simulation of court trial on a hypothetical case (Tasić, Dimovski, Išerić, Mulalić, Šimunović, Marochini Zrinski, Arsenijević, Vučetić, 2023: 2) and a practical student training method.

¹ "Simply stated, a case is *moot* when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 497 (1969).

2.1. An outline of moot court competition rules

In moot court competitions, students exchange persuasive legal arguments on a hypothetical case before the court. The case facts may be fictitious or borrowed from real court cases, but students are always required to develop their own arguments. The moot case presents a hypothetical story of factual circumstances and legal problems arising thereof, highlighting specific disputable legal issues. Participants argue these issues in a way which reflects “the form and the substance of the legal arguments in a real court of law as closely as possible” (Snape, Watt, 2010:4). Depending on the case at issue, the participants find the legal grounds for their arguments in statutes, conventions, case law of national, foreign and international courts, relevant literature and scientific findings.

A moot court includes two student teams. Each team is usually composed of two or three students (or rarely one student). One team represents the applicant (the party bringing the case to court) while the other team represents the respondent (the party responding to the allegations). On the basis of the same hypothetical case, each team must act on behalf of both parties (i.e. both as the applicant and the respondent). Hence, students are required to develop their pro and contra arguments on the same hypothetical case. This demonstrates that the core of mooting is a debate, the “age-old technique of honing legal skills by opposing arguments in favor and against a given topic” (LF Niš, 2023:5). In some moot court competitions, teams may comprise four to six students (rarely more) but, then, each team has two sub-teams (one for the applicant and the other for the respondent). In such a case, the team as a whole presents two standpoints rather than individual students presenting both.

Moot court commonly consists of two parts: written submissions and oral arguments (Tasić *et al.*, 2023: 3). In the first part, the teams prepare their written submissions (on behalf of the applicant) and “file them” with the moot court (by sending them to the moot court organizer). Then, each team is presented with the other team’s claims and is required to prepare the response. Each of these activities is time-limited. In the second part, the teams orally present their arguments before the judges. The applicants first state their claims and set grounds for discussion on the basis of moot case circumstances. The respondents respond to the claims, presenting their own arguments and using the case facts. After these primary addresses to the court, the applicants are given a chance for rebuttal, in order to weaken the respondents’ arguments and correct any given information if needed. Finally, the respondents are given an equal chance for rebuttal. Both primary addresses and rebuttals are time-limited. Presenting arguments in a limited time frame requires an efficient prior preparation. During the speeches and/or after they are finished, the judges may ask questions. The answers to these questions demonstrate how the team members cope with pressure and cooperate among themselves (Tasić *et al.*, 2023: 3).

This brief description of moot court proceedings clearly shows that moot court does not simulate trial proceedings in details but only in filing a claim, responding to a claim, presenting oral arguments before the court, and responding to judges’ questions. There are no recesses, no postponement of hearings, no exemption of judges, no presentation of evidence, no examination of witnesses, and no appeals.

The moot court judicial panel usually consists of practicing judges and attorneys, law professors and legal practitioners. Judges do not adjudicate the case; they assess the participants’ performance. Judges assess the participants’ knowledge of the subject matter (the substantive and procedural law), responses to questions (the ability to think quickly and properly, quality of replies, correlations between the presented arguments and replies),

personal presentation skills (manners, eye contact, delivery without reading notes, legal terminology and language use) and courtroom demeanor (proper attire, professionalism). The moot court results are not presented in the form of a judgment on accepting or declining the claims, but as a number of points awarded to each team. The team with more points wins. While presenting the results, judges are expected to give a conclusion on the raised legal issues and to advise participants about their performance.

Like other competitions, moot court competitions have preliminary rounds where two teams present their arguments, and the winner goes to the next round. The most prepared teams with strongest arguments and good performances meet in the finals, where arguments are heard by the most authoritative judges, which is clearly the pinnacle of moot competition.

2.2. The differences between European moot courts and Anglo-American moot courts

In the United States, there is a distinction between undergraduate moot courts (organized at colleges) and law school moot court (organized at law schools). Same distinction may be found in the United Kingdom. Both in the US and the UK, moot courts simulate the appellate court proceedings (thus, the term “appellate simulation” is used in the US), focusing on exchanging legal arguments only on the grounds of appeal. But, there is a difference between moot court in the Anglo-American legal education and the European-continental legal education. In the latter, the moot court does not necessarily simulate the appellate trial. For example, widely known European moot court competitions simulate the proceedings before the International Criminal Court (Nuremberg Moot Court), the Court of Justice of the European Communities (European Law Moot Court), and the European Court of Human Rights (Human Rights Moot Court). These moot courts do not necessarily simulate appellate court trials because some of these courts do not hear appeals. In Serbia, the National Moot Court Competition “*Condemn Discrimination*” (Serb. “*Osudi diskriminaciju*”) simulates the first-instance court proceedings. In all these moot courts, the moot case facts are indisputable; the subject matter of disputes are only legal matters.

3. THE ORIGINS AND THE FUTURE OF MOOT COURT

The mooting tradition originates from the system of education for aspiring barristers established in the United Kingdom (UK), at the Inns of Court² and the Inns of Chancery,³ about six centuries ago (Snape, Watt, 2010:9). At the time when printed materials for law students were scarce, practical legal education was provided through mooting, i.e. engaging in legal discussion with experienced barristers on subject-specific legal matters. Thus, mooting was a tool for oral learning. The key component of the English legal education “for aspiring barristers (...) was a combination of lectures and verbal arguments” (Snape, Watt, 2010:9). When legal textbooks became available, mooting lost its original significance. Moots were revived in 1926 and they became part of legal study courses at some law schools in the 20th century (Snape, Watt, 2010:13). In modern times, mooting has been revitalized

² The Inns of Court are professional guilds for barristers in England and Wales, similar to the Bar associations in Serbia. In the 15-17th century, law students learned about law practice primarily by attending court sessions and sharing accommodation and education with experienced barristers (Cook, 1952: 49–53; Pearce, 1855:51–62).

³ The Inns of Chancery emerged alongside with the Inns of Court as offices for chancery clerks (apprentices for the equity court, known as the chancery court); by the mid-16th century, they became the solicitors’ association (Blake Odgers, Underdown, Ingpen, Douglas Walker, Duke, 1912: 44-46).

in the form of trial simulation. Three key features of mooting, which have remained from the Inns of Court and are used in practice today, are: “students assume the roles of advocates before a simulated bench; students argue on points of law arising from a hypothetical scenario before the bench; students are expected to be able to answer questions from the bench relating to the arguments presented or any other relevant law” (Lynch, 1996: 3-4).

This practical Anglo-Saxon legal education method was accepted in the early Anglo-American legal education (in the late 18th and early 19th century), where law school lectures were followed by moot court practice (Rachid, Knerr, 2000:1). The acceptance of mooting by countries of the European-continental tradition was strongly influenced by the development of the European Union legal system, whose substantive and procedural law is a combination of classical European legal cultures (Ivančan, Petrić, 2019:284). In the EU law, moot court competitions have been used as a means of promoting and learning about the EU legal system (Ivančan, Petrić, 2019:284). Moots are aimed at facilitating students’ experiential learning on the practice of law and application of knowledge and skills in legal discussions.

Besides moot court competitions, the moot court method may be used in law schools as part of requirements for completion of particular courses (e.g. Human Rights, Criminal Procedure Law, Civil Procedure Law, etc.). In this context, moot court rules may be adjusted to the specific circumstances; thus, the moot problem may be an adjudicated case with or without modifications; the written submissions of the applicant and the respondent may be provided to moot teams as handouts; the judges may be senior students or moot alumni, etc. Although it is a teaching method in legal education, there are opinions that mooting may be used (with relevant modifications) as a training method for psychiatrists (Naeem, Gupta, Rutherford, Gachen, Roberts, 2007:29–32).

The use of moot court as a teaching method has advantages and disadvantages, both in terms of students’ participation and in terms of the ultimate results.

3.1. Advantages of moot court as a teaching method

No other method of teaching law provides such a good synergy of knowledge and set of skills necessary for a good lawyer (Tasić *et al.*, 2023: 5). Two main goals of using moot court as a teaching method are the comprehensive knowledge of the legal area and public speaking skills. In moot courts, students are required to perform multiple tasks. Mooting entails a “multidimensional” approach to assessment: it combines students’ cognitive strategies and processes that “directly determine the outcome of learning” and affective factors (motivation and affective responses) by bringing together the legal culture practices (legal research, preparing case plan, writing legal briefs, problem solving) and moot court features (preparing written submissions, oral presentations, rebuttals etc.) (Lynch, 1996:7-8, 10).

The numerous benefits of mooting for students are broadly highlighted. Knerr and Sommerman (2000) state that the simulation of appellate court proceedings is believed to contribute to increasing the students’ oral communication skills, case analysis and facts summarization skills, as well as legal reasoning and critical thinking skills. Furthermore, it contributes to building their self-confidence and an overall improvement in study habits (Knerr, Sommerman, 2000:17).

As noted by Yule, McNamara and Thomas (2009), in addition to enhancing their practical advocacy, research and writing skills, mooting provides other benefits which advance students’ employability prospective (e.g. building self-confidence and character,

developing professional networks, enhancing resumes, etc.), as well as other academic and professional benefits: improving academic learning (students' active engagement in in-depth analysis of relevant law); practicing lawyer skills i.e. 'thinking like a lawyer' (logical and analytical problem-solving, applying the law to the case at issue, presenting complex legal arguments simply and concisely, etc); understanding courtroom processes and case-management processes, etc. (Yule, McNamara, Thomas, 2009: 231, 232, 233).

Snape and Watt (2010) note that mooting contributes to acquiring interpretation and presentation skills, as well as the ability to cope with disruption and to work in teams. They consider that "research skills and the skill of presenting legal arguments are interdependent" (Snape, Watt, 2010:14) because strong arguments need to be supported by relevant evidence and expressed in an understandable and persuasive way. Mooting nurtures the incredible ability of legal practitioners to explain very complex legal material in simple and clear terms; it prepares students to search the relevant statutory provisions or case law; it enables students to put their conclusions into a clear written form, orally present legal arguments concisely and persuasively, and justify their conclusions (Snape, Watt, 2010:13). As the essence of a moot are highly formal dialogues between participants (mooters) and moot court judges, mooting also entails the ability to cope with interruptions and challenges while presenting one's arguments. Teamwork is another essential lawyer skill. Collaborative (group) work implies cooperative thinking, exchange of ideas and weighting of arguments, as well as practicing dispute strategies without belittling the partner (Snape, Watt, 2010:14).

Ivančan and Petrić (2019) see mooting as the most appropriate method for mastering a certain area of law, both its substantive and procedural aspects. It develops two sets of skills: 1) a set of practical legal skills: critical legal thinking by approaching a legal rule from different perspectives; persuasive representation of the assigned position by assuming the roles of both parties in the dispute; legal research and analysis as well as structured, argumentative and stylistically refined construction of various texts with citation of legal sources; 2) universal (transferable) life skills: creativity, leadership, self-discipline, teamwork, communication, public speaking and work habits (Ivančan, Petrić, 2019:286). In addition, Legal English and other moot court working languages are efficiently practiced and easily mastered through moot courts.

In view of the above, it is evident that participation in moot court has many advantages. Students enjoy specific educational benefits, such as: enhancing legal reasoning and critical thinking, mastering the substantive and procedural law, improving writing and oral communication skills, gaining practical preparation for court practice, increasing self-confidence, improving study habits, and developing alumni relations. Having a chance to perform before real judges, practicing advocates and legal professionals (moot judges) give students a unique opportunity to present themselves as future interns or employees. Thus, moot court may increase students' employment opportunities after graduation. Given the fact that students argue on behalf of both disputing parties, it raises their awareness that there are no lost causes or cases. Moreover, in-depth analysis of legal matters provides a solid base for future scientific research or master papers.

In addition to obvious benefits for students, moot court competitions are beneficial to institutions which organize and participate in moots. They enhance the visibility of the institution in the academic world, and contribute to better media representations and better ranking of the institution worldwide. Moot court competitions, particularly the international ones, are an objective indicator of the quality of university studies (Tasić *et al*, 2023: 7).

3.2. Disadvantages of moot court as a teaching method

A majority of mooters are likely to repeat their moot experience through several different moot court competitions. Yet, the joy of moot court participation entails certain challenges, burdens and costs encountered by students. The major challenge is the time-consuming moot competition preparation process; intense team work and short time limits exert additional pressure on mooters who have a huge burden to balance their regular academic activities and the extracurricular moot court activities. The stakes are certainly high considering that students' priority is to meet their regular course requirements in time and successfully complete their legal education. Another huge burden is the emotional pressure related to fulfilling obligatory academic activities, preparing for and taking exams, as well as the process of preparing for public speaking in a highly formal setting. Furthermore, as moot court competitions involve a careful selection and participation of a limited number of students, other students may experience the feeling of inferiority (Tasić *et al.*, 2023: 7). Yet, if time and emotions are effectively managed, mooting is a pure benefit for participants.

In relevant legal literature, we may also encounter critical opinions on law school moot courts. In the US, critics almost exclusively focus on the fact that the moot court simulation of appellate proceedings significantly differs from the actual appellate court procedure. For example, the US appellate judge Alex Kozinski published an article titled "*In Praise of Moot Court – Not!*", criticizing moot-courting in the US law schools and its failure to teach students the reality of US appellate court practice (Snape, Watt, 2010:7). Such criticism stands insofar as law schools are perceived as places preparing interns for legal practice rather than institutions providing broad law-related education. Moot court does not and should not mirror a real trial. In real courts, one party has a winning case; in moot courts, one team has a winning performance but only after acting on behalf of both parties. In moot court competitions, it is not rare that both teams win in two mutual duels when they represent the applicant. But, the ultimate winner of a moot court competition will be the team with more points collected while acting both as the applicant and the respondent, on the grounds of both team member arguments and performance.

As for the simulation of real court practice, either in trial or appellate proceedings, mock trial is the prevalent teaching method. Moot court is more concentrated on the legal matter discussions, which is not its flaw but simply reflects a different approach to practical legal education. The diversity of methods is an asset in practical legal education.

4. PARTICIPATION OF LAW FACULTY NIŠ IN MOOT COURT COMPETITIONS

The Faculty of Law, University of Niš, has been participating in different moot court competitions for more than two decades. In 2023, LF Niš published a photo-monograph on the moot court competitions (LF Niš, 2023), which is a unique account on the 20 years' history of mooting by LF Niš students, spanning from 2002 to 2022 (with exception of the year 2009). The impressive list of moot court competitions that LF Niš students participated in (190 law students in total) is followed by impressive statistics on students' achievements. In the past 20 years of mooting, LF Niš students participated in 71 moot court competitions at the national, regional and international level, won 25 first place awards and 10 second place awards. In addition, moot court competitors won 12 best speaker awards and 12 best memorials awards (LF Niš, 2023:5).

The history of mooting at the LF Niš started in 2002, when the first LF Niš student team participated in the first Regional Moot Court Competition in International Humanitarian Law (2002), held in Belgrade. Since then, LF Niš students participated in moot court competitions in various legal areas: international humanitarian law (2002-2013), human rights (2010-2022), media law (2012-2015), anti-discrimination law (2013-2022), commercial arbitration (2014), international criminal law (2017, 2019), and private international law (2019) (LF Niš, 2023:9-105).

In the past 20 years, LF Niš students took part in the following moot competitions:

- 1) *The Regional Moot Court Competition in Human Rights* and *The European Human Rights Moot Court Competition*, both known as *Human Rights Moot Court*. The first one assembles the Western Balkan countries, and second one assembles the finalist of Western Balkan regionals and Nordic regionals. Both competitions are based on the European Convention on Human Rights (ECHR), and simulate the proceedings before the European Court of Human Rights (ECtHR) in Strasbourg, France. Since 2018, LF Niš has been organizing the *Pre-Moot Court in Human Rights*, which gathers students from the regional universities which have not qualified for the Regional rounds.
- 2) *Helga Pedersen Moot Court Competition*, also known as *ELSA Moot Court*. This moot court competition is organised by the European Law Students Association (ELSA), representing students from 300 universities in 43 European countries, in cooperation with the Council of Europe. ELSA Moot Court simulates the proceedings before the ECtHR, and it has various pre-moot competitions as eligibility criteria.
- 3) Oxford University's *Price Media Law Moot Court* is an international competition focusing on freedom of speech, media law, and modern information and communication technologies (ICT). Moot court competitions include regional rounds and international rounds, which are traditionally held in Oxford, England.
- 4) *Willem C. Vis International Arbitration Commercial Moot* is an international commercial arbitration competition based on the UN Convention on Contracts for the International Trade in Goods (CISG), the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the UN Model Law on International Commercial Arbitration (UNCITRAL).
- 5) *Nelson Mandela World Human Rights Moot Court Competition* is the global moot court competition dedicated to human rights. After the eliminatory stage where team memorials are evaluated by a team of human rights experts, the best 10 teams (from 5 UN regions) participate in online preliminary rounds. The final rounds are held at the Palace of Nations in Geneva (Switzerland).
- 6) *Nuremberg Moot Court Competition* is a simulation of criminal proceedings before the International Criminal Court, focusing on substantive and procedural issues. The competition is traditionally held at the historic Courtroom 600 of the Nuremberg Palace of Justice, where the Nuremberg trials against the major Nazi war criminals took place.
- 7) *EU Child Moot Court in Private International Law* is explicitly dedicated to the issues of Private International Law family disputes regarding the children.
- 8) *The Red Cross International Humanitarian Law Moot (National rounds)* are organized by the International Committee of the Red Cross delegation in Serbia. The winners of National rounds are eligible for *Jean-Pictet Competition*. Both competitions focus on International Humanitarian Law and involve simulations and role-play exercises where participants are actors in a fictitious armed conflict (military, humanitarian, political

officers, lawyers, etc.). Although participants have multiple roles, this competition is essentially a modified moot court where participants discuss hypothetical legal matters.

9) *The National Moot Court "Condemn Discrimination"* (Serb. "*Osudi diskriminaciju*") focuses on anti-discrimination law. It is organized by the Commissioner for Equality Protection, which is a unique practice in Europe. The first national moot court in Anti-Discrimination Law was organized in 2013, at the time when the Commissioner for Equality Protection was Nevena Petrušić, a professor of the Law Faculty in Niš. This practice has been successfully continued to date.

5. MOOT COURT COMPETITIONS IN 2023

In 2023, student teams from the Law Faculty in Niš successfully participated in two moot court competitions: the Human Rights Moot Court (in the Regional and the European rounds), and the National Moot Court in Anti-discrimination law ("*Condemn Discrimination*"). In both competitions, the LF Niš teams triumphed.

5.1. The Human Rights Moot Court Competition (2023)

As previously noted, the Human Rights Moot Court simulates proceedings before the ECtHR on the alleged violations of human rights and fundamental freedoms protected under the European Convention (ECHR). The LF team "*Iustitia*" included: Maša Božinović, Anabela Saćipović, Mina Savić, Isidora Milenković, Milica Ranđelović, and Vojin Ilić. The team was mentored by Prof. Ivan Ilić, and Dimitrije Andrejić (student-demonstrator).

In the Regional rounds of the Human Rights Moot Court, the moot case regarded a three scholars who lost their scholarships funded by State C after their State of origin A attacked the neighboring State B. Scholars were invited to the embassy of State C to be informed about the canceling of their scholarships. They had to spend almost the whole day in a small room without windows and without any food or refreshments; their cellphones were taken and they were not allowed to leave the embassy's premises or contact anybody. Due to legal and practical obstacles, scholars had no access to courts in State C to challenge the decision on cancelling their scholarships. As a result, scholars filed a joint application with the ECtHR, claiming that they had been unlawfully detained at the embassy and denied the freedom of movement, which constituted the inhuman and degrading treatment. They further asserted that they had sustained the violation of physical, psychological and moral integrity during their detention at the embassy. The scholarship cancellation also raised the issue whether they had been denied the right to education and whether they had been discriminated in comparison to scholars from State B. Finally, they alleged that they had no access to courts and effective legal remedies in State C. Each of these allegations was examined within the admissibility criteria: whether the applicants had or lost their victim status. All these issues were debated with reference to the rights and freedoms protected under the ECHR and the ECtHR case-law.

When the moot case was published, the applicant team had to identify all violations of the ECHR human rights and freedoms arising from the case facts and base their claims on the ECtHR case-law. On the other hand, the respondent team had to identify all alleged violations arising from the case facts and prove them either inadmissible or unsubstantiated on the basis of the ECtHR case-law. These activities required an extensive research of the ECtHR case-law and the applicable substantive and procedural law. The teams prepared

written submissions, which were forwarded to the organizer and assessed by human rights experts. After the eliminatory written stage, the oral argumentation stage was held at the High Court in Podgorica (Montenegro). The Regional Rounds included 12 teams from Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia, Serbia and Slovenia.

Before each round (qualifications, semi-finals and finals), the LF Niš "*Iustitia*" applicant team received the response from another respondent team, while the LF Niš "*Iustitia*" respondent team received the application from another applicant team. In qualifications, LF Niš "*Iustitia*" was better than the team "*Discretio*" from the Faculty of Law in Split and the team "*Abe*" from the Faculty of Law in Banja Luka. In the semi-finals, LF Niš "*Iustitia*" team was better than the team "*Henrik Steska*" from the Faculty of Law in Ljubljana, and the team "*Gavro Vuković*" from the Faculty of Law UDG in Podgorica.

In the double-match final, LF Niš "*Iustitia*" team won over the team "*Iudex*" from the Faculty of Law in Sarajevo. The finals were held before a panel of seven ECtHR judges: the presiding judge Ivana Jelić (judge of Montenegro before the ECtHR), Stephanie Mouru Wikstrom, Lorraine Schembri Orland, Frederic Krenz, Jovan Ilijevski, Davor Derenčinović, and Boštjan Zupančič (former judge of Slovenia before the ECtHR).

By winning the Regional rounds, LF Niš "*Iustitia*" team qualified for the 10th Trans-European Human Rights Moot Court, held at the ECtHR in Strasbourg (France). In the super-finals, the LF Niš "*Iustitia*" team competed with the winner of the Regional rounds in the Nordic Union, the "*Schjodt*" team from University in Oslo.

The new moot case in the super-finals focused on illegal migrants. After the revolutionary government had taken power and instituted policies that significantly disadvantaged women, a woman and her daughter fled their home state A and found refuge in State B, but their asylum application was denied. They refused to comply with the decision and illegally stayed in State B. Under the newly introduced policy, all state officials in State B (including schools and hospitals) were required to notify the police about illegal migrants. While patrolling, police identified the woman and placed her in detention inside the migrant center, where she was denied the right to legal representation and deprived of regular medical treatment. For the first few days, the mother was separated from her daughter, without being informed of her whereabouts. The mother and the daughter spent nearly 18 months in detention at the migration center, after which State B issued a decision on their deportation to State A. The applicants filed an application with the ECtHR, which was joined by the doctor who treated the mother and the teacher who taught the daughter, who both failed to comply with the new State B's policy on illegal migrants and suffered the repercussions. The applicants raised the questions concerning unlawful detention, inhuman and degrading treatment during detention, violation of the applicants' family life, denial of legal aid, inability to obtain an education, and the risk of being subjected to inhuman and degrading treatment as a result of deportation to their state of origin. As for the doctor and the teacher, the contentious issue was whether they were denied the right to perform their professional activities. All these issues were debated in light of the ECHR and the ECtHR case-law.

In the super-finals, no memorials were exchanged between the LF Niš "*Iustitia*" applicant team and the LF Oslo "*Schjodt*" respondent team, but the teams exchanged lists of the ECHR articles they considered to have been violated. In the oral presentation, team members were required to think on their feet, present strong arguments supporting their claims, and weaken the opponent's team arguments by referring to relevant ECHR articles and the ECtHR case-law. The arguments were presented before the ECtHR judges: Ivana Jelić,

Lorraine Schembri Orland, and Erik Wennerstrom. In the double-match finals, LF Niš “*Iustitia*” team won the first place.

5.2. The National Moot Court Competition on Anti-Discrimination Law (2023)

The National Moot Court “*Condemn Discrimination*” (Serb. “*Osudi diskriminaciju*”) is a unique competition organized by the Commissioner for Equality Protection of the RS. In Serbian law schools, Anti-Discrimination Law is not studied within a single course; in fact, it is part of various courses: Constitutional Law, Criminal Law, Civil Law, Labor law, Human Rights, etc. Special procedure rules of discrimination litigation are studied in Civil Procedure Law. Thus, participation in this competition has proven to be beneficial as it enables students to consolidate the knowledge from several legal areas and practice lawyer skills.

The National Moot Court Competition 2023 gathered 8 teams from accredited Serbian universities, but some law schools had more than one team. In order to pay tribute to great women in Serbian history, moot court teams were named after some of them: Isidora Sekulić, Mileva Marić Einstein, Jelena J. Dimitrijević, Danica Tomić, Draga Ljočić, Jelisaveta Načić, Marija Milutinović, and Milica Stojadinović. The LF Niš team “*Draga Ljočić*”⁴ included Sanja Milić, Dušica Lazić, and Lenka Sekulić. The team mentors were Prof. Anđelija Tasić, and Bojana Arsenijević (Teaching Assistant).

The moot case regarded a man who applied for the job at a consulting agency, successfully qualified through 3 stages of interviews and tests, and was offered to sign the employment contract. However, the employer checked the candidate on the social media and found that he had been arrested and convicted of committing an economic crime 13 years ago (while working as a consulting agency director), and received a conditional sentence (probation). Consequently, the employer turned down the candidate, who complained to the Commissioner for Equality Protection on the grounds of discrimination. The primary issue was whether the prior conviction of the former consulting agency director is a justified reason for denying his employment at this consulting agency. In other words, does denying employment on the basis of a previous conviction for an act related to the job he is applying for constitute discrimination, an unjustified differentiation on the basis of personal characteristics, or was it a smart-business decision in a sector driven by integrity of a consulting agency and clients’ trust in it. The time reference of 10 years after the probation and a clean criminal record afterwards is relevant for the man to be rehabilitated and legally considered to be unconvicted at the time of applying for the job. Two sub-questions arose: whether the employer may ask for a candidate’s criminal record and whether he may search for information on social media and use it to assess the candidate and decide on one’s hiring.

When the moot case was published, the team had to identify the form and elements of discrimination in the case circumstances. Acting as a Commissioner for Equality Protection, the team first had to “file” a complaint against the discriminator before a national court. Then, the team received the complaint filed by another team and had to write an answer to complaint, acting as the representatives of the defendant. The preparation of memorials required an excessive research of conventions and anti-discrimination law, as well as the national, ECtHR and other relevant international courts’ practice in discrimination cases. It also

⁴ The LF Niš team was named after Draga Ljočić, the first Serbian woman who studied medicine at the University of Zürich (Switzerland), the first Serbian female physician, a medical assistant and Lieutenant of the Serbian Army in the wars against the Ottoman Empire (1876–1878), the first female doctor in the Balkan wars (1912–1913) and World War I (1914–1918), and a leading figure of the woman’s rights movement in Serbia.

entailed mastering the special procedure in discrimination litigation. After their answers to complaints were assessed, 8 teams with the best score in the written part of the competition qualified for the oral presentation before the hypothetical Higher Court in Belgrade.

The competition was held on the premises of the Commissioner for Equality Protection and the University Library “Svetozar Marković” in Belgrade. The judges were practicing advocates and representatives of the State Attorney's Office, the National Public Administration Academy, the Judicial Academy, the Commissioner for Equality Protection, the Commissioner for Information of Public Importance and Personal Data Protection, as well as representative from the business and the civil sector. In the finals, the five-member panel was composed of: Vida Petrović Škero, former chief justice of the Supreme Court; Bosa Nenadić, former chief justice of the Constitutional Court; Tijana Šurlan, judge of the Constitutional Court; Nebojša Đuričić, judge of the Appellate Court in Belgrade; and Dejan Đukić, judge and director of the Serbian National Internet Domain Registry.

In the National Moot Court 2023 on Anti-Discrimination Law, the LF Niš team “*Draga Ljočič*” won the first place in all three awarding categories. The team won the Best memorials award (for written submissions: the complaint and the answer to complaint). In the semi-finals, the LF Niš team competed with two teams: the LF Belgrade, and the LF for Commerce and Judiciary in Novi Sad. In the double-match finals, the LF Niš team competed with the LF Novi Sad team, and won the first place in oral presentations. A member of the LF Niš team Dušica Lazić won the Best Speaker award.

6. CONCLUSION

Moot court originated as a teaching method in professional lawyer associations (guilds) in England, approximately in the 15th century. In the contemporary world, it has been revived in the form of moot court competitions which are organized at the national, regional and international level. They cover a specific area of law (e.g. international criminal law, human rights, discrimination) or specific legal sources (e.g. ECHR).

Participation in moot courts has many advantages: it facilitates the development of case analysis and summarization skills, legal reasoning and critical thinking, application of the substantive and procedural law, advancement of oral communication skills, building self-confidence, developing professional networks, and improving study habits. On the negative note, moot courts are challenging, time-consuming and emotionally draining as students have to balance their regular academic activities and the additional moot court pressure.

As illustrated in the *Photo-monograph on the participation of students of the Law Faculty in Niš at moot court competitions* (LF Niš, 2023), the Law Faculty in Niš has had an impressive history of successes at moot court competitions for more than two decades. In the year 2023, the LF Niš student teams competed in two moot court competitions: the Human Rights Moot Court (Regional and European rounds) and the National Moot Court “Condemn Discrimination”. The teams triumphed in both competitions.

The victory at the Human Rights Moot Court Regional rounds was the 6th winning title of the LF Niš Moot Court club “*Iustitia*”, which makes it the most successful team in the regional competitions. The victory at the European rounds was a long-awaited second-time winning title, after years of being a vice-champion in European rounds. Not many European lawyers have a chance during their life-long practice to bring a case before the ECtHR and to plead the case before ECtHR judges. Having a chance to do that as a student participating

in a moot court speaks a lot about the importance of this academic practice. ECtHR judges do not choose a winner by assessing the participants' appearance, fluency or vocabulary (although these are taken into account) but the quality of the presented arguments, demonstrated in-depth research of case-law, analogies and creative legal thinking, and coping with the opposing arguments. For these facets alone, the moot court is an unmatched experience.

The organization of the National Moot Court on Anti-Discrimination Law ("*Condemn Discrimination*") is a unique initiative of the Commissioner for Equality Protection of the Republic of Serbia. The specific goal of this competition is to build the capacity of future lawyers for protection against discrimination by participating in a simulation of discrimination litigation, learning about the anti-discrimination legal mechanisms and acquiring legal arguments presentation skills. The National Moot Court 2023 was the 10th jubilee competition organized by the Commissioner for Equality Protection, and the 5th victory of the LF Niš students team in the overall ranking, which was crowned by the Best Memorials and Best Speaker awards. LF Niš is highly proud of the students' achievements.

On the whole, the successful participation of LF Niš student teams in moot court competitions at the national, regional and international level demonstrates the ongoing commitment of all participants in the lengthy moot court preparation and delivery processes to developing students' knowledge and skills for their prospective legal careers. Students' achievements in these moot court competitions clearly demonstrate the ultimate value of the moot court as a teaching method: the knowledge and skills acquired in moots will prove to be an asset in students' further academic and professional pursuits.

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REFERENCES

- Blake Odgers, W., Underdown E.M., Ingpen A.R., Douglas Walker J., Duke, H.E. (1912). *Six lectures on the Inns of Court and of Chancery*, Macmillan and Co., London.
- Ivančan, A., Petrić, D. (2019). O simulaciji sudenja (moot court natjecanju) kao praktičnom obliku nastave na pravnim fakultetima, *Zbornik Pravnog fakulteta u Zagrebu*, vol. 69, br. 2, pp. 277–310.
- Knerr, C., Sommerman, A. (2000). Undergraduate Moot Court in American Colleges and Universities, paper presented at the Annual Meeting of the National Communications Association, Seattle, WA, November 8–12, 2000, pp. 1–25.
- Lynch, A. (1996). Why do we Moot? Exploring the Role of Mooting in Legal Education, *Legal Education Review*, 3, Retrieved 20 March 2024 from <https://www.austlii.edu.au/cgi-bin/viewdoc/au/journals/LegEdRev/1996/3.html>
- Naeem, A., Gupta B., Rutherford J., Gachen A., Roberts S. (2007). The simulated mental health review tribunal - training tool for senior house officers, *Psychiatric Bulletin*, 31, pp. 29–32.
- OUP/Oxford University Press (2024). *Oxford Learner's Dictionary*, Oxford University Press https://www.oxfordlearnersdictionaries.com/definition/english/moot_2 (20 March 2024).
- Pearce, R. (1855). *A Guide to Inns of Court and Chancery*, Butterworths, London.
- Rachid, M., Knerr Ch. (2000). Brief History of Moot Court: Britain and U.S., U.S. Dep. of Education, Educational Resources Information Center, <https://files.eric.ed.gov/fulltext/ED442343.pdf>
- Snapé, J., Watt, G. (2010). *How to Moot: A Student Guide to Mooting*, Oxford University Press, Oxford, New York.
- Tasić, A., Dimovski D., Išerić H., Mulalić A., Šimunović L., Marochini Zrinski M., Arsenijević B., Vučetić D., (2023). *Guidebook on Mootcourts*, Europa-Institut Saarland University, Saarbrücken.
- Yule, J., McNamara J., Thomas M. (2009). Virtual Mooting: Using Technology to enhance the Mooting Experience, *Journal of the Australasian Law Teachers Association*, vol.2, no.1&2, pp. 231-243.

Pravni fakultet u Nišu/Law Faculty Niš (2023). *Fotomonografija o učešću studenata Pravnog fakulteta u Nišu na moot court takmičenjima* (Photo-monograph on the participation of students of the Law Faculty in Niš at moot court competitions), eds. I. Ilić, B. Arsenijević, Pravni fakultet, Univerzitet u Nišu.

US Supreme Court case: *Powell v. McCormack*, 395 U.S. 486 (1969), Retrieved 10 March 2024 from <https://supreme.justia.com/cases/federal/us/395/486/>

MOOT COURT KAO METOD UČENJA: USPEŠI PRAVNOG FAKULTETA UNIVERZITETA U NIŠU U 2023. GODINI

U radu autorka analizira šta je moot court kao metod učenja u univerzitetskoj praksi i razmatra prednosti i nedostatke ove metode. Iako je moot court nastao u praksi anglosaksonskog pravnog obrazovanja, tokom godina je prihvaćen na univerzitetima kontinentalne tradicije. Putem moot court takmičenja studenti dobijaju dubinsko znanje o različitim pravnim pitanjima, vezanim za različite pravne sisteme ili pravne izvore. Na ovaj način se ostvaruje međuuniverzitetska saradnja različitih regiona. Pravni fakultet Univerziteta u Nišu ima ponosnu istoriju moot court takmičenja. Uspeši na takmičenjima su ostvareni i tokom 2023. godine. U radu autorka predstavlja uspehe studenata Pravnog fakulteta Univerziteta u Nišu na dva prestižna takmičenja: Moot Court za ljudska prava i Nacionalni Moot Court "Osudi diskriminaciju".

Ključne reči: *pravničko obrazovanje, studentska moot court takmičenja, Evropski sud za ljudska prava, Moot court za ljudska prava, Nacionalni moot court "Osudi diskriminaciju".*